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22 October 2020

Merryn York  
Acting Chair  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Ms York

### **Bill contents and billing requirements consultation**

Thank you for the opportunity to make a submission on the Australian Energy Market Commission (the AEMC)'s consultation on the 'Better Bills' rule change proposal by the Minister for Energy and Emissions Reduction.

The Australian Competition and Consumer Commission (ACCC) supports the proposed regulatory approach to standardise and increase consumer comprehension of billing information. We consider that ensuring bill clarity and usefulness to consumers is best realised by an enforceable Australian Energy Regulator (AER) guideline informed by behavioural insights research and consumer engagement.

Consumer bills are the primary form of communication to electricity customers. For many, the only time they interact with the industry is to read and pay a bill. It is important that consumers understand how much energy they consume, how their bill is calculated, and how to ask a question, seek assistance, or dispute a bill.

In the provision of essential services such as electricity, there is a need for direct and enforceable regulation and this is particularly the case in relation to billing information.

The ACCC has considerable experience in the use of prescribed and voluntary codes to regulate market behaviour to protect consumer interests. We also have specific roles in the electricity retail market enforcing standing offer price caps, requiring retailers to enable clear comparisons when advertising offers and enforcing the new electricity market prohibitions in the *Competition and Consumer Act 2010* (Cth). We have also taken a number of actions against electricity retailers for breaches of the Australian Consumer Law.

In our view, based on this experience, the options of changing the requirements in the National Electricity Retail Rules (NERR) or industry self-regulation are not fit for purpose.

## The case for change

In our Retail Electricity Pricing Inquiry (REPI) we received feedback from many stakeholders in relation to bills and the need to increase comprehension.<sup>1</sup> Specific concerns included the lack of standardised terms, the inconsistency of bill formats and the amount of information included. We concluded that any improvements should be made on the basis of consumer testing and consumer research and warned of the significant risks in giving retailers freedom to choose what information is relevant to consumers. Our experience in taking enforcement action for misleading and deceptive behaviour in this sector underlines that retailers do not always provide clear information to their consumers, resulting in significant consumer confusion and harm. For example, in recent years, the Federal Court has ordered Origin Energy Ltd, AGL South Australia Pty Ltd and Amaysim Energy Pty Ltd in separate proceedings brought by the ACCC to pay penalties for false or misleading representations.

Studies by the Behavioural Economics Team of the Australian Government and the Behavioural Insights Team (on behalf of the ACCC and Australian Energy Regulator) have demonstrated how increased consumer confidence can result from changes to the format of bills, clear descriptive statements, and the stated involvement of 'government' or the Australian Energy Regulator.<sup>2</sup> There are clearly benefits for consumers in making changes to bills, which would include, at a minimum, a requirement to ensure that bills are clear and easy to understand.

## Regulatory approach

The AEMC seeks feedback on the appropriate regulatory approach to effect change to consumer bills. The Minister's preferred option is to create an enforceable AER guideline developed with regard to principles detailed in the NERR.

Alternative options listed in the AEMC's consultation paper include: amendments to the existing list of information to be included on bills under NERR rule 25; a move from prescriptive requirements in the rules to principles-based requirements; an industry code (either mandatory or voluntary); or a non-binding AER guideline.

We note the example of the telecommunications sector in the consultation paper's discussion of industry codes. Our experience with the sector is that there are systemic failures with the industry's self-regulatory code, which, together with the indirect enforcement process, has created insufficient incentives for industry compliance. Telecommunications, like energy, are essential services for consumers and businesses. The lack of a robust and effective compliance culture harms consumers and the market more generally. We consider that the consumer safeguards framework requires a fundamental re-think to meet the needs of consumers and end-users, to reflect the increasingly diverse range of market participants, and to provide adequate incentives for compliance. Our concern would be addressed by a new regulatory framework with similar characteristics to the authorisation framework that applies to energy retailers under the National Energy Retail law, and which would include the capacity to be dynamic and responsive to changing circumstances.

Direct and enforceable regulation is appropriate where there may not be strong commercial incentives for retailers to comply with requirements, such as providing clear billing information and prompts to switch to a better offer. For example, it is difficult to imagine a form of industry self-regulation implementing the Victorian reforms of 1 July 2019, requiring retailers to inform their customers in their bill of better offers the retailer has available.<sup>3</sup> In our

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<sup>1</sup> ACCC, *Retail Electricity Pricing Inquiry – Final Report*, June 2017, pp.287-9.

<sup>2</sup> BETA, [Electricity information to fit the bill](#), December 2018; BIT, [Testing comprehension of the reference price](#), June 2020.

<sup>3</sup> Victorian Energy Retail Code, rule 70Q.

most recent report on prices, profits and margins in the supply of electricity in the National Electricity Market (NEM) we found that a number of retailers took action to ensure customers were on their best plan before the new requirements were even in effect.<sup>4</sup> The pending new requirements were the likely driver of these additional benefits to Victorian consumers.

We agree that up-coming reforms such as the Consumer Data Right and the two-sided market will likely change customers' needs and preferences for their bills. Consequently, the best regulatory approach for specifying bill contents and format must also be nimble and responsive to changes in the market and regulatory landscape.

Only an enforceable AER guideline can provide the direct and enforceable regulation required for consumer benefits that may not align with strong commercial incentives, while being responsive to changes in an ever-evolving market.

If you have any questions in relation to this submission, please contact Lyn Camilleri, General Manager, Electricity Markets Branch, on (03) 9290 1973.

Yours sincerely

A handwritten signature in blue ink that reads "Rod Sims". The signature is stylized and cursive.

Rod Sims  
Chair

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<sup>4</sup> ACCC, *Inquiry into the National Electricity Market – September 2020 Report*, 19 October 2020, p.11.