

20 July 2023

Mr Benn Barr
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Reference: RRC0049

Dear Mr Barr,

RE: RRC0049 – National Energy Retail Amendment (Electricity Consumption Benchmarks) Rule 2023 Consultation Paper

The South Australian Council of Social Service is the peak representative body for the non-government, not-for-profit health and community services sector in South Australia. SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low-income people in South Australia. SACOSS has a long-standing interest in the delivery of essential services. Our research shows the cost of basic necessities like water and electricity impacts greatly and disproportionately on people experiencing vulnerability and disadvantage.

SACOSS would like to thank the Australian Energy Market Commission (AEMC) for the opportunity to provide feedback on the *National Energy Retail Amendment (Electricity Consumption Benchmarks) Rule 2023*, dated 22 June 2023¹ (the Rule Change). The Rule Change Proposal² was submitted by the AER on 9 May 2023, and proposes to repeal Part 11 of the *National Energy Retail Rules* (NERR) (Rules 168, 169 and 171) as well as Note 1 under Rule 13. The AEMC is progressing this Rule Change using an expedited process because it considers the request is for a non-controversial rule.

SACOSS supports and has signed onto the Public Interest Advocacy Centre's (PIAC's) submission to this Rule Change consultation, and we also make the following additional submissions for the AEMC's consideration, including:

¹ AEMC, [Electricity Consumption Benchmarks, Consultation paper](#), 22 June 2023

² AER, [Removing the requirement for the AER to administer electricity consumption benchmarks Rule Change Proposal](#), 9 May 2023

- on the purpose of Part 11 of the NERR, and whether the repeal of Rule 170 had the effect of making the remainder of Part 11 (Rules 168, 169, 171) redundant
- the need for electricity grid consumption data from distributors, and
- the inadequacy of alternative electricity consumption data.

Part 11 of the NERR – what is the AER proposing the AEMC repeal?

The now repealed Rule 170 under Part 11 of the NERR required retailers to publish consumption benchmarks on bills. The AER’s Rule Change Proposal argues the repeal of Rule 170 (as part of the Better Bills Guideline Rule Change process) removed the purpose of Part 11, and therefore the remaining Rules under that Part are no longer required and should also be repealed.³ SACOSS considers publication of consumption benchmarks on bills was one aspect of the obligations and requirements contained within Part 11, and the removal of that retailer obligation should not affect the remaining obligations on the AER and distributors under that Part.

We therefore consider it is important to clearly outline what will be repealed under Part 11 of the NERR, and to also place Part 11 of the NERR within the context of the broader National Energy Customer Framework (NECF) (the *National Energy Retail Law* (NERL), NERR and regulations). The AER has indicated the requirements relating consumption benchmarks had their origins in a Council of Australian Governments *National Partnership Agreement on Energy Efficiency* from 2009.⁴ This agreement recommended the implementation of benchmarking on consumer bills be incorporated into the NECF which, with the enactment of the NERL and NERR, came into operation in South Australia in February 2013. The objective of the NECF, referred to as the National Energy Retail Objective (NERO) is to:⁵

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.

SACOSS submits the inclusion of Laws and Rules providing for the collection and publication of electricity consumption data within the NECF necessarily mean those requirements contribute to the achievement of the NERO.

Part 11 of the NERR deals with ‘*Customer Retail contracts – electricity consumption benchmarks*’, with Rule 168 providing that the purpose of Part 11 is to:

‘provide for electricity consumption benchmarks for residential customers under a customer retail contract’.

Section 2(1) of the NERL defines a ‘customer retail contract’ to mean:

³ AER, [Removing the requirement for the AER to administer electricity consumption benchmarks Rule Change Proposal](#), 9 May 2023, p.2

⁴ Council of Australia Government, [National Strategy on Energy Efficiency](#), July 2009, measure 1.3.3, p 12.

⁵ [National Energy Retail Law](#), section 13

‘a contract between a small customer and a retailer of a kind referred to in section 20 for the provision of customer retail services for particular premises’.

Section 20 of the NERL provides that there are 2 kinds of customer retail contracts (standard retail contracts and market retail contracts), and a retailer cannot provide customer retail services to small customers under any other kind of contract or arrangement. The contract provisions within the NECF are vitally important to ensuring customers are supplied with energy on fair terms, and SACOSS considers the intention of the legislators was to provide electricity consumption benchmarks for the benefit of all residential customers, in accordance with Part 11 of the NERR.

Rule 169 under Part 11 establishes certain mandatory obligations for the AER in relation to the administration of electricity consumption benchmarks. In accordance with Rule 169, the AER *must*:

- *Provide the initial benchmarks to retailers and publish those benchmarks on its website.*
- *Following publication of the initial benchmarks, the AER must prepare subsequent benchmarks for the consumption of electricity (electricity consumption benchmarks) by residential customers in accordance with Rule 169.*
- *The electricity consumption benchmarks must be based on the following:*
 - *electricity consumption information received by the AER from distributors pursuant to rule 171*
 - *localised zones as determined and notified to the AER by the relevant jurisdictional Minister*
 - *household size.*
- *The AER must:*
 - *provide the electricity consumption benchmarks to retailers, and*
 - *publish the electricity consumption benchmarks on the AER website, and*
 - *provide the information supporting the development of the electricity consumption benchmarks to the Ministerial Council on Energy.*
- *The AER must administer the electricity consumption benchmarks and update them at least every 3 years from the date when the initial benchmarks are published.*

Therefore, the AER has an obligation under Rule 169 to require consumption information from distributors, in conjunction with information on localised zones and household size, to provide a distributional analysis of consumption patterns, which the AER is then required to develop into benchmarks to publish on its website and provide to energy retailers (updated every three years). Importantly, the AER is also required to provide the information used to develop the consumption benchmarks to the (then) Ministerial Council on Energy. SACOSS submits that underpinning these regulatory requirements is an acknowledgement of the importance of consumption information (based on distributor’s data) for consumers, retailers, policy makers and governments.

Rule 171 of the NERR makes provision for distributors’ obligations in relation to electricity consumption information, requiring that distributors **must**:

‘for the purpose of the electricity consumption benchmarks, provide information to the AER in such manner and form as may be requested by the AER.’

Relevantly, Section 281(2)(e) of the NERL specifically provides that the AER may provide guidance for regulated entities under its *Compliance Procedures and Guidelines* about (SACOSS’ emphasis):

‘the provision of information by distributors for the purpose of benchmarks for energy consumption for residential customers in accordance with the Rules.’

To SACOSS’ knowledge, the AER has not made provision for distributors to have reportable obligations relating to energy consumption information within the *Compliance Procedures and Guidelines*, Version 6. The reportable obligations for distributors under the current guidelines relate to life support, de-energisation and interruptions to supply.⁶ That said, the inclusion of this specific provision within the Law (not the Rules) confirms the intended importance under the NECF of consumption information provided by distributors for the benefit of residential customers.

Further supporting SACOSS’ view of the importance of consumption benchmarks based on distributor information within the context of the NECF, we refer the AEMC to Part 10 of the NERL. Part 10 of the NERL makes provision for the *National Energy Retail Rules*. Division 2 of Part 10 provides for the ‘National Energy Retail Rules Generally’, and section 237 under Division 2 deals with the ‘Subject matters of the Rules’. Sub-section 237(2(i)) states the Rules may make provisions for or with respect to the following matters, including ‘*benchmarks for energy consumption for residential customers*’.

The NECF therefore establishes a set of Laws and Rules relating to the development of consumption benchmarks for the long-term benefit of consumers. SACOSS considers the obligations (under Part 11 of the NERR) on the AER to develop consumption benchmarks, inform the public and the Energy Ministers, coupled with the obligation for distributors to provide consumption information to the AER in ‘such manner and form as requested’, as well as the provisions under the Law specifically referring to energy consumption benchmarks for residential customers, all support an interpretation of consumption benchmarks contributing to the achievement of the NERO.

Further, SACOSS considers this contribution is not just limited to ‘driving energy efficiency choices’ for residential customers, as suggested by the AER in its Rule Change Proposal⁷, it extends to informing efficient network investment, tariff design as well as price and policy development. Consumption benchmarks also remain relevant for energy efficiency at both a household and a system / policy level.

In the context of Part 11, the repealed rule 170 provided for retailer’s obligations in relation to electricity consumption benchmarks (not the distributor’s or the AER’s obligations). Rule 170 specifically required retailers to provide energy consumption particulars on the

⁶ [AER Compliance Procedures and Guidelines](#), Version 6, September 2018, pp16-18

⁷

customer's bill as a comparison tool and in a certain format (easy to understand graphical or tabular format). At the time of consultation on the Better Bills Guideline Rule Change, SACOSS assumed the obligations contained in Rule 170 would move into the Better Bills Guideline as a requirement relating to 'the content and form of retail energy bills'. We now understand the AER has determined not to include consumption benchmarking information within the Better Bills Guideline. SACOSS considers this decision does not, in and of itself, mean the remaining obligations contained within Part 11 should be repealed. The removal of Rule 170 is not fatal to Part 11. The purpose of Part 11 to **'provide for electricity consumption benchmarks for residential customers under a customer retail contract'** remains, irrespective of the removal of the obligation on retailers to include energy consumption comparisons on a customer's bill. That purpose can still be achieved through gathering and publishing consumption data, providing data to Energy Ministers, specifying the manner and form of data collection, and ensuring monitoring and compliance of distributor's obligations under remaining provisions.

Need for energy consumption data from distributors

With the electrification of households and vehicles, forecast increases in household electricity demand, higher penetration of roof-top solar, increased investment in transmission and distribution network infrastructure, ensuring the equitable distribution of costs is of vital importance now and into the future. We know households on low-incomes, renters and people experiencing disadvantage face significant barriers to accessing technologies to reduce their grid consumption. In times of such transformational change, SACOSS considers more detailed data is required to provide a picture of the experience of residential energy consumers in South Australia. Industry, policy makers, governments and households need grid consumption data to identify who is benefiting and who is paying, and how we can all redress that imbalance to ensure more equitable outcomes.

Energy consumption information (from distributors) provided on a distributional basis, can provide essential insights into current and future network cost distribution, energy affordability analysis, tariff design (including export tariff design), default market offer determinations and energy efficiency measures. The AER's current powers and obligations relating to consumption benchmarks under the NECF allow for the AER to obtain consumption information from distributors 'in such manner and form as may be requested'. Under Rule 171, distributors must provide that information to the AER (and if required report on that obligation in accordance with the *Compliance Procedures and Guidelines*). Therefore, there is currently scope under Part 11 for the AER to expand on the required consumption information obtained from distributors, and to publish that information on its website, and we strongly submit this should occur for the benefit of consumers if the AEMC decides not to make a more preferable Rule.

SACOSS considers publicly reported (annually / quarterly) consumption information for the following data sets would be valuable for households and stakeholders, and would contribute to the achievement of the NERO:

- Residential solar customer
- Residential non-solar customer
- Regional customers
- Urban customers

- Geographic areas within jurisdictions (e.g. climate comparisons, electrification trials, smart grids or community battery areas)
- DNSP tariff classes (specifically time-of-use (peak and sponge), demand, export, and flat rate).

We strongly disagree with the AER’s Rule Change Request and submit that consumption benchmarks, based on information provided by distributors, are increasingly important in the context of the current energy affordability crisis, market volatility, the energy transformation and climate extremes.

Alternative data is not sufficient

We remain convinced that consumption data obtained from distributors to inform consumers, policy makers and governments is an essential component of the information needed to ensure a just energy transition. The AER’s Rule Change Request does acknowledge the critical role of data in facilitating the energy transition, but states alternative data could be used by researchers and other stakeholders:⁸

‘We understand the critical role of data in facilitating the energy transition and the potential value of a dataset such as that gathered through the process of developing electricity consumption benchmarks. We note that there is alternative data that is published in more recent times that did not exist at the time the benchmarks were developed (for example, ACCC electricity retailer billing data). Data such as this may be used by researchers and other stakeholders.’

There are alternative data sources, but each data point has its own methodology and so results in different consumption amounts. ACCC’s billing data is useful, but does not provide the necessary information required to properly determine the equitable distribution of network costs or tariff design. SACOSS has previously questioned the AER’s methodology for calculating average annual usage for the purposes of the default market offer⁹, and the AER has now acknowledged it is ‘revisiting’ its methodology given the potential impact of the high penetration of roof-top solar on average grid consumption levels (which is particularly relevant in South Australia). Examples of some of the disparities in grid consumption data can be seen below:

- AER DMO: 4,011kWh p.a. in SA for consumption or 4,212 kWh consumption and 1,805kWh for controlled load
- SA Power Networks’ AER Annual Pricing Proposal (APP) Statement of Reasons: 3,919kWh p.a. in SA
- RIN data disclosed by SA Power Networks in the 2021-22 EB RIN: 4,526kWh Average annual consumption per residential customer in SA.

⁸ AER, [Rule Change Proposal: removing the requirement for the AER to administer electricity consumption benchmarks](#), May 2023, p.12

⁹ SACOSS, [Submission to the Australian Energy Regulator on the AER Draft Determination: Default Market Offer Prices](#), 6 April 2023, p. 4, and SACOSS, [Submission to the AER of the DMO Issues Paper](#), 5 December 2022, p. 11

The Regulatory Information Notice (RIN) process that distributors complete annually includes both energy delivered (consumption) and customer numbers. This allows the calculation of average annual usage of customers. The RIN data is difficult to find and interpret, and doesn't require reporting based on solar versus non-solar, different tariff types or locations. SACOSS has liaised with staff at SA Power Networks and confirmed that the consumption profiles of solar vs. non-solar customers is not something reported on externally, but when developing tariff structures and pricing as well as analysing customer impacts, SA Power Networks do consider those customers with and without roof-top solar.

SACOSS is firmly of the view that publicly reported consumption data provided by distributors in accordance with Rule 171 could encompass a broader scope (including solar vs. non-solar), benefitting consumers and contributing to a more equitable transition. This data is not currently available to consumers, or other stakeholders.

It is also worth noting that the Australian Bureau of Statistics (ABS) has delayed its collection of Household Expenditure Survey (HES) data to 2025-26, which includes energy consumption information from households.¹⁰ The latest available data is from 2015-16, given delays in the 2021-22 collection period due to COVID-19, and subsequent review of the process. In the absence of this key dataset, it is even more important we maintain continuity in the electricity consumption benchmark data.

SACOSS supports the recommendations contained in PIAC's joint submission, and strongly submits the AEMC refuse the AER's Rule Change Proposal to repeal Part 11 of the NERR, and either retain the current requirements or make a more preferable Rule that better contributes to the achievement of the NERO, in consultation with stakeholders.

If the AEMC decides to retain Part 11, we urge the AER to use its powers under that Part, and the Laws and Rules more broadly, to request expanded consumption data sets from distributors for publication.

If you have any questions in relation to this submission, please contact Georgina Morris by email georgina@sacoss.org.au or phone 8305 4214.

Yours sincerely,



Dr Rebecca Tooher
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¹⁰ ABS, [Household Income Housing Wealth and consumption data](#)