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**ENERGY MARKETS and
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Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
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AEMC reference: RRC0001

Dear Mr Pierce

Thank you for the opportunity to comment on the Australian Energy Market Commission's (AEMC) *National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 – Consultation Paper*. The following submission contains the views of officials in the Energy Markets and Programs Division (the Division) of the Department for Manufacturing, Innovation, Trade, Resources and Energy.

The Consumer Action Law Centre (CALC) and Consumer Utilities Advocacy Centre (CUAC) have submitted a rule change request to the AEMC to amend the National Energy Retail Rules (NERR) to prohibit price variations in market retail contracts during the fixed term of the contract.

The Energy Market and Programs Division (the Division) considers that the ability of retailers to offer a wide range of contract types is a critical part of a competitive energy retail market. Consumers have different preferences depending on their individual circumstances. The availability of a wide range of energy retail offers provides greater opportunity for customers to find an offer that best suits their particular needs.

On 1 February 2013 South Australia moved to a fully deregulated energy retail market and therefore is well placed to comment on its experience in relation to the market offers of retailers in such a market.

South Australia is experiencing the benefits of retail price deregulation, with a range of pricing structures now available in the market. Customers can choose from fully fixed, partially fixed or fully flexible offers and the AEMC has also found that South Australian households were potentially able to save around 9% by switching to a market offer in 2012-13.

While most market retail contracts are fixed period contracts that allow for price variations during the fixed period, there are a number of more innovative offers appearing in the market. One example of this is the Alinta Fair Go 15 contract which has no fixed term, and therefore no exit fee, and also offers a substantial (15%) discount off the customer's electricity consumption charges based on Alinta's standing tariff for South Australia if bills are paid in full by the due date.

Two fully fixed offers are also available in South Australia, being the Origin Energy Rate Freeze contract and the Energy Australia Rate Fix contract. Currently, these contracts are more expensive than other market offers. However, the Division is aware that some customers in South Australia would prefer price certainty over a lowest priced offer that carries the risk of price changes. Increasing consumer awareness of these types of contracts and their benefits may encourage consumers to seek them out and retailers to make them more attractive.

Based on this experience the Division considers that, since deregulation in South Australia, retailers have responded to the needs of consumers by offering a broad range of retail market contracts, without the need for regulation prescribing the structure of those contracts.

To facilitate competition, the NECF includes a number of measures aimed at improving the information available to consumers and encouraging more active engagement in the energy market. Specifically, the requirements relate to increasing price disclosure and transparency for consumers.

The National Energy Retail Law (NERL) provides for the AER to issue Guidelines that specify how energy pricing information is to be published by retailers. The aim of the Guidelines is to assist consumers in readily comparing contract prices. The Guidelines require retailers to produce an Energy Price Fact Sheet for each of their generally available contract offers.

The NERL also requires the AER to develop a price comparator website for this purpose. The "Energy Made Easy" website has provided customers with a way of quickly and easily accessing and comparing different energy contracts.

While the NERL requires extensive information provision to small customers, the Division recognises that some customers may be dissuaded from actively engaging in the energy market because they are overwhelmed or confused by the information available to them or because they simply don't understand the contract terms. For example, a customer seeking a fixed price offer using the Energy Made Easy website to compare offers in South Australia would need to scroll through up to eight pages of results to find a fully fixed price offer. Further, customers may be confused by offers which are defined as "fixed term" as these offers refer only to the contract length being fixed but may allow for variation of prices during the contract period.

The Division considers that energy retailers are currently subject to extensive regulation to ensure transparency and disclosure in their offers of market contracts. However, the information available to consumers remains complex and some consumers may struggle to extract relevant information that will help them make an efficient decision. Specifically, the Division considers that improvements to the

Energy Made Easy website that allow for more refined filtering and clearer contract terminology would be of great benefit to consumers in comparing energy market offers. The Division understands that the AER is currently reviewing the Energy Made Easy website. The Division also considers that there would be merit in stakeholders working together to develop common terminology for use in the retail energy market that is easier for consumers to understand.

CALC/CUAC further argue that retail price variations during the term of fixed term contracts, coupled with the imposition of exit fees, have the effect of dissuading consumers from actively engaging in the market. They argue that consumers believe any benefit to be gained by switching contracts will be outweighed by the cost of exit fees and the likelihood that any new retailer will also vary their prices.

South Australia has already taken steps to address the negative impact of exit fees on consumers' willingness to engage in the market. The *Electricity (General) Regulations 2012* impose additional obligations on retailers operating under the NERL. Regulation 44C requires retailers to offer one exit fee-free market contract. This rule also requires retailers to clearly identify its exit fee-free contract in the naming of the contract and to inform customers of its existence. This is to ensure that customers who want the ability to freely move between market contracts have a range of offers with no associated exit fee available to them and that they are easily identifiable.

Consultation in relation to the exit fee policy found that neither retailers nor consumer groups were supportive of any proposal to completely abolish exit fees on market contracts. Some retailers indicated they would be likely to recover the cost associated with early termination through a general increase in their prices. Consumer Groups were also concerned about the potential impact that abolishing exit fees would have on prices.

The Division's view is that South Australia's response has struck the right balance in providing flexibility for both retailers and consumers. This response ensures that consumers who are concerned about potential price increases or who want to freely move between contracts have the option of an exit fee-free contract, whilst not restricting pricing structures for retailers or impacting the range of offers with discounts or incentives that are available to customers who are willing to lock into contract terms.

Further, in its rule change proposal, CALC/CALC indicate that customers' lack of understanding of various offers/information has also led to problems (or allegations) of misrepresentation of market offers by retailers, particularly during door-to-door sales.

The Division notes that the Australian Competition and Consumer Commission (ACCC) has regulatory responsibility for ensuring compliance with competition, fair trading and consumer protection laws as set out in the *Competition and Consumer Act 2010* (Act).

The ACCC enforces these laws as they apply to energy markets and, in particular, is responsible for ensuring compliance by energy retailers with the misleading and

deceptive conduct provisions of the Act. The ACCC undertakes regular compliance monitoring activities to ensure marketing materials comply with the law in this regard.

Further, the consumer protection provisions of the NERR and the Australian Consumer Law (ACL) are also intended (in part) to address this problem. These provisions require retailers to provide clear and comprehensive information to customers about a retail contract and also provide for a ten day "cooling-off" period in which customers can cancel the contract without incurring any charges.

The energy industry has also been involved in actions to address the problem. The industry has established the Energy Assured Code of Practice for door-to-door sales and funded the Energy and Water Ombudsman (SA) Limited (who is empowered to receive complaints about retailers and provides a binding dispute resolution service).

In conclusion, based on the South Australian experience, the Division considers that energy retailers do respond to the various needs of energy consumers by providing a range of market contracts with varying structures, conditions and tariff rates. This is consistent with the Division's understanding that South Australian customers have different preferences in relation to energy market contracts depending on their circumstances and risk appetite.

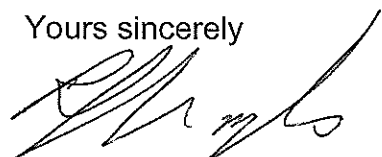
Further, the Division considers it important that consumers engage in the energy market and are aware of, and can readily understand, the various contract types available to them. The Division notes that if consumers are reluctant to engage in the energy market, this will result in inefficiencies in the market.

While the NECF reforms have improved the information available to consumers, further work on assisting customers understanding and assessment of the available information may be beneficial. The Division anticipates that the AER review of the Energy Made Easy website will improve customers' ability to compare market offers, for example, by drawing customers' attention to the availability of fully fixed offers.

The Division's view is that providing more refined and digestible information to consumers and better clarification of contract terminology represents a proportionate response to the problems identified in the rule change request. Increasing consumer engagement in the market should also provide the opportunity for these issues to be corrected through competitive market forces.

Should you have any questions in relation to this submission, please contact Rebecca Knights, Director Energy Markets on 08 8204 1715.

Yours sincerely



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