



26 June 2014

John Pierce
Chair, Australian Energy Market Commission
PO Box A2449
SOUTH SYDNEY NSW

Dear Mr Pierce,

Retailer Price Variations in Market Retail Contracts – Rule Change

As proponents of the above rule change, Consumer Action Law Centre and the Consumer Utilities Advocacy Centre writes to respond to a number of the assertions made at the AEMC's Public Forum on this Rule Change on 19 May, and to encourage further discussion and consultation with relevant parties.

Public Forum

In relation to the public forum, we would like to respond to comments made in relation to:

- customer preferences for variable rate contracts; and
- the impact on customers of adopting the proposed rule.

At the forum, retailer representatives stated “consumers are choosing a greater discount in return for an energy rate that may vary” and “repeated customer selection of energy plans where the price may vary indicate that consumers understand and prefer this option” (Origin Energy, slide 4).

We do not believe that customer uptake rates alone can prove that consumers understand and prefer this option. It is just as likely that the retailer is marketing the variable products better than the fixed-rate products. Most variable market contracts we have reviewed are promoted through significant “discounts”. It could be that consumers show a preference for “discounts” without realising that the rate may change. Evidence for this possibility is found in behavioural analysis around heuristics—consumers are likely to respond to simple messages like “discount” rather than undertake more complex analysis in reviewing and comparing terms and conditions. We refer you to our letter of 29 April 2014 for further information about this behavioural bias.

It was also stated at the forum that customers understand price variation and do not see this as problematic. The presentation from Origin Energy referred to “The AEMC’s recent customer survey indicates only 2% of electricity and no gas customers [were] dissatisfied due to price rises” (slide 4).

This AEMC survey pertained to NSW customers only and was undertaken in November-December 2012, before price deregulation in that state. Under price regulation, tariff variation for market contracts in NSW has predominately occurred around 1 July every year (when the regulated price changes). This is very different to Victoria, where retailers run their own pricing cycles. It is reasonable to assume that consumer frustration is greater in deregulated markets where consumers are typically unaware whether the retailer they switch to will increase the rates shortly thereafter. This frustration is exacerbated if the customer had researched various offers prior to switching and thought they had found the lowest rates.

The negative impacts on consumers of the proposed rule change were another key assertion at the public forum. It was stated that “The likely outcome is shorter contracts—increasing search/transaction costs for consumers” (Origin Energy, slide 5). A review of existing contracts suggests this is untrue.

We note that Origin Energy’s heavily promoted variable price product (Daily Saver Plus) has a “fixed benefit period” of one year. Origin Energy’s fixed rate product (Rate Freeze) has a two year period. Short “fixed benefit periods” are just as likely to increase search/transaction costs for consumers. When the “benefit period” is finished after 12 months the consumer needs to compare offers in order to obtain a discount or, if not, is heavily penalised by remaining on a non-discounted offer. It is also worth noting that under the NERR, unlike with the expiry of fixed period contracts, there is no requirement for a retailer to inform a consumer about the expiry of a fixed benefit period within a contract.

It was also suggested that “the market is continuing to respond to customer demands for greater clarity and communication preferences” and “consumer expectations and competitive pressure will continue to drive better customer outcomes than imposing restrictive product regulation”. We support a market that develops new ways to communicate with and inform customers—our assessment is that this is happening in relation to energy consumption, but less so in relation to terms and conditions of products. The South Australian government representative noted that the ACCC continues to take legal action against retailers for producing misleading statements. More restrictive regulation may therefore be cost effective if we take compliance and enforcement costs into account.

Further discussion and consultation

Consumer Action and CUAC maintain that our proposed rule change promotes the national energy retail objective. However, noting that the AEMC has the power to make a more preferable rule, we would welcome further discussion with the AEMC and relevant parties as to other rules that may deal with the problem identified.

Our initial rule identified a key concern with the existing rules being the ability of energy retailers to include terms and conditions in market retail contracts that allow them to vary prices during a fixed period. As other parties have noted, including the Australian Energy

Regulator (**AER**), another way to characterise the concern is that *consumers may not understand* that a fixed term contract (or one with a fixed benefit period) does not mean that the price they are charged for energy is also fixed for the period of that term.

With this in mind, we believe there may be value in considering other rules that are designed to improve consumer understanding of the types of contract that they enter into, and particularly the ability of the retailer to vary the price. We strongly believe this must go beyond the information provided by the Energy Price Fact Sheets, which are required in accordance with the AER's Retail Pricing Information Guideline. We note that the subject matter of the rules that can be created by the AEMC is very broad (see section 237 of the NERL) and that this includes Energy Marketing Rules (section 53 of the NERL). We also note that such Energy Marketing Rules can include rules regulating marketing, advertising and promotion (see section 2 of the NERL).

We have the support of the AER to have a meeting to discuss these possibilities, and we will approach representatives of the energy retailers to participate in such a meeting. We would like to invite the AEMC to also be part of this discussion.

Conclusion

We note that if rules are not changed there is a real risk that we will see more and more derogations from the National Energy Retail Rules introduced by jurisdictional governments to protect consumers from unfair practices as they deregulate their markets. There is a real possibility that we will end up with a marketplace where retail contracts include jurisdictional differences when it comes to price notification procedures, the application of exit fees etc, because the existing rule is considered inadequate. This will add to the cost of retailing and will ultimately be a cost borne by consumers.

We look forward to discussing this with you further.

Yours sincerely,



Gerard Brody, CEO
Consumer Action Law Centre



Jo Benvenuti, Executive Officer
Consumer Utilities Advocacy Centre