

Joint Rule Change Proposal of the Australian and New South Wales Governments to the  
Australian Energy Market Commission

**Advance price change notice**

## Contents

1.	Rule change proponents	3
2.	Summary	3
	Consumers are not advised of price changes in advance	3
3.	Issues to be resolved	4
	Consumers can miss the current notifications of price changes	5
	Energy Made Easy is potentially overlooked by consumers	6
	How the proposed rule will address the stated concern	6
4.	Description of the proposed rule	6
	Timing of implementation	7
5.	Contribution to the National Energy Retail Objective	8
6.	Benefits, costs and implications of the proposed rule	8
	The proposal benefits consumers and the efficient operation of the market	8
	Consumers will be incentivised to interact with the market	9
	Increasing knowledge of Energy Made Easy and other resources	9
	Improved national harmonisation	9
	Retailers have enough time to assess any network tariff changes	9
	Costs of rule change are minimal	9
	Risks, Implications and Treatment	10
7.	Additional Issues to Consider	10

## 1. Rule change proponents<sup>1</sup>

The Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government; and

The Honourable Don Harwin MLC, Minister for Energy and Utilities on behalf of the NSW Government.

## 2. Summary

The Hon Josh Frydenberg MP, Minister for the Environment and Energy in the Australian Government, and the Hon Don Harwin MLC, Minister for Utilities and Resources in NSW jointly submit this request to the Australian Energy Market Commission (AEMC) to change the National Energy Retail Rules (NERR) to require retailers to provide consumers with advance notice of changes to energy prices.

### Consumers are not advised of price changes in advance

The Australian and NSW Governments, alongside their counterparts in the COAG Energy Council, are committed to achieving the best outcomes for energy consumers, while minimising the regulatory burden on industry participants.

Consistent with these efforts, the NSW Government tasked the NSW Independent Pricing and Regulatory Tribunal (IPART) to monitor and annually report on operation of the retail energy market. In its December 2017 report, IPART identified a potential regulatory gap in relation to the notification of price changes.<sup>2</sup>

Under the NERR, consumers must be informed by retailers of changes in the prices they pay for energy no later than their next bill. For a household, this can be up to three months after a retailer has made changes to their energy prices. During this time, consumers will be unaware of their actual cost of energy.

Consumers deserve the right to be informed of any changes to their energy prices when they occur. Armed with advance notice of a price increase, consumers are prompted to shop around and find a better offer. As IPART noted in its report, when looking at other sectors that supply retail services under ongoing contracts, most terms and conditions provide for price changes only with prior notice.<sup>3</sup> Ensuring energy customers also have this information is key to assisting them to shop around, and to putting more pressure on retailers with the effect of driving down prices.

The Australian and NSW governments therefore request the AEMC amend the NERR to require retailers to provide notice customers before their tariff changes take effect. As described in further detail below, this notice should be provided in sufficient time prior to a price change, and with sufficient clarity, to allow the consumer to consider their options.

---

<sup>1</sup> For the purposes of r11(1)(a) of the *National Energy Retail Regulations*, the address of the proponents is 'care of the Department of Environment and Energy, Canberra'.

<sup>2</sup> The IPART Report: <https://www.ipart.nsw.gov.au/Home/Industries/Energy/Reviews/Electricity/Retail-Energy-Market-Monitoring-2017>

<sup>3</sup> IPART Report, p74.

The form of the proposed rule change mirrors the words that have applied in Queensland since 2014. This proposal would therefore have the benefit of harmonising the notice requirements across the National Energy Customer Frameworks (NECF) jurisdictions.

In addition, we request that the AEMC consider this rule change be expedited under s252 of the National Energy Retail Law (NERL), and so follow the expedited assessment process.

### 3. Issues to be resolved

The current rule requirements in the NERR can potentially result in consumers unnecessarily bearing an increase in energy costs because they are not made aware of price rises that have occurred.

The current requirement for retailers to inform customers of price changes in a market offer contract is specified in rule 46(3) - 46(5) of the NERR:

## 46 Tariffs and charges

...

- (3) The retailer must give notice to the customer of any variation to the tariffs and charges that affects the customer.
- (4) The notice must be given as soon as practicable, and in any event no later than the customer's next bill.
- (5) The retailer must set out in the market retail contract the obligations with regard to notice that the retailer must comply with where the tariffs and charges are to be varied.

This is similar to the requirement in relation to standing offers. Under s22 of the NERL, a retailer is required to include a specific price change notice clause in all standing offer contracts. The effect of this clause is that the retailer has to provide notice to the consumer of a price change in the consumer's next bill.<sup>4</sup>

While standing offer contract prices cannot be changed more often than once every 6 months, prices in market retail contracts can be changed at any time if the terms of the market offer contract allow for this.<sup>5</sup> The inclusion of these 'unilateral variation' clauses is understood to be common in the current retail market.<sup>6</sup>

If a variation clause is included in a market retail contract, rule 46 would allow a retailer to vary the tariffs and charges under the contract at any time. If such a change is made, the retailer is only required to notify the customer of a price change in the customer's next bill. The customer may therefore be unaware of a price increase until approximately three months later in the case of a typical quarterly billing cycle.<sup>7</sup>

---

<sup>4</sup> See Item 8 of Schedule 1 of the NERR. Item 8 also requires public notice of price changes to standing offers (in a newspaper or on a website).

<sup>5</sup> Rule 46A requires a retailer to seek explicit informed consent from the consumer for contractual provisions allowing the variation of tariffs.

<sup>6</sup> See, e.g. *National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014*, p19: <http://www.aemc.gov.au/Rule-Changes/Retailer-Price-Variations-in-Market-Retail-Contrac>

<sup>7</sup> Rule 24 of the NERR requires a retailer to issue bills to a small customer at least once every 100 days. While this is also typically the case for market offer customers, the rules do not require quarterly billing. It is therefore possible that the detrimental effect of delayed price change notice could be exacerbated in certain circumstances.

Competitive markets rely on active consumers to drive suppliers to provide the best possible offers. Without transparency in pricing – the ability of consumers to easily access up to date and accurate information about the cost of energy services – the operation of the market is undermined because consumers are making inefficient consumption decisions.

In 2014, the AEMC argued that the information asymmetry reflected in the existing notice requirements was unlikely to be a source of significant or prolonged inefficiency in the market.<sup>8</sup> We note that the energy market context has evolved substantially since that time and that there is merit in reconsidering the issue to take into account those changes.

The AEMC has recently reported a 10.8% increase in the national average annual electricity bill between 2016-17 to 2017-18.<sup>9</sup> The AEMC has also previously found that the main reasons for a customer to switch retailer are related to pricing.<sup>10</sup> In this context, delaying notice to consumers of price rises, which in turn prompts them to seek about a better deal, could clearly have a detrimental effect. The IPART report specifically addressed this issue in noting that advance notice requirements could save a NSW customer up to \$80.<sup>11</sup>

The savings identified by IPART are not insubstantial and are likely to be reflected across the National Energy Market (NEM) because price diversity in retail energy offers across the NEM can be significant. In the 2017 State of the Energy Market Report, the Australian Energy Regulator found that the difference between the worst and best offer exceeded \$1000 in most distribution network areas.<sup>12</sup> Given the existing price diversity in the market, providing earlier notice to consumers of price increases would prompt many consumers to take advantage of the wide range of better deals in the market and encourage competition.

#### Consumers can miss the current notifications of price changes

Under the current regulatory regime, there is potential for price change notifications to be overlooked by the customer. A customer who is provided notice which is insufficient will suffer the same detriment as a customer who is not provided any form of notice – a customer cannot take appropriate action to mitigate the effect of a price increase if the customer is not made aware of that increase.

In its report, IPART observed that current requirements in the NERR do not specify the manner and form of the notice that retailers must provide to consumers when tariffs change. The report provides an example of a typical retailer price change notice and notes that some retailers place relatively small ‘price change’ notices on bills, which can be easily missed.<sup>13</sup>

The manner in which the price change notice is provided to the customer is therefore critical to the effectiveness of the rule change proposal. The Australian and NSW Governments consider that this is a matter which the AEMC should address in the development of the rule. Specific suggestions on the form of the notice have been made in section 4 below.

---

<sup>8</sup> See the *National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014*, p27.

<sup>9</sup> See AEMC 2017 Residential Electricity Price Trends report: <http://www.aemc.gov.au/Markets-Reviews-Advice/2017-Residential-Electricity-Price-Trends>

<sup>10</sup> AEMC *Retail Energy Competition Review 2017*, p236: <http://www.aemc.gov.au/Markets-Reviews-Advice/2017-Retail-Energy-Competition-Review>

<sup>11</sup> IPART report, p78.

<sup>12</sup> See also the ACCC *Retail Electricity Pricing Inquiry: Preliminary Report*, p120: [www.accc.gov.au/publications/accc-retail-electricity-pricing-inquiry-preliminary-report](http://www.accc.gov.au/publications/accc-retail-electricity-pricing-inquiry-preliminary-report)

<sup>13</sup> IPART report, p76: <https://www.ipart.nsw.gov.au/Home/Industries/Energy/Reviews/Electricity/Retail-Energy-Market-Monitoring-2017>

### Energy Made Easy is potentially overlooked by consumers

Another issue IPART identified is the level of customer knowledge of the Energy Made Easy website. Energy Made Easy is an online comparison resource maintained by the Australian Energy Regulator. Households and small business can use Energy Made Easy to find the electricity or gas contract available in their area that best meets their needs. However, consumers lack awareness of Energy Made Easy and the opportunities it can provide.

Consequently, the Australian and NSW Governments consider it appropriate to bolster awareness of the site through the proposed notice requirements. Greater awareness of the website will help provide customers with appropriate knowledge of the market and assist them in finding better deals.

### How the proposed rule will address the stated concern

Changing the rules to ensure consumers are made aware of price increases before those increases take effect will ensure consumers have the opportunity to shop around for a better deal. Given the price diversity in the market, it is expected that many consumers will be able to find offers which reflect significant savings, in addition to avoiding the price increases levied by their retailer.

Early notice of price changes will ensure a consumer can seek out savings at the earliest opportunity. In turn, the rule contributes to a more efficient market.

## 4. Description of the proposed rule

In accordance with s243 of the *National Energy Retail Law* (the NERL), we request the Australian Energy Market Commission (AEMC) make amendments to:

- rule 46 of the National Energy Retail Rules (the NERR) in relation to market offer contracts; and
- item 8 of Schedule 1 to the NERR in relation to standing offer contracts.

In relation to market offer contracts, the following is proposed:

### 46 Tariffs and charges

...

- (3) The retailer must give notice to the customer of any variation to the tariffs and charges that affects the customer.

~~(4) The notice must be given as soon as practicable, and in any event no later than the customer's next bill.~~

(4) The notice must be given—

(a) if the variation results in an increase in the tariffs and charges applying to the customer – at least 10 business days before the variation to the tariffs or charges are to apply to the customer; or

(b) if the variation results in a decrease in the tariffs and charges applying to the customer – as soon as practicable, and in any event, no later than the customer's next bill.

The form of the proposed revision to rule 46(4) mirrors an existing derogation to the NERR that has applied in Queensland since 2014.<sup>14</sup> The proposal would therefore have the beneficial effect of

---

<sup>14</sup> Sch 5, item 8 of the *National Energy Retail Law (Queensland) Regulation 2014*.

harmonising the notice requirements across the remainder of the National Energy Consumer Framework (NECF) jurisdictions.

In relation to standing offers, it is proposed the Queensland derogations also be adopted to the extent possible<sup>15</sup>, as follows:

## 8.2 Changes to tariffs and charges<sup>16</sup>

- ~~(a) — If we vary our standing offer prices, we will publish the variation in a newspaper and on our website at least 10 business days before it starts. We will also include details with your next bill if the variation affects you.~~
- ~~(b) — Our standing offer prices will not be varied more often than once every 6 months.~~
- (a) If we vary our standing offer prices, we will publish the variation in a newspaper and on our website.
- (b) If the variation is an increase to the standing offer price, we will publish the variation at least 10 business days before the increase starts.
- (c) We will also—
  - (i) if the variation results in an increase in the standing offer price applying to you— notify you in advance of the variation; and
  - (ii) if the variation results in a decrease in the standing offer price applying to you— include details of the variation in your next bill.
- (d) Our standing offer prices will not be varied more often than once every 6 months.

Section 7, below, sets out additional issues for the AEMC to consider in relation to this rule change proposal.

### Timing of implementation

The Australian and NSW Governments consider this rule to be an important step in protecting consumers from potential detriment. To that end, we propose the rule be made under the expedited process set out in s252 of the NERL.

We would like the rule to start as soon as possible, but no later than 1 June 2018. This would ensure the rule takes effect prior to a period in which retailers typically change their tariffs. The Australian and NSW Governments do, however, recognise that a reasonable period of transition is needed to allow retailers to make necessary changes in compliance with the new proposal.

The Australian and NSW Governments request the AEMC consider an appropriate commencement and transitional approaches having regard to the potential impact of the new rule. We note that given a substantively similar rule already operates in Queensland, we do not consider transitional costs will likely be significant.

---

<sup>15</sup> The Australian and NSW Governments note that the extent to which the standing offer notice mechanism can be adopted under the NERL may be limited by NERL s23(3)(c). Queensland has addressed this through its application law in Item 16 of the Schedule to the *National Energy Retail Law (Queensland) Act 2014*. We therefore request the AEMC consider an appropriate approach which, to the extent the NERL allows, aligns with the proposal set out in this rule change request.

<sup>16</sup> Sch 5, item 15 of the *National Energy Retail Law (Queensland) Regulation 2014*.

## 5. Contribution to the National Energy Retail Objective

In assessing any request to amend the NERR, the AEMC is required to consider how the proposal helps meet the National Energy Retail Objective (NERO). The Australian and NSW Government consider that the proposal meets the NERO as it provides for more informed consumers and will lead to improved customer outcomes in energy markets.

The National Energy Retail Objective, as stated in the National Energy Retail Law, is:

“...to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.”

The disconnect between the date on which a retailer increases a retail tariff and the date on which the consumer is informed of that price increase can result in the consumer paying more. Absent this information asymmetry, a consumer armed with the knowledge of an impending price rise will be more likely to seek out less costly alternatives in the market.

In itself, this change would improve a customer’s capacity to participate in the market with confidence and support consumer choice. Through this change, the Government considers that the economic welfare of consumers is maximised over the long term – that is, the proposal is in the long term interests of consumers of energy.

In mitigating the possible information asymmetry in the market, this proposed rule thereby ensures more effective operation of competitive processes and an overall improvement in the efficient operation of the market, which is inherently in the long term interests of the consumer.

Given the second arm of the rule-making test in s236(2)(b) of the NERL, it is also noted that the implementation of this proposed rule is inherently compatible with the development and application of consumer protections for small customers. Providing greater transparency to consumers which leads to substantive savings is clearly aimed at protecting consumers against bearing unnecessary costs.

## 6. Benefits, costs and implications of the proposed rule

The Australian and NSW Governments consider that the benefits of the proposed rule change strongly outweigh the costs. This section outlines the primary benefits and main costs of the proposed rule.

### The proposal benefits consumers and the efficient operation of the market

The rule change will increase the information consumers have in relation to their market contract and the wider market. Under the current rules, a retailer can amend the price in a market contract and not inform the customer until the next bill. This could potentially be a period of a number of months.

This means that the consumer could be unaware of the tariff that they are currently paying, which could be higher than they expect. As a result, the customer may be surprised when they receive a bill that is higher than expected. This situation is commonly referred to as bill shock. This rule change reduces the risk of bill shock by making consumers aware of the prices they are paying, and increases consumer confidence in the market. Removing the information asymmetry represented by the delay in price change notices, and providing additional prompts to engage with Energy Made Easy and consider alternative market offers will also drive improvements to competition.

### Consumers will be incentivised to interact with the market

Assessment undertaken by Newgate Research for the AEMC indicates that the average consumer considers the energy market for a short period every year.<sup>17</sup> Consumers, while they are concerned about prices, often only engage with the market when market participants communicate directly to them.

By requiring the retailer to make explicit any price changes upfront of these occurring, the rule change will encourage customers to engage more frequently with the market.

### Increasing knowledge of Energy Made Easy and other resources

Research shows that consumers lack awareness of the AER's Energy Made Easy website and resources. Consequently, IPART and AEMC reviews have recommended that consumers be better informed of the available resources for comparing information that is available to them.

### Improved national harmonisation

The rule change as drafted mirrors wording that has applied in Queensland since 2014. Therefore, the rule change would lead to improved national consistency across the NECF jurisdictions. Improving national consistency across these jurisdictions would reduce regulatory burden and administrative costs on retailers.

### Retailers have enough time to assess any network tariff changes

The distribution businesses annually determine their network tariffs which are approved by the AER. In the NECF jurisdictions, the network tariffs are amended on 1 July of each year.

Changes to the network tariffs are one of the key inputs into retailers' choice of tariffs for consumers. Retailers need to evaluate the any changes to distribution tariffs, before determining the tariff changes they may introduce in response for consumers.

If the proposed rule were made, retailers would need enough time from receiving information on changes in network tariffs to inform customers of price changes before 1 July each year. Distributors are required to supply proposed network tariffs by 31 March of each year, with the AER making its decision within 30 business days of receiving the proposal.<sup>18</sup> Therefore, retailers should have sufficient time to inform customers of price changes.

### Costs of rule change are minimal

To comply with the rule change, retailers will be required to contact the customers before any price changes. This will likely require some systems changes as it represents a change in the compliance obligations of customer contacts. However, we observe that contacting customers before any changes in prices is already an obligation in Queensland. Therefore, the cost of rolling out these changes nationally are likely to be minimal for all national retailers.

Additionally, many customers prefer to receive their bills and other communication in paperless forms and many retailers are moving to monthly billing, which would provide greater opportunity to incorporate the notice alongside existing communications. Consumers that have provided consent for information from retailers to be sent electronically will be able to receive their advance notifications of price changes in that manner.<sup>19</sup> The Australian and NSW Governments therefore expect that the

---

<sup>17</sup> <http://www.aemc.gov.au/getattachment/62080e52-06d1-4526-8c92-3eadec24876f/Newgate-research-consumer-research-report.aspx>

<sup>18</sup> AEMC, Final Determination: National Electricity Amendment (Distribution Network Pricing Arrangements) Rule 2014, p95 <https://www.aemc.gov.au/sites/default/files/content/de5cc69f-e850-48e0-9277-b3db79dd25c8/Final-determination.PDF>.

<sup>19</sup> See s319 of the NERL.

administrative costs of implementing the rule change will be low and can be readily absorbed by retailers.

### Risks, Implications and Treatment

<b>Risk</b>	<b>Treatment</b>
<p><i>If a retailer wishes to increase retail tariffs to account for an increase in e.g. wholesale prices, this rule will require them to first provide notice to the consumer.</i></p> <p><i>In this respect, the retailer has a choice. The retailer may time the provision of the notice to the consumer with the issuing of a bill in the normal billing cycle. Doing so would mitigate any cost implications with providing such notice, however, to the extent that the retailer is exposed to increased costs prior to the notice, the retailer will be required to absorb those costs for that period.</i></p> <p><i>In the alternative, the retailer may provide notice to the consumer “out-of-cycle”. That is, the retailer could provide notice before the customer’s next bill. In doing so, however, the retailer may be exposed to greater costs associated with providing that notice.</i></p>	<p>Given retailers in Queensland are already managing a substantively similar requirement suggests that the proposal will have little impact on retailers, and the risks represented by this proposal are minimal and easily managed.</p> <p>For most retailers, it is expected that no significant change to price change notification practices will be necessary – that is, the retailer will continue to provide notice at the time the consumer is provided a bill.</p> <p>Were a retailer exposed to significant ‘out-of-cycle’ cost fluctuations, the retailer would be able to manage this risk through an out-of-cycle notice to consumers.</p>

### 7. Additional Issues to Consider

As stated in Section 4, the Australian and NSW Government request that the AEMC consider expediting this rule change, so that any the rule can be in force before 1 July 2018. We consider that the rule as proposed would increase national consistency and significantly improve price transparency for energy consumers, while not being burdensome on retailers.

However, the AEMC may wish to consider ways of encouraging consumers to take advantage of the advance price change notice. The proponents consider that the content and form of advance notification of price changes are within in the scope of the rule change proposal.

Consistent with the requirements under new ‘benefit change notice’ rule made by the AEMC in December 2017<sup>20</sup>, the AEMC may consider it appropriate to enhance the price change notice to, for example, clearly and prominently state:

- a) that a price change will occur, the price change and the price change date
- b) that the small customer may use the price comparator to compare offers that are generally available to classes of small customers in their area;
- c) the name and web address of the price comparator;
- d) that the customer can request historical billing data and, if they are being sold electricity, energy consumption data, from the retailer that will assist it to use the price comparator to compare offers that are generally available to classes of small customers in their area.

<sup>20</sup> New rule 48A: <http://www.aemc.gov.au/Rule-Changes/Notification-of-end-of-fixed-benefit-period>