Government of South Australia
Department for Energy and Mining

Record No: D19142865

Mr John Pierce
Chairman
Australian Energy Market Commission
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Regulating Conditional Discounting – Draft Determination (RRC0028)

Dear ~~Mr Pierce~~ John

The Energy and Technical Regulation Division (the Division) of the South Australian Department for Energy and Mining thanks you for the opportunity to comment on the Regulating Conditional Discounting – Draft Determination.

As noted by our submission to the Consultation Paper stage of this rule change process, the Division agrees the practice of discounting by energy retailers has been an issue in retail energy markets in recent years.

However, when considering the proposal, it is important to take note of the extent of change that has recently occurred in the retail energy market. The rule change to prevent discounts on inflated rates and the introduction of the reference price and restrictions on discounting as part of the Electricity Retail Code of Conduct, are all initiatives that will assist in overcoming the issue raised.

We consider the evidence is already demonstrating that these changes have had an impact on the practice of retailers offering conditional discounts.

The Commission acknowledges that this is the case, with the draft determination showing that the number of offers with conditional discounts is reducing since the introduction of these initiatives, both in terms of the number and magnitude of the discount. Despite this, however, the Commission argues that this trend cannot be trusted, and that retailers may increase their discounting behaviour in the future.

The Division suggests that a reduction in the proportion of offers with conditional discounts from 52 per cent in March 2019 to 22 per cent across all jurisdictions in September 2019 is a noticeable reduction (with South Australia witnessing an even lower percentage). This combined with the findings that the magnitude of conditional discounts has also decreased from approximately 30 - 40 per cent in 2018 to an average discount rate of around 8 per cent in September 2019, is clear evidence that the current regulations are resolving the issue.

Despite an observed reduction in the magnitude of discounts, the Commission estimates that conditional discounts set at reasonable costs would be lower than the average level currently seen in the market.

We note that the current average discount of 8 per cent identified in the draft determination includes an offer with the 'highest conditional discount' of 25 per cent. It would be assumed that the offer that contains this conditional discount would likely be in breach of other rules – such as the inflated discounts rule. If this is the case, and the offer was removed from calculations, the 8 per cent average figure would reduce even further.

The Commission's view is that a prudent approach assumes that the proportion and magnitude of conditional discounts may return to pre-default market offer (DMO) levels in the future. We consider that making further regulation 'just in case' as proposed by the Commission is erring on the side of over regulation.

In regard to the detail, the Division is strongly opposed to the inclusion of existing retail contracts as part of this rule change. By capturing existing contracts at the end of their benefit period, the Commission could potentially be negatively impacting more customers than it is benefitting. There is a high likelihood of many consumer's bills increasing due to this decision.

The draft rule change could result in negative outcomes for many customers – noting that 73% of residential customers meet the conditions attached to discounts, and enjoy the associated benefits, according to the ACCC. Removing these discounts, and potentially increasing consumers' bills, appears inconsistent with the intent of the ACCC's Retail Electricity Pricing Inquiry, and energy policy generally.

With regard to hardship customers who fail to realise conditional discounts, the inflated discounting rule should be ensuring that the undiscounted market rates they are paying are not higher than the retailer's standing offer. These standing offer rates would need to be in line with the DMO, or regulated prices, in all jurisdictions.

In addition, as stated by the Commission, the retail rules already recognise the fact that certain customer groups should not bear the risks of certain types of conditions. National Energy Retail Rule 73, for example, states that a retailer must waive late payment fees for customers on hardship programs.

Further, current legislation under the National Energy Retail Law, requires retailer's hardship policies to include processes to review the appropriateness of a hardship customer's market retail contract. This provision should be ensuring that a retailer is already reviewing how appropriate a conditional discount is for a hardship customer who has a history of failing to meet the conditions and making necessary adjustments to the offer. If this is not occurring, the AER should be investigating retailers' compliance with these obligations.

These initiatives, in addition to those mentioned above, should be achieving the objective of protecting customers from excessive penalties when conditional discounts are not met. If they are not, further review of retailers' compliance with these obligations is required, rather than applying further regulation.

If the AEMC considers that regulation is required to remedy the issue for customers in hardship, the proposed new rules could apply to vulnerable customers only, rather than impacting the high percentage of residential customers that are meeting the conditions associated with the discounts.

In summary, we consider that there has been a decrease in conditional discounting brought about by the introduction of recent regulatory change. We consider that additional regulation is not be required at this time.

The South Australian Government thanks the Commission for the work undertaken on the rule change.

Should you have any questions in relation to this submission, please contact Ms Rebecca Knights, Director - Energy Policy & Projects, Energy and Technical Regulation Division, on (08) 8429 3185.

Yours sincerely

Vince Duffy

Executive Director
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