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Department of  
Employment, Economic  
Development and Innovation

Mr Tom Leuner  
General Manager  
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Australian Energy Regulator  
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Dear Mr Leuner

The Department of Employment, Economic Development and Innovation (DEEDI) welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) on its position paper titled *AER Retail Pricing Information Guideline* (the Guideline).

DEEDI's submission is in response to a request by the AER for stakeholder views on whether the Guideline should supplement requirements in the Retail Law and Rules on retailers to notify customers of any variations to their offers. I understand that the AER, under section 61(3)(a) of the draft Retail Law, may make and amend the Guideline to specify the manner and form in which details of market offer prices are to be presented when publishing, advertising or notifying the AER of those prices or any variation in prices.

In Queensland, under clause 4.12.6 of the *Electricity Industry Code* (the Queensland Code), if an electricity retailer proposes a price change for a small customer on a market contract, the retailer must give the small customer 10 business days notice before the price change takes effect. This clause stops electricity retailers from increasing prices retrospectively.

The AER Guideline position paper states that as the Retail Law and Rules will likely include requirements for retailers to inform customers of any variation to standing and market offers, the draft Guideline does not include any additional requirements regarding variation.

Proposed Rule 46 Tariffs and charges in the Retail Rules, on variation of tariffs and charges for market contracts, provides:

- The retailer must give notice to the customer of any variation to the tariffs and charges;
- The notice must be given as soon as practicable, and no later than the customer's next bill; and
- The market contract is to set out retailer obligations regarding notice of variation to tariffs and charges.

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DEEDI recognises that the Retail Law and Rules do provide consumer protections for market customers, including requiring customers to give explicit informed consent to enter into a market contract. However, if the AER relies on proposed Rule 46, retailers will still be able to retrospectively increase tariffs and charges for market customers under the Retail Law and Rules.

There is a suggestion that customers may be protected under the unfair contractual terms provisions of the Australian Consumer Law (ACL). Section 25(1)(f) of the ACL states that a term that allows one party to increase the upfront price without the other party having the right to terminate the contract may be unfair. However, the use of the word 'may' indicates that it is not certain that a term allowing retrospective price increases would be unfair. Therefore, relying on the ACL to protect customers from retrospective price increases will lead to regulatory uncertainty for retailers and customers. Prohibiting retrospective price changes in the Guidelines will provide certainty on this issue.

It is recognised that many retailers currently provide advance notice of price increases to customers. However, prior to inserting clause 4.12.6 in to the Queensland Code, there was an instance of a retailer retrospectively increasing prices in Queensland. Customers affected by this retrospective price increase expressed dissatisfaction that their cost of electricity could increase without their prior notification.

In a review of the Queensland Code, the Queensland Competition Authority (QCA) found that there is an unacceptable risk that retailers can 'claw back' discounts below notified prices initially offered to customers. The QCA also found that customers were not able to exercise their right to choose between alternative retailers, or to revert to notified prices under a standard retail contract prior to the price increase taking effect, if they are not given advance notice of the price change.

If there is no requirement to provide advance notice of a price change, this allows retailers to transfer the risk of a price change to consumers. Retailers can use hedging strategies to minimise their pricing risk. Small customers are not able to use risk management strategies for electricity pricing. Therefore, retailers are in a better position to manage pricing risk than small customers. By allowing retrospective price increases, this potentially transfers economic loss on to customers.

Given the Guideline is to provide guidance to retailers in the presentation of market offer prices and to assist small customers to consider and compare retailers' market offer prices, it is appropriate that the Guideline at least clarifies the issue as to whether retrospective changes are permitted.

When considering moving from a standing offer to a market offer, or changing retailers, to allow customers to compare contract offers, they need to have a clear understanding of which tariffs are applicable to their premises. Therefore, it is suggested that an Energy Price Fact Sheet should include information on whether there are any specific metering requirements necessary for the customer to be eligible for the contract offer (e.g. time-of-use meter), and a generic statement included to the effect that "a change of meter will incur additional costs". This item could be included in clause 2.7.3 "additional information to be provided".

I trust this information is of assistance. Should you have any further enquiries, please contact Mr Darren Schneider, Director, Industry and Client Services of the Department of Employment, Economic Development and Innovation on telephone (07) 3237 1131.

Yours sincerely



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