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27 March 2014

Mr John Pierce
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Electronic lodgement – RRC0001

National Energy Retail Amendment (Retailer price variations in market retail contracts)

Dear Mr Pierce

United Energy and Multinet (the businesses) appreciate the opportunity to respond to the AEMC Consultation paper titled, National Energy Retail Amendments (Retailer price variations in market retail contracts). Victoria has not yet adopted the National Energy Customer Framework (NECF) and has no firm date on NECF commencement; however the businesses are concerned about the proposed amendment. A similar consultation has occurred in Victoria on this same issue and a more practical outcome may be adopted in Victoria at the conclusion of the review.

CUAC and CALC have proposed the first rule change to the National Energy Retail Rules which seeks to prevent any changes to retail tariffs or charges payable by the customer during a fixed term market retail contract. The proposed rule change would apply to electricity and gas customers on fixed term market contracts.

The businesses have contributed to and support the ENA submission. The two key concerns raised in the ENA submission in respect of the proposed changes;

- The proposal unnecessarily constrains the flexibility for customers and retailers to negotiate contracts by mutual agreement, limiting choice and innovation; and
- If it is implemented without careful drafting of consequential provisions, the proposal may unintentionally prevent the recovery of legitimate costs by distribution network service providers.

The businesses recognise that the rule change is aimed at improving customer protections by providing greater certainty and transparency.

The consultation paper notes that a number of costs which are included in the make up of retail tariffs may be outside of a retailers control and hence may not be price risks as readily managed by retailers.

The businesses would be concerned if “fixed term contracts” did not allow flow on price increases where required, or equitable, where changes occur or are approved by regulatory authorities, during the term of the contract. A few examples where regulated price increases (or decreases) might occur beyond the retailers’ control include:

- Legislation for distributors to incur certain additional transmission costs mid-term of the retail contract through a change in jurisdictional regulation;
- Legislation for feed in tariff schemes, carbon tax, F factor schemes where the network charges can increase (or could also reduce) during the term of the retail contract;
- S factor pass throughs where the electricity distributor is making the choice to pass through or bank each year in the annual network tariff submission could impact retail prices by as much as 5%;
- Annual distribution and transmission price increases and price reductions across pricing periods; or
- Retailer cost ROLR determinations or network costs ROLR determinations and approved pass throughs where the pass through determination by the regulator could occur after the contract was agreed.

If changes in costs beyond the retailers control are not allowed to be passed through to customers on fixed term contracts then the provisions in the National Electricity Rules (NER) 6B.A3.1/National Gas Rules (NGR) 508 would also preclude distributors from recovering these charges. The businesses would be concerned if the cost recovery of network charges were impacted by this proposed amendment to the NERR.

Distributors have no way of knowing which types of retail contracts a customer is on, in order to manage these processes. The result may be more disputes regarding line items in a network bill and may ultimately lead to increased network charges. Under a revenue cap these unrecovered costs would be socialised across the remaining customers.

The existence of the NER/NGR rules noted above mean that any lack of recovery by the retailer or inability to bill by having these types of contracts results in the distributor being precluded from recovering the charges and shifts the risks to network businesses. The businesses are concerned by these rules which lead to less favourable outcomes by socialising the costs across the remaining customers. A preferable rule would be to repeal or amend NER 6B.A3.1/NGR 508 so that they do not prevent recovery where retailers actions prevent recovery of network charges.

Given the NER/NGR rules which prevent network charges being recovered, the businesses do not support this proposed amendment to the NERR.

Given the concern by CUAC and CALC a preferable approach may be to ensure that retailers are required to specifically highlight the clause that allows price to be varied when gaining explicit informed consent for a fixed term contract.

Should you have any questions in relation to this consultation please give me a call (03) 8846 9856.

Yours sincerely

Verity Watson
Manager Regulatory Strategy