

Our ref: 202212
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5 February 2021

Ms Anna Collyer
Chair - Australian Energy Market Commission
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By online submission

Dear Ms Collyer

AER Submission – National Energy Retail Amendment (Bill contents and billing requirements) Rule

The Australian Energy Regulator (AER) welcomes the opportunity to make a submission in response to the Australian Energy Market Commission's (AEMC) draft determination on the National Energy Retail Amendment (Bill Contents and Billing Requirements) Rule (the draft rule).

We broadly support the draft determination and draft rule.

For the reasons set out in our previous submission we consider that a mandatory AER guideline developed through consumer research and testing is the solution that will best promote the National Energy Retail Objective (NERO). In particular, the benefits of this approach include:

- The ability for consumer research, testing and consultation to provide an evidence base that will ensure any reforms are effective and well targeted.
- The implementation of both prescriptive and principles-based approaches to regulating bill requirements under a guideline would provide flexibility and minimise the costs for market participants.
- Clear billing obligations for retailers will provide certainty for all stakeholders, and easier monitoring and enforcement by the AER.
- A guideline can be readily updated to reflect emerging issues and market developments.

Draft rule change

We are broadly supportive of the proposed rule change.

- *Billing objectives*

Draft rule 25A(2) clearly articulates the billing objectives. The AER agrees that the key purpose of a bill is to assist or help a small customer to easily understand:

- a) payment amounts, dates and methods for their bill
- b) how their bill is calculated and whether it conforms to their customer retail contract

- c) their energy consumption and production, and related costs and revenue, to assist with using energy efficiently, comparing their customer retail contract with other energy offers available to them and considering options for energy supply other than through the interconnected national electricity system
- d) how to dispute or raise a query in relation to their bill; and
- e) how to access interpreter services and seek financial assistance.

We support specifying information about interpreter services and how to seek financial assistance (individuals need to access these services, and that as the primary means of communication between a retailer and consumer, a bill is a key avenue to provide the information).

We also support objective c). Ensuring a customer can understand their energy consumption and production is an important precursor to consumer engagement, and facilitates activities such as comparing and switching energy provider. As the main communication between a retailer and a consumer, we consider that this should remain a key purpose of a bill for customers on both standing and market retail contracts. We note that the AEMC has received competing submissions on whether a bill should state if the customer is receiving the retailer's 'best offer'. Whether the benefits of such a requirement would outweigh the costs is a matter that would need to be carefully considered by the AER in making the proposed guidelines. The AER does, however, consider it essential that the proposed rule empowers AER to include such a requirement in its guidelines if it is justified having regard to the matters specified in proposed sub rule (4), and submits that this should be clarified in the AEMC's final determination.

The AER is committed to working with stakeholders and to using consumer and behavioural insights to optimise customer comprehension, and improve customer outcomes. This will include consideration of how a mix of prescriptive and principles-based regulation can be used to achieve the billing objectives. We also recognise innovative retailer practices that are currently improving customer outcomes. However, we do not agree with retailers' submissions that competition will lead to improved billing practices as consumers cannot compare bills prior to signing up for the service.

We note that some respondents to the consultation identified the provision of electricity consumption benchmark information on the bill to be an area that added to consumer confusion and could be removed. The AER will consider the utility of these benchmarks for consumers as part of our consumer insights research that will help inform the guideline, including how to best to present this such information.

- *Development of billing guidelines*

We broadly support the requirements of proposed rule 25(4). The clauses reflect the need to balance consumer and retailer interests in developing billing guidelines. We note the emphasis on ensuring retailer and market impacts are given due consideration in the creation of any obligations.

It is clear that retailers are concerned about potential costs that could arise from the development of a guideline. The AER's guideline will be developed through consumer research and testing, to ensure bills are meeting the needs of consumers. In accordance with proposed sub rules 25A(4)(a)(ii-iii), we will take into account the necessity, and potential costs to retailers and potential benefits to consumers of any changes. Ultimately, we recognise that costs incurred by retailers are borne by consumers, and we are committed to ensuring that any obligations are proportionate, in line with best practice regulation.

One goal of the AER's Strategic Plan 2020-2025 is to protect vulnerable consumers while enabling consumers to participate in energy markets. We are specifically seeking to improve consumer outcomes while reducing costs to industry, by boosting consumer and behavioural insights and applying them across AER initiatives, including the proposed billing guideline. We have committed to both improving consumer outcomes and reducing costs to industry as part of our work program.

The potential to standardise language and terminology across bills, contracts and offers was identified by multiple stakeholders as ripe for reform. As noted elsewhere, the AER will be informed by consumer research and testing, as well existing research, in addressing these opportunities for improving these elements of bills.

We also consider that effective monitoring of the guideline, including in response to changes in billing practices and technological developments, and targeted compliance and enforcement action will ensure that the guideline remains fit for purpose through a transitioning energy market, and continues to achieve the billing objectives. To support this, we will consider including a building in a timeframe for reviewing the guideline, responsive to stakeholder feedback, and will work to consult with stakeholders on the best mechanism for this through the development of the proposed guideline.

- *Consultation on billing guidelines*

We note the current legal framework provides an effective and transparent mechanism for the AER to consult with our stakeholders in making or amending guidelines. We also note that proposed rule 25A(1) obliges the AER to develop the billing guideline in accordance with the retail consultation procedure (rule 173 of the NERR). Through this process, the AER will consult and engage broadly with interested stakeholders in developing the guideline. We will publish a draft guideline and invite written submissions and comments on the instrument. In addition, we will actively seek to contact parties who have contributed to the AEMC's consultation to ensure they have an opportunity to participate in our consultation. The AEMC's consultation has elicited a diverse range of views from stakeholders, and is a rich source of information on billing issues. It is our intention to utilise the information made publicly available through the AEMC's consultation in developing the guideline.

- *Faults and emergencies*

Existing rule 25 (v) requires bills to include a fault enquiries and emergencies phone number. The billing objectives as presently drafted do not reflect this obligation. Given the critical nature of this information, we recommend the objectives be amended to ensure a future guideline can continue to require this information on bills.

- *Paper bills*

For the energy market to function well, the regulatory framework needs to protect vulnerable consumers, while enabling consumers to participate in energy markets. To enable consumers to participate in the market, we need to appropriately address any barriers to engagement and access. Noting different cohorts of consumers have different communication preferences and needs, a paper bill will be the best option for some consumers. Ensuring this information is provided free of charge will help ensure some consumers are not penalised for having different needs or preferences, and that they continue to engage in the market. We note that some jurisdictions have specific arrangements in place regarding paper bills and related fees. However, many competitively priced market retail contracts do not allow a consumer the option

of receiving a paper bill. We consider that it is important that no consumers are excluded from accessing these contracts, and recommend the proposed rule be amended to enable the AER to specify in a billing guideline that paper bills must be available for both standard and market retail contracts if, following consultation we consider this to be justified.

Evidence base

The AER has begun to identify consumer insights research projects that will help us to understand consumer billing needs and preferences to inform a guideline. We note that there is already a significant amount of information available, and the AER will use this existing information to the greatest extent practicable. The additional commissioned research will fill in gaps in our existing knowledge. We are also keen to work with stakeholders willing to share their consumer research.

Civil penalties

The AER supports the proposal to attach civil penalties to the amended rules. In August 2020, we made a submission to the COAG Energy Council in support of the proposed classification of existing sub rules 24(1) and 25(1) of the NERR as being tier 2 and tier 3 civil penalty provisions respectively.¹

Concluding comments

The content of an AER guideline will be evidence-based, developed through robust consultation with stakeholders, and informed by consumer research and testing. Our goal is to create a guideline that ensures bills meet the needs of consumers, now and into the future, in an efficient way that minimises cost and enables industry innovation. We welcome the opportunity to work with stakeholders to achieve this important consumer reform.

Please contact Arek Gulbenkoglou, General Manager (a/g), Consumers & Markets Branch on (03) 9290 1892 if you would like to discuss our submission in more detail.

Yours Sincerely,

A handwritten signature in black ink that reads "Jim Cox". The signature is written in a cursive style with a large, stylized initial 'J'.

Jim Cox
Deputy Chair

¹ Online at: <http://www.coagenergycouncil.gov.au/publications/proposed-classification-tiers-reform-australian-energy-regulator-civil-penalty-regime>