



Department of State Development, Business and Innovation

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John

Dear Mr ~~Pierce~~

Consultation Paper – National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 (Reference “RRC0001”)

The Victorian Department of State Development, Business and Innovation (the Department) welcomes the opportunity to provide comment on the Australian Energy Market Commission’s (AEMC) consultation paper regarding retailer price variations in market retail contracts.

Although the National Energy Customer Framework (NECF) currently does not apply in Victoria, the Victorian Government has committed to implementation of the NECF. Therefore, the Department is providing comments on the AEMC’s consultation paper in anticipation of its application in Victoria when the NECF commences.

Recent announcement in Victoria

In January 2014, the then Minister for Energy and Resources, the Hon. Nicholas Kotsiras MP, announced proposals to ensure that the term “fixed” should only be used by retailers where a contract has a fixed period and fixed terms. The Department has recently completed a consultation on this proposal and is currently considering the responses it has received.

As part of this consultation process, the Department also proposed changes to specify that retailers must receive explicit informed consent to terms or conditions that specify that the contract may be subject to tariff changes during the life of the contract. This would ensure that only customers who are comfortable with these contracts will sign up for them and would be in addition to existing requirements for retailers to obtain consent prior to putting consumers on market contracts.

The problem

The Department is aware of concerns raised by the Consumer Utilities Advocacy Centre (CUAC) and the Consumer Action Law Centre (CALC) about price increases during the life of fixed term contracts. Research undertaken by CUAC in 2012 found that many consumers are not aware that retailers can increase tariffs if provided for in the terms and conditions of the market retail contract.¹

The Department regularly receives correspondence from members of the public on this issue. It appears that lack of knowledge regarding price increases can cause customer disengagement in the market, as customers who spend time finding a suitable offer may experience a price increase soon after signing up, causing them to question the value in comparing offers that are subject to change.

It may be relevant that the Australian Consumer Law (ACL) contains provisions surrounding misleading and deceptive conduct and unfair marketing terms. The Department is interested in the AEMC's analysis of the ACL and its possible application to the marketing of fixed term, variable price offers. The Department is not aware of any action having been taken by customers or the Australian Competition and Consumer Commission around energy contracts, but the intent of the provisions are to ensure that products are marketed appropriately and under reasonable terms.

As noted by the AEMC, there are fixed term market contracts with set or fixed prices in the retail market, however the take up from customers appears to be low. This may be due to a number of reasons, such as customers do not know that these contracts exist, do not realise that their current contract allows price variations, or do not wish to pay the higher tariffs available in fixed term, fixed price contracts.

Related to this, the AEMC should carefully define the scope of the issue. The Department suggests that the problem may be defined as either:

- Contracts that allow for price increases during a fixed term are unfair for consumers, as they are contrary to the nature of a fixed agreement; or
- The different types of contracts in the energy retail market are not easily differentiated or understood by consumers, and as a result many consumers find themselves on fixed term, variable price market offers to their dissatisfaction.

Consumer awareness and understanding

The Department believes that some consumers may take up fixed term, variable price contracts because they have lower tariffs or higher discounts compared to fixed term, fixed price contracts. The Department is therefore cautious of supporting a blanket prohibition on fixed term contracts that allow for price increases, as it will remove offers that some customers may be happy with.

The Department also believes that whilst consumers may support the prohibition on price increases in principle, they may not have an understanding of the potential impact it would have on their tariffs

¹ CUAC, 2012, *Fixing up fixed term contracts – what the consumers are saying*, available at www.cuac.org.au.

which will likely increase. In particular, fixing costs that are not within the retailer's control may be expensive for retailers, who may pass the risk of increases onto consumers. This is particularly the case for network tariff changes, which are outside of the retailer's control and which may change within the fixed term period agreed between the retailer and the customer. It is therefore important to determine as part of the AEMC's review the extent to which consumers will be satisfied with paying higher tariffs in exchange for certainty regarding their prices.

If consumers become more aware of the pros and cons of both contract types, the take up of fixed term, fixed price offers may increase, and therefore may become more widely available by retailers. This would enable consumers to have a choice and pick the best contract for their needs, as opposed to limiting choice as suggested in the rule change proposal.

Therefore, the Department suggests that the AEMC consider whether amendments to the marketing rules in the National Energy Retail Rules are warranted, so that retailers must expressly advise consumers that their contract may be subject to change before the contract is signed. This would be in addition to current requirements for explicit informed consent.

Thank you for considering the Department's comments on these matters. Should you have any questions in relation to this submission, please contact Erin Dempsey, Legal Policy Officer, at erin.dempsey@dsdbi.vic.gov.au.

Yours sincerely,



Mark Feather
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Energy Sector Development

9 / 4 / 14.