



13 September 2024

Mr Benn Barr
Chief Executive
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

Lodged online: www.aemc.gov.au

Reference: ERC0378

Dear Mr Barr,

RE: ERC0378 – Accelerating smart meter deployment: Directions Paper

The South Australian Council of Social Service is the peak non-government representative body for health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians. We make this submission on behalf of the Australian, ACT and Queensland Councils of Social Service (ACOSS, ACTCOSS and QCOSS respectively).

We would like to thank the Australian Energy Market Commission (AEMC) for acknowledging the risks and negative customer impacts associated with the mandatory re-assignment of smart meter customers to time of use (TOU) retail tariffs. We would also like to thank the AEMC for extending the 'fast-track' consultation on the development of additional consumer safeguards, to mitigate against increasing negative outcomes for smart meter customers resulting from the accelerated smart meter deployment, and for the opportunity to provide feedback on the *Accelerating smart meter deployment: Directions Paper*, dated 15 August 2024¹ (the Directions Paper).

¹ AEMC, [Accelerating smart meter deployment: Directions Paper](#), dated 15 August 2024

This consultation has significant implications for all jurisdictions affected by the accelerated deployment of smart meters to commence in 2025, including NSW, ACT, QLD and South Australia. Together, SACOSS, ACOSS, ACTCOSS and QCOSS strongly support the AEMC's efforts to better protect consumers, and we also support the submission made by the Justice and Equity Centre in relation to this consultation.

The Proposed Safeguards

This consultation specifically relates to the AEMC's proposal to introduce two new customer safeguard measures which are in addition to the measures proposed in the AEMC's Draft Determination.² Specifically, the additional proposed safeguards include:

- a three-year explicit informed consent requirement for any retail tariff change following a smart meter deployment, and
- a requirement for designated retailers to offer customers with a smart meter a flat retail tariff structure.

We strongly support both the introduction of an Explicit Informed Consent requirement and the requirement for retailers to offer a flat rate tariff option. We commend the AEMC for working to deliver Recommendation 14 of the Australian Competition and Consumer Commission's (ACCC) 2018 *Retail Electricity Pricing Inquiry Report*³ to retain the choice of flat rate tariff structure for all households, irrespective of meter type.

The core principles of customer consent and customer choice are fundamental to ensuring households are not further disadvantaged by the operation of the current energy market. Imposing complex tariff structures on households without their consent and without the choice of an alternative structure, risks increasing energy hardship and fuelling inequality at a household level, particularly for those households experiencing vulnerabilities.

If Regulators and network businesses have determined that complex tariffs will deliver better outcomes for consumers, then the development of meaningful protections must be predicated on the reality that many households are understandably uninterested in their energy supply, cannot reasonably shift their energy usage (this is especially true for carers, families and people with disability) and cannot afford to, or if they rent have no choice to, 'invest in' or access smart appliances. To impose complex tariff structures without consent or choice, under the assumption that households can respond, leads to unsustainable and punitive outcomes for many households, especially those experiencing multiple pressures. We therefore strongly support the strengthening of a customer's right to consent and the retention of customer choice as proposed by the AEMC in this Directions Paper.

Overall support for the proposed safeguards, noting limitations

Broadly speaking, we consider that, together with the notification provisions contained in the Draft Determination, the AEMC's proposed new safeguards will better protect households from bill shock and increased vulnerability through the period of the accelerated deployment of smart meters in affected states (which is set to commence next year).

² AEMC, [Draft Rule Determination: Accelerating smart meter deployment](#), 4 April 2024

³ ACCC, [Retail Electricity Pricing Inquiry Report](#), June 2018, p. xix

That said, due to the confined scope of this ‘accelerated deployment of smart meters’ Rule Change process, we acknowledge there are limitations to the application of the proposed ‘transitional’ protections, including:

- The explicit informed consent requirement only applies for a period of three years from the date of the installation of the meter, after which time there is no barrier to the retailer assigning a household to a TOU retail tariff structure without the customer’s consent.
- The explicit informed consent requirement cannot be imposed retrospectively and will therefore not apply to households currently impacted by the removal of tariff choice and consent (including the 84% of smart meter customers - around 300,000 customers - in South Australia who are currently on TOU retail tariff structures).
- There are a range of circumstances where the explicit informed consent requirement would not apply, and these situations need to be examined more thoroughly, including around the application of the protection to renters who may move house more frequently.
- To avoid losing the three-year explicit informed consent protection, households may be locked into their current energy contract with their current retailer. Noting the ACCC’s recent billing analysis found that 61% of SA energy customers on flat rate market offers are paying at or above the DMO, with 9% of customers paying 25% or more above the DMO in 2023.⁴
- The retention of a flat rate tariff structure is limited to standing offers under section 22(1a) of the *National Energy Retail Law*, which in effect means smart meter households will only be able to access a TOU market offer, or a Default Market flat-rate Offer (which is not designed to be the cheapest offer in the market, but rather is designed to protect customers from unjustifiably high prices).
- The requirement for retailers to offer flat rate standing offers for smart meter customers may improve choice from the standpoint of ‘no choice’ in tariff structure, but could more properly be characterised as the *retention* of a more limited choice (between a TOU market offer, or the Default Market Offer) when compared to a selection of flat rate and TOU market offers.
- In line with section 22(1a) of the NERL, the requirement for retailers to offer flat rate standing offers must apply to *all* smart meter (type 4 and 4a) customers, irrespective of when the meter was installed, and this should be clarified in the Final Determination and the Final Rule.

⁴ ACCC, [Inquiry into the National Electricity Market Report](#), Appendix C [Cost Stack Data and Charts in the NEM](#), December 2023

The Draft Rules

To provide greater clarity for consumers, we make the following specific comments and suggestions on the drafting of the proposed Rules:

- A definition of **'tariff structure'** should be included within the Draft Rules.
- Draft Rule 2(1) refers to a retailer's intention to **'vary the tariff structure that applies to the customer'** and requires the retailer to issue a notice to the customer.
- Draft Rule 2(2) provides for the information that the notice must contain. Draft Rule 2(2)(a) refers to the notice specifying that the retailer **'proposes to vary the customer's tariffs and request the customer's explicit informed consent to such tariff change'**. Draft Rules 2(2)(c)-(f) refer to existing and proposed new **'tariff and charges'**. We consider there should be clarity around whether the retailers' notice obligations in Draft Rule 2 relate to variations to the customer's 'tariff and charges', or assignment to a different 'tariff structure' (which results in variations to the tariff and charges), or both. It is worth noting that Draft Rule 3 and subsection 22(1a) of the NERL refer to 'tariff structures'.
- Draft Rule 4 provides for a 'Flat Rate standing offer' and invokes the application of subsection 22(1a) of the NERL in circumstances where a local instrument of the jurisdiction declares Rules made for the purposes of that subsection apply in that jurisdiction. Subsection 22(1a) falls under Part 2, Division 3 of the NERL which deals with 'Standing offers and standard retail contracts for small customers'. Therefore, the flat rate structure required to be offered by the retailer under Draft Rule 4 will be a standing offer capped at the Default Market Offer price set by the AER. We do not consider this was made clear in the Directions Paper.
- Draft Rule 4(2) provides that **'if a customer's Legacy Meter is replaced with a Type 4 or Type 4A meter**, then the designated retailer for the customer's premises must offer that customer a flat rate structure'. We are seeking clarity on the drafting of this Rule. To align with subsection 22(1a) of the NERL, we submit the wording of Draft Rule 4(2) should reflect the wording of subsection 22(1a)(a) and simply state that **'If a small customer has an interval meter'**, rather than referring to the replacement of the meter.
- Referring to the replacement of the meter within Draft Rule 4(2) could be interpreted as constraining the application of the requirement for designated retailers to only provide a flat rate standing offer to households affected by the accelerated roll out, when the intention of the Draft Rules and subsection 22(1a) is that retailers must make a flat-rate standing offer available for **ALL small customers with an interval meter** (as is evidenced by the exclusion of Rule 4 from limits on the scope and application in Draft Rule 5(1) and 5(3)).

Retailer's 'cost risk'

We note the response of many retailers to this consultation around the 'unacceptable cost risks' associated with 'absorbing' the mismatch of costs between the default TOU network

tariffs and retail tariff structures. We refer to and support the Justice and Equity Centre’s submission that retailers are best placed to manage any risks or costs associated with default network TOU tariffs. Customers only have one way to manage risk and that is to deprive themselves of energy, which has significant negative impacts on the household. If energy deprivation is not possible, then households will have to pay more or go into debt. Retailers have multiple ways to manage costs and risks for diverse customers, and already do so from wholesale costs through to retail offerings.

Many retailers’ assert that these ‘risks’ should be passed onto consumers, and South Australia’s experience demonstrates this has been the approach to date. We strongly submit households should be protected from exposure to risks they have limited capacity to manage, and we refer the AEMC to Dr. Ron Ben-David’s proposed regulatory objective ‘to avoid exposing consumers to risks they are ill-equipped to understand, manage or price’⁵ in support of this submission.

At a structural level, we submit that if there are negative cost impacts for retailers (and therefore customers) resulting from a default TOU network tariff structure, then this evidence should be collected and provided by retailers to networks and the AER to inform the ‘customer impact’ requirements of the tariff structure design process.⁶ Where there is no consumer benefit at a retail level, then there needs to be a re-examination of the AER’s policy to promote complex ‘cost reflective’ network tariff design.

On this point, we also question the assumption in the Directions Paper (and the broader narrative underpinning the design of ‘cost reflective’ tariffs), around TOU price signals ‘constraining network augmentation costs’.⁷ We strongly agree with the analysis and findings in Energy Consumers Australia’s recent report on cost reflective tariffs.⁸ Evidence shows that distribution networks have significant spare capacity, and daily household consumption patterns do not drive network augmentation costs. Also, (relative to fixed network costs and replacement expenditure) augmentation costs are reducing, with residential grid consumption declining and predicted to remain flat into the future,⁹ raising further questions around the narrative of peak grid usage driving up distribution network costs. We strongly suggest that questions should be asked about the underlying narrative of ‘cost reflective pricing’ requiring all smart meter households to bear the risk and responsibility of complex price signals and behaviour change, in circumstances where many households cannot be expected to engage or respond.

Call for broader reform to better protect households

We acknowledge the AEMC’s assessment that this ‘accelerating smart meter deployment’ rule change process is not ‘the appropriate vehicle to holistically consider broader reforms

⁵ Dr Ron Ben-David, [What if the consumer energy market were based on reality rather than assumptions?](#), July 2024, p.7

⁶ [National Energy Rules](#) 6.18.5 (h) – (i)

⁷ AEMC, [Accelerating smart meter deployment: Directions Paper](#), dated 15 August 2024, p.11

⁸ ECA, [Cost Reflective network tariffs aren’t very cost reflective](#), 27 August 2024

⁹ AEMO, [South Australian Electricity Report](#), November 2023, p. 23, and AEMO, [Integrated System Plan 2024](#), p. 26

to network pricing arrangements’, but this does not mean that consumers should be subject to increasing energy hardship whilst waiting for the progression of alternative processes, when appropriate protections can be put in place now.

That said, we do hope the issues and consumer impacts highlighted throughout this consultation will be acknowledged and addressed in other processes currently underway. We urge the AEMC to feed the relevant feedback and lessons learnt from this consultation into the following related processes:

- The package of Rule Change proposals to amend the *National Energy Retail Rules* lodged by the Minister Bowen to help households access cheaper energy deals, increase support for people experiencing hardship and deliver better protections for consumers.
- The AEMC’s electricity pricing for a consumer driven future review.
- The ACCC’s holistic review of the *Electricity Retail Code*, scheduled to commence in November 2024, which the ACCC says ‘offers one vehicle for considering whether the current communication requirements and the settings for the Default Market Offer are correctly calibrated’.¹⁰ It is vitally important that the DMO is a fair and efficient offer with a price per kWh, in line with the Victorian Default Offer (particularly in circumstances where smart meter customers may be restricted to accessing the DMO as the only flat rate option).
- The AER’s Review of consumer protections for customers experiencing payment difficulty under the *National Energy Customer Framework*.

We are hopeful these processes will address our broader concerns with ensuring pricing certainty, meaningful consent and choice, equitable tariff design and stronger consumer protections for all customers, outside of the limitations of this process.

South Australian context

As part of this consultation, SACOSS considers it is important to highlight the number of households in South Australia currently paying for their electricity usage under a TOU tariff structure. The Australian Energy Regulator’s (AER’s) most recent available data from Q3 2023/24 clearly shows the mandatory transfer of smart meter customers to TOU retail tariffs undertaken by major South Australian energy retailers over the past few years:

- 3.6% of South Australian smart meter customers were on a TOU retail tariff in 2020/21, and **83.8% of SA smart meter customers** are on a TOU retail tariff as at Q3 2023/24:
 - 90% of AGL’s smart meter customers in SA are on a TOU retail tariff
 - 97.7% of Alinta’s smart meter customers in SA are on a TOU retail tariff
 - 100% of Origin’s smart meter customers in SA are on a TOU retail tariff.
- Around 39% of **ALL energy customers** (or 298,175 customers) are currently on time of use (TOU) retail tariffs in South Australia. Many (if not most) of these households and small businesses do not know they are on a TOU, and even if they do know,

¹⁰ ACCC, [Inquiry into the National Electricity Market](#), December 2023, p. 10

cannot change energy usage patterns and are at risk of experiencing extreme bill shock.¹¹

The ACCC's December analysis of TOU plans in South Australia found that in 2023-24, for three retailers (anonymised), between 85% and 100% of customers were paying tariffs that were at or above the DMO.¹² The DMO is not designed to be the cheapest offer in the market, but is a cap on standing offers and is there to protect 'disengaged' consumers from 'unjustifiably high' prices.

As evidenced in the following submissions and reports, over the past few years SACOSS has consistently and repeatedly raised the risks and negative customer impacts associated with the mandatory re-assignment of smart meter households to TOU retail tariffs in South Australia - which to date has occurred with no customer consent, no advanced notification, no education and no option to choose a flat rate retail tariff option:

- SACOSS, [Submission to the Department for Energy and Mining on Proposed Tariffs to Incentivise energy use in low demand periods for SA](#), 9 July 2020
- SACOSS, [Submission to the Australian Energy Regulator on the DMO 2022-23 Options Paper](#), 23 November 2021
- SACOSS, [Submission to the AER on the Draft Consumer Vulnerability Strategy](#), 28 February 2022
- SACOSS, [Submission to the SA Department for Energy and Mining on the accelerated roll-out of smart meters in SA](#), 18 February 2022
- SACOSS, [Submission to the Essential Services Commission of SA on the Inquiry into Retail Energy Prices](#), 15 December 2022
- SACOSS, [Submission to the AER on the DMO 2023-24 Issues Paper](#), 5 December 2022
- SACOSS, [Submission to the AEMC on the Regulatory Review for Metering Services Draft Report](#), 9 February 2023
- SACOSS, [Submission to the AER on the Retail Guidelines Review Issues Paper](#), 7 August 2023
- SACOSS, [Submission to South Australia's Green Paper on the Energy Transition](#), August 2023
- SACOSS, [Annual SACOSS Briefing to the Minister for Energy](#), August 2023
- SACOSS, [Submission to the AER on the DMO 2024-25 Issues Paper](#), 8 November 2023
- SACOSS, [Submission to the AER on the Retail Guidelines Review: Draft Instrument](#), 22 March 2024
- SACOSS, [Submission to the AER on SAPN's RD 2025-30 Issues Paper](#), May 2024
- SACOSS, [Submission to the AEMC on the Draft Rule Determination: accelerating smart meter deployment](#), 3 June 2024
- ACOSS, ACTCOSS, Justice and Equity Centre, QCOSS and SACOSS, [Letter to the AEMC requesting urgent tariff reform with smart meter upgrades](#), 8 July 2024

¹¹ SACOSS, [Submission to the AEMC on the Draft Rule Determination: accelerated smart meter deployment](#), 3 June 2024

¹² ACCC, [Inquiry into the National Electricity Market Report](#), December 2023, p. 56

- SACOSS, [Submission to the AER on the Review of consumer protections under the NECF](#), July 2024

We acknowledge the limitations of this process, and confirm that we will continue to push for long-term meaningful reform to better protect all South Australian households from punitive energy pricing structures and practices.

We also note South Australia will require specific amendments to local Regulations in order to implement the proposed flat-rate tariff requirement contained in the Directions Paper. Regulation 6A(1) of South Australia's *National Energy Retail Law (Local Provisions) Regulations 2013*¹³, does provide that section 22(1a) of the NERL applies in relation to South Australia. However, for the purposes of section 22(1a)(c) of the NERL, Regulation 6A(2) of the Local Regulations specifically prescribe SA Power Networks' TOU tariff structure and demand structure for residential customers.

In effect then, South Australia's local Regulations require that a retailer's standing offer must include SAPN's TOU or demand structures. As outlined in many of the submission referred to above, SACOSS has long argued for the repeal of Regulation 6A, which we consider was a misguided attempt in 2020 to impose TOU retail standing offers on residential customers when the Government and SAPN were under the assumption that retailers would not be passing on 'cost reflective' tariff structures (which SAPN considered would be beneficial). The overwhelming evidence now clearly points to all retailers transferring market customers to TOU retail structures in South Australia, which has resulted in significant bill shock and distress for many households unable to shift their energy usage patterns.

Therefore, whilst South Australia does have a local instrument which declares that subsection 22(1a) applies, the prescribed TOU / Demand tariff structures under Regulation 6A are in direct conflict with the flat rate tariff structure contemplated in Draft Rule 4. SACOSS will continue to work with the South Australian government to repeal Regulation 6A, but in the absence of an amendment to the Local Regulations, SACOSS notes the conflicting requirements for retailers under proposed Draft Rule 4 and Regulation 6A in this State.

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
Director of Policy and Advocacy
South Australian Council of Social Service

¹³ [National Energy Retail Law \(Local Provisions\) Regulations 2013 Regulation 6A](#)