

11 September 2014

Mr John Pierce
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged electronically: www.aemc.gov.au

Dear Mr Pierce,

RE: Draft Rule Determination National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 (Reference: RRC0001)

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide comments in response to the Australian Energy Market Commission's (AEMC) Draft Rule Determination - National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 (**Draft Rule**).

The ERAA represents the organisations providing electricity and gas to almost 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

The AEMC's Draft Rule has been made in response to the rule change request submitted by the Consumer Action Law Centre (CALC) and Consumer Utilities Advocacy Centre (CUAC) which sought to prohibit retailers varying prices during contracts that cover a defined period of time and contracts that offer a benefit, such as a discount. The ERAA submission to the AEMC's February 2014 consultation paper outlined our reasons for opposing the rule change and the ERAA welcomes the AEMC decision to reject the CALC and CUAC rule change request.

In assessing the CALC and CUAC rule change, the AEMC conducted stakeholder engagement and consumer research which found that some consumers may be entering into contracts unaware that prices may vary¹. In response, the AEMC has made a Draft Rule determination with the objective to improve information provided to consumers, and in particular so that information on price variation is clearly provided to consumers.

The Draft Rule seeks to build on the consumer protections by amending the National Energy Retail Rules (NERR) to specifically require retailers to disclose terms and conditions that provide for price variations during the explicit informed consent stage. In addition to this, there is an obligation on retailers to notify consumers of variations to prices in product disclosure forms provided on contract entry².

¹ AEMC Draft Rule Determination National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014, p.1

² Ibid, p.3



Retailers currently have obligations to disclose product information in a clear and transparent manner including how tariffs and charges may be varied.

This information is required to be specifically detailed in contract terms and conditions provided to consumers at the time of or immediately after entering into a market retail contract. The consumer may elect to cancel the contract during the cooling off period.

The ERAA notes that no assessment of the shortcomings of the current NERR with respect to information provision for market contracts has occurred. Further, the Australian Consumer Law already has appropriate and robust obligations on retailers with respect to information provision, specifically prohibiting misleading and deceptive conduct. We therefore question the need for this Draft Rule.

Draft Rule coverage

The ERAA also requests clarification from the AEMC as to the classification of market retail contracts captured under the Draft Rule. The Draft Rule indicates that the changes impact market retail contracts that have a fixed term or a fixed benefit³. However, in another section of the Draft Rule determination it states that the change will apply to all electricity and gas market retail contracts in the jurisdictions covered by the NERR⁴. The ERAA believes that this is beyond the scope of the original rule change request. The ERAA is concerned that should the Draft Rule cover all market retail contracts it will inadvertently capture retail products where price variation disclosures are not required. By way of example, a product with a guaranteed fixed price for the entire contract term. A requirement for disclosure in this instance will be detrimental to consumer benefit as it would serve no purpose but to create further complexity in the market, confuse consumers, and will lead to additional costs for retailers with no corresponding benefit to consumers.

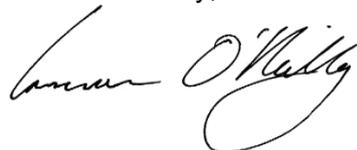
Marketing of energy offers

The Draft Rule makes further observations around the marketing of energy offers to consumers through information controlled and prescribed by the Australian Energy Regulator (AER). In particular the AEMC notes that improvements to the AER's Energy Made Easy website and energy price fact sheets could improve consumer understanding of how prices may vary during contract terms⁵.

The ERAA views merit in evaluating both of these mediums to review the volume and the presentation of information to consumers, assessing whether some of the information provisioning is warranted or only adds to consumer confusion. The ERAA would be pleased to work with the AER and stakeholders on this task.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,



Cameron O'Reilly
CEO
Energy Retailers Association of Australia

³ AEMC DRAFT RULE DETERMINATION National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014, p.1

⁴ Ibid, p.2

⁵ Ibid, p.4