Preventing discounts on inflated energy rates

Project code: RRC0012

Stakeholder workshop

Thursday 5 April 2018

Structure of the presentation

- Overview of the Commission’s initial position and analysis
- Part one — civil penalty for the RPIG
- Part two — prohibition on discounting
- Data analysis
- Staff level revised approach to dual fuel offers

Context

- The workshop's purpose is to give stakeholders the opportunity to provide input on the Commission's initial position as presented in the consultation paper, published Tuesday 20 March.
- The consultation paper contained the Commission's initial position and indicative drafting reflecting this position.
- We also have the opportunity to present a revised proposal for the treatment of dual fuel offers.

Key dates for this rule change process: expedited process with a two-week extension

KEY MILESTONES	DATE
Stakeholder workshop	15 February 2018
Publication of consultation paper and commencement of the rule change process	20 March 2018
Objections to Commission decision that the rule is for a non-controversial rule	3 April 2018
Additional stakeholder workshop	**5 April 2018**
Submissions on the consultation paper due	17 April 2018
Publication of final determination	15 May 2018

The rule change request

- On 18 December 2017 the Hon Josh Frydenberg MP, Minister for the Environment and Energy submitted a rule change request that aims to address confusing retailer discounting practices. The confusion identified was where retailers apply discounts to rates that exceed the rates of that retailer's standing offer.

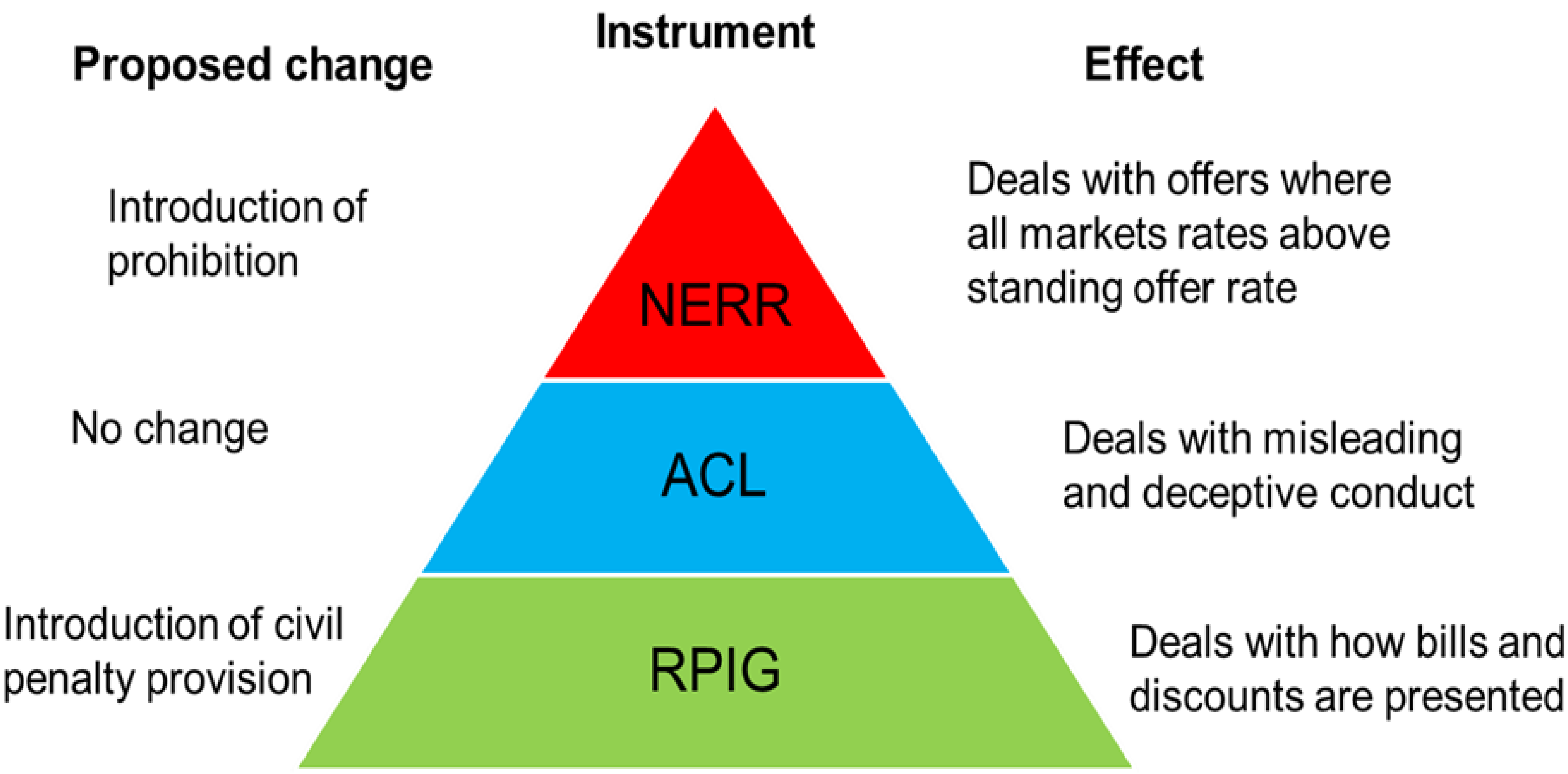
- The rule change request contained a proposed rule to amend the National Energy Retail Rules (NERR) to prohibit retailers from applying discounts in an electricity market retail contract where any of its rates are above the retailer's equivalent standing offer.

- The scope of the rule change is narrow: we are not considering discounting more generally or consumer confusion created by other types of retailer discounting practices, such as discounts made off standing offers which are set in inconsistent ways across retailers.

Overview of Commission’s initial position and analysis

- How the Commission’s initial position works with current arrangements
- High level questions

How the Commission's initial position works with current arrangements



High level questions

- Are the Australian Consumer Law (ACL) and the Australian Energy Regulator’s (AER) Retail Pricing Information Guidelines (RPIG) generally the appropriate mechanisms to govern retailers making and advertising market offers?
- Should some specific types of market retail contracts be expressly prohibited under the NERR but only when they are definitely not in the long term interests of consumers?
- Is our approach consistent with what a standing offer captures?
- What would be the expected impact in response to the Commission’s position on the prohibition on discounts?
- Should a civil penalty provision apply to the requirement to present standing and market offers in accordance with the RPIG? What would be the benefits? What would be the costs?

Part one of the initial position: civil penalty for the RPIG

- A civil penalty for the RPIG’s provisions on presentation of energy offer prices
- Why a civil penalty for the RPIG in this rule change process?
- Questions for comment

Part one of the initial position: why a civil penalty for the RPIG's pricing presentation provisions?

- The Commission is proposing to recommend non-compliance with sections 24 and 37 of the National Energy Retail Law (NERL) being subject to a civil penalty. This would make breaching the market and standing offer pricing presentations in the RPIG subject to a civil penalty.

- This appears to be the most effective way to have the RPIG subject to a civil penalty. It was less practicable to have a civil penalty for:
  - the RPIG's provisions on discounting
  - the RPIG as a whole.

- A civil penalty recommendation would be made jointly by the Commission and the AER to the COAG Energy Council.

Part one of the initial position: civil penalty for the RPIG in this rule change process?

- A civil penalty recommendation would not be part of the final rule in relation to this rule change request. It is a recommendation, and would not form part of any rule drafting in a final determination.
- The rule change request notes that an alternative option to its proposed rule is to “bolster the AER’s RPIG”.

Questions for comment

- Is a civil penalty provision added to sections 24 and 37 of the NERL the most effective manner to “bolster” the RPIG?
- Is there another way to provide for civil penalties for contravention of the RPIG that would be preferable?

Part two of the initial position: prohibition on discounting

- What is an equivalent standing offer?
- Examples
- Further aspects of the position
- Questions

Part two of the initial position: what is an equivalent standing offer? (1)

Under the indicative drafting, a standing offer is equivalent to the market retail contract only if all of these conditions are met:

- the same retailer offers the standing offer and market retail contract
- the standing offer and market retail contract would be available to the same small customer if the retailer was the designated retailer for the small customer's premises
- there are no material differences between the tariff structure of the standing offer and of the market retail contract in relation to energy rates and energy payments
- the market retail contract provides no material additional benefit or service to the customer compared to the standing offer

Part two of the initial position: what is an equivalent standing offer? (2)

- Equivalence comes down to:
  - tariff structure of the energy rates and energy payments
  - benefits and services in the market contract
  - being available to the same customer, as if the retailer were the designated retailer.
- Benefits or services can cover aspects of market contracts such as movie tickets and other benefits not related to energy rates or payments.
- The references to “material” means trivial differences in tariff structures and benefits and services will not prevent the prohibition from applying. The AER will need to judge what is “material”.
- The condition of a market retail contract and standing offer being “available to the same customer, if the retailer were the designated retailer” replaces the construction of “region” in the proposed rule.

Part two of the initial position: example 1

- A retailer has a ***standing offer*** in the Ausgrid distribution supply area with the following charges:
  - Daily supply charge: 122.80 c
  - Usage charge: 35.90 c/kWh
  - No payments to the customer, nor additional benefits or services
- The same retailer has a single rate tariff ***market offer*** in the Ausgrid distribution supply area with an equivalent tariff structure:
  - Daily supply charge: 132.624 c
  - Usage charge: 38.77 c/kWh
  - No payments to the customer, nor additional benefits or services
  - A conditional pay-on-time discount of 15 per cent to all charges
- A contract based on this market offer would be in breach of the indicative drafting as both daily supply and usage charges are higher.

Part two of the initial position: example 2

- A retailer has a ***standing offer*** in the Endeavour distribution supply area with the following charges:
  - Daily supply charge: 70.68 c
  - Usage charge: 44.56 c/kWh
- The same retailer has a single rate tariff ***market offer*** in the Endeavour distribution supply area with an equivalent tariff structure:
  - Daily supply charge: 75.906
  - Usage charge: 20 c/kWh
  - 10 per cent conditional pay-on-time discount to all charges
- The above would not be in breach of the indicative drafting. This is because only the daily supply charge is higher than the equivalent standing offer, but not its usage charge.

Part two of the initial position: example 3

- A retailer has a ***standing offer*** in the Energex distribution supply area with the following charges:
  - Daily supply charge: 122.80 c
  - Usage charge: 35.90 c/kWh
  - No payments to the customer, nor additional benefits or services
- The same retailer has a single rate tariff ***market offer*** in the Energex distribution supply area with an equivalent tariff structure:
  - Daily supply charge: 132.624 c
  - Usage charge: 38.77 c/kWh
  - 50% GreenPower is provided to the customer at no extra charge
  - A 15 per cent conditional pay-on-time discount to all charges
- The market offer would **not be** in breach of the indicative drafting if formed into a market contract due to the GreenPower service.

Part two of the initial position: example 4

- A retailer has a ***standing offer*** in the Energex distribution supply area with the following charges:
  - Daily supply charge: 122.80 c
  - Usage charge: 35.90 c/kWh
  - No payments to the customer, nor additional benefits or services
- The same retailer has a single rate tariff ***market offer*** in the Energex distribution supply area with an equivalent tariff structure:
  - Daily supply charge: 132.624 c
  - Usage charge: 38.77 c/kWh
  - Fixed charges for 2 years
  - A 15 per cent conditional pay-on-time discount to all charges
- The market offer **would be** in breach of the indicative drafting if formed into a market contract. Should it be?

Part two of the initial position: further aspects of the position

- The principle is to make sure that the drafting would apply to all market and standing offer tariff structures into the future, and would not be rendered ineffective by the tariff structure innovation and network pricing changes that are likely to occur over time.

- If a rule were made resembling this indicative drafting, a civil penalty would be recommended for contravention of that rule.
  - The rule change request asked that a civil penalty apply to the proposed rule.

Questions

- Are there any issues in the formulation of “equivalence” in the indicative drafting?

- How effective is the use of “material” for differences between tariff structures and benefits and services to ensure trivial differences do not allow market contracts to “escape” the indicative drafting?

- Should market retail contracts with fixed prices for a period be considered differently from contracts with variable prices, when being compared to standing offers?

- What should be considered a “benefit” or “service”? For example, the option to have GreenPower?

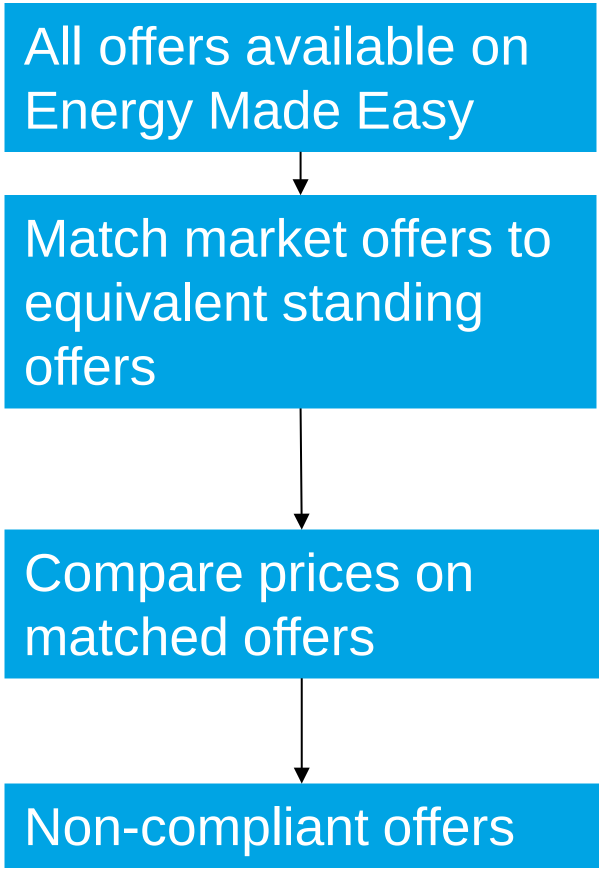
- Do you agree with the exclusion of fees and penalties from consideration of whether there is an equivalent standing offer?

Data analysis: an update

- Approach
- Prevalence of non-compliant offers
- Bill analysis
- Questions

Approach: overview of method

- Offers extracted from Energy Made Easy on 15 January 2018
- Offers are matched in accordance with conditions for equivalence
  - Proposed rule
  - Indicative drafting
- Comparing pricing elements in offer pairs
  - Proposed rule
  - Indicative drafting
- Non-compliant offers determined



Approach: offers examined

Offers from Energy Made Easy varied on the following dimensions:

- Single Rate / Multiple blocks / Time of Use (TOU)
- No controlled load / Controlled load
- Electricity / Gas
- Small Business / Residential
- Dual fuel / Single fuel

Approach: equivalence

Proposed rule

- Residential/Small business
- Retailer
- Gas/Electricity
- Supply area (at least one)
- Controlled load, name, brackets
- Tariff name, description, dates, season, block sizes, TOU brackets

Indicative drafting

- Residential/Small business
- Retailer
- Gas/Electricity
- Supply area (at least one)
- Controlled load, name, brackets
- Tariff name, description, dates, season, block sizes, TOU brackets
- Solar feed-in tariff name, description
- Incentives name, description
- Green power charges, name, description, options

Approach: prevalence of equivalent offers

No of equivalent standing offers	No of market offers (Proposed rule)	No of market offers (Indicative drafting)
0	773	1863
1	1806	879
2	185	50
3	1	1
4	28	0

- Under the proposed rule, 28 market offers had 4 equivalent standing offers each
  - Not surprising given that the proposed rule ignores solar feed-in tariffs.
- **The indicative drafting has fewer “equivalent” standing offers**
  - This operates even before the price elements are compared.

Approach: comparing prices of equivalent offers

Proposed rule

ANY of the following:

- Controlled load charges
  - Supply charge
  - Usage rates
- Tariff rate (for each season)
  - Supply charge
  - Usage rate
- Demand charge

Indicative drafting

ALL of the following:

- Controlled load charges
  - Supply charge
  - Usage rates
- Tariff rate (for each season)
  - Supply charge
  - Usage rate
- Demand charge
- Solar feed-in tariff rate
- Green power charges, name, description, options

Prevalence of non-compliant offers

Fuel Type	Customer type	Market	Regulated	Standing	Breach proposed	Breach indicative
Dual Fuel	Residential	254		44	6	0
Dual Fuel	Small Business	102		20	16	0
Electricity	Residential	1145	15	585	53	17
Electricity	Small Business	967	42	591	22	3
Gas	Residential	207	7	47	2	0
Gas	Small Business	118	7	40	0	0
Total		2793	71	1327	99	20

Bill analysis

- See if offers are trivially defeating indicative drafting
- Focus on offers caught by proposed rule but not caught by indicative drafting
- Comparing bill outcomes across consumption levels
  - High, medium, low
- Can only calculate bills for:
  - Electricity – Single Rate
  - Electricity – Controlled load
  - Gas
- No bills for:
  - Dual fuel offers
  - Electricity – Time of use
- Bill comparison for 24 market offers and equivalent standing offers

Bill analysis: caught by proposed rule but not indicative drafting

Bill outcome	Undiscounted bills	Discounted bills
Standing offer higher at all consumption levels	18	22
Market offer higher at all consumption levels	6	2

- *Before discounts*: 6 market offers were more expensive than their equivalent standing offer at all consumption levels.
- *After discounts*: 2 market offers were more expensive than their equivalent standing offer at all consumption levels.
- The proposed rule was overbroad and caught 18 market offers, where customers had lower bills under all consumption levels, before discounts.
- All of the market offers that were more expensive had a solar feed-in tariff.
- Currently no market offers which trivially breach the indicative drafting.

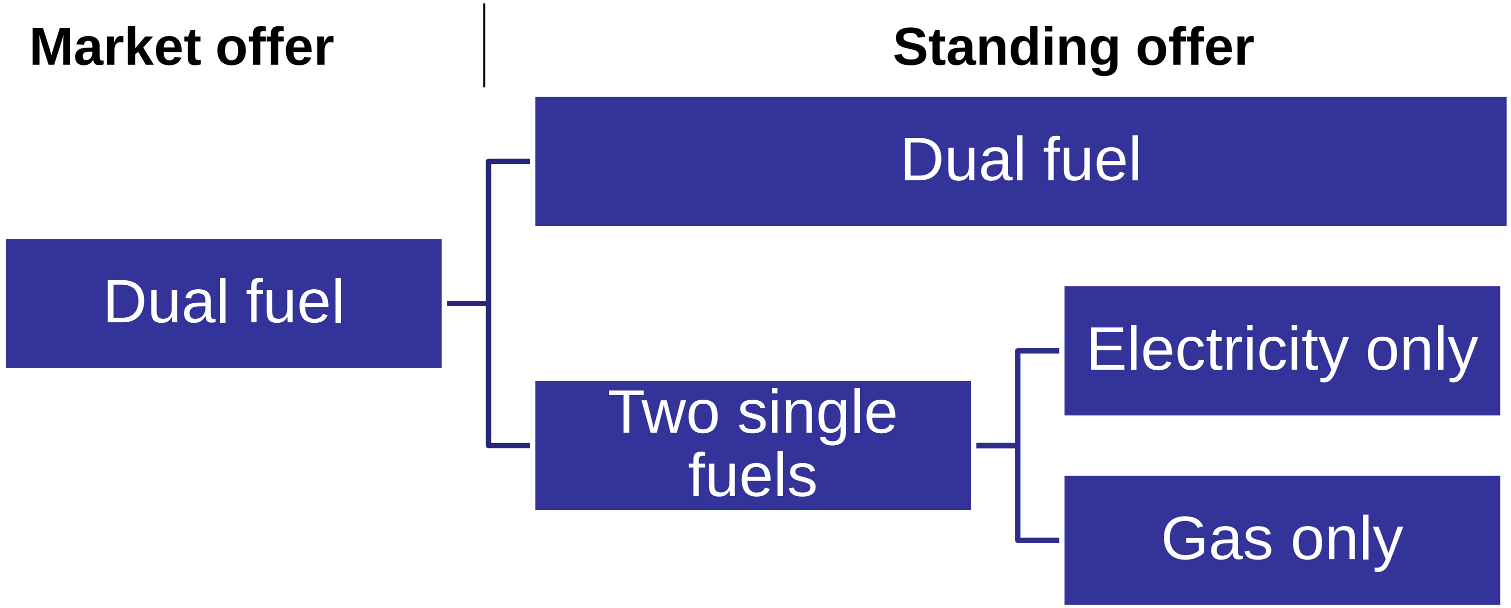
Dual fuel and matching: revised approach

- Problems with the consultation paper's approach
- Proposed new approach to dual fuel
- Questions about revised approach to dual fuel

Problems with the consultation paper's approach

- Matching dual fuel to single fuel offers may not always be a "like for like" comparison.
- This is particularly true when comparing the electricity elements in a dual fuel offer to an electricity-only offer.
- Pricing of electricity in single fuel offers could be different to pricing of electricity in a dual fuel offer due to the effect that gas consumption would have on electricity consumption.

Proposed new approach to dual fuel



Dual fuel market contracts need to have energy rates for all fuels (i.e. electricity and gas) above all energy rates for an equivalent standing dual fuel offer or a retailer's electricity and gas standing offers (across both of them).

- Dual fuel market contracts cannot be in breach on just one fuel. If one fuel is compliant, all of the contracts for dual fuel are compliant.
- Single fuel market retail contracts will also not be matched to one fuel in a dual fuel standing offer.

Proposed new approach to dual fuel: a dual fuel example under the revised approach (1)

	Standing offer	Dual fuel market offer
Distribution network supply area	Energex	Energex
	Electricity	
Daily supply charge	100 c	100 c
Usage charge	32.50 c/kWh	32.50 c/kWh
Discounts (if applicable)	N/A	10 per cent pay-on-time discount to all charges
Energy payments	Feed-in tariff: 8 c/kWh	Feed-in tariff: 8 c/kWh
Benefits or services	None	None
	Gas	
Daily supply charge	97 c	98 c
Usage charge	30 c/kWh	31 c/kWh
Discounts (if applicable)	N/A	10 per cent pay-on-time discount to usage charges
Energy payments	None	None
Benefits or services	None	None

- The dual fuel market offer turns into two separate market retail contracts for electricity and gas.
- However, neither of these contracts are in breach.
- The reason for this is that only the gas tariffs — but not the electricity tariffs — have energy rates higher under the dual fuel market offer.
- This would be the case if the standing offer was a dual fuel offer or a combination of two single fuel standing offers.

Proposed new approach to dual fuel: a dual fuel example under the revised approach (2)

	Standing offer	**Market offer**
Distribution network supply area	Energex	Energex
	Electricity	
Daily supply charge	100 c	101 c
Usage charge	32.50 c/kWh	39.50 c/kWh
Discounts (if applicable)	N/A	10 per cent pay-on-time discount to usage charges
Energy payments	Feed-in tariff: 8 c/kWh	Feed-in tariff: 8 c/kWh
Benefits or services	None	None
	Gas	
Daily supply charge	97 c	98 c
Usage charge	30 c/kWh	31 c/kWh
Discounts (if applicable)	N/A	10 per cent pay-on-time discount to usage charges
Energy payments	None	None
Benefits or services	None	None

- In the above example, the dual fuel market offer turns into one market retail contract for both electricity and gas.
- The entire dual fuel market contract is in breach.
- The reason for this is that both electricity and gas have higher energy rates under the dual fuel market offer compared to the standing offer.
- This would be the case if the standing offer was a dual fuel offer or a combination of two single fuel standing offers.

Proposed new approach to dual fuel: a dual fuel example under the revised approach (3)

	Standing offer	**Market offer**
Distribution network supply area	ActewAGL	ActewAGL
	Electricity	
Daily supply charge	110 c	121 c
Usage charge	32.50 c/kWh	39.50 c/kWh
Discounts (if applicable)	N/A	20 per cent pay-on-time discount to usage charges
Energy payments	Feed-in tariff: 12 c/kWh	Feed-in tariff: 12 c/kWh
Benefits or services	None	None
	Gas	
Daily supply charge	107 c	108 c
Usage charge	29 c/kWh	30 c/kWh
Discounts (if applicable)	N/A	20 per cent pay-on-time discount to usage charges
Energy payments	None	None
Benefits or services	None	None

- The dual fuel market offer turns into two market retail contracts.
- The standing offer column refers to two separate and unlinked single fuel standing offers.
- Both of these contracts are in breach.
- The reason for this is that both the electricity and the gas fuels have higher energy rates under the dual fuel market offer compared to the electricity and gas standing offers.

Questions about revised approach to dual fuel

- Do you agree with the general intent behind the staff level revised approach to dual fuel matching?
- Do you have any comments on how workable the revised staff level approach to dual fuel matching is?
- Are there any matters not considered in the revised approach to dual fuel that should be?

AEMC

Appendix

Current regulatory arrangements

- The AER provides guidance on the presentation of pricing information (including discounts) in its Retail Pricing Information Guideline (RPIG). The National Energy Retail Law (NERL) requires retailers to comply with the RPIG in their presentation of standing and market offers (sections 24 and 37).

- The Australian Consumer Law (ACL; enforced by the ACCC) contains provisions against misleading or deceptive conduct and false or misleading representations about goods and services.

- In 2015 Origin was ordered to pay penalties of $325,000 for false or misleading representations (under the ACL) about discounts. Its discounts referred to rates above standing offer rates for residential consumers in South Australia.

Proposed solution in the rule change request: a simple example (1)

- A retailer has a ***standing offer*** in the Ausgrid distribution supply area with the following charges:
  - Daily supply charge: 122.80 c
  - Usage charge: 35.90 c/kWh
- The same retailer has a single rate tariff ***market offer*** in the Ausgrid distribution supply area with an equivalent tariff structure:
  - Daily supply charge: 132.624 c
  - Usage charge: 38.77 c/kWh
  - The market offer has a conditional pay-on-time discount of 15 per cent to all charges.
- The difference between the standing offer and market offer rates is 8 per cent. The above would be a breach of the proposed rule.

Proposed solution in the rule change request: simple example (2)

- A retailer has a ***standing offer*** in the Energex distribution supply area with the following charges:
  - Daily supply charge: 70.68 c
  - Usage charge: 44.56 c/kWh
- The same retailer has a single rate tariff ***market offer*** in the Energex distribution supply area with an equivalent tariff structure:
  - Daily supply charge: 75.96 c
  - Usage charge: 20 c/kWh
  - A conditional pay-on-time discount of 10 per cent to all of their charges.
- The above would be a breach of the proposed rule.

Part two of the initial position: key definitions

Energy rate	**Energy payment**
Any tariff or charge that is a component of the market offer prices under a market retail contract, or of the standing offer prices under a standard retail contract, but in each case excluding charges that are fees or penalties	Any payment or credit by a retailer to a small customer for benefits or services provided by the small customer to the retailer under a market retail contract or a standard retail contract
Paid by: Customer Paid to: Retailer	Paid by: Retailer Paid to: Customer
Examples: • daily charges • kilowatt hour charges	Examples: • feed-in tariff • demand reduction credit