



Ethnic Communities' Council of NSW Inc.

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Submission to AEMC National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 Draft Determination, September 2014

The Ethnic Communities Council of NSW (ECC) welcomes the opportunity to provide input into the **AEMC National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 Draft Determination**

Since its formation 40 years ago the ECC has been the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. The ECC's main activities are advocacy, education and community development. It is a member of the Federation of Ethnic Communities Councils of Australia (FECCA) and the energy advocacy role represents FECCA in the NEM.

The AEMC's Draft Determination finds that the key issue raised by the Rule Change Request is that some consumers may be entering contracts unaware that prices may vary. Its proposed solution is to provide greater transparency for consumers in relation to how prices may vary when they sign up to a new contract.

The ECC congratulates the AEMC on the process that was followed in coming to this draft determination which provided the opportunity for robust discussions about the process and content. The ECC disagrees with the AEMC on the degree to which consumers are aware of the issue, attributing their increase in energy costs to the untrustworthiness of the energy retailer.

For people that speak a language other than English (LOTE) at home, (the 2011 census found there are more than 3 million of these people living in NSW and Victoria) providing greater transparency for consumers is not easily achieved, particularly at the point of signing up to a new contract when their attention is on the 'discount' or other benefits rather than the detail in the contract.

So the key issue raised by the Rule Change Request that some consumers may be entering contracts unaware that prices may vary in the case of consumers from non-English speaking backgrounds is multiplied. The AEMC's proposed solution, to provide greater transparency for consumers in relation to how prices may vary when they sign up to a new contract, may be extremely difficult to achieve for these consumers.

The ECC would argue that the Draft Determination fails to give sufficient consideration to the economic analysis by Dr Rhonda Smith, a well respected economist, despite it being provided as part of the evidence base underpinning the application. In addition the interpretation and reporting of the AEMC's own consumer research is somewhat selective. For example, it found that 43 percent of residential consumers across the

NEM believe that the rate paid per unit of energy consumed on an energy contract is fixed. Other responses also indicate that consumers believe – or hope – per unit rates of energy are fixed within contracts.

The AEMC appears to prefer findings that show people want a range of contract and price options to meet their needs. It states that almost half of residential and small business customers say they prefer the type of contract this request would have stopped retailers from offering. However it doesn't acknowledge the statement from the researcher that the respondents in the qualitative sample found the relevant questions 'somewhat difficult to absorb'. That this is a problem has not prevented the AEMC using this material to support their argument.

If this is the case then, similar to the offers from the financial industry, the energy industry could offer additional contract options where the price and terms are fixed. That this has not occurred again limits the options for consumers to choose.

The Draft Determination considered that consumers did not find the problem of non-fixed prices to be particularly important. Given that the AEMC's research found consumers were generally frustrated with, and distrustful of, energy retailers, it is unsurprising that this is not top of the list of complaints. However, that fixed pricing did not rank highly does not mean it is an issue consumers are not concerned about. When asked directly about unilateral price variation in 2012 by CUAC, consumers overwhelmingly opposed the practice and supported a change.¹ A small sample of 20 bilingual staff, the majority working as bilingual energy educators, were unaware that the prices could change within a fixed term contract. They also were dismayed when informed about this practice.

The Commission also appeared to rely on findings that consumers are generally satisfied and that low numbers of consumers responded to price variations in their fixed period market contracts with negative emotions. Consumer satisfaction is not a good indicator of effective competition as it can indicate a passive response to a lack of ability to get a better deal or a lack of time and energy or it could indicate a lack of understanding. Consistent failure to get good outcomes from their interactions with energy retailers leads to what psychologists call "learned helplessness": Consumers feel that their attempts to get better value are not getting them anywhere and so they disengage, stop trying to influence the situation, and become passive.²

The ECC encourages the AEMC to consider measures such as trust, on which the energy sector ranks very poorly as demonstrated by the research³ conducted by the ECC in late 2011 and more recently by Choice in their research.⁴

Behavioural economics and psychology are more or less ignored in the draft determination, despite attempts to bring this to the attention of the Commission in written submissions and presentations. The preferred response, ie to provide more

¹ CUAC (2012) Fixing up fixed term contracts for energy consumers

² Lawes Consulting, 2011, Retail Market Review: Energy bills, annual statements and price rise notifications; advice on layout and the use of language

³ ECC (2012) Experiences of Energy Consumption for CALD communities

⁴ <http://www.choice.com.au/media-and-news/consumer-news/news/choice-cost-of-living-report-highlights-tough-times-for-many.aspx>

information to consumers at the point of providing 'explicit informed consent', demonstrates a lack of understanding how consumers actually make decisions and has limited prospects of success. Consumers are likely to have made up their mind at the point of 'explicit informed consent', and treat the necessary disclosures as a checklist to be completed.

It is unfortunate that the alternative solution of banning exit fees was only noted by the AEMC in the Draft Determination but not considered in any depth, despite being discussed at forums and in submissions.

The Draft Determination states that there is insufficient evidence to conclude that retailers are engaging in price baiting practices on a widespread scale, but the Commission has not, to our knowledge, asked retailers for the history of price increases and their timing for market contracts offered to consumers. Without obtaining this information, it is true there no evidence of price baiting, but this is because it has not been sought in specific terms.

The Commission appears to accept, without significant challenge, the claims by energy retailers of the negative effects Consumer Action's and CUAC's proposed rule would have on them and their ability to offer a range of products to energy consumers. The Commission's view that CUAC and Consumer Action's suggested rules are likely to restrict consumer choice, inhibit retailers' ability to innovate, adversely affect competition in retail energy markets, and result in poorer outcomes for consumers (including higher prices) are, to our knowledge, not based on evidence.

The AEMC has accepted claims by retailers that they have limited ability to predict or control risks associated with changes to network prices or government policy costs. It has presented no evidence to support its conclusion that consumers should continue to bear the risks, despite acknowledging that retailers are better able to manage the price changes than consumers.

The ECC strongly supports the rule change proposed by CUAC and Consumer Action as it did not rely on CALD consumers being overloaded with information they find hard to understand. The difference between fixed term and fixed price may be a confusing distinction for those that speak English as a second language. The solution proposed in the draft determination relies again on consumers being able to make choices that best suit their needs when research and evidence demonstrates that particularly those who speak English as a second language already have difficulty with the complexities of the energy retail market.

If you require additional information please contact Iain Maitland, Energy Advocate on 02 9319 0288 or email energy2@eccnsw.org.au .

Sincerely yours,

A handwritten signature in black ink, appearing to read "Mark Franklin". The signature is fluid and cursive, with a period at the end.

Mark Franklin
Executive Officer
Ethnic Communities' Council of NSW Inc.