AUSTRALIAN ENERGY COUNCIL

Australian Energy Market Commission
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Lodged online: www.aemc.gov.au

19 September 2019

Regulating Conditional Discounts – RRC0028

The Australian Energy Council (the '***AEC***') welcomes the opportunity to make a submission to the Australian Energy Market Commission (the '***AEMC***') on the Regulating Conditional Discounts Consultation Paper (the '***Consultation Paper***').

The AEC is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC supports the intent of this rule change. We agree with the concerns raised by the Proponents that unreasonably high conditional discounts can make it difficult for consumers to compare energy deals, and might lead to disengagement. That being said, following the implementation of the default market offer (DMO) and the reference price the types of offers that led to these concerns no longer appear to be present in the electricity market.

Given there is no immediate problem that needs to be solved, the AEC strongly encourages the AEMC to consider the impact of this rule change carefully, ensuring that if a rule is to be made, it does not unduly stifle the development of energy offers beneficial to consumers.

Definitional issues

Of greatest concern to our members is how conditional discounts are defined. As the AEMC is aware, retail offers vary greatly, and whilst there is a view that conditional discounts deliver negative outcomes to consumers, in practice the perceived issues regarding conditional discounts largely relate to pay on time discounts. We suggest that any rule made is characterised in a manner that limits its application to a discount that might impact a particular bill.

For example, if a bill includes a discount (be it a pay on time discount, or another type of discount) that results in a customer paying a different amount if that condition is not met then the discount should be categorised as conditional. However, if the discount is related to an attribute of the offer (for example, if online offers or dual fuel offers were cheaper than other offers) then this should not be classified as conditional.

Of additional concern are issues relating to benefits or bonuses. The AEC understands that a number of stakeholders do not consider there is a material difference between benefits and penalties to consumer outcomes. Conditional discounts are often described by the proponent as "sneaky late payment fees". The AEC disagrees with that assessment, and considers that a rule that limits the ability for retailers to offer benefits to customers would not meet the National Energy Retail Objective.

At risk are the availability of loyalty bonuses, prepayment incentives, movie tickets, or other offers sought out by customers.

As the market continues to evolve, we may see other products and services being offered conditionally. A retailer may choose to include access to online services, or limit an offer to e-billing, in return for a different price. These types of arrangements should not be captured by any potential rule.

Prospectivity

The AEC considers that any rule made must capture new contracts only. Attempting to apply the rule to existing offers, or if a benefit changes, creates significant implementation issues for energy retailers, resulting in vastly higher costs.

Potential options

The AEC strongly encourages the AEMC to avoid the need for a separate guideline to determine reasonable costs. We consider that reasonable costs is a well understood concept, and provided the abovementioned definitional issues are clarified, there is no need for an additional subordinate instrument to regulate maximum discounts. It is our expectation that if the Australian Energy Regulator had concerns with an offer made by the retailer, they would request confirmation from that retailer that the conditional discount offered was reasonable. If the AER were unsatisfied with the response, compliance action could be taken.

Streamlining regulatory obligations

Whilst the AEC understands that the AEMC does not have responsibility for the Electricity Industry Code (the ***'Code'***), we are concerned that changes to the NERR may have consequential impacts to customers as a result of the requirements in the Code.

Retailers are required in the Code to present the offer as both a guaranteed and a conditional discount, with the guaranteed discount as the most prominent discount advertised. Additionally, the conditional discount must be represented as a percentage of the reference price.

These obligations make offers with conditional discounts confusing to customers, unless the base rate is equivalent to the reference price (if there is both a guaranteed and conditional discount on the same offer, the advertised conditional discount will not reflect the conditional discount shown on the bill).

If any potential rule change is too strict, limiting the ability for retailers to offer conditional discounts of the nature that they are today, then the availability of these low priced offers might decline.

The AER recently noted in their *Affordability in Retail Energy Markets 2018-19* report that the median conditional discounts available today were in the range of 10-15%. These discounts are off the reference price, and if ruled unreasonable, might result in customers paying more than they otherwise would given the relative complexity of offering a combination of conditional and guaranteed discounts in the Code.

For any questions about our submission please contact me by email at ben.barnes@energycouncil.com.au or on (03) 9205 3115.

Yours sincerely,

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