30 June 2022

Ms Anna Collyer
Chair
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Submitted via website

Dear Ms Collyer,

Delaying Better Bills Rule Change Request

The energy market is undergoing a period of great transition. In delivering this transition to the benefit of customers, energy retailers have been tasked with implementing a wide range of important reforms over the next 24 months. A number of these reforms are highly impactful on retail systems, with the Consumer Data Right and the implementation of the AER's Better Bills Guideline both highly complex and redefining, requiring retailers to devote significant resources at the expense of other priorities.

As the AEMC is aware, in 2020 it made a final determination to its Billing Contents and Billing Requirements rule change (the **"initial rule change")** that delegated a responsibility to the Australian Energy Regulator (**"AER**") to develop a mandatory Guideline (**"Billing Guideline"**) that would contain requirements for retailers in issuing bills to small customers.

The initial rule change included transitional rules which required the AER to publish a final Billing Guideline by 1 April 2022, to come into force on 4 August 2022. The AER was able to specify in the Billing Guideline different commencement dates for different provisions, provided that all provisions commenced by 31 March 2023.

This proposed rule change request focuses on this final point. In making the Better Bills Guideline (the **"BBG"**)[1], the AER provided retailers with as much time as it was able to within its powers to implement the BBG, deferring the required implementation date to 31 March 2023. Despite this, this maximum allowed timeframe is inadequate given the complexity and effort required to comply with the BBG and will result in significant costs being passed on to consumers to implement it in the timeframe allowed in the National Energy Retail Rules.

The AEC encourages the AEMC to defer this implementation date to 30 September 2023, to reduce the costs being passed through to consumers, at a time when rising energy costs are increasingly challenging energy affordability and the cost of living. A six-month delay will allow retailers enough time to re-optimise their implementation schedule, enabling them to mitigate economy wide challenges, and ultimately, should see implementation costs reduce as compared to the status quo, potentially reducing flow on impacts for consumers.

Given the tight timeframes to which this rule change relates, the AEC considers this rule change should be undertaken using the AEMC's expedited rule making process as it is non-controversial and is unlikely to have a significant effect on market for energy. As discussed further below, the impacts on consumers and the market are limited, with the benefits to customers being material.

Name & Address of the Person making the Request

Australian Energy Council
Level 14
50 Market St
MELBOURNE VIC 3000

[1] Australian Energy Regulator, Better Bills Guideline, 31 March 2022

Description of the Proposed Rule

The proposed rule is a simple amendment to Part 16 of Schedule 3 of the National Energy Retail Rules. The proposed rule would see the final implementation date in rule 1(2) be deferred from 31 March 2023 to 30 September 2023. This change would then allow the AER to make a change to its implementation schedule presented in part 1, paragraph 4 of its BBG.

In the AER's Notice of Instrument[2], it described the challenges imposed on retailers by the development and implementation of the BBG but noted that it was limited in its ability to provide a longer implementation window.

> *We are bound by Schedule 2 of the AEMC Final Rule, which inserts Part 16 rule 1(2) in Schedule 3 of the NERR and provides that the AER may specify different commencement dates for different provisions in the Guideline, provided that all provisions in the Guideline commence by 31 March 2023. Our ability to provide flexibility extends to the transitional approach to implementation. The AER is conscious of concerns raised by retailers in relation to challenges that may arise in implementing the guideline by the 31 March 2023. The AER will work with retailers to explore these issues further and would be supportive of a rule change proposal to the AEMC for a short extension of that timeline if necessary.*[3]

The AEC encourages the AEMC to undertake this rule change using its expedited rule change process. The AEC considers this rule change to be non-controversial as defined in the National Energy Retail Law. There are no impacts to a market for energy, with impacts limited to the relationship between a single retailer and their customer. In addition, the benefits that might be obtained as a result of a deferral will be lessened the longer it takes to finalise this rule change request.

Nature and Scope of the Issue that is proposed to be addressed

Nature of the Issue
As noted in the AEC's submission to the AEMC's Initial Rule Change Draft Determination, it was impossible for industry or the AEMC to ascertain a reasonable timeframe for implementing the Billing Guideline until the scope of the BBG was known.

The AEMC noted these concerns and provided a longer implementation window than was proposed in the Draft Determination and allowed the AER greater flexibility as to how it could require retailers to comply with the Billing Guideline. The Final Determination noted the following:

> *The Commission is also seeking timely implementation of the guideline and has therefore set a time limit on the commencement of the first guideline. This effectively limits the AER in how much change it may be able to introduce in the first guideline, noting it has the ability under the more preferable final rule to amend the guideline to introduce more change in the future.*[4]

The limitations in the NERR on the BBG now place retailers in a challenging situation. The AER acknowledges in its Notice of Instrument that the BBG will require significant implementation resources, despite the effective limitations placed on the scope of the first BBG by the AEMC. In short, retailers are now required to implement the entirety of the BBG by 31 March 2023, despite the AER's acknowledgement that this timeframe is tight, and the suggestion that it might have considered a longer period more reasonable if it had such flexibility.

This proposed rule change seeks to enable the AER's support for a longer implementation period as a means of reducing the pressures on retailers in implementing its broad ranging first guideline. While the AEC acknowledges that there is some disconnect between the AEMC requesting the AER to take note of the bounds of its regulatory timing in determining the scope of the first BBG, the scope of the BBG is now set, and retailers have been tasked with implementing it within the period set out in the NERR. To that end, the only resolution to this issue is a deferral of the final implementation date noted in the NERR to enable retailers to implement the guideline in a cost-effective manner.

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[2] Australian Energy Regulator, Notice of Instrument: Better Bills Guideline, 31 March 2022, Part 7
[3] Ibid, page 41
[4] Australian Energy Market Commission, Rule Determination: Billing contents and billing requirements, 18 March 2021, page 47

Level 14, 50 Market Street
Melbourne 3000
GPO Box 1823 Melbourne Victoria 3001

Phone +61 3 9205 3100
Email info@energycouncil.com.au
Website www.energycouncil.com.au

ABN 92 608 495 307

Scope of the issue
In developing its response to the AER's BBG Draft Decision, the AEC engaged Seed Advisory to undertake and publish a benchmarking exercise where it sought detailed cost estimates from 8 retailers to implement the BBG as drafted.[5] This exercise identified a benchmark cost of approximately $2.7m per retailer to implement the draft BBG, noting that there was a broad range around this number. These costs are highly material, and the AER in its final decision sought to minimise them to an extent, simplifying some elements of the draft BBG. The AEC has not sought to quantify if there are likely to be any reductions in cost from these changes, however, acknowledges that the AER's actions to simplify the requirements in the final guideline have the potential to deliver savings from the draft guideline on which the benchmarking exercise was based.

This benchmarking exercise also sought to identify the key drivers of retailer costs, and the challenges retailers faced in undertaking major billing projects such as the BBG. Nearly all retailers advised that the impact of major regulatory projects on other concurrent projects, along with the scope of the change were the top impacts, with the overall length of the regulatory period also important. Given this, the AEC contends that a 31 March 2023 implementation date will result in increased costs to retailers due to the scope of implementing the BBG, and it will impede the ability for retailers to undertake other critical developments over the next 12 months (both regulatory changes and business process enhancements).

Related to the BBG process are other factors that are impacting the broader Australian economy at this time. One particular and immediate challenge to retailers is the very tight labour market. Retailers are unable to scale up as easily at this time as they might usually do, due to these constraints, resulting in fewer staff having to deliver upon their heavy development schedule. This concern is particularly prevalent with IT projects such as implementing the BBG, given the heavy reliance of retailers on contract staff and external agencies. In an environment where retailers have less access to the staff required to implement projects such as this, they are required to either pay more, or to allocate existing staff from other projects onto this one. Neither of these scenarios were reasonably foreseeable at the time of the AEMC making the initial rule change, however, they are materially impacting the ability of retailers to deliver the BBG.

Explanation of how the Proposed Rule will contribute to the achievement of the National Energy Retail Objective

The National Energy Retail Objective is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers of electricity with respect to price, quality, safety, reliability, and security of supply of energy. The AEMC must also satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers".

This proposed rule change seeks to defer and reduce the costs that will be incurred by retailers in complying with the regulatory framework, and in turn, reduce the costs that will likely be passed through to energy consumers because of the implementation of the BBG in the near term. The proposed rule does not seek to re-prosecute the merits of the BBG or the initial rule, rather it merely seeks to ensure the BBG is implemented in the least cost manner.

The AEC acknowledges that it could be said that deferring the implementation date of the rule change would mean there might be lost benefits from customers not seeing the effect of the initial rule change for a longer period than it might in the status quo scenario. However, the AEC considers that these potential lost benefits are less than the cost impact that will be borne by consumers as a result of progressing with the current implementation date of 31 March 2023.

Additionally, the AEC does not consider there is a need to identify the quantum of any potential benefits of the BBG to quantify the cost of any deferred benefits. The AEC contends that the benefits of reducing the cost impost on consumers currently outweighs the very minor impediment that comes from a delay. Customers today are continuing to receive energy bills that comply with the existing rules and delaying the implementation of the BBG merely retains the status quo for a slightly longer period. In this case, the counter factual is not so extreme as those customers will not receive any bills for the deferral period, or that for an additional period

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[5] Seed Advisory, Better Bills Guideline: Retailer Cost Analysis – report for Australian Energy Council, 9 February 2022

Level 14, 50 Market Street
Melbourne 3000
GPO Box 1823 Melbourne Victoria 3001

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Email info@energycouncil.com.au
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ABN 92 608 495 307

there will be some unreasonable impediment placed on customers that might inhibit their ability to effectively engage with the retail market – the deferral will merely retain the existing effective arrangements that have operated for more than 10 years for an additional 6 months.

Given this scenario, there is no impact on consumer protections because of this change. The existing consumer protections within the NERR will continue to apply irrespective of whether this rule change is made.

The AEC considers there are three broad questions that should be considered by the AEMC in undertaking its NERO assessment.

1. Noting the breadth of the BBG, do the pre-determined implementation timeframes in the Rules remain appropriate?
2. What is the appropriate length of a deferral?
3. Is it likely that costs will be avoided because of this deferral?

On balance, the AEC considers the implementation window allowed under the BBG is shorter than it would have been if the AER had had scope to extend the final implementation date. When the AEMC made the initial rule, it was noted by the AEMC that the AER might be limited in what it could seek to implement in the first iteration. As noted above, the AEMC in seeking a timely implementation sought to allow the AER to have enough scope to make changes iteratively, if it identified benefits that might be difficult to implement in the first BBG. The BBG requires a full redevelopment of retailer bills, including the introduction of obligations that dictate where information can be presented on a bill, how it should be presented, and imposes new and bespoke items that will be required to be presented on every energy bill. With hindsight, the AEC considers that a longer period would have been preferred, had the scope of the BBG been known at the time of the initial rule change.

On the second question, the AEC considers that a three-month implementation deferral would slightly lessen the challenges placed on retailers in implementing the BBG. This additional window would allow retailers some leeway should any material challenges present themselves as part of their technical implementations, which will particularly benefit the ability of retailers to undertake a comprehensive testing process that will hopefully reduce the risk of unintended outcomes for energy consumers.

The AEC considers that a six-month deferral would see all of the benefits of a three-month deferral, however, may additionally allow retailers to optimise their upcoming system implementation schedule, potentially reducing overall costs of implementing this change. This optimisation process is unlikely to be able to occur in a three-month deferral, given the complexity of the changes proposed, and the existing challenges with meeting this date described above. A six-month delay would also allow retailers to incur costs over multiple financial years, potentially deferring the impacts on customer bills in the short term.

A 12-month delay would certainly allow for greater optimisation and may allow greater cost reductions than a six-month deferral, however whether these additional cost savings would be material and warrant the later implementation date is unclear from an industry perspective and would likely benefit some retailers more than others.

Given these factors, the AEC considers a 6-month deferral strikes the right balance between allowing retailers more flexibility and leeway in implementing this complex change and ensures that any benefits that come from the BBG can be seen by consumers in a reasonable timeframe.

On the third question, the AEC contends that it is highly likely that costs will be able to be deferred or avoided because of the proposed deferral. As noted above, the upcoming regulatory change schedule is very busy, and any opportunity to amalgamate these changes to reduce costs should be taken. The Seed Advisory benchmarking report noted that for many retailers several elements of the change management process could be undertaken simultaneously for related projects and allowing retailers a longer period to reoptimize their implementation schedule to allow for synergies to be realised is likely to reduce their costs, and those passed onto consumers. This is particularly relevant in this change process, given the AER will allow retailers a transition period in which it can schedule the change at a time that best aligns with their existing change schedule. This opportunity is not accorded in many other changes, particularly where changes are market impacting. Given that, maximising the flexibility of this implementation by enabling a longer period is likely to see greater benefits than deferring the implementation date of other changes.

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Overall, the AEC considers that a 6-month deferral of the final implementation date is in line with the NERO.

Explanation of the Expected Benefits and Costs of the Proposed Change

The benefits of this rule change are derived from a deferral or reduction in costs and other impacts to retailers, and a likely reduction in the costs that will be passed onto consumers.

There are no material costs that are incurred by any party as a result of this rule change. The AEC anticipates that the AER still retain its transitional period as prescribed in Part 1, paragraphs 4 and 5 of the BBG, albeit changing the latest implementation date to align with the deferred date as prescribed in this rule change. Whilst the AEC acknowledges this would ultimately be a decision for the AER, it is an important element of the proposed rule change, as it ensures that those retailers who are committed and able to comply with the BBG by 31 March 2023 are not materially affected by the extension date. Unlike previous extension rule changes (such as that relating to the implementation of five-minute settlements), there is no requirement for a single 'market' change date to implement the BBG. The changes are internal to retailers, with no broader market impacts.

Broadly, the benchmarking report the AEC published in February 2022 illustrates that the costs of implementing a guideline like the final BBG would cost a retailer $2.7m on average. These costs are very high, particularly given every retailer in the market would be required to implement the BBG and incur its costs. At a high level, the AEC anticipates that a 6-month deferral would result in a not insignificant cost reduction for many energy retailers. The AEC does however note that its benchmarking report was undertaken prior to the release of inflation data and the other economy wide factors mentioned above. Given this, the AEC is not able to predict that the costs of implementation would be lower than this benchmarking report indicated, but rather that the costs will be lower than they otherwise would if the final implementation date remained on 31 March 2023.

The AEC expects that retailers will be able to provide more developed impact assessments to the AEMC throughout the rule change process.

Conclusion

The AEC recognises that this rule change proposal is not one that the AEMC will be pleased to receive, however, considering changing market factors, and the high level of complexity and cost that will result from implementing the BBG, it is one that is in the interests of consumers. As energy prices increase, it is imperative on market bodies and the industry to seek to reduce unnecessary costs in any way possible. The AEC considers this rule change proposal meets the needs of consumers today, and the slight delay in seeing newly designed energy bills is a small impost when compared to the overall affordability of energy during this period of very high wholesale prices and global instability.

I would welcome the opportunity to discuss this rule change proposal with you further. In the meantime, if you have any further questions, please contact Ben Barnes, GM Retail Policy, on 0421 497 491 or ben.barnes@energycouncil.com.au.

Kind Regards

Sarah McNamara
Chief Executive

Level 14, 50 Market Street
Melbourne 3000
GPO Box 1823 Melbourne Victoria 3001

Phone +61 3 9205 3100
Email info@energycouncil.com.au
Website www.energycouncil.com.au

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