



## Australian Energy Market Commission

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10 December 2014

Mr Donald Lloyd  
[REDACTED]  
[REDACTED]

Dear Mr Lloyd

### Price Variations in Exit Fee Contracts – response to rule change request

I am writing in response to the rule change request you submitted to the Australian Energy Market Commission (AEMC or Commission) on 27 November 2014 that seeks to amend the National Energy Retail Rules (Retail Rules) to prohibit retailers from varying prices in retail energy contracts in a way that would erode the level of any applicable discount during any period where an exit fee is in place.

Under section 249(2) of the National Energy Retail law (the Retail Law), the AEMC has decided to not take any action in relation to your request because the subject matter of the request relates to the subject matter of a rule that the AEMC has recently made. This means that the AEMC will not be commencing the rule making process for your rule change request. The reasons for this decision are set out below.

#### The AEMC's rule making process

In considering requests to amend the Retail Rules, the AEMC is required to follow the rule making process set out in the Retail Law.<sup>1</sup> In deciding whether to 'initiate' or commence the rule making process in response to a request, under section 249(1) of the Retail Law, the AEMC must consider whether:

1. the minimum content requirements for rule change requests have been met;
2. the request appears not to be misconceived or lacking in substance;
3. the subject matter of the request appears to relate to a matter that the AEMC has the power to make a rule in relation to; and
4. the subject matter of the request appears to relate to a matter in relation to which the AEMC has made a rule, or considered in a request for rule in the 12 months preceding your request, or is currently considering making a rule in relation to.

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<sup>1</sup> The National Energy Retail Law and the Retail Rules together form the National Energy Customer Framework (NECF). The NECF currently applies in New South Wales, South Australia, Tasmania and the Australian Capital Territory. It is expected to apply in Queensland from 1 July 2015, once a commencement date for the *National Energy Retail Law (Queensland) Act 2014* is proclaimed. The Victorian Government has announced that it will implement the NECF by the end of 2015.

Having regard to these matters, the Commission can make a decision either to take no action in relation to your request (section 249(2) of the Retail Law) or to initiate the rule making process (section 249(6) of the Retail Law).

Your request for a rule meets the requirements set out in items 1 to 3 above. In relation to item 4, your rule change request addresses subject matter that relates to the subject matter of a rule made by the Commission on 23 October 2014.

*The retailer price variations in market retail contracts rule (new retail rule)*

On 23 October 2014 the Commission made a final rule to improve the information given to consumers when entering energy contracts. This rule was made in response to a rule change request submitted by two Victorian consumer groups, the Consumer Action Law Centre (CALC) and the Consumer Utilities Advocacy Centre (CUAC). That rule change request sought to prohibit retailers from varying prices during the fixed term or fixed benefit period of market retail contracts.<sup>2</sup>

In their rule change request CALC and CUAC noted retailers' ability to vary prices during contracts with a fixed term or benefit period. They also considered that retailers' ability to charge exit fees meant that consumers may be discouraged from changing their retailer or contract following price rises. They noted that although the size of exit fees is limited under the retail rules to the reasonable costs incurred or to be incurred by the retailer, many fixed term or fixed benefit period contracts still impose significant exit fees.

CALC and CUAC provided case studies indicating that some consumers have entered into contracts with retailers with low prices that have then increased during the fixed term or fixed benefit period of the contract while an exit fee is in place. Following the price change the consumers have noticed that the retailers are still offering similar lower prices to new customers. CALC and CUAC considered that the customers were locked into the higher prices because of the exit fees. They suggested that, as a result, customers were likely to consider that changing retailers would be a waste of time because the new retailer would soon raise their prices.

CALC and CUAC proposed these issues be dealt with by restricting retailers from varying prices during fixed terms and benefit periods in market retail contracts.

After careful consideration of the issues raised by the rule change request, extensive stakeholder engagement over a period of 8 months and detailed consumer research, the Commission considered that addressing the level of consumer understanding of market retail contracts would best address the issues raised.

The new retail rule specifically requires retailers to tell consumers about terms or conditions in market retail contracts that provide for the variation of tariffs, charges or benefits as part of the existing requirement to obtain the explicit informed consent of the consumer to entry into the contract. The new rule also requires retailers to provide information about when they will notify consumers of variations to prices, charges and benefits during market retail contracts as part of the existing product disclosure requirements.

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<sup>2</sup> We note that market retail contracts can be *fixed term retail contracts*, contracts with a *fixed benefit period* or neither of these. Fixed term retail contracts contain a term that specifies the date on which the contract will end or a method for calculating that date (e.g. a two year contract where the contract ends at the end of the two years). Contracts with a fixed benefit period contain terms that specify a benefit that is available for a specific period of the contract (e.g. a contract that has a two year period with a ten percent discount off the standard rate, and the same contract continues after the discount ends). Contracts that contain neither a fixed term nor a fixed benefit period are known as evergreen contracts.



### Your request for a rule

Your request relates to price variations in market retail contracts with a fixed term or a fixed benefit period where the contract contains a discount and where the consumer would have to pay an exit fee if the consumer was to terminate the contract. You have proposed that retailers be prohibited from increasing the pre-discount prices in market retail contracts in ways that would erode the discount that the consumer signed up to.

The subject matter of your rule change request clearly relates to the new retail rule described above. Both the rule change request submitted by CALC and CUAC and your rule change request raised issues concerning the variation of prices in market retail contracts with a fixed term or fixed benefit period. However, the new rule seeks to address the issues raised by improving consumer understanding about when and how prices (including discounts) may vary rather than by prohibiting retailers from varying prices in certain market retail contracts.

### Reasons for not initiating your request

The new retail rule will improve the information given to consumers about when and how prices (including discounts and other benefits) may vary. It is also likely to improve consumer understanding of their contracts more broadly and may improve consumer awareness of alternative contract options, such as the availability of contracts that do not impose exit fees. The new retail rule does not come into force until 1 May 2015. Until the impact of this new retail rule is felt in the market and has had begun influencing consumer and retailer behaviour, the AEMC does not consider that it would be appropriate to undertake the rule change process in relation to a request that seeks to address closely related issues to those raised in the CALC and CUAC rule change request.

As a result of the rule making process for the new retail rule, the AER has expressed its intention to consult on changes to its Retail Pricing Information Guideline to improve the presentation of information about energy contracts to consumers, including in relation to when and how prices may vary. Such improvements could also influence the issues raised in your rule change request.

Further, as part of the rule change request proposed by CALC and CUAC, market participants and stakeholders expended considerable resources participating in extensive stakeholder consultation. At this time, the AEMC does not consider it would be an efficient use of stakeholder resources to commence a rule change process that will require consultation on many of the same, or at the least related, issues.

For these reasons the Commission will not be commencing the rule making process in relation to your request.

A copy of this letter will be published on the AEMC's website, in accordance with section 249(5) of the Retail Law.

Thank you for taking the time to submit this rule change request. If you would like further information on this matter, please contact Chris Spangaro, Senior Director Retail and Wholesale Markets, on (02) 8296 7800.

Yours sincerely



Paul Smith  
Chief Executive