



Australian Energy Market Commission

CONSULTATION PAPER

National Energy Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017

Rule Proponent(s)

The Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government

12 September 2017

RULE
CHANGE

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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1 Introduction

On 22 August 2017 the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government (proponent) submitted a rule change request (rule change request) to the Australian Energy Market Commission (AEMC or Commission) under the National Energy Retail Law (NERL) seeking to increase customer awareness of changes in retail market contracts by requiring retailers to give customers notice of the end of benefit periods under those contracts.

This consultation paper has been prepared to facilitate public consultation on the rule change request and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change request;
- identifies a number of questions and issues to facilitate consultation on this rule change request; and
- outlines the process for making submissions.

2 Background

Rule 48 of the National Energy Retail Rules (NERR) requires retailers to notify customers on fixed term market retail contracts that their contract is coming to an end between 40 and 20 business days before the end date of the contract. The notice must include:

- the date on which the contract will end
- details of the prices, terms and conditions applicable to the sale of energy to the premises concerned under a deemed customer retail arrangement
- the customer's options for establishing a customer retail contract (including the availability of a standing offer)

The NERR and NERL provide significant flexibility to retailers in the design of retail market contracts, including the ability to vary prices during the course of a contract.

The NERR explicitly contemplates the concept of a fixed benefit period, where a customer receives a benefit or benefits which expire prior to the end of the market contract. A fixed benefit period is defined as "a period of a market retail contract (where the end date of that period is specified or ascertainable at the beginning of that period) during which a benefit to the customer (such as a price discount) is available."¹ Many retail market contracts include a fixed benefit period.

The proponent is proposing a new rule that also requires retailers to inform their customers of the impending expiry of their fixed benefit period and to provide them with certain financial information between 40 and 20 business days before the end of a fixed benefit period under a market retail contract.

¹ NERR, Rule 45A.

3 Issues raised in the rule change request

The NERR set out requirements for retailers to notify customers at the end of market retail contracts. Under rule 48 of the NERR retailers are required to notify customers before a fixed term contract ends and provide options for a new contract. However retailers can vary prices during the course of a contract. In particular, contracts may contain discounts that apply only for a fixed benefit period and retailers are not required to notify customers before a fixed benefit period ends. The proponent argues that, because of this there is a risk that consumers may:

- not notice or understand the change and complacently remain on the contract, even though they are no longer receiving discounts or benefits; or
- not actively seek out potentially better offers in the market

The proponent argues that this could negatively impact the competitiveness of retail electricity and gas markets and could erode consumer faith in the retail energy markets. Consumers may also be unaware of competing offers and unwilling to invest time in research, not realising that a retail offer comparator service (Energy Made Easy) exists.

Question 1	Significance of Issue
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To what extent do you consider that lack of information regarding the end of a fixed benefit period has led, or will lead, to a negative effect on the overall competitiveness of the market?	
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4 Proposed solution

The rule change request includes a proposed rule.²

The proposed rule aims to address the issues raised by requiring electricity market retailers to provide customers with:

- appropriate notice of the date that their fixed benefit period is due to expire
- the nature and quantity of the benefit that was available during the fixed benefit period
- information on early termination fees that would apply if the customer had terminated their contract at the date of the notice³
- information on where to view generally available retail energy offers in their area

If made, the proposed rule would also have the effect of requiring electricity market retailers to provide customers with information about the dollar value of the benefits they have received to date under their contract over the fixed benefit period and the financial consequence of the expiry of the fixed benefit period. While the rule change request says that “The proposed rule is designed to ensure customers are made aware of changes that impact the price of their electricity and gas bills”⁴ the wording of the proposed rule only captures retail electricity contracts.

Question 2 Gas

Should the proposed rule change apply to market retail energy contracts including gas, or only to market retail electricity contracts? Why?

The proposed rule 48A provides an exemption for non-financial benefits and for where the customer would be financially no worse off than if the benefit period had not expired. At footnote 2 the proponent requests the AEMC to consider alternatives to their proposed exemption.

Question 3 Exemptions

- a) Are the proposed exemptions clear, appropriate and workable?**
- b) What potential improvements could be made? Why?**

The proponent suggests a commencement date of 1 January 2018 for the proposed new retailer obligations,⁵ but also requests the AEMC to consider an appropriate commencement date having due regard to the impact of different commencement dates on the costs to retailers of complying with the rule.

² pp.2-3 of the rule change request.

³ Rule 49A constrains the application of early termination charges, particularly for retail contracts that are not fixed term contracts.

⁴ Rule change request, page 8.

⁵ Rule change request, page 5.

Question 4 Commencement Date

- a) Would a 1 January 2018 commencement date result in materially higher costs than a later commencement date?**
- b) If so, what is the soonest practical date for commencement?**
- c) Should commencement be staged? For example, if full implementation on 1 January 2018 is not practical should retailers still be required to send out a standard notice with basic information from that date?**

Copies of the rule change request may be found on the AEMC website, www.aemc.gov.au.

5 Previous work

The AEMC has previously made rule changes and recommendations aimed at increasing both the amount of information available to consumers and their level of engagement and participation in the market.

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

On 23 October 2014 the AEMC made a final rule (2014 rule change) to improve the information given to consumers when entering retail energy contracts. The rule required retailers to better inform consumers about any terms and conditions relating to price changes on contract entry, enabling consumers to engage more confidently in retail energy markets and make decisions that they consider better meet their needs. The rule commenced on 1 May 2015.⁶

The 2014 rule change introduced a new rule 46A requiring retailers to clearly, fully and adequately disclose any term or condition in a market retail contract that provides for variation of tariffs, charges or benefits to the customer prior to the entry by the customer into the contract with the retailer.

The 2014 rule change also amended rule 64, requiring a retail marketer to provide a small customer information in relation to non-price charges and benefits, and also to advise the customer of when changes to prices will be notified to them by the retailer.⁷

The AER commenced a review their Retail Pricing Information Guidelines in early 2015. On 31 August 2015 the AER released a final version (4.0) and accompanying Notice of Final Instrument. Version 4.0 of the Guidelines took effect on 1 February 2016. The amendments were prepared against the background of the improved information up-front disclosure requirements contained in the AEMC's 2014 rule change.

This proposed rule change differs from the 2014 rule change in that, among other things, it requires information to be provided during the term of a market retail contract (specifically the end of the fixed benefit period), rather than on contract entry.

5.2 Previous AEMC reviews

The AEMC's reviews of competition in retail energy markets have consistently found that consumers' ability to change to the most cost effective offer is limited by their awareness of alternative offers and their understanding of the differences between offers.⁸

⁶ Australian Energy Market Commission, Rule Determination, National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014, 23 October 2014 .

⁷ markup of final rule at <http://www.aemc.gov.au/Rule-Changes/Retailer-Price-Variations-in-Market-Retail-Contrac> accessed 1 September 2017.

⁸ AEMC Supplementary Report: Increasing Consumer Engagement, 31 October 2013, Section 3.1; AEMC Final Report, 2014 Retail Competition Review, pp.21-30; AEMC Final Report, 2015 Retail Competition Review, pp.34-38; AEMC Final Report, 2016 Retail Competition Review, pp.39-44; AEMC Final Report, 2017 Retail Competition Review, pp.77-100.

The AEMC has put forward a number of recommendations aimed at addressing the challenge of providing consumers with the information they need to compare offers and choose an energy plan that suits them. The first three recommendations in our 2017 retail energy competition review were aimed at increasing customer awareness and information transparency of retail market offers. They were:

Recommendation 1: A broad information program is developed by Energy Consumers Australia in partnership with the jurisdictions that would support consumer awareness and confidence in the options that are available to manage energy bills. This information program would be developed as soon as practicable given recent and significant price increases. This work would be supported by applying the AEMC consumer blueprint. The blueprint highlights and identifies the various channels needed to effectively communicate across and within consumer segments and also the broader community.

Recommendation 2: The AER is resourced to run an effective awareness campaign of their Energy Made Easy website and are resourced to maintain and develop the site.

Recommendation 3: The AER consider opportunities to improve the:

1. Information provided by retailers to consumers related to the comparison of retail market offers
2. Transparency of information provided to consumers in relation to expiring fixed benefit periods in market offers.

The review also indicated that the AER may need to consider whether amendments to its retail pricing guidelines are required or whether rule change requests need to be made to the AEMC.

6 Assessment framework

6.1 Achieving the NERO

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective (NERO).⁹ This is the decision making framework that the Commission must apply.

The NERO is: ¹⁰

“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 price, quality, safety, reliability and security of supply of energy.”

The Commission must also, where relevant, 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" (the "consumer protections test").¹¹

Where the consumer protections test is relevant in the making of a rule, the Commission must be satisfied that both the NERO test and the consumer protections test have been met.¹² If the Commission is satisfied that one test, but not the other, has been met, the rule cannot be made.

There may be some overlap in the application of the two tests. For example, a rule that provides a new protection for small customers may also, but will not necessarily, promote the NERO.

6.2 The NERO test

This section sets out the Commission's intended approach to its consideration of the NERO test. The long-term interests of consumers lie at the heart of the NERO test. The NERO requires that efficiency in the investment, operation and use of energy services is the principal consideration for determining what is in the long-term interests of consumers.¹³

The Commission considers that, where feasible, competitive markets provide the best means of promoting efficiency. Competition can be defined as a process of independent rivalry, where two or more parties (rivals) compete to supply a good or a service to consumers. Where competition is effective, retailers will have strong incentives to

⁹ Section 236(1) of the NERL.

¹⁰ Section 13 of the NERL.

¹¹ Section 236(2)(b) of the NERL.

¹² That is, the legal tests set out in s.236(1) and (2)(b) of the NERL.

¹³ Efficiency has three components. Allocative efficiency, which can be seen where goods and services are provided that meet the needs and preferences of consumers and are based on prices that reflect as closely as possible the costs of supplying an additional unit of a good or service. Productive efficiency, which can be seen where the minimum value of resources are used to produce a given set of goods and services (i.e. goods are provided at "least cost"). Dynamic efficiency, which can be seen where allocative and productive efficiency are sustained over time with changing technology and consumer tastes and preferences. Investment and innovation are integral to dynamic efficiency.

provide products and services that consumers value and set prices that reflect efficient costs.

The rule change request seeks to make changes to the rules in order to improve the timeliness and presentation of information provided to consumers. Given the importance of competition in driving efficient outcomes in markets, a key consideration of the AEMC in assessing this rule change request is the degree to which the proposed rule is likely to further promote competition. The Commission intends to use the following criteria to assess whether the proposed rule is likely to promote the NERO:

- effectiveness of consumer engagement and participation; and
- competition between retailers.

The AEMC intends to consider the benefits of the proposed rule change against the implementation costs that would likely pass through to consumers in a workably competitive market. The following sections outline how we intend to approach our assessment of each of these criteria under the NERO.

Question 5 Assessment Criteria

a) Are there any other matters that the Commission should consider in assessing the proposed rule change against the NERO test?

b) Are there any particular factors that the Commission should consider in assessing the proposed rule change against the consumer protection test?

6.3 Consumer engagement and participation

A competitive retail energy market can only promote efficiency if consumers actively participate in the market by making informed choices. Their participation in the market (through actions like changing their retailer or contract) provides retailers with information and incentives to develop products that better meet consumer preferences, including lowering prices to their efficient level.

To participate in the market with confidence and in a way that sends appropriate signals to retailers about consumer preferences, consumers need to have access to clear and relevant information about retail offers. A lack of awareness or understanding of the available options or nature of the product increases the prospect of consumers entering into contracts that may not meet their preferences, including value for money preferences.

Lack of appropriate transparency in the market, and in particular a lack of timely information about premiums that consumers are paying over and above competitive prices, could also cause consumers to lose confidence in and fail to engage with the market. This in turn would undermine effective retail competition. Typically in competitive markets retailers should have incentives to provide consumers with sufficient information to evaluate their product offerings.

The AEMC intends to consider the impact of the proposed rule change on market transparency and timely information availability, as required for consumers to make informed product and supplier choices.

Question 6 Information disclosure

- a) Has the proponent identified the right notice period and set of information likely to be required by consumers?
- b) Are the additional quantifications of dollar amounts for past and future benefits as set out in section 5 and 6 of the draft rule clear, appropriate, workable and cost effective to produce?

6.4 Competition between retailers

If retail energy markets lack sufficient competition, consumers may remain on contracts that do not meet their needs, but from which they have little incentive to move because the effort, risk and/or cost involved in changing contracts exceeds the perceived benefit. In these circumstances, retailers will have little incentive to provide contract terms that meet their existing customers' preferences because they know their customers are 'sticky' and unlikely to move to a better offer.

Question 7 Barriers to competition

Would the proposed rule materially increase the likelihood of consumers seeking and obtaining better deals in retail energy markets?

The AEMC intends to consider the proposed rule in light of current levels of competition in retail energy markets and the impact that the proposed rule change may have on the future level of competition.

Question 8 Costs and Benefits

Will the long term benefits to consumers of the proposed rule change exceed the additional costs that would pass through to them?

6.5 Making a more preferable rule

Under s.244 of NERL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NERO.

Question 9 Form of rule

Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

7 Process for this rule change

7.1 Treatment as a non-controversial rule change

The proponent has proposed the rule change request be made under the expedited process set out in s.252 of the NERL.

The Commission considers that the rule change request should be subject to the expedited rule making process under s.252 of the NERL on the grounds that it considers the rule change request to be a request for a non-controversial rule (as that term is defined in the NERL).

The Commission considers that the rule change request is a request for a non-controversial rule because it is unlikely to have a significant impact on a market for energy or the regulation of customer connection services¹⁴ as the proposed rule change requires an increased level of information disclosure to customers but does not change any of the fundamental design elements of retail markets. In addition, the requirement to provide additional information involves a single additional notice that appears to be based on information already held by the customer's retailer.

Rule changes that are considered to be non-controversial may be processed under an expedited (faster) process than the Commission's standard rule change process. Under an expedited process there is only one round of consultation and the AEMC must publish its final rule determination within six weeks of commencing the rule change process (subject to extension if warranted).¹⁵

The Commission has decided to use an expedited process to consider this rule change request provided that it does not receive any valid requests not to use the expedited process by Tuesday 26 September 2017. To be valid, an objection should set out the reasons why the rule change request will have a significant impact on a market for energy or the regulation of customer connection services.

While the rule change is considered appropriate for an expedited process, the Commission considers that the time between the publication of the consultation paper and the final rule determination should be extended from six weeks to eight weeks.¹⁶ The extension allows more time to consider submissions and other issues related to the consultation paper including potential alterations to the proposed exemption as requested in footnote 2 of the rule change request, the commencement date as discussed at the top of page 5 of the rule change request, the appropriate level of prescription in the rules (including whether the AER should have discretion over some elements of the proposed rule) and, if applicable, the form of a more preferable rule.

¹⁴ Section 235 of the National Energy Retail Law.

¹⁵ The AEMC has published a notice under sections 251 and 252 of the National Energy Retail Law to commence and assess this rule change request as a non-controversial rule.

¹⁶ In its January 2016 response to the Review of Governance Arrangements for Australian Energy Markets the COAG Energy Council, at 3.6, also agreed that changes should be made to the national energy laws to allow for an increased time-frame range of six to eight weeks for the expedited rule change process.

7.2 Key dates

Submissions are invited in relation to the matters identified above, and any other relevant issue.

The **key dates** for stakeholders in this process are as follows:

- Commencement of this rule change process: 12 September 2017
- Objections to an expedited process to be received by: 26 September 2017
- Submissions to the rule change request to be received by: 10 October 2017
- Final decision to be published under an expedited process by: 7 November 2017

8 Lodging a submission

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change request.

All enquiries on this project should be addressed to Alan Rai on (02) 8296 7800.

8.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s.252 of the NERL must include reasons for the request, and must be lodged with the Commission by Tuesday 26 September 2017, either online or by mail.

8.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with Commission by Tuesday 10 October 2017, either online or by mail, in accordance with the requirements specified below.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.¹⁷ The Commission publishes all submissions on its website, subject to a claim of confidentiality.

8.3 Lodging a submission electronically

Electronic submissions, or requests not to make a rule under the expedited process, must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code RRC0010.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

8.4 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The request or submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

The envelope must be clearly marked with the project reference code: RRC0010.

¹⁷ This guideline is available on the Commission's website www.aemc.gov.au.

Abbreviations

AEMC	Australian Energy Market Commission
Commission	See AEMC
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NERO	National Energy Retail Objective