10 September 2014

Mr John Pierce
Chairman
Australian Energy Market Commission
SYDNEY NSW 2000

Submitted at http://www.aemc.gov.au/Contact-Us/Lodge-a-submission?nodeid=24147

Your Ref: RRC0001

Dear Mr Pierce

National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014

The Public Interest Advocacy Centre (PIAC) thanks the Australian Energy Market Commission (AEMC) for the opportunity to provide comment on the Draft Rule Determination for the AEMC's examination of the National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 (the Draft Determination).

The original rule change proposal, submitted by the Consumer Action Law Centre (CALC) and the Consumer Utilities Advocacy Centre (CUAC) proposed that retailers be banned from varying prices within the period of fixed-term retail contracts. PIAC made a submission in response to the AEMC's initial consultation paper for this review that largely supported the proposed rule change.[1]

PIAC is disappointed with the AEMC's proposed draft rule. The AEMC's proposed response to the issue identified in the rule change proposal is to provide consumers with more information at the time that they are entering into a market retail contract.[2] PIAC believes that this does not go far enough, and repeats its recommendations that retailers be required to give customers 21 days notice of any price increase.

The AEMC's proposed rule

The AEMC draft rule changes proposes to amend the National Energy Retail Rules (NERR) to specifically require retailers to:

- disclose terms or conditions that provide for price variations as part of the existing requirement to obtain the explicit informed consent of consumers to the entry into a *market retail contract;* and
- provide information about when they will notify consumers of variations to prices during *market retail contracts* as part of existing product disclosure information provided on contract entry.[3]

1 PIAC, 2014, *Let's be clear*, available at: www.piac.asn.au/publication/2014/05/lets-be-clear.
2 AEMC, 2014, *Draft Rule Determination: National Energy Retail Amendment (Retailer price variation in market retail contracts) Rule 2014*, iii.
3 Ibid.

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Both these provisions relate to providing consumers with information at the point at which they enter into a market retail contract. The AEMC further notes that following the provision of the required information, consumers 'have a ten business day cooling off period to withdraw from the contract'.[4]

The Draft Rule provided along with the Draft Determination uses the language above, and inserts a provision into the NERR that information required to be provided to consumers when entering into a market retail contract 'includ[es], where relevant, when prices will be notified by the retailer to the customer'.[5] However, PIAC notes that is possible for retailers to technically comply with this provision without providing information that is useful to consumers. For example, a retailer could tell consumers that they will be provided with information about price increases "as soon as practicable" or "when such information becomes available". As the Draft Determination notes, some Energy Price Fact Sheets 'are required to include information about whether prices can vary during the term of a contract' but the information is 'at times limited or unclear'.[6] The AEMC cites the example of Energy Price Fact Sheets that only state that 'prices may vary in accordance with the terms and conditions of the contract'.[7] PIAC takes the view that the AEMC's draft rule is potentially open to being similarly skirted by retailers.

PIAC's proposed approach

PIAC believes that to increase consumers' ability to participate in the competitive energy market, retailers should be required give consumers 21 days notice of any price increases. In its submission to the AEMC's initial Consultation Paper for this review, PIAC noted that, currently, retailers are required to notify consumers of a change in price 'as soon as practicable or, at the latest, the next bill'.[8]

In practice, PIAC understands that it is unusual for consumers to be informed of a price rise before the next bill. This means that consumers are using energy thinking they are purchasing it at a one price, when they are actually being charged another price. This hampers their ability to respond to a price signal about the increased cost of the product they are consuming. As noted by the AEMC in its Draft Determination, 'inefficient consumption decisions may occur' where consumers only receive notification of a price variation 'some months after their price has varied'.[9] This issue would not be overcome under the proposed amendment to the NERR, particularly under the circumstances outlined above.

Where consumers are informed about a price rise before it takes effect, they will also have the opportunity to evaluate whether they should seek a different offer from an alternative retailer. As part of these considerations, consumers would have to evaluate the impact of any late payment fees. (PIAC has previously advocated for late payment fees to be banned in NSW.) In doing so, consumers would be bringing the rigour of their informed consumption decisions to bear on retailers. Before retailers increased prices they would need to consider the possibility that consumers would chose to pay a late fee and move to another provider. Where retailers chose not to increase prices due to this risk, the competitive market would have produced an outcome that is beneficial to consumers.

PIAC, therefore, recommends that the NERR be amended to require retailers to inform consumers of a price rise before it takes effect. This would allow consumers to respond to this

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4 Ibid.

5 AEMC, 2014, *Draft Rule Retailer price variations in market retail contracts v2,* 3.

6 AEMC, above n 2, 60.

7 Ibid.

8 AEMC, 2014, *Consultation paper: National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014*, 28.

9 AEMC, above n 2, 26.

price increase and, if able, reduce their consumption in response. PIAC recommends that consumers be given a minimum of 21 days notice before a price increase takes effect.

Modern communications technologies, such as email and text messages, offer a low-cost option for retailers to contact many consumers about price increases. Where consumers elect not to be contacted in this way (including because they do not use the internet or mobile phones), retailers will have to contact consumers by mail. PIAC accepts that there is a cost associated with any mail out to consumers and that informing consumers of price rises through bills minimises this additional cost. Where retailers cannot contact a consumer electronically—and choose not to send a separate letter, due to the cost of doing so—those suppliers would need to schedule price rises to take effect at least 21 days after a bill is issued.

As stated above, PIAC made this recommendation in its earlier submission to this rule change process. However, the suggestion was not addressed in the AEMC's Draft Determination. PIAC therefore, also requests that the AEMC state publicly what, in its view, the impact this proposal would be.

Recommendation

PIAC recommends that the NERR be amended to require retailers to give consumers 21 days notice of any price increase. This notification could be delivered electronically, where consumers agree to be contacted via such channels.

Once again, PIAC thanks the AEMC for the opportunity to provide comment on the Draft Determination. If you require any further information from PIAC in relation to this matter, please do not hesitate to contact me or Oliver Derum, Energy and Water Consumers' Advocacy Program Senior Policy Officer, on 02 8898 6518 or oderum@piac.asn.au.

Yours sincerely

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