



7 May 2010

**By email:** [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Mr Tom Leuner  
General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Dear Mr Leuner

### **Submission to the AER Retail Pricing Information Guidelines - Issues Paper**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to make a submission to the Australian Energy Regulator's (the **AER**) Retail Pricing Information Guidelines - Issues Paper (**Issues Paper**).

The Issues Paper makes the important point that there is a difference between consumers having a general awareness that they have a choice between energy retail offers and having an actual ability to access and readily compare important information.

We consider that the Retail Pricing Information Guidelines (**Guidelines**) will be critical to ensuring that consumers can access, consider and compare important information about energy retail offers in an informed manner, in what is becoming an increasingly complex marketplace.

Our comments on the Issues Paper are set out below.

#### **About Consumer Action**

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia.

Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly. Consumer Action has been actively involved in energy advocacy work in Victoria and nationally since the 1990s. Over this time we have provided key consumer input into important energy regulatory processes for consumers, including the current Victorian smart meter rollout and initiatives relating to

improved energy price and product information disclosure following the deregulation of Victorian retail energy prices.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

### **Scope of the Guidelines**

We support the AER's initiative to develop the regulatory guidelines it will be responsible for under the new National Energy Customer Framework (**NECF**) laws once enacted, prior to the implementation of the NECF laws.

The AER is developing the Guidelines in response to the second exposure draft of the NECF, specifically, their likely obligation to make Guidelines under what is currently section 242 of the National Energy Retail Law.

Section 242 currently sets some broad guidance for the contents of the Guidelines. They are intended to specify the manner and form in which details of standing offer prices and market offer prices are to be presented. They should do so in a way that will:

assist customers to consider and compare standing offer prices and market offer prices offered by retailers.

We agree that this must be the key purpose of any guidelines intended to set out the way in which energy offers are presented to consumers. The modern contestable energy market relies on consumers having the confidence to participate actively in the market by considering and choosing between different energy offers and actually being able to understand offers and make choices that do, in fact, reflect their interests. Further, it is simply unfair to expect consumers to enter into agreements without having a genuine opportunity to consider them first.

For these reasons, it is critical that consumers are able to access, understand and compare different offers against each other to determine the best offer for their needs. This is an essential prerequisite of the explicit informed consent required by the NECF before consumers enter into an energy contract.

Section 242 as currently drafted is not prescriptive as to what the AER should include in the Guidelines. We encourage the AER to consider all matters that would facilitate the objective of assisting customers to consider and compare offers.

We also recommend that the AER ensure the Guidelines cover all of the relevant information required to be given to consumers by retailers, including not only upfront prices but other charges, early termination payments, billing and payment arrangements and how any of these matters may be changed.

It is unclear to what extent the AER currently intends to address issues relevant to the ability of consumers to consider and compare offers other than the mere presentation of that information in any given materials. Consumer Action strongly recommends that issues of access to such information be covered by the Guidelines. Customers will not be assisted in considering and comparing offers if they are not given well-presented information in the first place or cannot find it when searching for offers. For example, we believe that the Guidelines should cover the required accessibility of information on retailer websites, not just how they are physically presented once you do find them, to ensure that consumers are able, in practice, to consider and compare the information they need to make informed decisions.

### **Forms of pricing information publication**

We strongly recommend that the Guidelines cover information provided via a range of different forms of communication, not only written statements.

While we support the AER raising this question in the Issues Paper, we consider that it requires more detailed discussion than has been provided to date.

The Guidelines should cover all forms of publication of pricing information.

At door-to-door sales, when reading brochures and when viewing retailer websites, consumers will be considering whether to enter into a contract. This means the information to be provided in such circumstances must necessarily be in a form that enables easy understanding and comparison with other offers and must contain the information necessary for consumers to make a decision with explicit informed consent.

Billboards and newspaper advertisements do not require the same level of information but must still provide the most important pieces of information in consistent form and in a form that allows a consumer to search for the more detailed information relating to that offer, for example to corresponding offer information on the retailer's website. For example, advertisements should state the name of the offer, the basic pricing information, any discounts and penalties in a way that makes the corresponding offer easily recognisable when trying to find out more about the advertised offer.

On this basis, we believe that a template for information provided on the Internet, in brochures or in any marketing material published in written form should be prescribed by the AER under the Guidelines. That is the only way to ensure standardisation of the information for comparison purposes and to ensure that the sufficient level of information – balancing detail with simplicity – is achieved.

We do not think it is necessary or reasonable for the same format to be required for information provided via billboard advertising or television advertising, however, we do believe that some prescription of requirements is necessary, namely, to require certain basic details to be displayed that enable a consumer to identify the offer when looking for further information.

## **Presentation of prices**

We support providing consumers with both some annual cost pricing information and standardised unit pricing.

However, we do not support the AER's proposed 'combination approach'. This is because standardised unit pricing must be required as the minimum level of disclosure – it is the only simple form of information that is always accurate for the consumer.

Annual cost information provides a useful short-hand guide but it is not specific to any particular customer and therefore is not accurate for the customer. Thus, without careful prescription of how annual costs are presented, we consider that it would be very likely to be misunderstood by many consumers and could be inappropriately relied on. This problem will be magnified exponentially where time of use tariffs apply, which we discuss further below.

Consumer Action believes that, when used in combination with the standardised unit cost approach rather than as a first option, there is considerable merit in using annual cost information. We note that some jurisdictions already require the use of annual cost information and it is a reasonable (but not exact) guide to expected costs for consumers. The annual cost approach could perhaps incorporate a division of the information into seasonal periods so that consumers can see how their consumption, and therefore bills, vary over a twelve month period.

Standardised unit pricing information must, however, remain the building block of pricing information for consumers.

For fixed charges, we believe that a unit of "cents per day" is the most effective standard unit of measure. Billing periods can vary with each bill, meaning that a week of data may be more or less representative of overall usage, whereas a day's worth of usage is a more representative cost sample. We consider that a shorthand form such as "c/day" or "cents/day" would make sense to most consumers.

Usage charges are based on the amount consumed, therefore the unit of measure must relate to a volume unit. We agree that cents per kilowatt hour is appropriate. A short-hand version such as "c/kWh" is acceptable and useful for consumers, so long as a key that clearly defines c/kWh is provided in the materials. This also allows for simpler formatting of published documents. We also agree that usage charges should display unit prices for each tariff segment.

The presentation of prices in any published materials must mirror the format of prices as presented on bills to enable consumers to understand how prices will apply to them. For example, prices should be provided both inclusive and exclusive of GST if the prices on their bill are presented in that way.

Further, we are of the strong belief that other information relating to the overall price paid must also be covered by the Guidelines. The AER categorises information on incentives such as direct debit rebates and loyalty rebates as 'information other than price' but, in fact, they are part of the mix of what will make up the final price the consumer will pay, thus in our opinion they constitute pricing information. We consider that such information, including on

discounts, rebates and additional fees, must be disclosed separately from the underlying price for the energy services supplied. These details must be displayed clearly and as separate items in a format that allows comparison with other retail offers, potentially as per Figure 1 on page 14 of the Issues Paper. This is particularly important because an offer may be marketed on the basis of the total final price inclusive of all discounts where the design of that offer means some or all of the discounts are conditional on the consumer meeting certain requirements, for example to pay by a particular time. To provide their explicit informed consent to such a contract, consumers need to see all relevant aspects of their offer.

### **Time of use tariffs**

The introduction of time of use tariff offers into the retail energy market will increase the complexity of offers and make it more difficult for consumers to compare offers in a meaningful way to facilitate an informed choice between different contracts.

The complexity created by time of use tariff structures and other complex tariffs could be partly overcome by providing for the standardised disclosure of pricing information that incorporates disclosure of an overall average unit price, combined with a unit price for each tariff segment. The development of an appropriate average unit price measure may be a more complex undertaking than developing standard units for simple tariff offerings and may require the AER to conduct a rigorous analysis of how such a unit of measure should be constructed. However, regardless of how the AER decides to address the disclosure of useful information to consumers about offers incorporating time of use pricing, time of use tariffs will be a reality in the modern energy market, thus, the Guidelines must address the issue.

The inclusion of annual cost information, as discussed earlier in our submission, could also assist consumers to compare the overall pricing result under flat and time of use tariffs. However, to present meaningful annual cost information in relation to time of use tariff offerings, the annual cost information would need clearly to show the amount of usage within each different tariff period that the annual cost examples are based on. This will particularly be the case if deemed load profiles are used because they may bear no relation to that customer's actual usage patterns. Further, the information should make it clear to consumers that it is based on a deemed or average usage pattern but is not specific to their circumstances.

We note that the Federal Department of Resources, Energy and Tourism is currently undertaking a bill benchmarking study, which amongst other matters is considering what consumption bands should be used to show information to consumers about their usage compared to the average consumption for different sorts of customers. Any consumption bands used in prescribing an approach to annual cost information disclosure should be developed in collaboration with that project and should be consistent with the consumption bands that consumers may see on their bills. We therefore encourage the AER to liaise with the Department to ensure consistency in this area.

We thank the AER again for the opportunity to provide input into the Guidelines at this early stage in the process. Should you have any questions about this submission, please contact Janine Rayner on 03 9670 5088.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive, flowing style.

Janine Rayner  
Senior Policy Officer