



Preventing discounts on inflated energy rates

Final determination and rule published

The Australian Energy Market Commission has made a rule to address confusing energy retailer discounts that can cause consumer detriment.

Background

In August, the Prime Minister met with and announced agreement from the seven largest Australian energy retailers on several measures to improve consumer outcomes.

The Prime Minister's meetings focused on the key issue of affordability, with a priority being that consumers have increased transparency about their bills. A particular concern raised was that percentage discounts contribute to consumer confusion and that energy offers with large percentage discounts do not always lead to the lowest bills for consumers.

Some of the agreements were addressed by the Australian Energy Regulator's (AER) recently revised Retail Pricing Information Guidelines (RPIG). The RPIG provides guidance on how retailers should present pricing information, which could include percentage discounting. For other matters it was concluded changes to the National Energy Retail Rules (NERR) were required.

The rule change request

On 18 December 2017, the Honourable Josh Frydenberg MP, Minister for the Environment and Energy on behalf of the Australian Government submitted a rule change request to the Australian Energy Market Commission (Commission) under the National Energy Retail Law (NERL) to address confusing retailer discounting practices where retailers apply discounts to rates that significantly exceed the rates of the retailer's standing offer.

The rule change request proposes to prohibit such behaviour by restricting retailers from applying discounts to market retail contracts if any of the rates in the contract are higher than the retailer's equivalent standing offer rates. The rule change request also suggests a "bolster" to the AER's RPIG as an alternative option to the proposed rule.

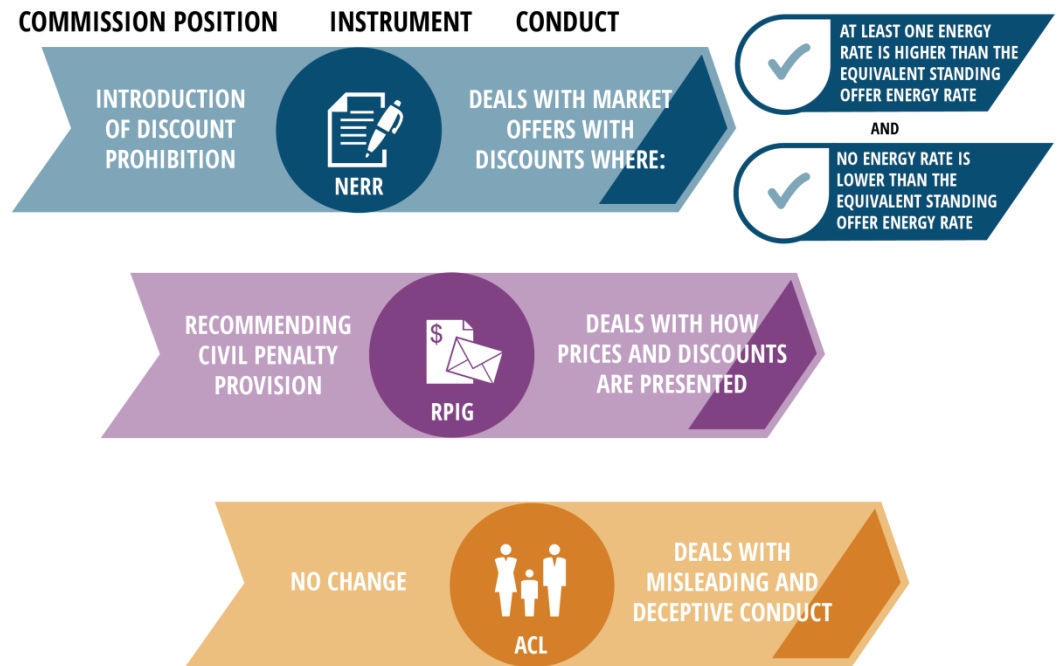
Commission's final rule and civil penalty provision

As displayed in Figure 1, the Commission's final determination:

1. Introduces a rule in the NERR (not applicable in Victoria) restricting retailers from including discounts in market retail contracts where customers would definitely be worse off under the undiscounted market offer than under the standing offer.
2. A joint Commission-AER recommendation to the COAG Energy Council to make retailers' non-compliance with the RPIG's provisions on presentation of market and standing offer prices subject to a civil penalty under the NERL. Civil penalties for these RPIG provisions would allow the AER to issue infringement notices with penalties of up to \$20,000 (for a body corporate) per breach.

The Commission supports the intent of the rule change request and the final determination achieves this intent through a targeted and integrated approach. It strengthens the existing regulatory framework through changes to the NERR and the addition of a civil penalty provision to the AER's RPIG. These changes will work in tandem with the existing Australian Consumer Law (ACL), as displayed in Figure 1.

Figure 1: Proposed package of regulatory arrangements



The addition of civil penalties for the RPIG would provide the AER greater enforcement options. The AER will be able to use these options to fit the circumstances when faced with a contravention of the RPIG.

Commission’s analysis: civil penalty provision for the RPIG

A competitive retail energy market is generally better at producing energy offers that meet consumers’ preferences at prices consumers are willing to pay than regulatory measures which restrict the offers that retailers are able to make to consumers. The primary means of addressing confusion should therefore be through the existing regulatory instruments governing the presentation and advertising of retail offers. That is, the RPIG and ACL.

The ACL, enforced by the Australian Competition and Consumer Commission (ACCC), and the AER’s RPIG together provide a framework for regulating how retailers present and market offers in the competitive energy retail market. The ACL restricts misleading or deceptive conduct and false or misleading representations. The RPIG contributes to this framework by addressing the presentation of market and standing offer prices. In this context it is important that these instruments are enforceable and to achieve this the Commission recommends a civil penalty provision for the RPIG.

The addition of civil penalties for the RPIG would provide the AER greater enforcement options. The AER will be able to use these options to fit the circumstances when faced with a contravention of the RPIG. The Commission considers civil penalties are an effective tool for the AER in many of the circumstances where an RPIG provision regarding the presentation of standing or market offer pricing has been breached.

Commission’s analysis: discount prohibition in the NERR

Where there are particular retail practices which cannot be in the interest of consumers and are apparently designed purely to confuse consumers, a specific prohibition of such practices within the NERR is appropriate.

This is the case where retailers provide discounts in a market retail contract where at least one rate is above the equivalent rate in a standing offer and no rates in the market offer are below an equivalent rate in a standing offer. In this case, no consumer could be better off under the undiscounted market retail contract than under the standing offer. A key reason the market retail contract may be attractive is through confusing consumers with an inflated discount. The Commission’s final rule prohibits this practice under the NERR.

This new prohibition in the NERR will supplement the ACL. It does not narrow the application of the ACL. If there are discounting practices that would constitute misleading or deceptive conduct, or a false or misleading representation then these practices can and should still be prosecuted by the ACCC under the ACL.

Broader issues relating to discounting

While this rule change relates to a specific discounting practice, the Commission is cognisant of broader issues with discounting. The Commission noted in the 2017 Retail

The Commission's final rule prohibits retailers providing a discount in a market retail contract where at least one rate is above the equivalent rate in a standing offer and no rates in the market offer are below an equivalent rate in a standing offer.

Energy Competition Review that retailers mainly compete on price through discounting (e.g. a conditional pay-on-time discount) on standing offer rates. The current presentation of discounts which typically reference a standing offer price set inconsistently across retailers also contributes to consumer confusion. The result of this broader discounting practice is that the value of different market offers becomes difficult for consumers to compare. Larger discounts have been shown often not to correlate with the best deals for consumers. The AER's recent revision of the RPIG has partly addressed this issue. The ACCC's Retail Electricity Pricing Inquiry is also investigating this issue. The Commission supports the AER and ACCC's work and welcomes suggested reforms in this area.

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