Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

8 May 2025

To Ms Collyer,

Improving consumer confidence in retail energy plans – Draft determination

ENGIE Australia & New Zealand (ENGIE) appreciates the opportunity to respond to the Australian Energy Market Commission's (the Commission) draft determination on the four rule change requests that seek to amend the National Energy Retail Rules (NERR) to make changes to energy market contracts.

The ENGIE Group is a global energy operator in the businesses of electricity, natural gas and energy services. In Australia, ENGIE operates an asset fleet which includes renewables, gas-powered generation, diesel peakers, and battery energy storage systems. ENGIE also provides electricity and gas to retail customers across Victoria, South Australia, New South Wales, Queensland, and Western Australia.

ENGIE is supportive of targeted reforms that address systemic market failures. However, ENGIE does not consider the draft determination has sufficiently justified imposing significant regulatory intervention and implementation complexity on participants based on the limited evidence provided of systemic concerns with participant behaviour. For example, the proposed new regulatory requirement for retailers to only increase prices once every 12 months is already consistent with market behaviour. This proposed new regulatory requirement would result in additional regulatory complexity for participants without a proportional improvement in consumer outcomes.

ENGIE notes that the Commission has stated their intention is that the draft rule will inform, empower and protect consumers through resolving specific systemic issues. As highlighted in the Commission's summary of the draft rule[1], the proposed reforms are primarily focused on protecting consumers and there appears to be limited focus on ensuring that consumers are more empowered and better informed.

[1] Australian Energy Market Commission 2025, National Energy Retail Amendment (Improving consumer confidence in retail energy plans) Rule 2025 – Draft rule determination, 27 March, p. i

In the remainder of this submission, ENGIE provides feedback on the proposed implementation of each of the four rule change requests and proposes some alternative approaches to those set out in the draft determination.

Ensuring energy plan benefits last the length of the contract

ENGIE is broadly comfortable with a requirement for benefit periods to be aligned to contract periods for contracts entered into from 1 July 2026 onwards. However, ENGIE is concerned about the Commission's proposal to retrospectively apply the draft requirements and to introduce a price cap on market offer contracts with expired benefits.

The retrospective application of rules impacts regulatory certainty

ENGIE does not support the retrospective application of regulatory rules, as participants have established contract terms and conditions based on the rules of the time and could not have envisaged the future evolution of the regulatory rules. The retrospective application of regulatory rules erodes regulatory certainty and the confidence that market participants have in the market and its frameworks. While retailers are able to respond to prospective rules and update their systems, processes and energy products to accommodate these, they are unable to adequately do this for retrospectively applied rules.

Of particular concern in the drafting of the Commission's proposed rule is that the retrospective rules would apply to any contract that has had a benefit expire any time in the past. It would be significant undertaking for retailers to review their full energy product portfolio for contracts that have had expired benefits and assess whether each of these legacy contracts require a price change to become compliant with the new rules.

ENGIE would appreciate clarity from the Commission around the scope of the retrospective application of this rule and whether the Commission's intention is that the rule captures every active retail contract or only those that have had their benefits expire within a specified period.

A market offer price cap is a significant shift in regulatory approach

ENGIE contends that the proposal to limit market offer pricing to the standing offer prices after benefits expire is a significant shift in regulatory approach. To date, price regulation has appropriately been limited to standing offer prices. ENGIE considers it would be regulatory overreach for the Commission to introduce price regulation on market retail contracts, particularly where this price regulation is being imposed retrospectively. If the reform were solely being applied prospectively, retailers would at least have the ability to avoid the price regulation by ceasing the selling of contracts with fixed-term benefit periods.

In terms of the drafting of the proposed new rule 48C in the NERR, ENGIE considers the reference to 'the retailer's standing offer prices' is too vague and should be expanded upon in the final determination. Retailers will have different standing offer prices across the National Electricity Market, which will vary based on the distribution network region and the underlying network prices and structure. The Commission should ensure that the drafting of any new rule 48C expressly reflects the variability of standing offer prices depending on the location of the premises and the applicable underlying network tariffs.

If the Commission proceeds with a retrospective application of the rule, the drafting of rule 48C should also be updated to make it clearer that the price regulation only applies from the date that rule 48C has come into effect, rather than 'after the benefit change date'. As noted in the previous section, for some legacy contracts the 'benefit change date' may be many years in the past.

The retrospective application of rules increases the risk profile of retailers

The proposed retrospective application of this rule change, as well as other rule changes in this package, are a significant shift in the Commission's rule making approach and will result in a step-change in the regulatory uncertainty and risk profile faced by retailers. Through this package of reforms, the Commission will be signalling to the market that it is willing and able to apply obligations retrospectively, which inherently makes the retail energy market a riskier market to participate in. A prudent business would reasonably respond to this by requiring a higher risk premium to enter and participate in the Australian retail energy market.

ENGIE expects that if the Commission proceeds with the retrospective application of rule changes that the Australian Energy Regulator incorporates the increased risk premium for participants in the setting of the Default Market Offer on an ongoing basis.

Non-price benefits should be excluded from the reform

To the extent that the reform is applied retrospectively, ENGIE urges the Commission to specifically exclude plans with non-financial benefits. Retailers developed plans with non-price benefits in the past based on the rules in-place at that time and may have chosen to not market and sell those plans if they were aware that the regulatory rules would retrospectively change. There would be significant work for retailers to go back through their energy product portfolio and identify and update for the customer cohorts that have had non-financial benefits expire at some point in the past.

As the inclusion or exclusion of plans with non-financial benefits is a critical element of the reform, ENGIE does not consider it is appropriate for the Commission to defer this assessment to the Australian Energy Regulator through the 'Benefit change notice guidelines' as proposed in section 3.4 of the draft determination. ENGIE notes that the exclusion of non-financial benefits from this reform would provide regulatory consistency with Victoria, where the Essential Services Commission's implementation of a similar reform excluded non-financial benefits such as loyalty points, tangible gifts and third-party subscriptions, as it may not be possible for retailers to guarantee that these benefits can be provided on an evergreen basis. For example, a retailer may intend to provide a customer with a subscription to a streaming service on an ongoing basis but that service may unexpectedly close down or otherwise be no longer available.

The proposed approach to address protections for deemed customers will also impact move-in customers

While ENGIE is pleased that the Commission has taken on board its feedback about deemed customer retail arrangements, the proposed solution to delete rule 115 of the NERR would have unintended consequences for disconnections of move-in customers. This customer cohort includes people that take occupancy of a premises and consume energy before entering into a contract with the financially responsible retailer, or any other retailer of their choice. ENGIE considers that these unidentified customers should be able to be legitimately de-energised under the process set out in rule 115 of the NERR if the occupant of the premises refuses or fails to engage with the financially responsible retailer, or any other retailer of their choice.

Removing unreasonable conditional discounts

As discussed in the above section, ENGIE is not supportive of the retrospective application of regulatory rules. The Commission's 2020 decision on the 'Regulating conditional discounting' rule change set out a prospective approach that was intended to support retailer certainty and a gradual transition of the customer base away from high conditional discounts.[2] This has been a successful approach, as demonstrated by the small proportion of customers that remain on pre 1 July 2020 contracts with high conditional discounts. As there is only a small cohort of customers affected by this draft rule, it is not clear that the consumer harm justifies the additional regulation and associated compliance costs relative to continuing the current gradual transition path.

If the Commission proceeds with this rule change, ENGIE urges the Commission to ensure there is a consistent application of the rules for contracts entered into pre and post 1 July 2020. Specifically, the final rule should enable a retailer to effectively split an existing conditional discount into both a conditional and unconditional component, with the conditional discount not being able to exceed a reasonable estimate of the costs incurred, or likely to be incurred, if the customer fails to satisfy the payment condition. An example of how a retailer may apply such a rule is included below.

Pre-rule change pay-on-time discount	**Maximum 'reasonable estimate' pay-on-time discount level**	**Post-rule change discount**
20 per cent (conditional)	5 per cent	15 per cent (unconditional) 5 per cent (conditional)

ENGIE recognises that some retailers may find it more administratively simple to apply conditional discounts in-full even if the customer did not meet the condition of the discount. As long as the Commission

[2] Australian Energy Market Commission 2020, Regulating conditional discounting – Rule determination, 27 February, p. 30.

drafts the rule in a way that requires a conditional discount below a maximum amount, retailers would have the discretion to set the conditional component of the discount at zero.

Preventing price increases for a fixed period under market retail contracts

ENGIE is pleased that the Commission has not progressed the proposed rule change to prevent price increases for the first 100 days of a contract, which would have had significant administrative challenges and unintended consequences. ENGIE is broadly comfortable with the Commission's proposed reform to only allow retailers to increase prices once every 12 months for all market retail contracts with some exceptions. ENGIE does have some feedback about specific elements of this proposed reform, which are discussed in further detail below.

A requirement for 20 business days' notice provides retailers insufficient time to prepare for price changes

ENGIE considers that a shift from the current practice of five business days' notice to 20 business days' notice before a price increase takes effect is an overcorrection to address concerns customers are not provided sufficient time to prepare for a price change. The annual price change project is a significant undertaking and is highly resource-intensive with short timeframes between late-May, with the publication of final network tariffs and the Australian Energy Regulator's Default Market Offer prices, and mid-June when price change notices are finalised and are sent to customers. The proposed 20 business days' notice requirement would provide a further strain on retailers' resources to meet their compliance obligations.

ENGIE considers that a 10 business days' notice requirement would more appropriately balance the impacts on retailers' resources and the Commission's preference for more clarity and reduced bill shock for consumers. Most retailers would prefer to update their pricing as close to 1 July as possible, to align with network tariff change dates and minimise their exposure to higher network tariffs that are not able to be passed through to consumers. Typically, if a customer will change offers or transfer between retailers, they would do this relatively soon after receiving their price change notice. As customers are generally able to finalise a transfer between retailers within two-days, ENGIE considers that 10 business days' notice provides customers with sufficient time to respond to the information in their price change notice and finalise a transfer between retailers.

Extending the notice requirements to 20 business days may also have unintended consequences when combined with the ability for retailers to undertake their annual price increases at any point in the month of July. Some retailers may target a 1 July price change date to minimise exposure to higher network tariffs, while others may delay their price change date to provide their teams with additional time to finalise pricing of their products for the period. This mismatch in timing between retailers could result in scenarios where a customer receives a price change notice in late-May or early-June and decides to transfer to another retailer, which at that time has not yet finalised its new prices and cannot indicate to the customer the extent to which their pricing will change in July. This type of scenario could increase the occurrences of bill shock and poor outcomes for consumers that do the right thing and compare and switch retailers after receiving a price change letter.

As noted in ENGIE's submission to the consultation paper, increasing consumer awareness of the date they can expect their retail energy prices to change is the most effective way to reduce potential bill shock. A widely understood annual price change cycle already occurs in other industries, such as private health insurance.

The period for price increases should include 1 August as an option

ENGIE is comfortable with either setting a single day for price increases to take effect or allowing the price increases to occur throughout the month. In Victoria, where price increases can only take effect on 1 August each year, retailers are able to manage this timing by staggering the mail-out of price change notices to manage their resources and costs.

Regardless of the approach taken, ENGIE requests that the Commission allow price increases to take effect on 1 August, which would allow retailers the flexibility to align the effective dates of their price changes with Victoria.

Any requirement for fixed term pricing should provide exemptions for material events

ENGIE notes that restricting price increases to a set time-period each year could make it challenging for retailers to manage their risks if an unexpected and material event occurs. In Victoria, retailers are able to increase their prices on a date other than 1 August if the Essential Services Commission varies their Victorian Default Offer determination due to a material unforeseen event occurring outside the control of retailers.[3] ENGIE requests that a similar mechanism be implemented in the NERR to provide retailers with the ability to pass through material cost increases due to significant unforeseen events, rather than requiring retailers to fully absorb the financial impact of these events until the next price change period.

A formal exemption process for the July price increase requirement should accompany the rule change

While ENGIE is pleased that the Commission has expressly considered the examples it raised in its submission to the consultation paper for exemptions to the requirements, ENGIE considers that a further mechanism for managing exemptions should be introduced as part of the rule change.

There may be innovative offerings that develop over the coming years that do not neatly meet the draft exemption requirement that a tariff 'continually varies in relation to the prevailing spot price of energy'. ENGIE considers that introducing a formal exemption process facilitated by the Australian Energy Regulator would ensure the framework can continue to remain fit-for-purpose over time and allow for an individual assessment of the terms and conditions of offerings on a case-by-case basis. ENGIE notes that the Essential

[3] Section 13 of the Victorian Default Offer (VDO) Order in Council provides the framework for the Essential Services Commission to vary a VDO price determination. Section 6 of the VDO price determination each year sets out the Essential Services Commission's approach to varying a VDO price determination.

Clause 94(6) of the Energy Retail Code of Practice sets out the ability for retailers to increase market offer prices following a variation of a VDO price determination.

Services Commission provides for a similar mechanism in clause 117(1)(c) of the Energy Retail Code of Practice and associated Guideline.[4]

Removing fees and charges

ENGIE agrees that any fees or charges should be limited to the reasonable costs incurred by the retailer in providing that service. ENGIE is supportive of the Commission's proposal that the prohibition on fees and charges be limited to vulnerable consumers rather than the full customer base.

ENGIE considers the scope of the reform should be further clarified in the final determination to ensure the reform is properly targeted to benefit consumers who are most vulnerable.

The definition of vulnerable consumers should be further clarified

In our submission to the consultation paper, ENGIE supported the prohibition on fees and charges being limited to customers participating in hardship programs, which is the customer cohort that is disproportionally impacted by fees and charges. While ENGIE agrees with the prohibition extending to customers who may be affected by family violence, ENGIE contends that the customers on payments plans and customers receiving a concession will not necessarily be vulnerable consumers.

For customers on payment plans, there are many customers who voluntarily sign-up to payment plans due to their own preference to manage their own energy bill payments in this way. ENGIE currently provides all customers with simple options to set up voluntary payment plans, either online or via conversations with call centre agents. The Commission's proposed definition to extend the prohibition beyond customers receiving payment plans within a hardship program may result in retailers ceasing to offer voluntary payment plans to customers. ENGIE urges the Commission to remove the prohibition for customers 'on a payment plan' in the final determination.

The Commission has proposed that the prohibition apply to a customer that is 'receiving a rebate, concession or relief under any government funded energy charge rebate, concession or relief scheme'. ENGIE considers this definition is very broad and may capture untargeted programs such as the Energy Bill Relief Fund, which has provided regular rebates to every small customer.[5] More generally, not all customers receiving a concession will necessarily be vulnerable and require additional protections, such as some customers that hold veteran affairs cards. For those customers that receive a concession and are experiencing vulnerability, these customers will in most instances be participating in their retailer's hardship program and would be captured by the prohibition. Due to the potential unforeseen

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[4] Essential Services Commission 2022, Guideline: Exemptions from complying with Energy Retail Code of Practice requirements to restrict market retail contract price increases to once a year, Version 2, accessed at; https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/guideline-exemptions-once-year-price-increases

[5] Department of Climate Change, Energy, the Environment and Water, Energy Bill Relief Fund, accessed at; https://www.energy.gov.au/energy-bill-relief-fund

circumstances, ENGIE proposes that the Commission does not include a specific prohibition for concession customers.

The meaning of a 'reasonable estimate of the costs incurred' should be further clarified

While it is appropriate that any fees or charges should be limited to the reasonable costs incurred by the retailer, ENGIE considers that the Commission should provide further clarity and guidance on how the reasonableness of fees and charges will be assessed. In particular, fees and charges are not always a straight pass-through as retailers incur legitimate costs in administering fees and charges, such as operational costs and bad debt costs. The introduction of this rule change would also increase the operational costs for retailers in managing fees and charges, as retailers would need to establish and maintain processes to ensure they can demonstrate compliance with the new regulatory requirements.

The above items would not represent a 'mark-up' as retailers are not making a profit margin by seeking to recover legitimate costs that are incurred. If the rule change does not permit retailers to recover these legitimate costs, they would either have to spread these costs across all customers or absorb these costs. ENGIE does not consider it is equitable or desirable outcome for the broader customer base to pay the costs of fees and charges incurred by select customers. This approach would also reduce the transparency of fees and charges for customers.

Special meter read fees are legitimate costs incurred by the industry

ENGIE does not agree with the Commission's proposal to prohibit move-in and move-out fees rather than to require these are set to reflect the reasonable cost of providing the service, which is based on the fees set by the relevant distributor. It is not an equitable approach to require the broader customer base to pay the cost of special meter read fees.

As special meter read fees are network charges, ENGIE's view is that any prohibition on retailers passing these fees through to consumers should necessarily trigger rule 6B.A3.1 of the National Electricity Rules and rule 508 of the National Gas Rules, which prohibit the distributor from recovering fees from the retailer if the retailer cannot recover those fees from the customer. ENGIE asks that the Commission clarify in the final determination the party that it intends will absorb the cost of any prohibited special meter read fees.

If the Commission's expectation is that retailers continue to incur special meter read fees and absorb these costs into their general cost stack, ENGIE contends that the Australian Energy Regulator should be explicitly instructed to include these costs in its calculation of the annual Default Market Offer price.

Concluding remarks

Should you have any queries in relation to this submission please do not hesitate to contact me on, telephone, 0436 929 403.

Yours sincerely,

Matthew Giampiccolo

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