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22 October 2020

Ms Merryn York
Chair (a/g) - Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

By online submission

Dear Ms York

AER Submission – Bill contents and billing requirements

The Australian Energy Regulator (AER) welcomes the opportunity to make a submission in response to the Australian Energy Market Commission's (AEMC) consultation paper on the National Energy Retail Amendment (Bill Contents and Billing Requirements) Rule (the consultation paper).

Introductory comments

We broadly agree with the rule change proponent's assessment of the issues with the effectiveness of current billing obligations. In particular there is evidence that the amount of information provided on bills, bill design, and the language used, does not encourage consumer comprehension. This, along with complexity and a lack of overall trust in the energy market, can impact the ability of consumers to engage with the market.

We consider that the proposed rule change is the best of the potential solutions identified in the consultation paper. An enforceable guideline, developed through consumer research and testing, provides an opportunity to ensure bills are meeting the needs of consumers. This solution also provides a flexible mechanism that can be responsive to emerging issues and market developments. Improving consumer engagement with bills is one step towards re-establishing consumer trust and building greater consumer participation in the market.

Billing issues

Bills allow a consumer to verify charges they must pay in exchange for a good or service – a fundamental feature of a contractual relationship. They are also an important tool to help consumers understand and manage their energy costs and usage.

The causes of low levels of consumer comprehension of energy bills have been investigated. The broad categories below provide a few examples of the key consumer issues.

- **Information is not presented in an understandable way**
  Research by the Behavioural Economics Team of the Australian Government (BETA) found that electricity bills are typically confusing and not useful to help consumers

navigate the electricity market.[1] Ofgem concluded that many consumers may engage with their bills more successfully if the information was presented more clearly and effectively signposted,[2] and essential information was set out on the front of the bill.[3] The AER's *Small Customer Billing Review* identified issues including overreliance on footnotes to explain important information, such as meter reading type.[4]

- **Confusing presentation of bill information in both design and format**
  The AER also found poor billing practices in relation to bill design including the use of small fonts, and excessive shading.[5] BETA found that consumer comprehension may be increased by presenting information in a clear and attractive way.[6]

- **Information overload on bills**
  The ACCC's stakeholder feedback indicated that consumers are currently confused by the amount of information included on energy bills, or 'information overload'.[7] Ofgem research found that 81 per cent of consumers who open mail from their utility provider do so only to review the bill amount, discarding any other information.[8] The European Commission concluded that the increase in the volume and complexity of information in bills did not lead to any measurable gains in consumer engagement, as switching rates did not increase.[9]

- **Use of technical, inconsistent language or jargon**
  Ofgem found that difficult to understand, jargon-heavy communications are a common issue for consumers.[10] Acknowledging this problem, the Consumer Policy Research Centre (CPRC) promotes the use of clear communication with consumers, such as the use of Easy English.[11] BETA's research also concluded that consumers' confidence to make decisions in the energy market is improved by clear and accessible information.[12]

- **Missing information that would be useful to consumers**
  Ofgem found that consumers feel that there should be a clearer breakdown of information, for example, at what point energy units become more expensive on tiered tariffs.[13] The European Commission's consumer study found that 68 per cent of respondents had a preference for receiving information about their energy consumption from the past 12 months, while 53 per cent of those surveyed would like to receive energy saving tips on their bill.[14] Ofgem found that a common problem consumers experience is having no easy way to compare the value of tariffs and

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[1] BETA, *Electricity information to fit the bill*, December 2018, p. 4

[2] Ofgem, *Consumer First Panel Research Findings from the Second Events – Billing Information and Price Metrics*, March 2009, p. 8.

[3] Ibid, p. 17.

[4] AER, *National Energy Retail Law: Small Customer Billing Review,* February 2014, p. 9.

[5] Ibid.

[6] BETA, *Electricity information to fit the bill*, December 2018, p. 8, citing Roberts and Baker for Centre for Sustainable Energy, *Towards effective energy information, Improving Consumer Feedback on Energy Consumption*, 2003.

[7] ACCC, *Retail Electricity Pricing Inquiry—Final Report* (REPI), June 2018, p. 287.

[8] Ipsos MORI, *Prompting engagement with and retention of written customer communications*, October 2012, p. 6, citing Hannah Mummery and Gillian Cooper, *Missing the mark: Consumers, energy bills, annual statements and behaviour change,* 2011, London: Consumer Focus, p. 9.

[9] European Commission, *Pre-contractual information and billing in the energy market – improved clarity and comparability*, September 2018, p. 107.

[10] Ofgem, *Retail Market Review: Energy bills, annual statements and price rise notifications; advice on layout and the use of language*, November 2011, p. 3

[11] CPRC, *Five preconditions of effective consumer engagement – a conceptual framework*, 2017, p. 7.

[12] BETA, *Electricity information to fit the bill*, December 2018, p.19.

[13] Ofgem, *Consumer First Panel Research Findings from the Second Events – Billing Information and Price Metrics*, March 2009, p. 17.

[14] European Commission, *Pre-contractual information and billing in the energy market – improved clarity and comparability*, September 2018, p. 132.

payment plans within the portfolio of a supplier.[15] The ACCC noted that dispute resolution and Ombudsman scheme contacts should be provided as key billing information.[16]

The above findings suggest that there are many potential billing changes that could benefit consumers. While not a perfect fix, improved bill comprehension can encourage a consumer to engage in the market and shop around for a product that meets their needs at the best price, in turn facilitating competition amongst providers.

Importantly, the ACCC's Retail Electricity Pricing Inquiry (REPI) concluded that any improvements to billing should be made on the basis of consumer testing and consumer research, and warned of the significant risks of giving retailers freedom to choose what information is relevant to consumers.[17]

Solutions

Support for the proposed rule change option

We have considered the relative advantages and disadvantages of the potential solutions identified in the consultation paper. We believe that the proposed solution to replace the existing rule 25 of the NERR with an enforceable guideline is the option that will best contribute to the achievement of the national energy retail objective (NERO) and protect consumers, now and into the future.

In particular, this solution would see:

- **Further research, consumer testing and consultation informing the solution**
  This will identify what is (and is not) critical billing information for consumers as an evidence base to ensure any reforms are effective and well targeted. This is a significant short-coming of other potential solutions noted in the consultation paper. Issues around the format and layout of bills, which are a commonly cited problem but not currently captured in the existing rules, may be considered as part of this approach.
- **The implementation of both prescriptive and principle-based approaches to regulating bill requirements**

  This would be informed by the further research, consumer testing and consultation noted above. Having an appropriate balance of prescriptive and principle-based approaches as part of a guideline would facilitate flexibility and potentially minimise the costs for market participants. There may continue to be areas where prescription is necessary. For example, taking consumer preference and the ongoing digital exclusion of some vulnerable consumers into account, there may be an ongoing need to provide for hard copy bills for some consumers.
- **Clear billing obligations for retailers, through an enforceable guideline**

  Other potential solutions that are non-enforceable could result in poor outcomes for consumers. As discussed further below, in self-regulatory environments like the telecommunications industry, supplementary regulations like the introduction of mandatory standards have been required to achieve policy objectives due to the failure of industry codes to achieve this on their own.

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[15] Ofgem, *Retail Market Review: Energy bills, annual statements and price rise notifications; advice on layout and the use of language*, November 2011, p. 3

[16] ACCC, *Retail Electricity Pricing Inquiry—Final Report* (REPI), June 2018, p. 287.

[17] Ibid, p. 289.

- **Ability to update the guideline to reflect emerging issues and market developments**

  These developments include the emergence of new service offerings, introduction of the consumer data right, the emergence of two-sided markets, and increased digitalisation of products, services and information. This solution will allow the AER to respond quickly to industry developments and provide certainty to industry. For example, the availability of real-time usage information is one development that may change consumer preferences for the level of detail provided on the bill. Having a guideline that can be readily updated would accommodate such developments.

Alternative options

The consultation paper seeks views on whether other solutions might also achieve the NERO. It is our view that self-regulatory or co-regulatory approaches, and voluntary initiatives, are unsuitable for the regulation of consumer energy bills. The proposed approach of a binding guideline can combine a number of the benefits of flexibility and reduced regulatory burdens attributed to these options with more effective protections for consumers.

We also note the important distinction between a principles-based approach and self-regulation. While both approaches allow for flexibility and focus on outcomes, the two are separate concepts that can be, but need not necessarily, be used in combination.

The AEMC's Consumer Protections Framework report considers that telecommunications co-regulatory approaches have been "highly beneficial for consumers insofar as they have enhanced competition and choice, brought new and innovative services to the market, and have successively improved service quality and performance."[18] We note that the *Telecommunications Act 1997* specifies that the Parliament's regulatory policy is specifically to promote "the greatest practicable use of industry self-regulation."[19]

Not all stakeholders share the view that self-regulation is appropriate or successful for the telecommunications sector, and there are ongoing concerns that consumers do not receive adequate protection under this model.[20] Ombudsman complaints remain high, with more than 127,000 consumers in the last year seeking redress when attempts to resolve their individual issue directly with their provider failed.[21]

As far back as 2011, the Australian Communications and Media Authority (ACMA) recognised the need to augment current industry self-regulation mechanisms with additional regulatory measures.[22] The ACCC's 2018 communications market study, for example, noted its intent to monitor communications contracts for unfair terms having identified a number of problematic practices, and found a lack of compliance with the Telecommunications Consumer Protection (TCP) code requirements (the TCP being the key co-regulatory code that codifies rules around consumer and supplier relationships).[23]

In July 2020, the Department of Infrastructure, Transport, Regional Development and Communications (the Department) released a consultation paper as part of the Consumer Safeguards Review. It suggests self-regulation works best where:

- products and services are relatively homogenous

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[18] Decker for AEMC, *Consumer Protection Frameworks for New Energy Products and Services and the Traditional Sale of Energy in Australia*, March 2020, p. 57.

[19] *Telecommunications Act 1997*, Section 4 Regulatory Policy.

[20] Decker for AEMC, *Consumer Protection Frameworks for New Energy Products and Services and the Traditional Sale of Energy in Australia*, March 2020, p. 4.

[21] Telecommunications Industry Ombudsman, *Annual Report 2019-20,* p. 11.

[22] ACMA, *Optimal conditions for effective self- and co-regulatory arrangements,* September 2011, p. 22.

[23] ACCC, *Communications Sector Market Study Final Report*, April 2018. p. 122.

- there are a smaller number of market players, and
- industry has high visibility of the problem, and is willing to disclose information on performance in addressing the problem and can manage the problem themselves.[24]

Importantly, the Department acknowledged that the "code development process has appeared to suit matters that require cooperation across industry (e.g. technical matters), rather than consumer issues".[25]

In our view, adopting a self-regulatory solution presents considerable risks for consumer outcomes:

- Enforcement is problematic in self-regulatory markets. In telecommunications, the large size of the industry means that breaches are not detected easily and industry-wide compliance checks are resource-intensive and time-consuming.[26]
- It can favour the interests of larger players in the market. In the telecommunications industry, small retailers have faced capacity constraints in their ability to participate in the process of developing codes. This can result in frameworks that favour participants with greater market share and reduce the benefits of competition for consumers.
- It can be difficult to reach agreement on contentious issues which can result in protracted negotiations, or ineffective compromises that fail to address detriment and remain problematic for those impacted (both consumer and other industry participants).
- Engaging in self-regulation processes are very resource intensive for consumer groups – often for very nominal consumer benefit.

Given the nature of bills and the current billing issues identified above, similarly we do not consider that voluntary initiatives are likely to yield positive outcomes for consumers. A fundamental function of a bill is to allow a consumer to verify payment claims – in this context, baseline obligations that are consistent and enforceable, are critical for consumers.

In summary, the AER does not support the alternative solutions outlined in the consultation paper.

Resourcing implications for the AER

While improving bills will have significant benefits to consumers, the creation of an enforceable guideline will require an increase in resourcing for the AER. Anticipated costs include consumer research and testing necessary to ensure that the content of the guideline is evidenced-based and best practice.

There may also be costs to update the Energy Made Easy website to incorporate any new billing formats and structures, specifically with respect to the features and functionality that enable consumers to provide information from their bills to Energy Made Easy.

We anticipate the development of a guideline will take up to 12 months and further time will be required for implementation. We provide this information to guide any timeframes the AEMC may attach to the guideline implementation phase of any rule change.

[24] Department of Infrastructure, Transport, Regional Development and Communications, *Consumer Safeguards Review, Part C: Choice and Fairness*, July 2020, p. 10.

[25] Ibid, p15.

[26] ACMA, *Optimal conditions for effective self- and co-regulatory arrangements*, September 2011, p. 21.

Concluding comments

Reform of billing requirements could greatly assist in consumers better understanding their energy bills and have positive effects on consumer engagement within the energy market.

We look forward to working with the AEMC on the issue of bill contents and billing requirements and would be happy to provide further information.

Please contact Arek Gulbenkoglu, General Manager (a/g), Consumers & Markets Branch on (03) 9290 1892 if you would like to discuss our submission in more detail.

Yours sincerely,

James Cox

Jim Cox

Deputy Chair