



EnergyAustralia

11 September 2014

Mr John Pierce
Chairman
Australian Energy Market Commission
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Submitted online at www.aemc.gov.au

Dear Mr Pierce

Submission in response to Draft Determination on Retailer Price Variations in Market Retail Contracts

EnergyAustralia welcomes the opportunity to comment on the AEMC's Draft Determination on Retailer Price Variations in Market Retail Contracts and the Draft Rule. We are one of Australia's largest energy companies, providing electricity and gas to over 2.6 million household and business customers in NSW, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation and storage facilities across Australia, including coal, gas and wind assets with control of over 5,600MW of generation in the National Electricity Market.

We understand that this rule change is in response to consumer group representations that there is widespread confusion in the market about the potential for rate variations to occur during their contract term. EnergyAustralia does not consider that the proponents have provided sufficient evidence to support this assertion.

Summary

EnergyAustralia is disappointed that the AEMC considers it appropriate to amend the National Energy Retail Rules in response to the proposal made by Consumer Action and Consumer Utilities Advocacy Centre (the proponents). Best practice regulation¹ suggests that regulatory intervention is only required where there is a clear market failure which cannot be addressed without regulation. In our view, neither the proponents' rule change proposal, AEMC's own research or EnergyAustralia's direct experience with consumers evidences a material customer confusion issue in relation to rate variations during a contract term.

EnergyAustralia appreciates that the Draft Rule is in the light handed range of the regulatory spectrum and is a common sense approach to resolve the perceived issue. However, we also assert that competitive retail markets will deliver outcomes to consumers through provision of

¹ Australian Government Guide to Good Regulation P17. Circumstances under which regulatory intervention should occur aligns with the Australian Government Guide to Regulation which suggests that "arguments to support market intervention should rely on authoritative data, both qualitative and quantitative".

clear information, products and pricing structures which meet their needs, thus nullifying the need to impose regulation. On rate variations during the contract term, retailers are already listening to consumer concerns and addressing them by introducing a range of "fixed rate" products to satisfy the segment of the market which value this stability.

The AEMC's Draft Decision rejects the proponents' rule change on the basis that there is no evidence to support their claims of bait pricing, but has proceeded with a more preferable rule to address the issue of customer confusion regarding the nature of fixed term contracts despite the fact that evidence of this issue is equally scarce.

EnergyAustralia's Experience

EnergyAustralia is a participant in the Ombudsman Scheme in each jurisdiction in which it retails energy. It is a requirement of these schemes that customers must first attempt to resolve issues with their retailer before they can be dealt with by the Ombudsman. Our evidence does not accord with the proponents' view that there are widespread consumer concerns with this issue as we have received very little evidence in the form of direct complaints that customers are unaware that their rates may change during the term of their contract.

AEMC's Research

In the absence of data from the proponents or real industry experience AEMC has relied heavily on the Consumer Research on Retailer Price Variations in Market Retail Contracts work undertaken by Newgate (the Newgate Report) to establish the existence of a market failure. Despite providing a number of interesting insights we do not consider that this research constitutes authoritative proof of the need for a regulatory response. The Draft Decision states *"It is clear from the Newgate consumer research that some consumers appear to have limited information or knowledge concerning market retail contracts. In particular, when entering contracts with a fixed period, some consumers believe that the prices will be fixed when in fact they are not."*² We strongly disagree with the comment that the research makes this clear because the qualitative analysis contradicts the statistics contained in the report.

Despite the statistical information in the report showing some consumers believe that the per unit price was fixed *"...upon further discussion, the majority clarified that actually they had hoped it would be fixed (because it would shield them from rising energy prices) but they assumed that, realistically, it would probably not be fixed in practice."*³

We believe that the Newgate figures can be further qualified as a number of products in the market do in fact hold the per unit price constant for the duration of the contract and some of those surveyed may have had these in mind when responding.

Competitive markets will deliver to customers

We support moves to provide greater clarity of information to consumers but question whether additional regulation is the appropriate means to achieve this given the prescriptive regulatory requirements which currently govern these issues have led to this perception of consumer misunderstanding.

We agree that appropriate customer protections are vital to establish an environment where consumers are confident to participate in a competitive market however, we also believe that

² AEMC DRAFT RULE DETERMINATION National Energy Retail Amendment (Retailer price variations in market retail contracts) July 2014 page 35

³ AEMC Consumer Research on Retailer Price Variations in Market Retail Contracts Final Qualitative and Quantitative Research Report June 2014 Page 13

in many cases it is the regulatory framework imposed on the competitive market which can lead to real or perceived issues of consumer confusion and it is the imposition of regulation that has weakened these protections.

In properly functioning competitive markets, retailers will develop products and pricing structures which meet the needs of consumers as they are communicated directly to us through feedback and behaviour. The regulatory framework under which we are required to provide information on these products is prescriptive inflexible and in many cases does not allow retailers to provide clear, accessible information to consumer. If retailers are offering these products in response to consumer demands, it stands to reason that it is retailers who are best placed to explain to consumers how these particular products meet their needs.

We believe that allowing retailers to establish a dialogue without prescribed form or content is the best way to ensure that consumers are aware of the nature of each particular product as the retailer who best engages with consumers will enjoy a competitive advantage.

EnergyAustralia opposes the Draft Rule as we are unconvinced of the justification for regulatory interference on this matter.

We look forward to working with the AEMC and consumer representatives to develop appropriate regulatory frameworks to allow for the provision of information to consumers.

If you would like to discuss this submission further, please call me on (03) 8628 1731.

Regards

A handwritten signature in black ink, appearing to read 'Joe Kremzer', with a long horizontal flourish extending to the right.

Joe Kremzer
Regulatory Manager, Retail

