THE HON CHRIS BOWEN MP
MINISTER FOR CLIMATE CHANGE AND ENERGY

MS24-001246

Ms Anna Collyer
Chair
Level 15
60 Castlereagh Street
SYDNEY NSW 2000

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Dear ~~Chair~~ Anna

Please find attached a package of rule change proposals to amend the National Energy Retail Rules to help households access cheaper energy deals, increase support for people experiencing hardship, and deliver more protections for consumers.

These necessary changes are recommended by the Energy and Climate Change Ministerial Council (ECMC) which on 19 July agreed that I submit the attached package to the Australian Energy Market Commission (AEMC) in my capacity as Chair of ECMC. This package was developed in response to findings presented to Energy Ministers in March 2024 by the Australian Competition and Consumer Commission (ACCC), the Australian Energy Regulator (AER) and Energy Consumers Australia (ECA) that there are aspects of the east coast regulatory framework that could be strengthened to better serve the interests of electricity consumers.

I endorse these rule change requests and ask that the AEMC urgently progress with their initiation, prioritising those proposals which are most urgent and have the highest expected impact, as agreed by Energy Ministers. These are: 'improving the ability to switch to a better offer,' 'ensuring energy plan benefits last the length of the contract,' 'preventing price increases for a fixed period under negotiated market retail contracts,' and 'assisting hardship customers.'

As the Commonwealth Minister for Climate Change and Energy, I also request withdrawal of the pending rule change request 'long-term standing offer notice', as it is now superseded by the attached package of rule change requests.

Yours sincerely

CHRIS BOWEN

Preventing price increases for a fixed period under market retail contracts
Request to make a rule

Name and address of the person making the request

The Honourable Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

Statement of issue

In its Inquiry into the National Electricity Market, the Australian Competition and Consumer Commission (ACCC) found that consumers who do not regularly engage in the market face higher prices, and customers on older plans versus newer plans experience higher prices or a 'loyalty tax'. There is no easy way for customers to know when and by how much their energy price will be increased.

The ACCC also monitors and enforces retailers' compliance with their legal obligations, including by proactively monitoring retailer conduct and auditing retailer communications with consumers about energy cost and price increases, to ensure adherence to the Electricity Retail Code of Conduct and Australian Consumer Law. During its proactive compliance monitoring program, the ACCC has observed instances of retailers engaging in discount advertising to induce customers to sign up and in some instances passing through large price increases shortly after.

The information asymmetry in this scenario (a customer signing up to a price in good faith and a retailer increasing prices shortly after, notionally due to market events) does not align with a retailer's role in transparently managing market risk on behalf of its customers and allows for a principal/agent market failure whereby a retailer pursues increased profit against the expectations of its customer. This increases switching costs for consumers attempting to remain on competitive acquisition offers, reduces the forward transparency of prices and may reduce consumer confidence in the market. ACCC analysis suggests retailers recoup their costs over a customer's lifetime, by setting attractively low acquisition offers and making subsequent unilateral price increases for their existing customer base over time.[1]

The proposed rule change would require that any increase to tariffs or charges payable by the customer under a retail market contract cannot be made for a specified fixed period following commencement of an energy plan.

This rule change is not intended to prevent retailers from recovering costs where the underlying costs to serve have legitimately and materially changed. In such situations where underlying costs increase, the economic cost of immediately passing increases through to residential customers is likely greater than if that cost was to be borne by retailers for a period. Retailers have greater capacity to absorb or pass-through costs than residential customers, including greater access to debt facilities and more favourable financing terms, hedging contracts, scale and in some cases vertical integration. In combination with pass-through of costs to consumers who are passed the fixed period which would be introduced in this rule change, these give retailers scope to spread cost increases

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[1] Inquiry into the National Electricity Market: December 2023 Report (accc.gov.au) p 73.

and minimise economic impact. Consumers have few or no options to minimise the impacts of such price increases, particularly when they occur immediately following a switch to a new energy provider or plan.

Background

Under the National Energy Retail Rules (NERR), retailers can offer:

- ongoing (no contract end date) market retail plans with a benefit period
- contracts with a fixed term (with either a fixed price or a variable price), or
- market retail plans with no contract term or benefit period.

Under rule 46 of the NERR, retailers can increase prices under market retail contracts after giving notice to a customer with at least 5 business days' notice (10 business days' notice for customers in Queensland). One key factor for whether a household can absorb energy costs, particularly when costs are high or for households facing financial hardship, is that energy bills are consistent and predictable over time. Month to month, people do not necessarily know if the price they are paying for energy will change.

Research has found that lack of certainty about bills drives adaptive and sometimes negative consumer behaviours, such as reducing expenditure on other essentials such as food. While energy companies need some flexibility to pass through changing costs, retailers are arguably better placed than consumers to manage volatility. Consumer sentiment surveys have also shown that consumers are concerned about their ability to pay electricity bills, with price increases being the most common reason for this concern. It is in the long-term interest of consumers to provide certainty for a reasonable amount of time after entering an energy contract.

In Victoria, the Essential Services Commission's (ESC) 'Clear and fair contracts' rule changes were implemented in July 2020, primarily to reduce bill shock and provide price certainty to customers. Under Victoria's Energy Retail Code of Practice there are two types of rules for fixing prices, depending on the type of market retail contract the customer is on:

- For fixed term contracts, these must be at least one year long. A customer will not see price increases for at least 12 months after signing up.
- For evergreen contracts, prices can only change once a year (August, when network prices change). If a customer signs-up in January, the price will stay the same until August.

The ACCC June 2023 Inquiry into the National Electricity Market (NEM) reported that Victorian annual changes in the median electricity prices are less volatile than other states over the past four years.

Description of the proposed rule change

The proposed rule change would require that any increase to tariffs or charges payable by the customer under a retail market contract cannot be made for a specified fixed period following commencement of an energy plan. Further consultation with stakeholders is required on the duration of the fixed period. One option would be for the fixed period to be 100 days, in line with the current billing frequency required for customers on a standard retail contract under rule 24 of the NERR. This rule change request proposes that the fixed period would apply to all new contracts, irrespective of whether a different billing cycle has been agreed. This is because all consumers should have a reasonable degree of certainty about the energy costs of running their home or business.

This could be implemented by amending the NERR, potentially rule 46 or some other part of division 7 (Market retail contracts—particular requirements).

In its *Ensuring energy contracts are clear and fair - Final Decision*,[2] the ESC noted that engaged consumers may benefit from entering contracts with innovative pricing structures and proposed an exemption process for innovative products. It is proposed that the Australian Energy Market Commission (AEMC) consider whether a similar exemption framework should accompany the rule requiring contract prices not be changed for a fixed period, noting the need to ensure any exemption framework is carefully considered to avoid unintended consequences.

Alternative options

An alternative approach would be to extend on the '100 day' option outlined above to a greater number of days, which could be generalised as a limit on the number of increases that can be made to a market retail contract in a 12-month period, in line with the approach in Victoria (retailers are limited to price increases once a year for market contracts, and no more than once every 6 months for gas standing offers). For many customers, this happens on a set date one month after network tariff prices change (usually on 1 August each year). Customers on fixed-price contracts will only experience any price increases on the anniversary of their initial fixed-price period expiring. The rationale for the ESC adopting this approach is outlined in its Final Decision.

However, limiting increases to annual only may increase the risk of energy consumers experiencing larger increases at that point, and those costs being borne by retailers for a longer period. Analysis undertaken on behalf of the Victorian Government in 2019 also highlighted a risk that imposing fixed-price 12-month contracts would limit retailers' ability to compete for engaged customers looking to take advantage of introductory discounts and varying contract durations.[3] However, there is no evidence that the Victorian approach has unreasonably increased the risk profile of retailers operating in that jurisdiction. During a period of extreme wholesale prices (2022-2023), Victoria did not see a higher rate of retailers exiting the market than the rest of the NEM. There have also been more retailers in Victoria since the reforms were introduced (from 2020-21 onwards).

There is currently limited public data available on the frequency of price increases made to market retail contracts by retailers. In the absence of a decision to implement a minimum frequency for price changes (i.e. the Victorian model), a further option would be to empower the Australian Energy Regulator (AER) to collect data from energy retailers on the number of price changes made to market retail contracts, and the level of those price changes, as part of its regular performance reporting. This would align with the energy retail sector's core role of managing wholesale market volatility and risk on behalf of retail customers, and could be reported publicly by the AER and/or made available as part of the comparative tool on Energy Made Easy. One important consideration for implementation is the number, types, and titles of contracts in the market and how these change over time; the reporting would ideally account for (or if possible, ignore) those aspects of contracts which are not useful for increasing customer understanding of a retailer's behaviour.

An extension of this option would be to require all fixed term contracts to be fixed price contracts. Note if this is pursued, the AEMC may wish to consider some kind of safeguard around minimum contract length, like that introduced by Victoria in cl 99(1) of the Energy Retail Code of Practice (Vic), which states that fixed term market retail contracts must provide for a contract length of not less than 12 months. This would be considered in the context of the 'Ensuring energy plan benefits last

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[2] Final Decision, p 42.

[3] academic-report-4A-market-design-20191210.pdf (esc.vic.gov.au) p 8.

the length of the contract' proposal , which proposes changes to the treatment of benefit periods and ensuring disengaged consumers are not paying higher prices after a period.

It should be noted that altering the types of the market retail contracts that can be offered would not affect the variety of tariff structures that retailers can offer.

How the proposed rule change will address the issue

This rule change would prevent retailers from increasing tariffs or charges under market retail contracts within a fixed period (notionally 100 days, or such other period to be determined) after an energy contract commences. For further information, including a proposed exemption for certain types of contracts, see the description of the proposed rule change above.

Practically speaking, this would allow energy retail customers to budget for at least the first bill they receive under a new contract. This would work to increase consumer trust and engagement, allowing more meaningful engagement at natural points, as opposed to customers facing a choice between the potentially high transaction costs of switching and the higher-than-expected costs of remaining on their existing contract.

Limiting the frequency of price changes may ease the switching burden borne by customers, ensuring that they can compare genuine price offerings for the predictable, short-term future. This would provide energy consumers with greater certainty with regards to the costs they can expect with their next energy bill.

Preventing price increases for a fixed period of less than 12 months would reduce the risk of retailers asserting a need to build a price premium into plans if changes were limited to annual increases only.

How the proposed rule change will or is likely to contribute to the achievement of the National Electricity Objective

The National Energy Retail Objective (NERO), set out 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:
>
> c. price, quality, safety, reliability and security of supply of energy; and
> d. the achievement of targets set by a participating jurisdiction—
>   iii. for reducing Australia's greenhouse gas emissions; or
>   iv. that are likely to contribute to reducing Australia's greenhouse gas emissions."

The relevant aspect of the NERO for this request is the price of energy services in the long-term interests of consumers of energy. The rule change would contribute to the achievement of the National Electricity Objective by ensuring Australian energy consumers are not subject to frequent and unexpected price increases. Consumers will have a clearer understanding of the costs they are likely to face, and this amendment will reduce risk of bill shock soon after entering a new contract.

Expected costs, benefits and impacts

Expected benefits

For consumers:

The ACCC has noted it is not uncommon for consumers to sign up to an energy plan and have their electricity prices increase soon after. Such consumers face additional costs where frequent and/or unexpected price increases cause bill shock. In some cases, frequent price increases may require affected consumers to access debt. Placing limits on the frequency and timing of price increases is expected to reduce bill shock and provide greater certainty for energy consumers.

This rule change will ensure customers signing up to new offers with a discount will receive that benefit for a specified period.

Consumers may still experience higher bills if their prices do not increase but their energy usage does. Consumers will require clear communication around this.

Expected costs

Retailers will carry any risk associated with increased wholesale prices during the period in which it cannot increase contract prices, increasing its own risk profile. Analysis undertaken on behalf of the Victorian Government in 2019 in the context of fixing prices for a 12 month period noted there may be competitive implications for vertically integrated 'gentailers' as they may be better placed to manage these risks. The research also noted requiring retailers to offer a price for a fixed period when combined with consumers being able to end the contract without penalty would further increase the risk to retailers.[4] Although, as noted above, there is no evidence to suggest the approach taken in Victoria has unreasonably added to retailers' risk profile. Furthermore, clause 94(6) of the Energy Retail Code of Practice (VIC) allows retailers to increase market contract prices one month after a Victorian Default Offer (VDO) price variation due to an uncertain or unforeseen event – however even during the 2022 period of energy wholesale price volatility this provision was not been used. Any risks should be reduced if the fixed period is limited to 100 days.

The AEMC will need to consider the expected costs to retailers and the need to avoid any unintended consequences. Consideration of the risk to retailers, in both economic and operational terms, should be balanced by equivalent consideration of the economic and financial impacts of the alternative i.e. customers bearing the costs of price increases (in broad terms this would be a customer's opportunity cost, with one practical example being a customer going into some/more debt to manage a higher bill).

There may be impacts on retailer billing systems which the AEMC will need to consider.

Providing price certainty for 100 days only may result in consumers incurring search costs again after that period to identify whether a better offer is present on the market.[5]

Expected impacts

The proposed approach provides consumers certainty that their tariffs will not increase for a fixed period in a rising market.

Retailers are likely to factor the risk of not being able to increase prices during a specified time into their pricing plans, which may result in a price premium being built into those plans. However, this risk will be reduced if the period is 100 days, as retailers could reasonably be expected to set a manageable price for that period, without requiring a premium to be built in.

The period during which a retailer is unable to change a customer's tariff would be determined for each customer immediately following the point at which they entered an energy plan. Because this point in time would not be consistent between individual customers, for a given retailer at a particular time, there would be some proportion of customers on a given plan who could have their

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[4] academic-report-4A-market-design-20191210.pdf (esc.vic.gov.au) p 6.

tariffs raised and a proportion who could not. This may have an impact on the ability of retailers to broadly change tariffs across their customer bases.