



EnergyAustralia

LIGHT THE WAY

13 February 2020

Commissioners
Australian Energy Market Commission
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Dear Commissioners,

Issues Paper 2 Consumer Protections in an evolving market: Traditional sale of energy – 2020 Retail energy competition review - PUBLIC VERSION

EnergyAustralia is one of Australia's largest energy companies with ~2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own and operate a multi-billion dollar energy generation portfolio across Australia, including coal, gas, and wind assets with control of over 4,500MW of generation in the National Electricity Market (NEM).

EnergyAustralia welcomes the AEMC's review of the National Energy Customer Framework in Issues Paper 2 Consumer Protections in an evolving market: Traditional sale of energy (Issues Paper 2).

However, we note that Issues Paper 2 focusses on changes to a few key consumer protections to address a few barriers to innovation. However, by doing so it assumes that energy specific regulation under the National Energy Customer Framework (NECF) will essentially remain the same.

While we welcome these few improvements, we see them as short term focussed and an incomplete solution to ensuring that the regulatory framework remains fit for purpose in view of innovation that will occur in the retail market. We ask that this submission be considered together with our response to Issues Paper 1: New energy products and services (Issues Paper 1), as the issues are overlapping.

At a high level, EnergyAustralia's position is:

- Current energy specific regulation over-regulates retailers. While it is well-intentioned, there is the real risk that current regulation does not support good customer outcomes. The high number of retailer contact points with customers and the complex content of each communication, means that key information

(which should support customer decisions about their energy supply) is not absorbed by the customer.

- Explicit informed consent (EIC) should only be required for transfers to a new retailer and entry into a market retail contract, and not for other transactions.
- For EnergyAustralia to support third parties providing EIC on behalf of customers, we would need to see how current concerns regarding the third party market are addressed. More consultation is required. These concerns should be highlighted and consulted on when delegation of EIC to third parties is considered.
- We can see a future where EIC can be waived to provide financial benefit and convenience to customers.
- The cooling off period is no longer required.
- Regulation of billing and information provision around benefit and price changes should be reviewed and changed to reflect principle-based regulation that aligns with desired customer outcomes.

Our response does not individually answer the questions set out in the AEMC's paper. We have structured our response to discuss the key themes.

Should you have any questions in relation to this submission, please contact Selena Liu (Selena.liu@energyaustralia.com.au or 03 8628 1548).

Regards,

Sarah Ogilvie
Industry Regulation Leader

1. Explicit informed consent

a) Explicit informed consent should only be required to transfer a customer between retailers and to enter into a market retail contract

Only the energy industry is subject to explicit informed consent (EIC) requirements of the nature and extent as that established under the NECF. EIC is required for a number of customer transactions under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR).

Under the NERL, EIC must be obtained for the transfer of the customer to the retailer from another retailer, and the entry by the customer into a market retail contract with the retailer. This addresses past industry practices which showed misconduct by door to door sale persons and outbound marketing activity where customers were being switched to a new retailer without their agreement.

The policy basis for EIC to apply to transactions other than a customer transfer or entering into a market retail contract, is unclear and questionable. These other transactions include: bill smoothing for retail market contracts; modified frequency of billing; and direct debit.

We consider these matters are incidental to access to energy and are of minimal importance to customers. They are also not transactions that are unique to the energy industry and without evidence of a systemic industry concern, continuing to apply EIC to these other transactions in energy specific regulation, is to continue to over-regulate the industry and impose unnecessary cost. This cost is in the form of conducting outbound call activity or designing electronic transactions to obtain EIC from the customer.

Our comments below are based on EIC applying to transferring retailers and entering market retail contracts only.

b) Required information supporting explicit informed consent is ineffective and should be reviewed

EnergyAustralia's front of house scripting for a sale contains the Required information under Rule 64 of the NERR, which provides the relevant information required for EIC. In a similar way, online sign up by a customer delivers Required information via content on webpages displayed to a customer before they electronically accept an energy plan online.

Rule 64 is overly prescriptive and does not reflect the salient information relevant to entering into an energy contract or transferring retailers. Details such as service levels, the availability of contract extensions, the termination of the contract on move out, and information about electronic transactions; do not have any relevance to the sale. These only add extra content which may distract a customer from the key information about their energy plan.

These requirements should be re-assessed and replaced with principle-based regulation with a focus on customer outcomes.

The Clear advice requirements in the *Energy Retail Code (Victoria)* set out in sections 70G and 70H present regulations which are closer to principle-based regulation. Section 70G requires retailers to give small customers "clear, timely and reliable information, provided

in a respectful manner, to assist the *small customer* to assess the suitability of, and select, a *customer retail contract*.” The few minimum requirements set out in section 70H ensure that customers receive essential information and that there is a minimum baseline of information consistent across the industry. In our view this regulation may deliver better customer outcomes compared to the current Required information and EIC requirements under the NERR.

c) Delegation of enduring explicit informed consent to third parties

We understand how delegation of EIC to third parties, so that third parties can provide consent on behalf of a customer to switch to a new plan/retailer, could be pro-competitive. This is particularly the case in the context of the Consumer Data Right which could increase customer switching facilitated by third party data services (Accredited Data Recipients).

However, for EnergyAustralia to support this delegation to third parties, we would need to see how current concerns regarding the third party market will be addressed:

- First, the third-party market today is by its nature incentivised to increase customer switching to generate revenue (they are often paid per customer switch). They are incentivised to “roll” customers through the market, when it may not deliver value to the customer. EIC in this context can be an important safeguard against this conduct.
- Second, as the Australian Competition and Consumer Commission (ACCC) recognised in its Retail Electricity Pricing Inquiry - Final Report (REPI Final report)¹, commercial comparators’ websites and other third party intermediaries do not always make recommendations that are in the best interests of consumers:
 - due to biases because of commission arrangements, or
 - because they are only comparing a proportion of the market, and
 - where these matters are not disclosed to customers.

The ACCC considered these concerns to be of sufficient scale and gravity to recommend that the Australian Government prescribe a mandatory code of conduct for third party intermediaries to address these issues.

We ask that the AEMC highlight and consult on the above two issues when considering potential delegation of EIC to third parties. This should also be highlighted to the Council of Australian Governments when making any related recommendations.

The risk to customers is that this change would see third parties possibly recommending an energy plan that is not in the customer’s best interest, automatically switching them to that plan, and then repeating the exercise with the primary purpose of generating revenue. Accordingly, delegating EIC to third parties would need to be accompanied by an additional safeguard that ensures any provision of EIC by the third party on the customer’s behalf, will switch the customer to a more appropriate plan based on their financial interest.

¹ https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018_0.pdf, Chapter 14.

d) Waiving Explicit Informed Consent in certain circumstances should be considered

EnergyAustralia considers that the requirement to obtain EIC when switching market retail contracts but remaining with the same retailer, may potentially inhibit innovation which delivers greater financial benefit and convenience to customers. For example, current regulation requires a retailer to obtain EIC to switch concession customers from standard retail contracts to cheaper market retail contract plans. Often customers are not contactable to obtain EIC which creates barriers to this activity.

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2. Remove the cooling off period under the National Energy Customer Framework

We strongly consider that the cooling off period that applies for solicited energy market retail contracts under the NECF, should be removed in view of the regulation of exit fees or early termination charges under the NERR (which restricts the times when retailers can charge them). Further, some state legislation imposes complete bans on early termination

charges in the context of energy contracts.³ This means a customer faces little to no financial barriers in signing up with a retailer on a market retail contract, and then switching back to their old contract for change of mind shortly after.

3. Information provision – Bill

a) Contents of a bill

Both the requirements of contents of a bill in Victoria and the states and territories participating in the NECF are superfluous and some billing particulars are redundant.

Providing many particulars on the bill makes it more difficult for customers to understand it, access the information they need, and can drive call volumes to front of house staff for bill queries. Retailers are incentivised to “get the bill right” and provide customers sufficient information to minimise customer confusion and complaint.

There is scope to provide clear principle-based regulation regarding bill contents. These principles should focus on the purpose of a bill from the perspective of a customer.

Customers require from their bill content:

- information which verifies that the bill is for them, and
- information that provides confidence that the bill is true and correct.

Principle-based regulation can be developed to reflect these two customer needs.

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Usage information can serve to verify the bill is true and correct. Rather than historical usage information from the last billing period or last season, data could be made available more frequently (i.e. the previous week) via online portals that can report on more current usage, so that a customer can reconcile more recent consumption data with their perceived use.

³ See Regulation 4, *Electricity (General) (Early Termination Fees) Variation Regulations 2019* under the *Electricity Act 1996 (SA)*, and Rule 9C, *National Energy Retail Law (Adoption) Regulation 2013 (NSW)*

Information which has no direct relevance to invoicing of and payment by the customer should be removed from the bill.⁵ This can be replaced by a single contact number or link to a website which can be viewed should the customer wish to see information about concession/rebate schemes, interpreter services, and other information.

There are also specific billing particulars required by the NERR that are redundant or will become redundant with the roll out of smart meters:

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- The values of meter readings at the start and end of the billing period, when smart meter usage data is available in 15 minute increments and can be used to calculate total usage, is redundant.
- The estimated date of the next scheduled meter reading, even for accumulation meters, has limited utility as it does not reflect when the next bill will be issued.

b) Delivery and format

With the proliferation of smart phones and smart home devices which are effective at delivering short messages, the regulations could also reflect a tiered approach to billing.

This could allow for short messages which deliver information which verifies that the bill is for that customer, along with payment amount and due date; and an option to view extra information via a link to an online account or attachment, if a customer seeks to access information that relates to whether the bill is true and correct.

Customers should be able to agree through either opt in or opt out mechanisms, to the frequency of a bill and its delivery method (post, email, online account or otherwise). These transactions do not warrant the higher threshold requirement of EIC.

4. Information provision – Price and benefit change notifications

Research conducted by EnergyAustralia suggests that the price and benefit change notices required under the NERR could be more effective in providing clearer information to customers to assist them at a potential decision point.

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⁵ . For example, reference to the availability of government funded energy charge rebate, concession or relief schemes; contact details of interpreter services; the amount of any security deposit; the estimated date of the next scheduled meter reading (if applicable); the values of meter readings (or, if applicable, estimations) at the start and end of the billing period; and the basis on which tariffs and charges are calculated.

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Before the price and benefit change notice requirements were introduced into the NECF (the latter in response to the ACCC REPI Final report), retailers were sending notices to customers to inform them of these changes. Again, price and benefit changes are not unique to the energy industry. We question if regulation is required when a retailer is incentivised to successfully communicate these messages to customers to retain their trust.

If the regulated requirements are retained, EnergyAustralia supports re-framing them in terms of principle-based regulation which focusses on informing the customer of three key points: What is changing, when it is changing and how it affects the customer in dollar terms.