



25 May 2015

Ms Sarah Proudfoot
General Manager - Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

AERinquiry@aer.gov.au

Submission to the Notice of draft instrument: Amendments to the AER Retail Pricing Information Guidelines

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the Australian Energy Regulator's (**AER**) *Notice of draft instrument: Amendments to the AER Retail Pricing Information Guidelines (draft amendments)*.

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

We are very supportive of the AER's review of the *Retail Pricing Information Guidelines* (the **Guidelines**). This review can improve the clarity, quality, accessibility and prioritisation of information on retail energy offers. While the guidelines will go a long way to addressing retailer marketing and promotion of retail energy offers, deliberate obfuscation and poor conduct occurs at other points during the life of a contract—for example, during 'win back' conversations or at the point prices are changed or increased. Further guidance will be needed in these areas.

The proposed amendments are a welcome response to concerns about consumer understanding about energy offers, including the issues raised by the rule change proposed by the Consumer Action and Consumer Utilities Advocacy Centreⁱ to the AEMCⁱⁱ. While the AEMC did not support our rule change which would have prohibited retailers from changing prices during fixed term energy contracts, the AER's proposed changes to the use of terms such as 'fixed term' or 'fixed' will significantly improve transparency of information about the terms of an energy retail offer.

This submission responds to a number of the draft amendments, including:

Consumer Action Law Centre

Level 7, 459 Little Collins Street
Melbourne Victoria 3000

Telephone 03 9670 5088
Facsimile 03 9629 6898

info@consumeraction.org.au
www.consumeraction.org.au

- *Consistency of terms*
- *Discounting*
- *Non-generally available offers*
- *Standardised layout*
- *Accessibility, prominence and prioritisation of offer information on Energy Price Fact Sheets*
- *Promotion of clear and simple language*
- *Energy sourced from renewables*
- *Ongoing reviews*

In considering the draft amendments, we make the following recommendations:

Recommendation:

1. The AER require retailers to use a specific and consistent term when energy offers refer to energy generated by households with solar panels, eg household generation.
2. The AER investigates the benefits to consumers of differentiation between gross and net generation.
3. The AER to broaden Clause 2.4.2.2 *Conditional Discounts* to include the statement "Retailers must not make representations of conditional discounts relating to usage charges, to small customers without stating the tariff to which the discount is being applied". Alternatively under "information must include", list "the base tariff".
4. The AER undertakes research to determine whether consumers will understand the implication of multiple conditioning discounting on their tariffs and overall bill.
5. The AER ensures that tariff information is provided alongside the details of a discount, to ensure retailers are prevented from placing tariff information in the fine print or in an external document/website, referenced by the fine print.
6. The AER requires retailers to inform consumers about the implications for their 'discount' should the base tariff be increased after they have signed a contract.
7. In any marketing material for non-generally available offers, the relevant base tariff must be included.
8. The AER extend retailer obligations to specifying arrangements at the end of a fixed benefit period, in addition to the end of fixed term contracts.
8. The AER allow only GreenPower accredited products to use the terms 'GreenPower', 'green' or 'clean', with all other renewable energy products required to be called 'Non-Accredited Renewable Energy', and accompanied by a clear disclaimer that the purchase of the product does not reduce emissions from energy generation in Australia.

Our comments are detailed more fully below.

1. Consistency of terms - usage and household generation

We support the requirement for retailers to use the word 'usage' instead of 'consumption'. Consistent use of one term will contribute to more comparability across the market. Use of this term may also improve consumer understanding.

The AER should also require a specific term for solar customers exporting energy to the grid and mandate such a term in the Guidelines. Many consumers understand existing terms relating to energy generated through solar, but with over a million households in Australia with solar panels on the roof there are many Australians with solar panels who do not fully understand the meaning of terms used. Consumers that contact us can be especially confused when reconciling their bills after installing solar panels.

'Usage' is obviously not appropriate for rooftop solar—in an effort to contribute to consistency, we would support the term 'household generation'. We note that it may also be beneficial to consumers to differentiate between gross and net generation and encourage the AER to investigate this.

Recommendation 1:

The AER require retailers to use a specific and consistent term when energy offers refer to energy generated by households with solar panels, eg household generation, and for the AER to investigate a need to differentiate between gross and net generation.

Recommendation 2:

The AER investigates the benefits to consumers of differentiation between gross and net generation.

2. Discounting

We generally support the AER's proposals in relation to 'unconditional' and 'guaranteed' discounts. We particularly support the proposed requirement that representations of guaranteed discounts must also state the tariff to which the discount is being applied.

Retailers have admitted that discounting is regularly used to 'lure'ⁱⁱⁱ customers into signing up to offers. It is therefore obvious that retailers know that discounting obfuscates pricing information to promote retailers' interests over consumers' interests. We acknowledge that retailers also use discounts as a marketing tool because it is 'simple' to understand. However, if the base rate from which discounts are applied differ among different retailers, then the inclusion of tariffs is meaningless. More clarity is necessary in relation to the base rate of tariffs, because it is likely to be complex i.e. multi-part, with discounts potentially applied to only certain parts of the tariff (for example fixed charges or usage only, or both). While we appreciate efforts to achieve pricing simplicity, this should not be done if it is in effect masking the real cost. The AER's approach must also focus on the complexity of multi-part tariff offers, and require retailers to display the actual, most relevant tariff.

It is likely that the AER's proposed requirements around guaranteed discounts will mean that retailers may not use this approach in general advertising. It will be difficult for retailers to list tariffs on general marketing material featuring guaranteed discounts, given that tariffs are mostly location based. This may mean that retailers will increasingly use conditional discounts. While this issue may

also exist for conditional discounts, the way in which conditional discounts are communicated may be further problematic.

Given there are risks that the conditions linked to the application of discounts will not be met, consumers need to be able to understand the implications for them. This is particularly the case for contract features like 'pay on time' discounts, which are likely to negatively affect more vulnerable consumers who have difficulty paying on time. We consider that the base tariff should also be displayed where conditional discounting is used, and more specifically Clause 2.4.22 *Conditional Discounts* needs also to include the statement "Retailers must not make representations of conditional discounts relating to usage charges, to small customers without stating the tariff to which the discount is being applied". Alternatively under "information must include", list "the base tariff".

Recommendation 3:

The AER to broaden Clause 2.4.2.2 *Conditional Discounts* to include the statement "Retailers must not make representations of conditional discounts relating to usage charges, to small customers without stating the tariff to which the discount is being applied". Alternatively under "information must include", list "the base tariff".

Recommendation 4:

The AER undertakes research to determine whether consumers will understand the implication of multiple conditioning discounting on their tariffs and overall bill.

Even when there is an obligation for the tariff to be displayed on conditional offers, we are concerned that relevant tariff information will be relegated to the fine print, particularly in the case of promotional or advertising materials. This is problematic, as people are attracted to the headline discount and will miss the tariff as they typically ignore the fine print, in part because it is often difficult to navigate.

Attached to this submission is a recent marketing initiative by a top tier retailer. It demonstrates the problem with the discount on offer, and the fine print. The flyer refers to undefined 'market usage rates' but does not state the actual tariff from which the discount is applied. Consumers are instead directed to a URL on the retailer's website. If a consumer visits this website, they are required to provide information such as fuel type and postcode before they are presented with a range of offers. At this point, the consumer would have to refer back to the initial marketing material to determine which offer is being discounted. This is listed only in the fine print, ie 'Flexi Saver Plan'.

Recommendation 5:

The AER ensures that tariff information is provided alongside the details of a discount, to ensure retailers are prevented from placing tariff information in the fine print or in an external document/website, referenced by the fine print.

The problem of discounts occurs not only in promotional material and energy offers, but during the period of a contract. For example, it is common that retailers will increase prices after a consumer has signed a contract subject to a discount, such that the discount is 'lost'. In *ACCC v AGL* [2014] FCA 1369, the ACCC alleged that it was misleading for a retailer's letter not to explain that discounts had been lost when it alerted consumers to a price rise. The court found that this was not

misleading—there was no positive obligation to give particularised information. This was an unfortunate decision for consumers, and highlights a gap in the Australian Consumer Law and its general prohibition on misleading conduct.

Recommendation 6:

The AER requires retailers to inform consumers about the implications for their 'discount' should the base tariff be increased after they have signed a contract.

3. Non-generally available offers

While we agree that there is little value in requiring retailers to publish Energy Price Fact Sheets for all non-generally available offers, we have concerns that where non-generally offers are linked to 'usage' or 'market' rates in 'generally available offers', the actual tariff is inaccessible and does not provide transparency or the necessary information a consumer needs to make an informed decision without further investigation.

In our view, for any promotion of a non-generally available offer, the relevant base tariff must be included.

Recommendation 7:

In any marketing material for non-generally available offers, the relevant base tariff must be included.

4. Standardised layout

We agree that the current obligation on retailers to produce an Energy Price Fact Sheet has not facilitated comparable product statements. The proposed amendments to the guidelines may provide the clarity needed to ensure that Energy Price Fact Sheets are providing all necessary information to enable consumers to understand and compare offers.

We support the AER's finding that in standardising format and layout of Energy Price Fact Sheets that the benefits to consumers, will outweigh any costs to retailers. We would be interested in understanding the basis for any retailer cost claims that exceed those estimated by the AER.

We are supportive of the proposed template for the Energy Price Fact Sheet.

5. Accessibility, prominence and prioritisation of offer information on Energy Price Fact Sheets

We support the AER's recommendations in relation to accessibility, prominence and prioritisation of offer information on Energy Price Fact Sheets.

We support the AER's approach to ensuring that an Energy Price Fact Sheet must be generated when an 'add-on option changes any of the items in the base offer', for example when it relates to solar.

6. Promoting Clear and simple language

We are supportive of the proposed changes to language on an Energy Price Fact Sheet. While we think that there are more terms that can be defined, such as 'household generation' and 'Non-Accredited Renewable Energy', both of which are proposed in this submission, we are encouraged by the AER's guidance to retailer's to provide clear, simple and widely understood language.

As discussed above, we are very pleased with the inclusion of acceptable terms in relation to fixed term products. We consider that prohibiting the use of those terms, except where the price is also fixed, is a very positive outcome for consumers. As proposed in our retail rule change application, the ability of retailers to unilaterally vary prices where contracts were 'fixed' dis-empowers consumers and negatively impacts competition. In many cases, consumers who have signed fixed term contracts believed they had a fixed price. Price changes were, in fact, occurring multiple times within the life of a contract with a fixed term. We refer to a submission made by the Energy and Water Ombudsman Victoria (EWOV) to the AEMC's retail rule change process, which revealed 3,381 customers raised variation in price/contract terms as their primary complaint issue from 2009 to 2013, and an additional 1,450 customers raised it as a secondary complaint issue in relation their case. Moreover, the increase in cases raised in relation to this issue has been significant, from 339 cases in 2009 to 2,171 in 2013 (primary issues only).^{iv} Further, EWOV noted:

"...most cases in these categories involve customers who are concerned that the tariff and/or discount had changed or was not the same as they believed when they entered the contract. Customer confusion often arises from misleading information, miscommunication or misunderstanding at the time of marketing."^v

The proposed changes will improve consumer understanding of offers, and empower them to choose a contract that best suits their needs.

We strongly support the obligation on retailers to ensure that the Energy Price Fact Sheet must specify arrangements that will take place at the expiry of a fixed term contract, should a customer take no action. Energy retailers must also be required to inform consumers at the point of any benefit expiring under the 'fixed benefit' terms of a contract.

Recommendation 8:

The AER extend retailer obligations to specifying arrangements at the end of a fixed benefit period, in addition to the end of fixed term contracts.

We also support the inclusion of the terms 'exit fee' and 'guaranteed discounts', as these terms provide consumers with a clearer understanding of the product.

7. Energy sourced from renewables

We believe there is scope for the AER to go further in clarifying information on energy sourced from renewables. In our experience, there is considerable confusion—and potential for financial detriment—amongst consumers about the nature of renewable energy options due to the inconsistent use of terms, and confusion around the term 'GreenPower'.

Consumers who want to minimise their environmental impact will seek out clean energy retail options, which are offered by many retailers. However, renewable energy offers which are not GreenPower accredited (ie. Momentum Energy's SmilePower) do not unlock any new investment in renewable energy sources and therefore can not be accredited with displacing any greenhouse emissions from the generation pool. For example, while Momentum's front page on energy offers and rates lists the benefits of SmilePower as '*Clean energy generation matched to your usage*'^{vi} the following appears on the dedicated SmilePower information site: '*No claims can... be made by customers in regard to reduction in greenhouse gas emissions as a result of energy purchased as SmilePower.*'^{vii} This is a very clear example of the misleading nature of terminology around renewable energy options and the difficulty for consumers who are looking for an emissions-free retail energy option.

In light of this, we disagree with the AER's proposal to not address the problem with terminology around renewable energy options as part of this review. We believe that the review should put forward that only accredited GreenPower products can use the words *green* (as this word has become strongly associated with the GreenPower product) or *clean* (as only GreenPower accredited products can claim to have reduced emissions from energy generation in Australia). All non-accredited renewable energy products should be termed *Non-accredited renewable energy* and be accompanied by a clear disclaimer that purchase of this product does not reduce emissions from energy generation in Australia.

This clear demarcation in terminology will also give consumers confidence in pricing, as only GreenPower accredited options can justifiably charge a premium per kWh, due to the requirement to finance Renewable Energy Certificates to certify that the clean energy was purchased.

Recommendation 8:

The AER allow only GreenPower accredited products to use the terms 'GreenPower', 'green' or 'clean', with all other renewable energy products required to be called 'Non-Accredited Renewable Energy', and accompanied by a clear disclaimer that the purchase of the product does not reduce emissions from energy generation in Australia.

8. Ongoing reviews

We encourage the AER to continue to investigate and analyse the way in which energy retailers are presenting contract terms and conditions following the implementation of these changes to the Guidelines. We continue to consider that retailers do not consider it in their interests to ensure consumers have access to easy to information that is easy to understand and compare. Please refer again to the unsolicited mailing offer in **Attachment A**.

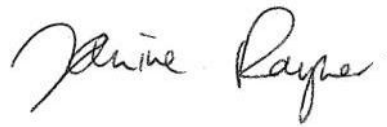
We would welcome an opportunity to further discuss this submission with you. Please contact Janine Rayner on 03 8554 6943 or janine@consumeraction.org.au.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer



Janine Rayner
Senior Policy Officer

ⁱ Consumer Action Law Centre and Consumer Utilities Advocacy Centre, Unilateral Price Variation & Market Retail Contracts Rule Change Request for Australian Energy Market Commission, October 2013

<http://www.aemc.gov.au/getattachment/40c1baae-b0ca-404a-9d4d-03b18c692ccd/Rule-Change-Request.aspx>

ⁱⁱ Australian Energy Market Commission, Retailer Price Variations in Market Retail Contracts, May 2015

<http://www.aemc.gov.au/Rule-Changes/Retailer-Price-Variations-in-Market-Retail-Contract#>

ⁱⁱⁱ Australian Energy Regulator, Stakeholder Forum: Retail Pricing Information Guideline Review, 12 February 2015, Pg 14.

<https://www.aer.gov.au/sites/default/files/Retail%20Pricing%20Information%20Guidelines%20Review%20Stakeholder%20forum%20transcript%2012%20February%202015.pdf>

^{iv} EWOV, Submission to AEMC, Retailer price variations in market retail contracts, Consultation Paper, 25 March 2014, 2 https://www.ewov.com.au/_data/assets/pdf_file/0020/10919/EWOV-comments-on-AEMC-Retailer-Price-Variations-in-Market-Retail-Contracts-Consultation-Paper.pdf

^v *ibid.*

^{vi} <http://www.momentumenergy.com.au/energy-solutions/latest-offers>, Accessed 18 May 2015

^{vii} <http://www.momentumenergy.com.au/energy-solutions/smilepower>, Accessed 18 May 2015