



Tasmanian Council of Social Service

National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule, 2014

Consultation Paper

March 2014

TasCOSS is the peak body for the Tasmanian community services sector. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage and promote the adoption of effective solutions to address these issues.

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The Tasmanian Council of Social Service (TasCOSS) welcomes the opportunity to comment on the amendment to the National Energy Retail Rules proposed by the Consumer Action Law Centre (CALC) and the Consumer Utilities Advocacy Centre (CUAC), and on the related *Consultation Paper* published by the Australian Energy Market Commission (AEMC).

A competitive retail electricity market will be introduced to Tasmania in July this year and while TasCOSS has no direct experience in retail electricity market matters, we see this proposed rule change as an obvious opportunity to improve the fairness and transparency of the market and to thereby increase the confidence of consumers to participate in the market.

TasCOSS believes that this rule change is particularly significant for Tasmanian consumers who have no experience of electricity market contracts. Most Tasmanian consumers will expect electricity market rules and conditions – and therefore contracts – to be in line with those of other markets they are familiar with, for instance, telecommunications markets. In short, consumers will expect that fixed term electricity contracts will have fixed prices for the term of the contracts.

TasCOSS supports the rule change proposal, including the insertion of a 46A Rule into the National Energy Retail Rules as detailed by the rule change proposers. This will ensure that it is unequivocal under the Rules that there must be fixed prices for fixed term contracts.

Key issues

Allocation of costs and risks

It is clear to TasCOSS that there are many electricity consumers in Tasmania who are not in a position to manage the risk involved in a contract that does not have fixed price. About a quarter of electricity customers in Tasmania are in receipt of a concession based on low income, and many find electricity bills a financial challenge.

While we understand that retail electricity prices can change with market conditions, regulated network revenue movements and government policy changes, we believe that retailers are in a much better position than most residential consumers to manage the risks involved. Retailers can, for instance, manage market risks through various contracts, including hedge contracts; retailers are aware in advance of most network revenue movements; and we would expect retailers to have the capacity to temporarily cover any price increases related to government policy changes.

Low-income households, on the other hand, have very little capacity to find more money for electricity costs at short notice.

Consumer participation and engagement

Tasmanian electricity consumers are yet to have the opportunity to participate in a competitive retail electricity market¹ and, to date, very little information has been provided to consumers about the nature, operation and regulation of the proposed competitive market in Tasmania.

As mentioned above, Tasmanian consumers will therefore expect to encounter similar conditions and market rules in an electricity market that they encounter in other similar markets, such as financial services and telecommunications markets. These include fixed prices (or interest rates) for fixed contract periods. When it is understood that this is not the case in retail electricity market contracts, it is possible that Tasmanian consumers will not be willing to participate in the market.

The current situation allows retailers to price their contracts below competitive levels to attract consumers, then to unilaterally increase prices to above competitive levels once a consumer has signed a fixed term contract. With exit fees operating as disincentives to change retailer, consumers are stuck in a contract with a higher price than they anticipated. This could have a number of undesirable outcomes for consumers, including financial hardship and/or responses such as rationing. Both outcomes are unacceptable for an essential service.

Markets must be fair – with equal access to information for all contracting parties. Under the current rules, retailers are equipped with better information about likely price movements than consumers are. Currently retailers' expectations about likely price movements within the contract period are not shared or revealed to consumers through prices. A fixed price for a fixed contract period would ensure that both parties to a contract are completely informed about the price for the duration of the contract.

The issue was raised in the *Consultation Paper* about the possibility that retailers will 'load' a fixed price with a premium to cover their risk for fixing a price for a fixed period. While this could well be the case, consumers will have the opportunity to assess the fixed price offered for the fixed period and make a decision according to their circumstances, and they will do so with full knowledge.

TasCOSS believes that it is more likely that Tasmanian consumers will participate in a competitive retail electricity market that they trust and perceive as fair. We believe that the rule as it stands will inhibit competition in Tasmania.

Competition between retailers

It may be possible that the proposed rule will result in a more limited variety of contracts being made available to consumers, as suggested in the *Consultation Paper*. This does not strike us as a particular problem. If the price for diversity of

¹ Although the natural gas market in Tasmania is competitive, it affects a very small proportion of Tasmanian households and is not currently covered by the NECF.

contracts is unfairness of this kind in some contracts, it is not worth it. In our view, consumers need protection from the possibility of unfairness and this is rightly the role of the law and its rules. In our view, robust consumer protections are particularly important for the supply of essential services to vulnerable consumers through competitive markets.

Consumer protection issues

TasCOSS believes it is necessary to provide consumers with certainty, and that legal instruments should be clear in their intentions. It appears that it is unclear whether or not the retail rules currently expressly permit price variations clauses in fixed term contracts.

If they do not, we understand that a case could be made under the *Australian Consumer Law (ACL)* to deem the current rule (or part thereof) an 'unfair contract term'. If the rules do expressly permit price variations in fixed term contracts, we believe that this is at odds with the intention of Australian governments to ensure that all consumer contracts are fair (especially since the *ACL* includes in its list of examples of unfair contract terms any provision that 'permits, or has the effect of permitting, one party (and not another party) to vary the terms of the contract'.²

TasCOSS believes that this proposed rule is compatible with the development and application of consumer protections for small customers, and is a particularly welcome protection for vulnerable energy consumers.

The proposed rule change, with the addition of the proposed Rule 46A, will make unequivocal that price variations within the term of a fixed contract are unlawful.

TasCOSS looks forward to seeing the AEMC's draft rule determination on this matter later in the year. We believe this is an important proposal and one that, if accepted, will improve the efficiency of the competitive retail electricity market in Tasmania and throughout the jurisdictions covered by the National Energy Customer Framework. In so doing, it will contribute to the achievement of the National Energy Retail Objective.

It will also provide necessary protection for all consumers, and will especially benefit those consumers who are vulnerable for reasons of low income and other forms of disadvantage.

² *ACL Schedule 2* Part 2 section 4(d)