



Retailer price variations in market retail contracts

Public consultation begins on first retail rule change

The AEMC has commenced consultation on a rule change request that proposes to prohibit retailers from including terms in their contracts that allow them to change prices during fixed period gas and electricity market retail contracts.

Rule change request

On 23 October 2013 the Consumer Action Law Centre (CALC) and the Consumer Utilities Advocacy Centre (CUAC) submitted a rule change request to the AEMC. The rule change request seeks to make amendments to the National Energy Retail Rules (retail rules) to prohibit retailers from including terms in their contracts that allow them to change prices during the fixed term or fixed benefit period of market retail contracts (fixed period contracts). CALC and CUAC consider that these amendments would encourage retailers to more efficiently manage risks for their customers and promote more confident consumer participation in retail energy markets.

Key issues for consultation

We have identified some key issues for consultation to assist our consideration of the rule change request, including:

- whether the current rules regarding price changes in fixed period contracts impact on the application of consumer protections;
- whether price changes in fixed period contracts, together with exit fees and other transaction costs, hinder consumers from engaging in retail energy markets;
- how prohibiting price changes during fixed period contracts may affect contract prices, the choices available to consumers, and the level of competition in retail energy markets. In particular, we will consider the degree to which retailers are likely to charge consumers higher prices for providing price certainty; and
- whether retailers are passing on risks in fixed period contracts to their customers rather than managing the risks efficiently.

We encourage stakeholders to consider and comment on these issues as well as any other aspects of the rule change request. These issues are discussed in detail in our consultation paper.

Background

The AEMC is considering this rule change request in its role as the rule maker for the Australian retail energy markets. This is the first retail rule change request that the AEMC has received since being given responsibility for the retail rules on 1 July 2012 under the National Electricity Customer Framework (NECF).

The National Energy Customer Framework

The retail rules are part of a broader set of regulations that together comprise the NECF. The NECF establishes consumer protections and obligations regarding the sale and supply of electricity and gas to consumers. The consumer protections under the NECF are intended to complement and operate alongside consumer protections in other relevant laws, such as those under the Australian Consumer Law. Jurisdictions have also maintained some of their existing consumer protections, which provide additional protections to those under the NECF.

A consultation paper has been prepared to facilitate stakeholder consultation on the rule change request.

Submissions close on 27 March 2014.

The NECF currently operates in Tasmania, the Australian Capital Territory, South Australia and New South Wales. The NECF has not yet been implemented in Victoria, Queensland, the Northern Territory or Western Australia.

Rule-making powers of the AEMC

The AEMC cannot make or amend a retail rule if it is not satisfied that two tests have been met. These tests are:

- that the new rule will or is likely to promote the long-term interests of consumers as required under the National Energy Retail Objective; and
- where relevant, that the new rule is compatible with the application and development of consumer protections for small customers, including hardship customers.

When we are considering a particular rule that has been proposed, we can decide to make the rule as proposed, make a more preferable rule, or no rule at all if we consider that doing so would better serve the long-term interests of consumers.

Price changes under the current retail rules

There are two different kinds of retail contracts that are regulated by the NECF. These are *standard retail contracts* and *market retail contracts*. Retailers have less flexibility in the terms and conditions they can offer under *standard retail contracts* compared to *market retail contracts*. CALC and CUAC's rule change request only relates to price variations under *market retail contracts*.

Only *market retail contracts* can be fixed period contracts. Under the retail rules, *market retail contracts* can contain terms that allow prices to change in fixed periods if the retailer informs the customer of this as soon as it is practical to do so, or at the latest in the next bill. There are no restrictions on the amount or number of price changes that a retailer can make during a fixed period in a contract.

Under the retail rules, retailers can only charge customers for terminating a contract early if it is a contract with a fixed period and is terminated during that fixed period. These "exit fees" cannot be more than a reasonable estimate of the costs to the retailer resulting from the early termination. New South Wales has also set a cap on the exit fees that can be charged by retailers in that jurisdiction. This cap will apply from 1 March 2014 and will be set at \$130 if the contract is terminated in the first year and \$45 if terminated in later years.

CALC and CUAC consider that the current retail rules are leading to these outcomes:

- retailers shifting risks onto consumers in the form of price changes when they are in a better place to manage the risks themselves;
- consumers lacking confidence to engage in retail energy markets due to exit fees and the perception that the time and effort in switching energy contracts will be wasted;
- inefficient pricing and consumption decisions by consumers as price changes may result in consumers using energy in a way that is different from what they expected when they entered the contract; and
- adverse impacts on the application of consumer protections available to individuals under the Australian Consumer Law.

CALC and CUAC consider that their proposed amendments will address these concerns.

Rule change process

Submissions on the consultation paper will close on 27 March 2014. The expected timetable for the remainder of the rule change process is:

- publication of the draft rule determination - August 2014;
- close of submissions on the draft rule determination - September 2014; and
- publication of the final rule determination - Late 2014.

For information contact:

AEMC Chairman, **John Pierce** (02) 8296 7800

AEMC Senior Director, **Chris Spangaro** (02) 8296 7800

Media: Communication Manager, Prudence Anderson 0404 821 935 or (02) 8296 7817

13 February 2014