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Australian Energy Market Commission
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Sydney South NSW 1235
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To Whom It May Concern:

Consultation: National Energy Retail Amendment (Strengthening protections for customers in hardship) Rule 2018

On 21 March 2018 the Australian Energy Regulator submitted a rule change request to the Australian Energy Market Commission (AEMC) seeking to strengthen the protections for residential customers in financial hardship. The rule change proposal aims to amend the National Energy Retail Rules (NERR) to allow for the development of binding Customer Hardship Policy Guidelines (Hardship Guidelines).

ActewAGL Retail ('ActewAGL') - response

ActewAGL appreciates the opportunity to provide feedback regarding the AEMC's proposal to implement the rule change regarding strengthening protections for customers in hardship.

Responses to the questions raised by the AEMC can be found at Appendix A.

If you have any further questions regarding this submission, please email:
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Yours sincerely

Ayesha Razzaq
General Manager Retail

APPENDIX A

Question 1 Rationale for rule change - adequacy of the current approach to hardship

(a) To what extent do you consider that the current approach to the application of hardship policies provides adequate protections to consumers in financial difficulty?

ActewAGL believes that the current regulatory framework is sufficient and provides adequate protections to customers in financial hardship. The National Energy Retail Law provisions, relating to customer hardship policies, clearly set out the minimum requirements that a retailer's hardship policy must contain and explicitly state that a policy needs to be approved by the AER within three months of a retailer authorisation being granted. As it stands, section 44 also allows for the AER to specify variations, meaning that it has the power to compel retailers with inadequate policies to remedy them.

(b) Are general obligations that are more difficult to enforce leading to inadequate consumer protections?

ActewAGL does not believe this to be the case. As already stated, the AER currently holds enforcement powers and their use of audits over the past 12 months, along with recent enforcement activity, highlights their ability and willingness to use them. ActewAGL believes that working collaboratively with retailers to remedy shortcomings is a better approach, for both the market and customers.

Question 2 Hardship indicators

(a) Do the current indicators appropriately reflect the success or failure of hardship policies in protecting consumers who are facing financial difficulty? Please explain your perspective.

ActewAGL does not believe the current indicators are reflective of the success or failure of hardship policies. The indicators are a statistical snapshot and do not capture the highly variable nature of hardship. Specific, standard guidelines and definitions are often irrelevant as each case needs to be managed according to the individual needs of the customer in hardship and often this occurs outside of the confines of a hardship program. ActewAGL's experience has been that in many instances, the nature of a customer's issue is so complex they are often unable to meet any guideline in terms of regular payments or obligations. These customers need to first be guided and then managed, over a period of time, to a point where a regular arrangement can be put in place. These customers are not reflected in current indicators.

In the ACT, customers are afforded an additional layer of protection through the ACT Civil and Administrative Tribunal (ACAT). The ACAT has its own hardship program to which retailers are able to refer customers who cannot meet regular payments and/or need greater levels of financial assistance than the retailer can provide. Customers under the ACAT Hardship Program are not visible in NECF reporting numbers and as such, an inaccurate view of hardship assistance within the ACT is presented to and by the AER. Whilst the ability to cross-refer has been immensely beneficial to customers in the ACT, the current reporting is not an accurate reflection of the success of hardship policies and practices within the ACT.

(b) Should the hardship program indicators reside in the binding Hardship Guidelines as proposed or remain as separate to the Guidelines as a stand-alone requirement in the NERR? Please explain your perspective.

As stated previously, specific indicators rarely tell the story in its entirety. The placement of indicators into binding guidelines, with the associated penalties, would likely see retailers forced to

APPENDIX A

‘meeting metrics’ and ‘ticking boxes’, as opposed to taking the flexible and holistic approach to hardship case management so essential for successful outcomes in this area.

Question 3 Proposed approach

(a) Are you of the view that Hardship Guidelines that include standard statements adequately protect the long-term interest of consumers in financial difficulty, while providing retailers with flexibility in how they apply hardship provisions?

ActewAGL is not of this opinion. General obligations are more practicable as they allow more flexibility in the management of individual circumstances. The imposition of standard statements is almost certainly the precursor to the introduction of a standard hardship indicator that does not actually indicate hardship in a number of jurisdictions e.g. a customer with a debt of \$1000. In the ACT, \$1000 could be a single winter bill. Every customer who makes their payment late is not in hardship. To identify them as such and subsequently be forced to proactively contact them, to offer hardship assistance, would be both prohibitively expensive as well as potentially damaging to the truly vulnerable, given it would divert the resources needed to manage genuine hardship cases. The nature of standard statements also means that there is an increased risk of genuine hardship customers being excluded because they don't meet the standard criteria.

ActewAGL believes that the current regulatory framework is sufficient in both scope and enforceability. Should the AER wish to harmonise the approach to hardship taken by retailers, where possible and appropriate, there are more effective ways to do so.

(b) Is there another approach that would better meet the requirements under the NERL in relation to customers in hardship, and allow retailers to meet their obligations more efficiently?

ActewAGL would prefer to see the AER work directly and collaboratively with retailers, who they deem to have inadequate policies and practices, to remediate. In addition, given retailers are necessarily operational in their thinking and have a real world understanding of how policy changes materially impact customers, prices and systems, ActewAGL's recommendation would be that the AER convenes a series of all-day workshops, inviting retailers from all jurisdictions to attend, for the purpose of drafting and agreeing a hardship indicator checklist, relevant across jurisdictions.

The AEMO is a prime example of how collaborative working within the industry benefits all parties. AEMO runs multiple working groups throughout the year and its approach to Power of Choice epitomised good practice, in terms of inclusion and an understanding that theory and policy are not enough – minimum impacts to the market (and therefore the customer) can only be achieved when all key parties are intrinsically involved in planning and design.

Question 4 Enforceability of Hardship Guidelines

The AER proposed that all the Hardship Guidelines be enforceable. Do you agree that all aspects of the guidelines should be enforceable? If not, what aspects of the guidelines should or should not be enforceable and why?

As previously stated, ActewAGL disagrees with making the Hardship Guidelines enforceable. As it is currently drafted, the AER would like to make enforceable, “any matter that the AER considers necessary.” This is unreasonable and does not take into account the individual nature of hardship management and jurisdictional differences. Making the Hardship Guidelines, in their entirety,

APPENDIX A

enforceable will encourage retailers to do the bare minimum, as spelt out in the Guidelines. Any customer falling outside of the “standard” parameters will likely no longer receive the same assistance they are currently afforded. The removal of the differentiation and competitive factor could demotivate retailers to innovate.

Question 5 Implementation

(a) What transitional arrangements should be put in place to require that retailers amend their current policies to comply with the Hardship Guidelines, if this rule were made?

Increased regulatory and legislative activity over the past 12 months means that retailers currently face a number of system and operational changes, all of which need to be implemented over the next 6-9 months. Whilst specific transitional arrangements will be dependent upon the content of the Hardship Guidelines, ActewAGL would advocate for the AER to consult with retailers prior to making transitional arrangements. This will ensure that the AER has a holistic picture of the scope and volume of changes currently being managed by the industry.

(b) What aspects of the rule, if made, should be a civil penalty provision?

The only aspect of the rule that should be made a civil penalty provision is the requirement for a retailer to have a policy, approved by the AER, within 3 months of a retailer authorisation being granted.

ActewAGL would also support a compulsory resubmission in accordance with AER-determined recurring timings, e.g. every 3 years a retailer would need to resubmit their current policy and that policy needs to be signed off by the CEO. This would ensure that retailers are regularly reviewing policies to ensure they are fit for purpose and that the policy has endorsement at the highest level. It would also give retailers a regular opportunity to make amendments and adjustments in response to operational and/or industry changes.

Question 6 Costs and benefits

(a) Please comment on the benefits and costs that have been identified, in terms of their adequacy in assessing the rule change proposal and any quantification of those factors.

ActewAGL notes that a single paragraph in the Rule change proposal addresses the costs to retailers. Indeed, the paragraph notes that costs could be incurred due to system changes, staff training and “associated changes involved in implementing policies, systems and procedures,” but nowhere is the significant cost of additional resourcing mentioned. Driving up the cost to manage a hardship program this significantly will likely see some of the more innovative incentives, created by retailers, removed. Smaller retailers, in particular, will be adversely and disproportionately affected.

(b) Will improving hardship policies through the Hardship Guidelines result in a cost saving to consumers as a result in a reduction in bad debt? Please explain your perspective.

ActewAGL is of the view that the proposed changes to the hardship guidelines will not result in a reduction of bad debt and could in fact result in an increase in accumulated debt. If hardship indicators are included in the Guidelines, they may have the effect of driving customers who are not in genuine hardship onto the program, prolonging the payment of their debt. Assistance and protection should be reserved for customers in genuine need.

APPENDIX A

Question 7 Form of rule

Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

ActewAGL believes that if the guiding purpose of the rule is to ensure customers understand the minimum requirements of their retailer's hardship policy, i.e. what they can expect, then it would be more beneficial for the AER to create and implement a strategic customer communication program. The redesign of the energy made easy website would be a useful platform for readable, useful information such as this. A simple set of questions, arising from the minimum set of requirements for a hardship policy, that all retailers need to answer in relation to their policy and practices would enable customers to compare apples to apples, ensure that all components are included (and where) and also highlight anything "extra" the retailer may offer as an incentive to customers on the hardship program. ActewAGL believes that the independent status of the AER would lend credibility and increase trust for consumers if this approach were adopted.

Question 8 Other issues

Please identify broader issues with regards to hardship and affordability that may not be addressed by this rule change, if made.

ActewAGL notes that the main drivers for the AER's rule change proposal appear to be:

- A response to a concern that hardship numbers have not increased or varied dramatically as a result of price increases;
- Recent reviews and audits of retailer hardship programs has found inconsistent approaches to hardship.

ActewAGL agrees that customers do not always behave in expected ways. This incongruity has also been recognised in a recent consumer research paper commissioned by the AER¹. The research supports the position that despite numerous campaigns exhorting customers to explore switching retailers/plans, in order to obtain the best offer, a large number of customers still remain disengaged or uninterested.

ActewAGL believes that rule changes carry significant financial, system and resourcing impacts. They should be the last resort, not the first.

¹ Energy Made Easy Market Research, Usability & User Experience Report – Prepared by Bastion Latitude for the ACCC/AER (18/5/17)