



Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

16 January 2025

Dear Ms Collyer,

**Delivering more protections for energy consumers: changes to retail energy contracts –
consultation paper**

ENGIE Australia & New Zealand (ENGIE) appreciates the opportunity to respond to the Australian Energy Market Commission's (AEMC) consultation paper on four rule change requests that seek to help households access cheaper energy deals, increase support for people experiencing hardship and deliver more protections for consumers

The ENGIE Group is a global energy operator in the businesses of electricity, natural gas and energy services. In Australia, ENGIE operates an asset fleet that includes renewables, gas-powered generation, diesel peakers, and battery energy storage systems. ENGIE also provides electricity and gas to retail customers across Victoria, South Australia, New South Wales, Queensland, and Western Australia.

While ENGIE supports the objectives underpinning these four rule changes, ENGIE is concerned about the absence of long-term oversight and the potential for adverse consumer outcomes should they be implemented. The proposed reforms lack compelling evidence of market failure, which raises concerns about the justification for such significant regulatory intervention. Without a clear evidence base demonstrating the intended net benefits, piecemeal reform risks the emergence of unintended consequences for retailers and consumers. This issue is magnified given the cost and scale of implementing the proposed solutions.

ENGIE also notes that the Essential Services Commission (ESC) is currently consulting on a similar reform to the Energy Retail Code of Practice. Misalignment between the reforms would likely introduce additional compliance risk and increased administrative costs potentially leading to further adverse consumer outcomes.

Piecemeal reform risks undermining the effectiveness of a robust consumer protection framework

ENGIE contends that the four proposed rule changes are closely interrelated, making it challenging to assess both direct and indirect impacts fully. The most appropriate example of this interrelatedness is the overlap between the proposals for “Ensuring energy plan benefits last the length of the contract” and “Preventing price increases for a fixed period”. One rule is likely to affect the other, and vice versa, meaning the outcomes of such a rule change may have unintended consequences if the rule change is not implemented appropriately. Responding to connected reforms in isolation makes it difficult to evaluate the full market implications of these proposed rule changes, especially where overlapping requirements could create conflicting compliance obligations.

Further analysis is required to understand the net benefit to consumers

ENGIE contends that the proposed rule changes lack sufficient alignment with existing regulatory instruments across the energy market. As such, there is a risk of diluting the effectiveness of existing frameworks, which ultimately may require retailers to price inconsistencies into their offerings as risk premiums and impact the consumer. ENGIE contends that proposals should undergo more rigorous end-to-end regulatory consistency assessments, with cost-benefit analysis conducted before public consultation to ensure a clear understanding of the net benefit to consumers.

ENGIE’s response to this consultation paper provides detailed commentary on the four proposed rule changes, with consideration for desired outcomes, costs, benefits, and challenges.

Ensuring energy plan benefits last the length of the contract

The evidence to justify aligning benefits with contract length is limited

ENGIE does not support the proposed rule change requiring benefits to last for the full duration of a contract. The fact that the ESC has introduced a similar rule does not, in itself, justify the AEMC adopting the same approach particularly given the scale, impact, and distribution of the issue remains unknown.¹ Implementing significant regulatory changes without a robust evidence base to assess both the extent of the problem and potential adverse consequences is not best practice.

Non-price benefits should be excluded from the proposed rule change

ENGIE contends that the AEMC should specifically exclude non-price benefits from the proposed rule change, as retailers may be unable to guarantee the ongoing provision of such benefits within the context of an otherwise ongoing contract. This approach would align with the ESC’s implementation of similar reform, where non-financial benefits such as loyalty points, tangible gifts, or third-party subscriptions were

¹ Australian Energy Market Commission, *Delivering more protections for energy consumers: changes to retail energy contracts: Consultation Paper*, 2024. [Link](#) Page 2

excluded on the basis that it may not be possible to guarantee these benefits can be provided on an evergreen basis.²

The proposed rule change should only apply to contracts commencing after the rule change is effected

ENGIE contends the proposed rule change should only apply to new contracts entered into after the rule change is enacted. Implementing retrospective laws would cause practical difficulties for businesses including actual and reputational damage to the market, high compliance costs; and unintended consequences from increased regulatory complexity.³ Additionally, it could impose financial constraints on retailers if required to provide benefits on an ongoing basis, despite those benefits being initially funded for a limited duration when the contracts were first sold.

The proposed rule change will lower the variety of tariff structures available in the retail market

ENGIE contends that the proposed rule change may reduce consumer choice in the retail energy market, as retailers could be restricted in the diversity of benefits they can make available. This could hinder smaller retailers' ability to compete effectively, as they often differentiate themselves through unique benefits and offers. This would ultimately have a long-term impact on competition. This proposed rule change risks stifling creativity and market dynamics, ultimately working against the objective of developing a competitive and consumer-focused energy market – especially when regulators have consistently called for greater innovation from retailers

The proposed rule change may increase the occurrence of customer de-energisations

Retailers typically sell ongoing contracts with no expiration date. The introduction of the proposed rule change may result in retailers more frequently selling fixed-term retail contracts with an aligned benefit period.

At the conclusion of a fixed-term retail contract, a customer that does not enter into a new contract would be considered a 'carry-over' customer and would be supplied under a 'deemed customer retail arrangement'.⁴ While this does mean that the customer would be supplied under the prices, terms and conditions of the relevant standing offer, it does not mean that a customer is 'automatically moved to a standard retail contract' as stated in the rule change proposal.⁵ As stated in section 54(6) of the National Energy Retail Law (South Australia) Act 2011, 'carry-over' customers are required to contact their retailer to take appropriate steps to enter into a customer retail contract, either a market or standing offer contract, as soon as practicable.

² Essential Services Commission, *Clear and Fair Contracts: Final Decision*, 2020. [Link](#).

³ Australian Law Reform Commission, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws (ALRC Report 129)*, Chapter 13: *Retrospective Laws*, 2016. [Link](#).

⁴ National Energy Retail Law (South Australia) Act 2011, s. 54(2)(b). [Link](#); National Energy Retail Rules, rule 48. [Link](#).

⁵ The Hon Chris Bowen MP, *Ensuring energy plan benefits last the length of the contract: Request to make a rule*, 2024. [Link](#).

Rule 115 of the NERR sets out the process for retailers to arrange for de-energisation of 'carry-over' customers that have not met their requirements under section 54(6) of the Act. The steps for this form of de-energisation are more streamlined for retailers than other forms of de-energisation, such as for not paying a bill.

ENGIE is concerned that without any fundamental changes to the processes for 'carry-over' customers this reform may result in a higher frequency of disengaged consumers being de-energised due to not contacting their retailer at the expiry of their fixed-term contract. This reform would not align with the intended outcomes of the rule change proposal, which seeks to improve outcomes for disengaged customers.

Removing unreasonable conditional discounts

Retrospective rule changes risk penalising retailers that have operated in good faith

ENGIE strongly opposes the proposal to remove the grandfathering arrangement to limit conditional fees and discounts to reasonable costs for contracts entered into before 1 July 2020. As discussed in the above section, implementing retrospective laws would cause practical difficulties for businesses and risks creating unintended consequences.

Contracts entered into before 1 July 2020 were developed under the legal and regulatory frameworks in place at the time. The terms and conditions of these agreements were established to reflect those settings, some with no capacity for contract amendments. For these reasons, ENGIE does not support removing grandfathering arrangements in contracts entered into before 1 July 2020.

Obtaining explicit informed consent to alter contracts from disengaged customers is challenging

ENGIE notes that the rule change proposal states retailers would be required to obtain consumers' explicit informed consent to comply with an implementation option to move relevant consumers onto a new plan.⁶ While explicit informed consent is an important principle, obtaining it in practice presents significant challenges for retailers. This difficulty is acknowledged in the concurrent consultation paper on "Assisting Hardship Customers" which recognises that some consumers are disengaged from their retailer.

Limiting this reform to customers on hardship programs would ensure it addresses those in most need

ENGIE contends that this reform would benefit from a more targeted approach to customers who engage with retailers on hardship programs. This approach would better balance consumer protection objectives by focusing intervention on those most likely to be impacted by conditional fee structures. It would also allow retailers a greater chance of gaining explicit informed consent as retailers regularly engage with customers who are on hardship programs. Restricting the reform's application in this way is proportional to the problem at hand and ensures that vulnerable customers, particularly those facing financial hardship,

⁶ The Hon Chris Bowen MP, Removing unreasonable conditional discounts: Request to make a rule, 2024, p. 4.

receive the intended protections without introducing broader market instability or retrospective impacts on businesses. However, ENGIE notes that the effectiveness of a reform to require retailers to attempt to move hardship customers onto a better offer may depend on the implementation pathway for the 'Assisting hardship customers' rule change proposal.

Preventing price increases for a fixed period

Energy retailers continue to operate in a high-risk environment

Energy retailers typically vary the prices under their market contracts once per year, in line with the timing of associated network tariff changes on 1 July. As network tariffs contribute almost 40 per cent of a typical customer bill⁷ and retailers do not have any tools to hedge against the variability of these tariffs, it is rational that retailers would align their price changes to the timing of network tariff changes.

ENGIE does not support the proposed rule change to prevent price increases for the first 100 days of a contract, as it would limit retailers' ability to appropriately respond to rising network costs. The introduction of this rule change could have significant unintended consequences, such as retailers ceasing to sell new market retail contracts in the lead-up to 1 July or building in a risk premium into the prices of contracts sold in the lead-up to 1 July.

The proposed rule change would likely also create administrative challenges for retailers that sought to pass through changes in network costs to all customers. The annual price change project is a significant undertaking for a retailer and is highly resource-intensive. It would be costly and complex for retailers to duplicate this typically once-per-year process multiple times to capture the additional cohorts of customers that are rolling off their 100-day restricted period in the months following 1 July.

ENGIE acknowledges that it can be a frustrating customer experience to sign up for a new energy contract and receive a price increase within the next few months. ENGIE does attempt to address this in the lead-up to its annual price change by ensuring that call centre agents and its website inform prospective customers about an upcoming price change on 1 July. As will be discussed further below, these concerns may be further addressed by increased consumer awareness of the date they can expect their retail energy prices to change, as already occurs in other industries such as private health insurance.

Allowing price increases once a year is the least unfavourable of the proposed solutions

ENGIE contends that should the AEMC proceed with a rule change, aligning with Victoria's approach of permitting price increases only once per year would offer a more balanced outcome. In this scenario, prices could be held constant until 1 July to coincide with the reset of network and other regulated charges. This approach better manages the trade-off between consumer protection and market efficiency compared to the alternative proposal of preventing price increases for the first 100 days of a contract. Delaying pricing

⁷ Australian Competition and Consumer Commission, *National Electricity Market December 2024 Report*, 2024. [Link](#).

adjustments due to market volatility could impose further risk on retailers and ultimately disadvantage consumers through reduced market competitiveness.

Innovative products should be exempt from new price change requirements

ENGIE supports the proponent's suggestion to exempt innovative products from the proposed price change requirements, as restricting price adjustments could inhibit product innovation. This is particularly relevant for engaged customers who could benefit from dynamic pricing models. Innovative offerings such as Virtual Power Plant products and solar curtailment solutions often rely on market price signals or distribution network controls to safeguard grid stability. Limiting retailers' ability to adjust prices in response to these signals may undermine the viability of products and broader benefits of innovation as well as reduce consumer choice.

Removing fees and charges

Fees and charges serve a legitimate business purpose

ENGIE does not support the proposal to require retailers to remove certain fees and charges for all small energy customers. ENGIE considers that these charges serve a legitimate business purpose by reflecting actual costs incurred by retailers.

Additionally, smaller retailers are likely to be disproportionately affected compared to larger retailers as they have less capacity to absorb rising operational costs. For example, in November 2024, Australia Post submitted a public draft price notification to the ACCC proposing a 13 per cent increase in the price of reserved ordinary letters delivered on the regular timetable from mid-2025.⁸ Smaller retailers especially face ongoing cost pressures and must retain the ability to recover these expenses, as they represent genuine business costs essential to communicating with certain customers based on their preferences.

A nationally consistent fees and charges framework would create greater consumer outcomes

ENGIE notes there are already safeguards in place that restrict the application of fees for customers experiencing financial hardship; however, these are different across jurisdictions. As such, the existing patchwork of jurisdictional prohibitions already creates significant regulatory complexity and increases the risk of inadvertent non-compliance. ENGIE contends that more appropriate reform would be to consult on a nationally consistent, proportionate framework that balances cost recovery with consumer protection would be preferable to additional layers of regulation that could stifle innovation and market efficiency.

⁸ Australian Competition and Consumer Commission, *Australia Post Draft Price Notification*, 2024. [Link](#).

Removing fees and charges for customers on hardship programs provides benefits to those who would be most affected

Most customers have sufficient capability to engage with electronic bills or utilise multiple payment methods. If these customers instead value receiving a paper bill or paying their bill at Australia Post, they should continue to pay the cost of that service. However, ENGIE notes that some customers are disproportionately impacted by fees and charges, particularly vulnerable customers who may feel more comfortable using traditional billing methods. Therefore, ENGIE contends that removing payment and paper billing fees specifically for customers participating in hardship programs, rather than implementing a blanket ban, would better target support for those in genuine need while minimising unintended consequences. This approach ensures assistance is directed where it is most required while preserving flexibility for retailers to manage costs effectively.

Concluding remarks

ENGIE looks forward to working actively with the AEMC to support the objectives of this rule change, ensuring they represent the long-term interests of the consumer, with respect to retailer implementation and costs.

Should you have any queries in relation to this submission please do not hesitate to contact me by telephone on 0400 731 274.

Yours sincerely,

Ronan Cotter

Ronan Cotter
Regulatory Advisor