

23 September 2019

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

REGULATING CONDITIONAL DISCOUNTING: CONSULTATION PAPER

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments (COAG) Energy Council in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply.

We appreciate the opportunity to make a submission on the Australian Energy Market Commission's (AEMC) Regulating Conditional Discounting Consultation Paper. We support the intent of the proposed rule change in seeking to support consumer choice by helping consumers to better understand the available offers and by reducing the risk to vulnerable consumers of higher than anticipated bills.

Ultimately it is up to the sector to meet consumers where they are and structure energy services to deliver affordable outcomes. Retailers looking to the future will not simply seek to comply with the rules, but deliver individualised, value for money energy services that build the trust and confidence of consumers. Confusing deals and discounts that don't materialise – whether they are within the rules or not – are not consistent with consumer and community expectations.

What are consumers telling us

Consumers tell us that energy services are not affordable, and do not represent value for money. Over the past 10 to 15 years the price of energy has nearly doubled for many households and small businesses and this increase is a key driver of consumers' dissatisfaction. In fact, household satisfaction with the value for money of electricity remains behind all other comparable services in every state and territory.¹

Consumers are also telling us they are not confident they have the information and tools they need to make choices in a retail market where it is very difficult to make choices because of a proliferation of complicated deals.

The recent report from the Australian Energy Regulator (AER), *Affordability in Retail Energy Markets*, found that paying energy bills is a major concern for many Australian households, especially those on low incomes.² This concern is exacerbated when consumers can't realise the advertised discounts.

As you would be aware, a recommendation to limit the size of conditional discounts to the reasonable costs faced by the retailer was included in the 56 recommendations in the Australian Competition and Consumer Commission's (ACCC) *Retail Electricity Pricing Inquiry*. We are pleased to see further progress on implementing the intent of the ACCC recommendations which together would help secure 20-25 per cent bill savings or around \$400 off the average bill for consumers.

¹ <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-Report-June-2019.pdf>

² AER, *Affordability in Retail Energy Markets*, p. 4.



The ACCC found that many consumers, particularly vulnerable consumers, are not benefiting from conditional discounts.³ In particular, they noted concern that the impact of missing a pay on time discount had on a consumer's bill. In particular, for consumers in financial hardship who are less likely to be able to afford the financial penalty resulting from the loss of the on-time discount.

These low realisation rates may be indicative of the retail energy market 'confusopoly', where high headline discounts might catch the eye, but can be illusory once conditions and other fees are taken into account. Further, the complexity of retailer offers means consumers may not immediately understand the risk of not being able to achieve the discount. The ACCC considered some consumers, such as those in financial hardship, would be better off on an offer with no headline discount as the financial impact of failing to pay by the due date could mean substantial increases in their annual electricity bill.

Better, more straightforward choices to re-build trust

The ACCC *Retail Electricity Pricing Inquiry* found that there had been an increase of 28% in the retail cost component of electricity bills between 2007/08 and 2017/18 across the National Electricity Market. These retail costs include the costs of acquisition and the operating costs of the retailer (including billing systems and processes, management of debt and regulatory compliance) and are generally passed through to consumers.

The ACCC made recommendations about how retailers could better manage, and ultimately reduce these costs to benefit consumers. In addition to reducing the costs, the ACCC also identified problems with the way they were being passed through to consumers in terms of the structure of retail bills. Differences in the application of the discounts (to the whole bill, or just one component of the bill), in addition to the use of conditional discounting and additional fees and charges (such as late payment fees) all add complexity for the consumer.

The ACCC noted that the widespread use of conditional discounting appears, at least in part, to have evolved from restrictions on late payment fees. For example, in NSW, the Government introduced requirements to ban late payment fees for vulnerable customers (those receiving some types of financial assistance, or on payment plans). But these restrictions in different jurisdictions don't extend to vulnerable customers who miss a "discount" by not paying on time.⁴

We note that signatories to The Energy Charter have committed to ensuring that investment, commercial and operational decisions are cost efficient (principle 2.1).⁵ In addition, The Energy Charter notes that improving affordability for low-income households is an important feature of an equitable energy system. At a minimum, in this context, we would expect that retail costs structures should reflect reasonable costs of late payment and other issues, and not be designed to extract extra revenue from consumers in an unfair way.

However the ACCC found while retailers do make legitimate savings where consumers meet certain conditions (such as on time payment), "the size of such savings are not commensurate with the high conditional discounts currently available in the market, providing retailers with an excessive benefit when the conditions are not met".⁶ In this context, it is unsurprising that consumers have a lack of trust

³ The ACCC found that nearly 30% of all residential customers fail to achieve conditional discounts. The situation is worse for vulnerable customers. Only 41% of hardship customers and 56% of payment plan customers are able to achieve them. ACCC, *Retail Electricity Pricing Inquiry Final Report*, p. 264.

⁴ National Energy Retail Law (Adoption) Regulation 2016, cl.10.

⁵ The Energy Charter, available at https://www.theenergycharter.com.au/wp-content/uploads/2019/04/TheCharter_20190328.pdf

⁶ ACCC, *Retail Electricity Pricing Inquiry*, p. 268.



and confidence in the market and raises the question of whether retailers are doing enough to manage risk on behalf of their customers.

One of the key issues here is transparency. Eligibility criteria for some offers may increase the transparency and certainty of prices that customers are likely to face when signing up to an electricity plan as opposed to opaque conditional discounts. In addition, we would want to ensure that consumers have the tools and information they need to be able to choose an energy offer that suits their needs.

Recent market changes, such as the Electricity Retail Code of Conduct will go some way to addressing customer confusion and improving consumer outcomes. In fact, the recent report from the ACCC, *Inquiry into the National Electricity Market*, found more than 75 per cent of residential flat rate market offers in South Australia, New South Wales and south-east Queensland now have no conditional discounts.⁷ However, as the AEMC notes, this Code does not apply in all jurisdictions or to gas offers.

The negative impact these opaque upfront discounts can have on individual consumers, in the form of higher energy costs, and to energy consumers as a collective, as reduced trust and confidence in the market, can be substantial. As such, we support measures which seek to limit this harm and provide better consumer outcomes.

If you have any questions about our comments in this submission, or require further detail, please contact Jacqueline Crawshaw, Associate Director, by phone on 02 9220 5520 or by email at jacqueline.crawshaw@energyconsumersaustralia.com.au.

Yours sincerely,

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Chief Executive Officer

⁷ ACCC, *Inquiry into the National Electricity Market*-August 2019 Report, p.10.