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16 January 2025

Mr Benn Barr
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000
Online via: www.aemc.gov.au

Dear Mr Barr

RRC0058 Delivering more protections for energy consumers: changes to retail energy contracts

Thank you for the opportunity to comment on this consultation paper.

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman South Australia (EWOSA), and Energy and Water Ombudsman Queensland (EWOQ). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, and Queensland. We have collectively reviewed the consultation paper and we have only responded to those questions that align with issues customers raise, or with each respective organisation's operations as they relate to the consultation paper. Case studies included in this submission are representative of multiple complaints to our offices not one-off events.

If you require any further information regarding our submission, please contact Dr Rory Campbell, Manager Policy & Systemic Issues (EWON) on 02 8218 5266, Mr Antony Clarke, Policy and Governance Lead (EWOSA) on 08 8216 1861, or Mr Jeremy Inglis, Manager Policy and Research (EWOQ) on 07 3212 0630.

Yours sincerely

Janine Young
Energy & Water Ombudsman New South Wales

Sandy Canale
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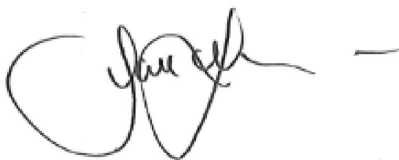

Jane Pires
Energy and Water Ombudsman Queensland

RRC0058 Delivering more protections for energy consumers: changes to retail energy contracts

Question 3: Ensuring energy plan benefits last the length of the contract.

The rule change proposes changes to the National Energy Retail Rules (NERR) to require:

- for fixed term contracts – that the retail contract ends when the discount/other benefit ends
- for ongoing contracts – that the discount/other benefit applies continually.

The purpose of the rule change is to avoid non-engaged customers being exposed to high prices after a discount or other benefit period ends but their market contract continues.

1. How material do you consider the proposed issue to be?

We receive complaints about benefits such as discounts ending which indicate a range of material customer impacts, including:

- customers at risk of, or experiencing, vulnerability and/or affordability difficulties are particularly impacted by higher than expected bills when a benefit ends given the onus is on the customer to contact the retailer to initiate new contract discussions
- some customers do not realise a benefit has ended until they receive a higher than expected bill, evidencing that some current retailer notice practices are not consumer centric
- it is burdensome for customers to have to keep track of benefit expiry conditions and then initiate new contract discussions particularly if their individual circumstances impact their capacity to engage, such as affordability or language difficulties or limited/no internet access.

See Case study 1.

2. Will the proposed solution address the issue raised in the rule change request?

The proposed rule change is an appropriate approach to the issues raised. It builds on existing arrangements for fixed term contracts and fixed benefit periods in the NERR and National Energy Retail Law (NERL).

The rule change must include rigorous requirements for the timing and content of customer notices ie plain English when a contract and benefit period end at the same time. The combined notice requirements should be at least equal to the current separate requirements for:

- retailer notice at the of end of a fixed term retail contract – Rule 48 of the NERR
- retailer notice at the end of a benefit change – Rule 48A of the NERR
- the Australian Energy Regulator (AER) to make a Benefit Change Notice Guideline – Rule 48B of the NERR.

The rule change proposal and consultation paper do not discuss the AER's Benefit Change Notice Guideline. The AEMC should consider the role of this guideline under the proposed rule change to determine whether it needs to be substantially amended or replaced. For example, certain benefit types are likely to be excluded from the proposed rule change. Currently, Rule 45A of the NERR includes a general definition of a benefit change. Rule 48B empowers the AER's Benefit Change Notice Guideline to be more specific about the kinds of benefits that are excluded from requiring retailer notice. Section 2.2 of the Benefit Change Notice Guideline details these exclusions, such as one-off gifts and sign-up credits. The AEMC will need to consider what benefit types are excluded from the proposed rule change and the extent to which these exclusions should be detailed in the NERR and an updated Benefit Change Notice Guideline and/or a new guideline. The requirements need to be clear to avoid confusion for retailers and customers.

Question 4: Removing unreasonable conditional discounts.

A previous rule change limited conditional discounts/fees to the reasonable costs the retailer is likely to incur when payment conditions are not met, applicable to new contracts from 1 July 2020. The current rule change proposes to apply the same provisions to legacy contracts from prior to 1 July 2020.

1. What is the materiality of the problem raised in the rule change request?
We do not have specific data about the number of complaints we receive where the customer's contract is a legacy conditional discount contract before 1 July 2020. However, complaints about conditional discounts generally indicate that customers at risk of, or experiencing, vulnerability and/or affordability difficulties are particularly impacted by missed discounts when they cannot meet payment conditions and retailers require Ombudsman complaint intervention for taking appropriate action to address the affordability impact. See Case study 2.

2. Will the proposed solution address the issue raised in the rule change request?
Grandfathering the 1 July 2020 regulations is appropriate. Overall we have seen a significant reduction in complaints to our offices about conditional discounts/fees following increased regulation with:

- the introduction of Rule 48A and Rule 48B of the NERR on 1 February 2018, requiring retailers to send end of benefit notices (which improved consumer awareness of expiring conditional discounts)
- the introduction of Rule 46C and Rule 52B of the NERR on 1 July 2020, limiting conditional discounts/fees to the reasonable costs incurred by the retailers.

Question 5: Preventing price increases for a fixed period.

The rule change proposes to prevent any increases in tariffs or charges payable under a market retail contract for a specified fixed period following commencement of an energy plan. The three proposed options noted at this stage are:

- prevent price increases for the first 100 days, so consumers would not have price increases until after their first bill (if billed quarterly, in line with the current billing frequency required for customers on standard retail contracts)
- allow price increases only once a year
- empower the AER to collect data from energy retailers on the number of price changes made to market retail contracts, and the level of those price changes, as part of its regular performance reporting.

The purpose of the rule change is to provide consumers with greater certainty and predictability when entering into new market contracts.

1. What is the materiality of the problem raised in the rule change request?
Complaints to our offices about prices increasing shortly after switching retailers/changing plans indicate a range of material customer impacts, including:

- reduced consumer trust in energy retailers and the energy market
- reduced price certainty and increased likelihood of bill shock
- increased burden on customers to conduct research and switch more frequently
- lack of opportunity to take action to avoid higher rates by switching or adjusting usage behaviour.

See Case study 3 and Case study 4. Case study 3 also indicates that customers value price certainty for feed-in tariffs along with tariffs that apply to usage.

Special consideration or additional provisions may be required for the following customer types:

- customers at risk of, or experiencing, vulnerability and/or affordability difficulties who have less capacity to engage with the market and/or to afford higher than expected bills
- customers with basic electricity meters, as their billing rights may transfer on an estimated meter read or retrospective meter read, adding to potential billing complexity[1]
- customers changing gas retailers, as it can still take up to three months to switch, meaning a customer may be exposed to unexpectedly higher prices for longer while waiting for a transfer[2].

2. Which of the proposed solutions would best address the issue raised in the rule change request?
We support in principle the prevention of increases to tariffs or charges payable by the customer under a market retail contract for a specified fixed period following commencement of an energy plan.

Our complaints indicate that this should be extended as customers expect this to include preventing a reduction in feed-in tariffs for solar generation, discharging battery-stored usage for a Virtual Power Plant and the like.

It is too early to consider the pros and cons of the 100 day option and the once per year option. That can only occur when these options have been developed in more detail through the AEMC's review, as well as other factors such as whether certain innovative products should be exempt.

We support in principle empowering the AER to collect data around price changes as part of its regular performance reporting and including it in the publicly published quarterly data. Performance reporting data provides valuable insights into retail market outcomes, trends and issues. The increased transparency around price changes would likely outweigh the cost and burden to retailers, especially as retailers already have extensive systems and procedures in place to fulfil existing performance reporting requirements.

Question 6: Removing fees and charges.

The rule change proposes to remove or limit fees and charges that are typically incurred by consumers in the usual business of entering into, maintaining and exiting a retail energy contract. Retailers would be prevented from charging the following types of fees, unless State or Territory legislation authorises them being charged:

- account establishment fees
- special meter read fees (move-in and move-out reads)
- credit card payment fees except for the application of cost reflective reasonable costs
- late payment fees except for the application of cost reflective reasonable costs
- early termination fees
- over the counter fees at Australia Post
- paper bill fees.

The purpose is to improve transparency and ensure advertised prices are as close as possible to the price a customer would pay.

1. What is the materiality of the problem in this rule change request?
Complaints to our offices about fees and charges indicate that:

- customers at risk of, or experiencing, vulnerability and/or affordability difficulties are particularly impacted by unexpected additional costs like late payment fees

[1] EWON, Spotlight On: Challenges in the new world of switching energy providers, March 2023
[2] Ibid.

- customers with individual circumstances impacting their capacity to engage, such as limited internet access, can be at greater risk of incurring fees and charges like late payment fees
- customers may not notice fees and charges until they receive a higher than expected bill and/or experience affordability difficulties
- customers experience frustration when they receive automated fees or charges and the retailer does not take into account individual or mitigating circumstances.

See Case study 5, Case study 6 and Case study 7.

2. Will the proposed solution address the issues raised in the rule change request?

In principle, we support measures to improve transparency for consumers and better align fees and charges across jurisdictions, as long as this does not result in:

- a reduction in consumer protections in any state jurisdiction
- unintended complexity in the way the rule change interacts with existing derogations eg if the rule change takes a "white-listing" approach whereby only prescribed fees and charges can be imposed on customers, this could result in unintended complexity given most jurisdictions currently take a "black-listing" approach whereby they prohibit specific fees.

Consistency with existing regulatory requirements will reduce confusion for customers, simplify compliance for retailers and help reduce complaints. For example, EWON has investigated three systemic issues where particular retailers charged large cohorts of NSW customers fees for paper bills or over the counter payments at post offices, which have been prohibited in NSW since January 2018. In each instance, inconsistency across states exacerbated the issues as procedures and/or system logic for other states where the fees are allowed were inadvertently applied to NSW customers. See Case study 8 and Case study 9.

We support prohibiting special meter reads fees (move-in and move-out reads) for remotely read meters where there is no physical attendance to read the meter. The consultation paper states that the AEMC will consider whether separate arrangements are necessary where a customer elects to disable the remote comms capability of their smart meter, thereby requiring the retailer to make arrangements to manually read the meter. However, the rule change proposal and consultation paper do not explore the implications for legacy manually read meters. For these meters, special meter read fees (move-in and move-out reads) are associated with a service provided by distribution networks with specific business to business purposes that help to ensure accurate billing. Given that smart meter installation across the market will take at least another five years, the AEMC should consider whether prohibiting special meter reads fees for legacy manually read meters will have unintended negative consequences e.g. increased likelihood of a customer having estimated initial and/or final meter reads.

Appendix 1 – Case studies

Case study 1 – Customer does not realise a 23% discount has ended until he receives higher than expected bills for gas and electricity
A customer was concerned about his household budget and increasing energy costs so took steps to reduce his gas and electricity usage. He received a gas bill for the period May 2023 to July 2023 for $390. According to the usage statistics on the bill, he had reduced his usage by 15% compared to the same period the year before – but the bill the year before had been lower at $290. He also received an electricity bill for the period April 2023 to July 2023 for $750. He had reduced his usage by 40% compared to the same period the year before, but the cost of the bill was very similar rather than lower. He also thought he should be receiving a 23% discount but could not see this on the bills. He contacted his retailer to dispute the bills and considered their responses to his questions were vague and confusing. He contacted an ombudsman's office in September 2023 and agreed for the matter to be referred back to the retailer at a senior level in the first instance. He returned as he considered the retailer was focusing on ideas to reduce usage instead of investigating his concerns, and he had already reduced usage as much as he could. Our review found that the customer was billed on actual reads for both accounts. He was receiving a 23% discount on his gas account until 17 August 2022. The retailer demonstrated that it sent the required benefit change notice on 7 July 2022 via post. He was receiving a 23% discount on his electricity account until 1 July 2022. The retailer demonstrated that it sent the required benefit change notice on 23 May 2022 via post. Post was the customer's preferred contact method as he was not able to afford home internet. The customer acknowledged that he must have missed the notifications. The customer had not noticed the lack of discount on his bills until the cooler months which were historically his highest bills. The lack of discount contributed to the bills being higher than the year before even though the customer's usage was significantly lower. The customer agreed to contact the retailer to provide explicit, informed consent to be placed on new gas and electricity plans. The gas and electricity plans included a 15% discount for 12 months, the best offer available at that time. The customer was frustrated that the onus would be on him to look out for notices and follow up with the retailer about new plans in 12 months' time, especially given his lack of access to the internet and his affordability difficulties. The retailer also offered to apply a goodwill credit of $150 each to the gas and electricity accounts, a total credit of $300. This put each account $150 in credit, but with new bills due to be issued soon. Our office advised the customer of the assistance available to him should he have difficulty paying the new bills once issued.

Case study 2 – Advocate concerned about customer's plan with a pay on time discount
An advocate started helping a customer, his elderly mother, with her electricity account. He realised she had not paid her most recent bill on time and therefore missed out on a pay on time discount. As she was on a limited income, the missed discount made a big difference to her household budget. He thought it was unsuitable for his mother to be on this plan as she was having difficulty managing her bills, so he contacted the retailer. The retailer discussed potential better offers but he was dissatisfied that it declined to apply the missed pay on time discount from the recent bill. He contacted an ombudsman's office and agreed for the matter to be referred back to the retailer at a senior level in the first instance. He returned as he was not contacted in the agreed timeframe, and his mother spoke to the ombudsman's office to provide permission for him to handle the complaint on her behalf. Our office's review found that the customer was on a market plan with a 17% pay on time discount

that still had several months before it was due to end. She had paid bills on time and received the discount since the plan started, up until she paid the most recent bill two weeks late and missed out on a total pay on time discount of $100. She was receiving the appropriate concessions and energy relief payments. During the review, the customer spoke to the retailer and gave consent to be put on a better offer with an 18% guaranteed discount.

The retailer acknowledged that the customer had a history of paying on time before the late payment, and applied the missed pay on time credit of $100. The retailer also acknowledged that although it met its Better Offer message obligations under the Better Billing Guidelines, it could have done more to assist the customer as it was evident in the account history that there were signals of affordability issues. The retailer applied a further credit of $370, the amount the customer would have saved if she had been on the better offer for the preceding 12 months. This placed the account slightly in credit. Our office advised the advocate of the retailer's obligations to provide assistance if the customer had affordability issues with her next bill once issued.

The advocate was happy with the outcome. However, he advised our office that he considered monitoring for messaging on bills and notices from the retailer about better offers was too burdensome for customers like his mother who are in vulnerable circumstances.

Case study 3 – Customer's rates increase after three weeks with new retailer

The customer switched to a new retailer on 19 June 2023 after extensive research on the best rates available in the market, including consulting Energy Made Easy. After three weeks, she received a notification that the usage tariffs would increase and her solar feed-in tariff would decrease. The prices were higher than the prices she was receiving with her previous retailer before switching, and the feed-in tariff was also worse. She ended up switching back to her previous retailer shortly after receiving the price increase notification.

She contacted an ombudsman office to discuss whether it appeared the retailer had breached any rules. Our office discussed general information about price increases and notice requirements. We advised that we could review whether the retailer met relevant rules. The customer advised that based on the information provided, she thought they had met the requirements. However, she was unhappy that a price change so soon after switching was allowable and felt that it was not a "level playing field" for customers trying to find a fair price.

Case study 4 – Customer's rates increase before transfer completes

A customer contacted a retailer to discuss available offers and decided to switch her electricity. She signed up to a 12 month plan in June 2023, with rates 16% below the reference price. Shortly after, she received an email advising that the prices would increase on 1 July 2023, and be only 13% below the reference price. She contacted the retailer to dispute the rates increase but was not satisfied with its response. She contacted an ombudsman's office and agreed for the matter to be referred back to the retailer at a senior level in the first instance.

She returned as she did not hear from the retailer in the agreed timeframe. Our review found that the customer was sent a welcome pack on 13 June 2023. The billing rights did not switch until 3 July 2023 as the retailer waited until after the cooling off period to initiate the transfer. Between the customer receiving the welcome pack and the billing rights transferring, the retailer sent a five business days' notice that the rates would increase from 1 July 2023. The retailer offered a goodwill credit of $200 in acknowledgement of the unfortunate timing and poor customer experience. The customer accepted the outcome and decided to remain with the retailer.

Case study 5 – Customer charged late payment fee while waiting for assistance payment

A customer received an electricity invoice in October 2024 for $130 that she was not able to pay by the due date due to affordability difficulties. She knew that a National Bill Relief Payment instalment was due to be applied soon which would cover most of the bill. She then received a reminder notice with a confusing amount owing on it. She contacted the retailer and it advised that a $75 National Bill Relief Payment instalment had been applied as anticipated. However, she was charged a $12 late payment fee for not paying bill in full on time. The customer was not happy that she was charged a late payment fee even though the National Bill Relief Payment had covered so much of the bill amount. She considered it was unfortunate timing that the bill was issued before the payment was applied and not vice versa. She considered $12 was a high fee in proportion to the original bill amount and what was left owing. She contacted an ombudsman's office and agreed for the matter to be referred back to the retailer at a senior level in the first instance.

Case study 6 – Customer charged late payment fee for being one week late paying a low amount

A customer received a quarterly gas bill for $120 that was due on 8 November 2023. He paid the amount in full on 15 November 2023. On his next bill in January 2024, he noticed he had been charged a $12 late payment fee. He noted that this was the equivalent of 10% of the entire bill amount. He went back through his records and noted that the had never paid a bill late before. He contacted the retailer to ask if they would consider waiving the fee on the basis of the low bill amount and his previous good payment history. He considered the retailer just kept referring him to compare the due date and payment date to confirm the fee was charged correctly. He acknowledged that the fee was technically correct but was expecting them to consider his individual circumstances. He contacted an ombudsman's office and agreed for the matter to be referred back to the retailer at a senior level in the first instance. The retailer provided an update to our office that it waived the $12 fee and applied a goodwill credit of $25.

Case study 7 – Customer charged credit card fees when bill was paid with solar credits

A customer with solar panels installed at their property received solar feed-in credits that consistently covered the usage and supply charge. This meant they did not need to make any payments toward the account. The customer had been charged credit card fees on their bills, even though they were not making any payments to the account. When the customer contacted the retailer, it advised that the fee was correct.

The customer contacted an ombudsman's office as they had not been able to resolve the issue. The complaint was referred back to the retailer at a senior level in the first instance. The retailer apologised to the customer, reimbursed fees of $8.69 and offered a $50 goodwill gesture, in recognition of poor customer service.

Case study 8 – Systemic Issue – NSW customers charged paper bill fees in error

During a billing investigation, EWON's dispute resolution team identified that a NSW customer was charged paper bill fees. The retailer waived the fees as part of the complaint resolution. The Policy team then investigated the matter as a potential systemic issue. The retailer identified that a system error resulted in 17,000 NSW customers inadvertently incurring paper bill fees. The retailer employed a system fix to prevent the fees being charged moved forward. It also applied credits to all impacted accounts to offset the fees and adhered to the overcharging requirements of the NERR.

Case study 9 – Systemic Issue – NSW customers charged over-the-counter payment fees in error
During a billing investigation, EWON's dispute resolution team identified that a NSW customer was charged fees for paying bills over the counter at the post office. The retailer waived the fees as part of the complaint resolution. The Policy team then investigated the matter as a potential systemic issue. The retailer identified that a system error resulted in over 3,000 NSW customers inadvertently incurring over-the-counter payment fees. The retailer confirmed that a contributing factor was the inconsistency in allowable fees across different states. The retailer employed a system fix to prevent the fees being charged moved forward. It also applied credits to all impacted accounts to offset the fees and adhered to the overcharging requirements of the NERR.