



9 September 2014

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged online (AEMC Reference RRC0001)

Dear Sir/Madam

Re: *Draft Rule Determination – National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014*

Thank you for the opportunity to comment on the Australian Energy Market Commission (AEMC) *Draft Rule Determination – National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014*.

As an industry-based external dispute resolution scheme, the Energy and Water Ombudsman (Victoria) (EWOV) provides alternative dispute resolution services to Victorian energy and water customers by receiving, investigating and facilitating the resolution of complaints. Although Victoria is not currently covered by the National Energy Customer Framework (NECF), it is harmonising its energy laws with the NECF, and it is in that context that we make this submission.

EWOV's earlier submission

In March 2014, EWOV made a general submission¹ on the AEMC's *Consultation Paper*² on the rule change request. The draft rule determination states that submissions on the rule change proposal fell into three broad categories, and includes EWOV's submission in the category of those which 'generally considered that an approach that improves the information provided to

¹ Available at http://www.ewov.com.au/_data/assets/pdf_file/0020/10919/EWOV-comments-on-AEMC-Retailer-Price-Variations-in-Market-Retail-Contracts-Consultation-Paper.pdf

² *National Energy Retail Amendment (Retailer Price Variations in Market Retail Contracts) Rule 2014 Consultation Paper*.

consumers would be a more appropriate and proportionate response to the issues raised than the proposed rule.³

The inclusion of EWOV's submission in this category is not entirely accurate. Our submission outlined current⁴ Victorian law, described trends in EWOV transfer contract terms cases about termination fees and variations in price/terms, and detailed three related case studies. It showed that customer confusion and dissatisfaction around price variations in fixed term contracts were causing complaints to EWOV, but did not take a position on suitable policy options for addressing the issue.

Existing disclosure requirements in Victoria

The draft rule determination acknowledges that the rule change request highlights an actual problem in the energy retail market. While recognising this, the AEMC has rejected the proposed rule and put forward its own preferred rule change, which would strengthen National Energy Retail Rule requirements on retailers to disclose how prices may vary when a customer agrees to a new contract. Proposed rule 64(a) would specifically require retailers to disclose to consumers any term or condition that provides for the variation of tariffs, charges and benefits (that is, prices) as part of the existing requirement to obtain explicit informed consent from a consumer to their entry into a market retail contract. Retailers would also be required, soon after entry into a market contract, to disclose when customers will be notified of any price variation.

The proposed rule 64(a) requirements for disclosure on entry into a market retail contract appear to be similar to requirements contained in current Victorian codes and guidelines:

Energy Retail Code (10a)

20	(b) If the structure or nature of the tariff changes in accordance with a term or condition of an energy contract previously agreed between the customer and the retailer or in accordance with the Advanced Metering Infrastructure (AMI Tariffs) Order 2013, no further agreement is required between the retailer and the customer to effect such tariff change, provided that, where the contract is a market contract, the customer had given its explicit informed consent to the inclusion of the relevant term or condition in the energy contract.
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³ AEMC, *Draft Rule Determination – National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014*, p. 12.

⁴ Under the *Energy Retail Code* (version 10a), which will be superseded by version 11 on 13 October 2014.

Guideline no. 19 Energy Price and Product Disclosure (Issue 4)

- 3.4 Each **price and product information** statement must at least include:
[...] (c) an explanation of how the tariff and other fees and charges can change, if applicable
[...] (i) where the **specified retailer** intends to make the tariff or any other element of the published details available only for a fixed period, the availability end date
- 4.1 A retailer must provide an **offer summary** in writing to a **small retail customer**:
[...]
(b) when providing the customer the terms or information about the terms of any new retail contract, including when engaging in any marketing activity.
- 4.2 Each **offer summary** must include at least:
(a) the information set out in clauses 3.4(a) to (c) and (f) to (j)

Code of Conduct for Marketing Retail Energy in Victoria (January 2009)

- 3.3 **Pre-contractual information**
A retailer must provide the following information to a consumer before entering into a contract:
[...] (b) in addition, for a market contract:
[...] in the case of **contracts** formed by **marketing representatives** in person off the business premises of the retailer, the full terms of the **contract** including the period of the **contract**
- 4.1 **Consumer transfer**
(a) A **retailer** shall not transfer a **consumer** to itself from another retailer without first obtaining that **consumer's explicit informed consent** to such transfer

These requirements have been in place for some time. Earlier versions of the *Energy Retail Code* (Versions 9 (March 2012) and 10 (May 2012)) also required retailers obtain a customer's explicit informed consent to the inclusion of a market contract term or condition that allowed change to the structure or nature of the tariff. Similarly, issues 3 (June 2009) and 4 (August 2013) of the Essential Services Commission's *Guideline 19 – Energy Price and Product Disclosure* required retailers to include an explanation of how tariffs, fees and charges may vary in both price and product information statements and offer summaries.

Guideline 19 and version 10a of the *Energy Retail Code* will be superseded by the harmonised *Energy Retail Code* (version 11) from 13 October 2014, and the *Marketing Code of Conduct* is

also slated for repeal. Nevertheless, it is noteworthy that EWOV received a substantial and increasing number of complaints about price variation during fixed term contracts while such disclosure requirements have been in place. As detailed in our March 2014 submission, between 1 January 2009 and 31 December 2013:

- Variation in price or contract terms was raised as a primary issue by 3,381 customers, and as a secondary issue by a further 1,450.
- Termination fees were raised as a primary issue by 5,425 customers, and as a secondary issue by a further 3,060 customers.

Not all of these cases relate specifically to price increases during fixed-term contracts, but we do find that most cases in these categories involve customers concerned that the tariff and or discount had changed, or was not the same as they believed when they entered the contract. That EWOV has received such complaints while disclosure requirements similar to the proposed rule 64(a) were in place suggests that this rule would be unlikely to reduce complaints in Victoria should the state adopt the NECF, or amend its harmonised *Energy Retail Code* (version 11) in line with the AEMC's proposed rule change.

EWOV's name

The draft rule determination also refers to EWOV as the 'Energy and Water Ombudsman of Victoria' in a number of places. Please note that the 'Energy and Water Ombudsman (Victoria)' is the organisation's official name.

We hope the above comments are helpful. Should you require further information or have any queries, please contact Matt Helme, Research and Communications Manager, on 03 8672 4289 or at matt.helme@ewov.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', followed by a long horizontal flourish.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)