



2 June 2017

By email: Christine.reen@aemc.gov.au

Christine Reen
Australian Energy Market Commission
Level 6 ,201 Elizabeth Street
Sydney NSW 2000

Dear Ms Reen

Subject

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Australian Energy Market Commission's draft document *The rule change process: A guide for stakeholders*.

We acknowledge the Australian Energy Market Commission's intention to assist energy stakeholders to understand the rule change process and provide guidance to assist them propose changes. However, until broader problems with the rule change process addressed, consumer groups will be reluctant to risk investing the time and resources to pursue changes to the rules, to the detriment of consumers.

Our comments are detailed more fully below.

About Consumer Action

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.

Consumer Action's rule change experience

Consumer Action has first-hand experience of the AEMC's rule change process. In October 2013, along with the then-Consumer Utilities Advocacy Centre (CUAC), we proposed changes to Rule 46 of the National Energy Rules, to limit retailers' ability to unilaterally increase prices in retail market contracts.

Our analysis of the problems faced as a consumer group seeking to change the NERR, and our recommendations to make the process more transparent and less onerous for proponents, are

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extensively detailed in our report, [*FIX IT! How to fix the energy market rule making process – an evaluation.*](#)¹

Our full list of recommendations to reform the rule change processes from the *FIX IT!* report are included as **Attachment 1**.

Flexibility

It took approximately 66 weeks from when Consumer Action and CUAC commenced the rule change project to the final determination.

While we acknowledge that it is important for the AEMC to have adequate time to consider the issues raised and seek stakeholder input, a much more flexible multi-layered rule change process where certain issues – such as those where consumer are at risk of detriment – can be fast-tracked.

Evidence

A key concern for Consumer Action and CUAC emerging from the rule change proposal was the AEMC's treatment of evidence. The AEMC's draft and final determinations cited 'insufficient evidence' as a reason not to accept the proposed change. *FIX IT!* Identified a number of problems relating to evidence, including:

- Lack of clarity about which party bears the burden of undertaking the necessary research and analysis providing evidence to substantiate a rule change proposal—the rule change applicant, or the AEMC?
- Differing standards of evidence for different stakeholders—several retailers argued that Consumer Action and CUAC's rule change request contained insufficient evidence to support their arguments, but did not provide substantive evidence to support this assertion.
- The AEMC's lack of information gathering powers that would allow it to independently assess specific market issues raised by stakeholders and challenge assertions by retailers in particular; and
- Little weight given to behavioural economic analysis.

These concerns about evidence led to our recommendations that the AEMC:

- needs sufficient information gathering powers to investigate specific market issues if it were to have the capacity to obtain the 'evidence' required to substantiate any rule change proposal
- clearly articulates its expectations regarding the level of evidence to be provided by rule change proponents and evidence that will be collected by the AEMC during a rule change review.

In relation to the lack of clarity of roles, we note the draft guide does clarify that proponents do not require detailed specialist knowledge:

The submission of a rule change request is not intended to be onerous or require a deep level of technical expertise on the part of the proponent [...]

¹ *FIX IT! How to fix the energy market rule making process – an evaluation*, CALC/CUAC, November 2015.

Once initiated, we will undertake our own analysis, along with the collective expertise of the rule change proponent and other stakeholders through a consultative process, to determine whether a change to the rule is consistent with promoting the energy objectives.

An assurance that it is not up to proponents to provide exhaustive evidence is useful. However, our experience is that without powers for the AEMC to investigate and independently assess claims made by submitters, the burden falls on proponents to undertake the necessary analysis.

Conclusion

Our experience is that a retail rule change is an extremely resource intensive and lengthy process. The process is too cumbersome for it to be a viable avenue for consumer advocates to improve energy market regulation that promotes the long-term interests of consumers.

Further, the retail rule change and related institutional framework is not able to effectively respond to a dynamic and changing retail energy market. For consumer representatives this is a significant concern—it means that the national energy market processes are incapable of promoting good consumer outcomes.

Please contact Simon Kidd, Energy Policy Officer on 03 9670 5088 or at energy@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE

A handwritten signature in black ink that reads "Gerard Brody". The signature is written in a cursive, flowing style.

Gerard Brody
Chief Executive Officer

Attachment 1

Recommendations from *FIXIT! How to fix the energy market rule making process – an evaluation (CALC/CUAC, 2015)*

1. That the AEMC reviews the rule change process and examines options for a much more flexible multi-layered rule change process where particular issues can be fast-tracked.
2. That the COAG Energy Council initiates a review of the AEMC's information gathering powers with the aim to ensure that the AEMC has the powers necessary to thoroughly investigate market issues and industry practices.
3. That the AEMC clearly articulates its expectations regarding the level of evidence to be provided by rule change proponents and evidence that will be collected by the AEMC during a rule change review.
4. That the AEMC develops a guideline for its public fora, organised as part of review processes, that can enhance debates and include views from expert non-stakeholders.
5. That the AEMC consult on and develop a framework for how explanations of consumer behaviour informed by behavioural science inform its decision-making.

Recommendation to replace the rule change process

6. That the COAG Energy Council consult on alternative mechanisms to the Retail Rule change process that can ensure that the national framework for retail markets is responsive and progresses in line with market developments.
7. That the COAG Energy Council's Review of Governance Arrangements for Australian Energy Markets consider the benefit of one national energy regulator being responsible for energy market reviews.