

27 March 2014

Ms Sarah Lau
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235
Fax: (02) 8296 7899.

Dear Ms Lau

Submission to the National Energy Retail Amendment (Retailer price variation in market contracts)

AEMC reference RRC 0001

The Major Energy Users (MEU) welcomes the opportunity to provide its comments regarding the rule change proposed by Consumer Action Law Centre (CALC) and Consumer Utilities Advocacy Centre (CUAC) 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).

Some energy consumers across the NEM are opting for fixed period energy contracts in the belief that this will shield them from increasing retail energy prices. Despite this expectation, they do not experience what they think they are getting.

Under the current national energy retail rules (Rule 46), retailers regularly change the price within the period fixed by the contract as the inputs to the bundled price vary. In combination with the exit fees on fixed period contracts, this practice is inequitable with what is expected by the retail offer. Further, it creates a distortion in the energy market suppressing consumer choice and transfers risks to consumers which they do not expect from a fixed price contract.

The practice of changing prices within a fixed period contract transfers the risk of changes in the energy market onto the consumer, who rarely has the ability to predict the change or even hedge against it (supposing they have this ability). This is particularly so given the exit fees imposed on leaving fixed period contracts.

Efficient market design requires risk to be borne by the party most able to manage it. Between a consumer and the retailer, this is the retailer as the retailer has a much greater ability than the consumer to identify and quantify those costs¹ that might change

¹ The MEU is aware that retailers do not control network prices, but they have a better understanding of where these prices might move over time. Similarly, a retailer is aware of the costs to provide renewable energy certificates as many retailers trade in these products. The risk to a retailer is the

during a fixed period. While retailers may charge a small risk management premium for this service², retailers' greater risk management efficiency would lead to a net saving for consumers.

By removing the ability of retailers being able to change prices, the AEMC is correcting a significant market distortion. Currently, consumers cannot employ the basic market principle of opting for a product that best suits their needs - this because finding an energy plan comes with comparatively high search costs and then imposes an exit fee, which effectively holds consumers captive to their current plan even when prices become unaffordable. This is especially the case when consumers are only notified of the price change after the change has taken place.

The proposed change will correct this distortion by creating clearer and more easily understood contracts. It will also ensure that the contract prices offered are closer to the optimal level, increasing overall market efficiency. This increase in transparency and efficiency will increase the engagement of consumers in the market, a goal that the AEMC has been particularly keen to see; it will also increase levels of informed consumer choice. The ability of current smaller retailers to offer fixed price contracts, or to operate without fixed period contracts, suggest energy retail competition will not be negatively affected by the proposed change.

The proposed rule change meets the AEMC's key tests, by providing greater efficiency in price and removing restraints on competition, while creating greater transparency that will allow more consumers to effectively participate in the market.

Extending the Australian Consumer Law's unfair contract terms provisions to market retail contracts would not sufficiently address the problem.

In light of this, the MEU supports the CALC/CUAC proposed rule change to amend the National Energy Retail Rules to remove the ability of energy retailers from changing fixed energy prices within the term of a fixed period energy contract.

Should you wish to discuss the MEU views expressed in this response in more detail please contact the undersigned at davidheadberry@bigpond.com or on (03) 5962 3225

Yours faithfully



David Headberry
Public Officer

percentages that apply to these certificates and they again have a better understanding of what movements are expected over time.

² The MEU draws the AEMC attention to fixed price contracts offered by banks for debt instruments. The banks are equally unaware of what movements might occur in relation to their costs of providing debt, they offer fixed price contracts at a premium to floating rate contracts to accommodate the risks they face. The banks are better placed than consumers to assess the risks in fixing the contract debt costs.