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Mark Feather
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Australian Energy Regulator
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Via email: dmo@aer.gov.au

DRAFT DETERMINATION – DEFAULT MARKET OFFER PRICE

Dear Mr Feather,

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments (COAG) Energy Council in 2015, our objective is to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply.

We appreciate the opportunity to comment on the Draft Determination for the Default Market Offer (DMO) Price. This submission complements our response to the Australian Government Department of Environment and Energy consultation on the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (Code). This submission builds on Energy Consumers Australia's contribution at the Australian Energy Regulator (AER) public forum on the Default Market Offer (DMO) on 5 December 2018.¹

We support the pragmatic, market inquiry methodology the AER outlines in the Draft Determination, to re-establish the price safety-net for consumers in a market where there are significant risks of paying more than necessary.

A market not working for consumers

High prices for electricity are causing significant and ongoing detriment for households and small businesses. In the latest Energy Consumer Sentiment Survey (ECSS), households and small businesses ranked electricity behind banking, insurance and mobile phone services on value for money, and less than half indicated that they have the information and tools they need to make choices about energy services. Importantly, only a third of respondents indicate that they believe the market is working in their interests.²

The measures recommended by the Australian Competition and Consumer Commission (ACCC) and progressed through this draft determination aim to address confusing discounting practices and the growing price gap between competitive market offers and standing offers that are key features of a market that is not working for consumers. Standing offers are meant to provide a safety-net for consumers but are instead acting as a source to cross-subsidise competitive market activity.³

¹ <https://energyconsumersaustralia.com.au/publication/default-market-offer-impacts-for-consumers/>.

² <https://energyconsumersaustralia.com.au/news/only-1-in-4-say-their-homes-are-energy-efficient/>

³ We note that there is also a sizeable cohort of consumers who are technically on market offers with expired fixed benefits periods, most of these consumers are being charged standing offer prices while technically on a market contract.



Consumers who cannot or do not actively engage in the market face the risk of paying hundreds of dollars more than they need to for electricity, even though they are buying the product designed as the safety net. While the number of households and small businesses on standing offers is falling, a significant number remain on them – between 7-22 per cent depending on the jurisdiction. Importantly, those who are on standing offers contribute more than is reasonable to retailers' overall revenues: in New South Wales, 18 per cent of customers are on standing offers, but they account for 40 per cent of the Big Three retailers' revenues. It is also important to note that a higher proportion of small businesses are on high-priced standing offers.⁴ As noted above there are also consumers on market contracts paying the standing offer rate.

The methodology the AER outlines in the Draft Determination for setting the DMO price – what we would term a 'market inquiry' approach – is pragmatic and one we support. As recent experience in the United Kingdom has shown, designing and implementing detailed bottom-up methodologies can be complex and protracted processes that risk delaying cheaper prices and better outcomes for consumers. The market inquiry approach can also be better integrated with competitive retail markets, given prices are derived from prevailing offers rather than a separate set of reference points calculated centrally.

We are pleased to see that the AER is engaging with the jurisdictional regulators such as the Queensland Competition Authority to support consistent and coordinated pricing outcomes for consumers. Jurisdictions have made significant investment in competitive market reform processes and every effort must be made to work cooperatively to build on that work. We are also considering the Victorian Default Offer, designed in accordance with a specified approach to acquisition and retention costs.

We are engaging separately with the Department of Environment and Energy on the development of the code that would implement the DMO and reference pricing initiatives. It is critical that the design and implementation of these mechanisms helps reset the market and makes competition work for consumers.

Implementing the ACCC recommendations as a package

As the consultation paper notes at page 36, the use of a market inquiry approach in the first instance does not preclude the regulator moving to a bottom-up methodology in the future if the issues around the safety-net identified by the ACCC persist. Interventions in the retail market need to be accompanied by downward pressure on underlying wholesale, network, environmental costs to deliver cheaper prices overall for consumers. The ACCC identified significant problems across the entire supply chain that are contributing to what the report said is a "market that is not working for consumers".

A coordinated process to refine and implement the Australian Competition and Consumer Commission (ACCC) Retail Electricity Pricing Inquiry Blueprint to secure the 20-25 per cent bill savings, \$400 off the average bill, that consumers have been promised, should be the highest priority for governments and market bodies.

There is a lack of transparency about what work is underway through the COAG Energy Council and by jurisdictions to implement various ACCC recommendations. From our understanding of progress more needs to be done to coordinate this work as a package.

⁴ See chapters 13 and 18, ACCC Retail Electricity Pricing Inquiry Final Report, <https://www.accc.gov.au/publications/restoring-electricity-affordability-australias-competitive-advantage>



By working together through the National Electricity Market framework, governments, market bodies, energy companies and consumer organisations, can deliver robust and consistent solutions for households and small businesses across the country.

The implementation of the ACCC Blueprint and getting the market working for consumers will be an ongoing, iterative process. The ACCC's Electricity Market Monitoring Inquiry, which will publish six-monthly reports until 2025, and higher-levels of scrutiny by the Australian Energy Regulator (AER) using strengthened information gathering and enforcement powers, provide a basis for a "review and ratchet" process in relation to prices and service that can inform DMO settings underpinned by the market inquiry process.⁵

Industry leadership to re-build trust

Energy companies must demonstrate leadership by acting to reduce prices, re-establish the safety-net and address confusing discounting practices. Improving outcomes and salvaging the idea of a competitive market cannot be achieved through new law and regulation alone – it will require a big cultural shift by energy suppliers to focus on delivering the best possible service for consumers, on their terms. This shift needs to be led by boards in conjunction with senior leadership teams of energy companies across the supply chain and by policy makers and market bodies in the sector.

Recent action by the Big 3 retailers following the roundtable with the Federal Minister for Energy, including to improve concessions support for customers and to reduce prices for standing offer customers, is an important first step in this process. More significant price reductions, and longer-term initiatives like the Energy Charter, should create space for governments to resume a more normal oversight role.

The primary responsibility for communicating with customers about transitional issues associated with changes in prices and the structure of retail offers – whether that is in relation to the reference pricing initiative the Australian Energy Council is leading, or the implementation of ACCC recommendations – lies with energy companies. This is consistent with a sector business culture that does not wait for others to step forward, but in line with the Energy Charter principles in action, sees every business taking responsibility for customer outcomes, structuring remuneration and incentives for managers and employees to ensure the whole organisation is aligned to that purpose.

The next round of retail price announcements is an important opportunity for retailers and networks to work together through the Energy Charter framework to deliver improved affordability outcomes for consumers and begin to re-build trust. The resolution of the remittal of the 2014-19 NSW distribution network determinations, means that \$730 million in savings must begin to be returned to households and small businesses in that jurisdiction, from 1 July 2019. In terms of the specific requirements about what is communicated to customers about the DMO and how, it is important that the requirements are consistent with the AER's improved Retail Pricing Information Guidelines (RPIG). The RPIG now requires retailers to publish Basic Plan Information Documents (BPID) which are a simple summary of the key features of a plan and were informed by consumer testing by the Behavioural Insights Team.⁶ The integration of the BPID with Energy Made Easy, has improved the user experience for consumers.

⁵ Presentation AER DMO Forum, 5 December 2018, <https://energyconsumersaustralia.com.au/publication/default-market-offer-impacts-for-consumers/>

⁶ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-pricing-information-guidelines-2018/final-decision>



Code Mechanism

We are not aware of codes being used to directly set a price cap as the Commonwealth is proposing in relation to the DMO. Stakeholders have raised concerns about risks associated with setting a price cap via a disallowable instrument. We have confidence the AER can develop the underpinning methodologies in a rigorous and open way. In our submission to the Department of Environment and Energy consultation on the development of the industry code, we suggested that the consistency and independence of the process to adjust the price cap may be enhanced by recasting clause 14 of the draft code so that the AER makes a recommendation to the Minister who is deemed to accept the recommendation and make the determination, unless the Minister rejects the recommendation within a specified period and requests the AER make a new determination. We understand there are parallels here with the way that private health insurance premiums are set under section 66-10 of the *Private Health Insurance Act 2007*.

Conclusion

Thank you for the opportunity to comment on the Draft Determination. If you have any questions regarding our submission, please contact Jacqueline Crawshaw on 08 9220 5500 or email on jacqueline.crawshaw@energyconsumersaustralia.com.au.

Yours sincerely,

Rosemary Sinclair AM
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