



THE HON CHRIS BOWEN MP
MINISTER FOR CLIMATE CHANGE AND ENERGY

MS24-001246

Ms Anna Collyer
Chair
Level 15
60 Castlereagh Street
SYDNEY NSW 2000

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Dear Chair *Anna*

Please find attached a package of rule change proposals to amend the National Energy Retail Rules to help households access cheaper energy deals, increase support for people experiencing hardship, and deliver more protections for consumers.

These necessary changes are recommended by the Energy and Climate Change Ministerial Council (ECMC) which on 19 July agreed that I submit the attached package to the Australian Energy Market Commission (AEMC) in my capacity as Chair of ECMC. This package was developed in response to findings presented to Energy Ministers in March 2024 by the Australian Competition and Consumer Commission (ACCC), the Australian Energy Regulator (AER) and Energy Consumers Australia (ECA) that there are aspects of the east coast regulatory framework that could be strengthened to better serve the interests of electricity consumers.

I endorse these rule change requests and ask that the AEMC urgently progress with their initiation, prioritising those proposals which are most urgent and have the highest expected impact, as agreed by Energy Ministers. These are: 'improving the ability to switch to a better offer,' 'ensuring energy plan benefits last the length of the contract,' 'preventing price increases for a fixed period under negotiated market retail contracts,' and 'assisting hardship customers.'

As the Commonwealth Minister for Climate Change and Energy, I also request withdrawal of the pending rule change request 'long-term standing offer notice', as it is now superseded by the attached package of rule change requests.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Bowen'.

CHRIS BOWEN

Removing fees and charges

Request to make a rule

Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

Statement of issue:

The National Energy Retail Rules ((NERR) allow retailers to charge fees – including but not necessarily limited to account establishment fees, move-in and move-out special meter read fees, credit card payment fees, late payment fees and early termination fees. These fees are not easily visible to consumers as part of the total estimated bill and as such cannot reasonably be expected to be costs customers would consider when choosing between competing retailers. However, these costs are typically incurred by customers in the usual business of maintaining a retail energy contract.

Against an ideal of perfect information, this constitutes a market failure whereby the complexity and opacity of information concerning likely costs acts to prevent a consumer from taking account of all information in forming a decision about which offer to sign up to. A consequential market failure is that inherent fees and charges could be more directly exposed to competition (i.e. a customer is unlikely to add up all potential fees and charges, and the likelihood of incurring them, as part of taking account of all costs associated with a contract and comparing competing contracts on that basis).

The NERR governs how these fees are charged and requires all fees to be reasonable and represent only the costs directly incurred by the retailer. In Victoria, under the Energy Retail Code of Practice, retailers can charge customers on market retail contracts “additional retail charges” provided that they are fair and reasonable and reflect costs incurred.

The proposed rule change would require all retailers to remove certain inherent fees and charges for all small customers, helping to ensure the price advertised to consumers is as close as possible to the price they pay. Fees and charges arising due to a customer-initiated specific arrangements (e.g. disabling remote communications capability of a smart meter that necessitates a special meter read), where that customer is informed of the costs, should not be prohibited. Noting that where there are costs of providing services for which inherent fees and charges could no longer apply, it is expected that retailers would have the option to either absorb costs or recover them through tariffs, exposed to competitive tension.

The Australian Energy Market Commission (AEMC) will need to consider the circumstances that may apply to specific fees and charges and subsequently the case for prohibiting them, including whether they are charges arising outside of the establishing and maintaining of a retail energy contract, and whether it is appropriate for the costs to be spread across the retailers’ customer base. Some fees would be charged rarely, or once only (e.g. account establishment), while others may be more frequent (e.g. 12 times a year to pay a bill with a credit card) and/or common to a specific cohort (e.g. paper bill fees may be more likely to be paid by those without access to electronic billing).

The proposed rule change would need to allow retailers to retain the ability to pass through cost-reflective costs incurred by the retailer that are due to customer choice rather than inherent to

establishing and maintaining a retail energy contract, and customer-specific costs not incurred by the retailer; for example, costs incurred by a distribution network service provider on the customer's request or behalf.

Background

Some jurisdictions (e.g. New South Wales, Queensland, South Australia and Victoria) have already implemented limitations on particular fees and charges. In Queensland, derogations from the National Energy Retail Law (NERL) were made to ensure consumer protections in place prior to the commencement of the NERL were retained. Some retailers already minimise fees and charges that consumers pay outside their supply and usage charges, and/or exempt some customer groups from those fees and charges.

Jurisdiction	Legislation
NSW	<p>National Energy Retail Law (Adoption) Act 2012 modifying the NERR:</p> <ul style="list-style-type: none"> • Additional rule 35A: prohibits charges for paper bills or paying bills at an Australia Post outlet • Modification of rule 49A: prohibits early termination charges other than in prescribed circumstances • Modification of rule 73: requires waiving of late payment fees in certain circumstances. • Additional rule 73A: requires waiving of early termination charges for certain customers.
QLD	<p>National Energy Retail Law (Queensland)</p> <ul style="list-style-type: none"> • Derogation New Section 22A – prevents new fees and charges being applied to standing offers*; • Derogation to Rule 49A(1)(b) & (2)(7) NERR – caps early termination fees to \$20; and • Derogation Rule 49B NERR – retailers to have one market retail contract that does not include an early termination charge clause. <p><i>* Acceptable fees include: providing historical billing data that is more than two years old, dishonoured payments, and financial institution fees for a dishonoured payment (P 565, Queensland Government Gazette Extraordinary Vol. 366, No. 62, Friday 18 July 2014).</i></p>
SA	<ul style="list-style-type: none"> • Electricity (General) Regulations regulation 44C prohibits early termination fees other than in prescribed circumstances. • Section 24 of the <i>National Energy Retail Law (South Australia) Act 2011</i> allows for late payment fees subject to certain conditions.
TAS	<ul style="list-style-type: none"> • <i>National Energy Retail Law (Tasmania) Act 2012</i> s 19 requires retailers to waive late payment fees or charges for certain types of customers.
VIC	<ul style="list-style-type: none"> • Electricity Industry (Victoria) Act 2000 sections 40C and 40D (and equivalent provisions in the <i>Gas Industry (Victoria) Act 2001</i>) prohibit charging of fees for late payment and exit fees, respectively, in specific circumstances.

Description of the proposed rule change

This rule change request seeks to amend the NERR to prevent the following fees and charges being imposed unless state or territory legislation authorises them to be charged:

- account establishment fees
- special meter read fees (for move-in and move-out meter reads)
- credit card payment fees except for the application of cost reflective reasonable costs
- late payment fees except for the application of cost reflective reasonable costs
- early termination fees
- over the counter fees at Australia Post
- paper bill fees (subject to further consideration and analysis).

This could be implemented by amending the NERR, likely under [Division 7](#) (Market retail contracts—particular requirements). Specifically, amendments to rules [46](#) (Tariffs and charges) and [52A and 52B](#) (Conditional fees) would need to be considered.

It would be appropriate to consider if fees for issuing paper bills should also be removed. In 2017 New South Wales introduced provisions modifying the NERR that prevent energy retailers from charging consumers fees for receiving paper bills and for paying bills over the counter at Australia Post outlets. It would also be appropriate to consider whether the findings of the Commonwealth's [Decision Regulatory Impact Statement \(pmc.gov.au\)](#) remain relevant and if it remains appropriate for paper bill fees to be charged. Some, but not all, energy businesses exempt certain consumers from bill fees (for example, customers receiving concessions and rebates or on hardship plans).

The proposed rule change would ideally not prevent retailers from imposing fees and charges allowed under the NERL and regulations in effect in a particular jurisdiction, or from recovering any remaining costs to cover the installation or provision of designated assets or equipment to a customer. However, it is possible that the rule change would render certain state or territory derogations from the NERR unnecessary, resulting in a more consistent standard across jurisdictions.

The proposed rule change should consider allowing reasonable cost reflective fees and charges as a result of customer-initiated arrangements that give rise to additional costs for retailers in supplying energy (e.g. a customer electing to disable the remote comms capability of their smart meter, that necessitates special meter readings to be undertaken by their energy retailer).

It is noted that prohibiting particular types of fees or charges may result in other different (equivalent) charging structures being imposed. An alternative to this black-listing approach would be, in contrast, a white-listing approach whereby only prescribed fees and charges can be imposed on customers in addition to a tariff or tariffs. This approach would mean that, should a retailer consider that it is necessary or beneficial for its customers to be exposed to a new fee or charge outside those prescribed, it could submit a rule change request making the case for adding it to the prescribed list. A further permutation would be to consider whether retailers should be obliged to exempt certain types of consumers (e.g. consumers in receipt of a concession or rebate, on a payment or hardship plan) from all or certain prescribed fees and charges.

How the proposed rule change will address the issue

This rule change would require all retailers to remove fees and charges typically incurred by customers in the usual business of establishing and maintaining a retail energy contract, helping to ensure the price advertised to people is the price they pay in the absence of customers opting in to

different arrangements with full visibility of costs. Retailers would have the option to recover these costs through tariff charges, which help to ensure these costs face competitive pressures.

How the proposed rule change will or is likely to contribute to the achievement of the National Electricity Objective

The National Energy Retail Objective (NERO), set out in the *National Energy Retail Law*, is:

“to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to:

- e. price, quality, safety, reliability and security of supply of energy; and
- f. the achievement of targets set by a participating jurisdiction—
 - v. for reducing Australia's greenhouse gas emissions; or
 - vi. that are likely to contribute to reducing Australia's greenhouse gas emissions.”

The relevant aspect of the NERO for this request is the price of energy services in the long-term interests of consumers of energy.

The proposed rule change advances the NERO by simplifying the cost structure of energy bills (by removing fees and providing retailers with the option to recover these through tariffs) and helping to ensure these costs face competitive pressures. Consumers will also have a clearer understanding of the costs they are required to pay across the life of their energy contract, and this amendment will reduce risk of shock from additional fees.

Expected costs, benefits and impacts

Expected benefits

This rule change will simplify the structure of energy bills and reduce shock to consumers of additional fees. This will help to ensure the price consumers are advertised is the price they pay across the life of their contract.

It will still provide retailers with the option to recover these costs through tariff charges, which will streamline the number of charges consumers need to pay while also exposing these costs to competitive pressures.

Expected costs

The proposed rule change would impose a small cost to retailers, by requiring them to amend how they charge their customer base (i.e. recovering costs previously recovered through fees via tariffs). This would require a change of process and calculations to determine how tariffs need to be adjusted to recover these costs.

Expected impacts

The Australian Competition and Consumer Commission’s (ACCC) [Inquiry into the National Electricity Market](#), released in June 2023, noted that ‘*for most customers, fees and charges have a minimal impact on the overall cost of electricity*’. However, the report also noted that customers should consider the amount of fees and charges and the frequency at which they are likely to incur any fees or charges when choosing an energy plan.

This reform aims to minimise the presence of fees and charges in energy contracts and maximise the proportion of retailer costs exposed to competition. It would not override the operation of state or territory derogations that either explicitly or implicitly allow retailers to charge certain fees, or cap those fees, or exempt certain consumers from paying those fees.

It is anticipated that in aggregate, shifting the recovery of retailers' business costs away from fees and charges largely shielded from competitive effects and into tariffs exposed to competition would drive efficiency, rewarding retailers best able to efficiently manage risk and maintain the lowest possible tariff offerings, while requiring other retailers to adapt.