

17 April 2018

Mr. Ben Davis  
Director  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Ben,

Reference Code: RRC0012

**Rule Change Request Consultation Paper - Preventing discounts on inflated energy rates**

Powershop Australia Pty Ltd (**Powershop**) thanks the Australian Energy Market Commission (**AEMC**) for the opportunity to provide comments in relation to the Consultation Paper NER Amendment (Preventing discounts on inflated energy rates) Rule 2018 (the **Paper**).

Set out below our responses to the questions posed in the Paper.

**Question 1 - Prevalence of the issue raised in the rule change request:**

How prevalent is this practice of discounting in market offers where any (or all) of the demand, usage or daily supply rates are above these rates in the equivalent standing offer in the same distribution supply area? How prevalent has this practice been historically?

Powershop's understanding is that this discounting strategy is not common practice in the industry. This is confirmed by the AEMC's findings that only 2% of energy offers in Energy Made Easy (**EME**) would breach the proposed rule.

Powershop does not discount off rates that are inflated above standing offer rates.

**Question 2 - Standing offers:**

Do stakeholders agree that retailers applying discounts in market offers to rates above that retailer's standing offer rates is inherently confusing?

Powershop agrees that retailers applying discounts to market offers rates above standing offer rates can be inherently confusing for some customers.

**Question 3 - Standing offers as a "base rate":**

Should standing offer rates be considered base rates, or effectively a "cap", for the purpose of applying discounts to market offers?

Standing offers are often treated as a base rate for the purpose of applying discounts to market offers, but Powershop's view is that introducing the concept of a 'cap' could lead to adverse outcomes for customers.

Powershop's concern is that further regulating offers could lead retailers to increase their standing offer prices as a risk mitigation strategy to ensure that they do not breach the proposed rule. This could affect around 1,023,000 Queensland customers and around 735,000 New South Wales customers who

are on standing offers at the end of June 2017.<sup>1</sup> The impact of this risk mitigation could result in vulnerable customers on standing offers paying more for their electricity than they do today.

**Question 4 - Appropriateness of ACL and RPIG:**

Are the ACL and the RPIG generally the appropriate mechanisms to govern retailers making and advertising market offers to consumers?

Yes.

**Question 5 - Civil penalty recommendation:**

Should a civil penalty provision be added to sections 25 and 37 of the NERL, in respect of the requirement to present standing and market offers in accordance with the RPIG? What would be the benefits of doing so? What would be the costs?

Given that only 2% off all offers on EME would breach the proposed rule, the only apparent benefit to including civil penalty provisions would be the AER having stronger enforcement options available.

In terms of cost, Powershop's view is that vulnerable customers may experience increased standing offer prices as a result of the aforementioned retailer risk mitigation strategy.

**Question 6 - Direct prohibition within the NERR:**

Should some specific types of market retail contracts be expressly prohibited under the NERR?

Powershop's position is that in a deregulated market, different types of market retail contracts should not be expressly prohibited under the NERR as this has the potential to impede competition and limit innovation.

If a particular market retail contract has, for example, the potential to mislead a customer existing Australian Consumer Law protections are available to prohibit the conduct.

**Question 7 - Market retail contracts to be directly prohibited:**

Do you agree with the Commission's initial discount prohibition as applied to the market retail contracts as set out in section 4.2.2?

Powershop agrees with the intent of the AEMC's initial discount prohibition but believes further consideration must be given to the unintended consequences as outlined above.

**Question 8 - Exclusion of fees and penalties:**

Do you agree with the exclusion of fees and penalties from consideration of whether there is an equivalent standing offer in the Commission's initial position?

Yes.

**Question 9 - Materiality and discretion for the AER:**

Do you think the concept of materiality for differences between tariff structures and benefits and services in standing offers and market retail contracts is appropriate?

Powershop's view is that the market needs certainty in order to design innovative offers that ultimately benefit customers. As noted by the AEMC in the Paper, the use of materiality and giving the AER

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<sup>1</sup> AER Annual Report on Compliance & Performance of the retail energy market, section 1.2 Standard and market retail contracts

discretion to determine what is an “equivalent” standing offer for every market retail contract provides no certainty to the market. Therefore, the proposed rule should be clear and provide certainty.

**Question 10 – Equivalency on energy payments:**

The basis on which energy payments are made may differ between market retail contracts and standing offers. Is it appropriate for differences of this kind to prevent the standing offer being an equivalent standing offer (assuming the other conditions for equivalence are met)? If not, what approach would be preferable?

Powershop considers the conditions appropriate.

**Question 11 – Market retail contract and standing offer availability to the same customer:**

The Commission’s initial position relies upon the market retail contract and standing offer being available to the same small customer (if the retailer were the designated retailer for the customer’s premises) for matching the market retail contract to the standing offer for the discounting prohibition on energy rates to take effect. Is this appropriate?

Powershop considers this appropriate.

**Question 12 – Energy rates and energy payments:**

Do you consider that the definitions of energy rates and energy payments in the indicative drafting are clear and workable? Please note any potential ambiguities or items that you consider should be specifically included in or excluded from these concepts.

Powershop considers the definitions workable. ?

**Question 13 – Approach to dual fuel contracts:**

Is the Commission’s approach to dual fuel contracts in the indicative drafting appropriate? Are there any issues in the treatment of the types of contracting for dual fuel services, particularly in matching the relevant energy rates, energy payments, tariff structure, and benefits and services to an “equivalent” standing offer, that have not been addressed in the Commission’s initial position?

Powershop does not see any issues with the treatment of dual fuel contracts under the proposed rule.

**Question 14 – Prices changes throughout a contract:**

Should market retail contracts with fixed prices for a period (or throughout the life of) be considered differently from contracts with variable prices for the Commission’s initial position?

Powershop believes that fixed price contracts should not be considered differently from contracts with variable prices due to the unintended consequences of such an exemption.

Should electricity costs start to decrease, some customers locked into a fixed price contract may not reap the benefits of the reduction in costs due to a retailer pricing model that complies with the proposed rule.

While Powershop acknowledges that a reduction in market offer prices generally won’t lead to a breach of the proposed rule it is Powershop’s view that, should the proposed rule come into effect, these customers need to be protected. Powershop also acknowledges that while some market offers do not

have exit fees others do and customer apathy means that a customer may not switch out of their fixed price contract when energy rates decrease.<sup>2</sup>

**Question 15 – Likely response to a rule reflecting the indicative drafting:**

What would be the expected response of retailers to a rule implementing the indicative drafting?

As previously stated, given that only 2% of current market offers would breach the proposed rule and all of those offers were from one retailer – Powershop does not anticipate a dramatic response from an industry perspective. But Powershop encourages the AEMC to consider the unintended consequences of standing offer prices going up as a result of the potential retailer risk mitigation strategy noted above.

**Question 16 – Regulatory burden of a rule reflecting the indicative drafting:**

Would a rule implementing the indicative drafting be burdensome to maintain compliance with?

Powershop's view is that implementing the indicative drafting of the rule would be burdensome. This is on the basis that the issue being addressed is relatively minor and that a rule change may not be beneficial from a return on investment perspective – in fact it may have more negative effects than positive when it comes to standing offer pricing.

**Question 17 – Civil penalties for part one of the initial position:**

Is a civil penalty recommendation for a rule reflecting the Commission's initial position in this consultation paper appropriate?

If the aim is to give the AER more leverage in terms of enforcement then yes, civil penalty provisions are appropriate.

**Question 18 – Regulation of standing offers:**

Would a rule in response to this rule change request need to consider jurisdictions or parts of the NEM where the standing offer is regulated?

Yes. All regulatory bodies within the NEM should be aligned as much as possible to ensure a consistent and fair offering to all customers across Australia.

**Question 19 – Commencement dates:**

Should a rule, if made, commence immediately upon being made (on 15 May 2018 according to the Commission's proposed timeline) or should its commencement be delayed to provide time for retailers to implement compliance systems? If it should be delayed for this reason, what period of time will retailers require?

If the proposed rule were to be made, its commencement should be delayed to enable retailers to make any necessary adjustments to compliance systems. Commencing the new rule on 15 May 2018 would be irresponsible given some retailers may need to, for example:

- adjust standing offer rates (which may be impossible given standing offer prices can only be changed by retailers every six months);
- adjust an entire years pricing strategy; or
- adjust market offers.

If the proposed rule is to be implemented, Powershop would suggest a go-live date of 1 January 2019.

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<sup>2</sup> Energy Australia's fixed price offer (NSW) does have exit fees whereas AGL's offer (VIC) does have exit fees

This would allow retailers ample time to make any required adjustments and would align with a normal price change period.

**Question 20 - Complementarity of the rule change to current arrangements:**

Given the current regulatory arrangements does the rule change complement these arrangements and address discounting practices which can cause confusion and consumer detriment? Do you consider there are instances where consumer detriment could result from discounting practices described in the rule change request, where there may not be a breach of the ACL or where the ACL may be costly to have recourse to?

Powershop's view is that the proposed rule change does not complement current regulatory arrangements. Significant consumer detriment results from the use of fixed benefit period contracts.

**Question 21 - Complementarity of the rule change to potential future arrangements:**

Would a final RPIG including the comparison pricing table requirement in the draft RPIG published 30 January 2018 reduce the need for, or reduce the benefit for, a potential rule on this rule change request? Are there other aspects of the draft RPIG that would reduce the need for, or reduce the benefit of such a rule?

Powershop's view is that the comparison table requirement in the draft Retail Price Information Guideline removes the need for this rule change, especially given that only 2% of offers would be caught by the proposed rule and the potential adverse effects on standing offer pricing.

**Question 22 - Consideration of retail gas:**

Is there a reason why a rule made in response to this rule change request should not cover retail gas offers? Is there a case to exclude gas from a rule, or to treat retail gas differently from retail electricity?

Powershop does not see a reason for this rule to not cover gas offers, nor does it see a need to treat gas and electricity differently in the context of the proposed rule change.

In closing, Powershop supports the intent of the proposed rule change to the extent that it is trying to address the confusing market offer strategies used by some retailers. However, Powershop's view is that the desired outcome of this rule change may be achieved through other recent changes such as:

- Benefit Change Notice Guideline
- Stronger messaging around when fixed benefit contracts are ending which should drive better customer engagement in the market
- Retail Pricing Information Guidelines - the new comparison table requirement provides customers with a tool that enables them to easily compare offers.

If you have any queries or would like to discuss this submission further please do not hesitate to contact me.

Yours sincerely,  
**Haiden Jones**  
Retail Compliance Coordinator