

10 October 2017

Australian Energy Market Commission
Level 6, 201 Elizabeth Street
Sydney NSW 2000

By online submission

Proposed Rule: Notification of end of fixed benefit period (Ref. RRC0010)

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (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 welcome the opportunity to comment on the proposed Rule 48A. This paper sets out our general comments and responses to the questions posed in the consultation paper at **Appendix 1**.

Energy Consumers Australia supports the proposed Rule 48A to increase customer awareness of changes in retail market contracts by requiring retailers to give customers notice of the end of benefit periods under those contracts. Given the difference between the best and worst deal in the retail market – a difference that can amount of many hundreds dollars – consumers can experience significant financial detriment if their discount expires without being properly notified by the retailer.¹

These additional requirements augment the current obligations retailers provide customers note at the end of a fixed term market retail contract under Rule 48.

We also welcome the decision to expedite the consideration of this rule change. After a ten-year period where the energy prices have doubled, consumers are now facing further, very significant price rises. At a time when there is an acute concern about energy affordability, it is critical that consumers have the information, tools and support they need.

In terms of form and process, we note that the notice from the retailer to the customer under proposed Rule 48A is either by letter or email and must be separate to the bill to the customer. Furthermore, it must clearly state that:

- The fixed benefit period is due to expire.
- The date on which the fixed benefit period will expire.
- The nature of the benefit in dollar terms.
- Loss of the benefit in dollar terms.
- That the customer may view all available offers through the Australian Energy Regulator's price comparison website Energy Made Easy.
- Any termination charges that the customer would be required to pay if they terminated the contract.

This rule change is part of an important package of retail market reforms being driven by the Prime Minister, and through the Australian Competition and Consumer Commission (ACCC) Electricity Supply and Pricing Inquiry. At the heart of this work is the expectation that retailers take responsibility for their customers' energy outcomes.

¹ See Australian Energy Regulator, State of the Energy Market 2017, Table 4.3

In this spirit, Energy Consumers Australia would encourage the Australian Energy Market Commission (AEMC) to also consider whether retailers should be required to notify customers not only at the end of benefit periods, but also in relation to other material changes under that impact customer outcomes under a retail market contract. We note, for example, that retailers in Queensland are required to notify their customers of price changes, under a derogation from the National Energy Retail Rules.²

We also believe that the notification under the proposed Rule 48 should also include information about the retailer's best available offer. This would significantly reduce the 'search costs' for consumers, making it much easier to use the information in the notice to make a decision: to remain on their current contract; change to a better deal with the same retailer; or switch.

It is also important that retailers monitor the effectiveness of these notices over time, and refine their approaches in an iterative way in line with behavioural insights best practice. We welcome the involvement of the Behavioural Economics Team of the Australian Government (BETA) in the development and delivery of the Prime Minister's retail package.

If you have any questions regarding our submission please contact Chris Alexander, Director Advocacy and Communications on 02 9220 5500 or chrisalexander@energyconsumersaustralia.com.au.

Yours sincerely,

Signed for and on behalf of
Energy Consumers Australia

² *National Energy Retail Law (Queensland) Regulation 2014*, Schedule 5, 8 Rule 46, <https://www.legislation.qld.gov.au/view/pdf/inforce/2014-12-19/sr-2014-0339>

Appendix 1

Issues Raised

1. To what extent do you consider that lack of information regarding the end of a fixed benefit period has led, or will lead, to a negative effect on the overall competitiveness of the market?

Consumers have faced significant price increases in electricity prices this year and there are many concerns about the structure and presentation of retail market offers and the lack of transparency around prices and margins that are being considered by the ACCC as part of its Electricity Supply and Pricing Inquiry (Inquiry). We explore these at length in our submission to the Inquiry which is available [here](#).

The lack of relevant, accessible and clear information about benefit periods and discount expiry means consumers can end up paying well over the odds. The extent of the problem is potentially very significant given around half of households have never switched retailers or plans, and may be on a sub-optimal deal.³ This is particularly problematic for low income and vulnerable consumers, who spend a higher proportion of their income on energy. A study by AGL in 2015 found that 26,000 of the 500,000 customers it surveyed were vulnerable and on less competitive standing offers.⁴

2. Should the proposed rule change apply to market retail energy contracts including gas, or only to market retail electricity contracts? Why?

Energy Consumers Australia believes there is no reason why this proposed Rule 48A should not apply to retail gas market contracts. We suggest that consideration be given to the applicability of the rule to gas contracts to ensure a consistent consumer experience across electricity and gas services.

**3. Exemptions – a) Are the proposed exemptions clear, appropriate and workable?
b) What potential improvements could be made? Why?**

The proposed Rule 48A provides for two exemptions: for non-financial benefits; and where the customer would be financially no worse off than if the benefit period had not expired. We note that the Proponent has also requested the AEMC to consider alternatives to its proposed exemptions.

In the interests of ensuring full transparency for customers, we are of the view that these exemptions should not apply to the requirement for notice.

Firstly, if non-financial benefits have been offered to a customer then it is reasonable to assume that they have value for that customer. A customer is therefore entitled to know when the period of those non-financial benefits is due to expire.

³ For a state-by-state view of switching trends, see Energy Consumer Sentiment Survey June 2017, page 28 <http://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-June2017.pdf>.

⁴ AGL, *Applied Economic and Policy Research Working Paper 49 – Differential Pricing*, available at <http://aglblog.com.au/wp-content/uploads/2015/07/No.49-Price-Discrimination.pdf>

Secondly, we can foresee circumstances where a customer may be entitled to the same total discount before and after the expiry of the benefit period, but may be exposed to a different set of risks about receiving the benefit.

For example, a customer who previously enjoyed a 10 per cent discount comprising of a 5 per cent pay-on-time discount and a 5 per cent benefit period discount, could hypothetically be shifted onto a 10 per cent pay-on-time discount at the conclusion of the benefit period – placing them at risk of losing the full 10 per cent if they are late on a payment.

Furthermore, even if they are no worse-off financially at the end of the benefit period under the relevant market contract offer, the customer may in fact be worse-off compared to the market more generally.

Commencement Date

- a) Would a 1 January 2018 commencement date result in materially higher costs than a later commencement date?**
- b) If so, what is the soonest practical date for commencement?**
- c) Should commencement be staged? For example, if full implementation on 1 January 2018 is not practical should retailers still be required to send out a standard notice with basic information from that date?**

Giving the pressing nature of the affordability challenges consumers are facing, the proposed Rule 48A should be implemented as soon as possible. We therefore support a 1 January 2018 go-live date. That said, we appreciate that there may need to be a period of transition to enable retailers to update their systems and processes to implement these changes.

4. Assessment Criteria

- a) Are there any other matters that the Commission should consider in assessing the proposed rule change against the NERO test?**
- b) Are there any particular factors that the Commission should consider in assessing the proposed rule change against the consumer protection test?**

Energy Consumers Australia has no comments regarding the assessment criteria being proposed by the AEMC as it seems appropriate in the circumstances. However, we would urge the AEMC to particularly consider potential misleading and deceptive behavior (Australian Consumer Law) in assessing the proposed rule change against the consumer protection test.

5. Information disclosure

- a) Has the proponent identified the right notice period and set of information likely to be required by consumers?**
- b) Are the additional quantifications of dollar amounts for past and future benefits as set out in section 5 and 6 of the draft rule clear, appropriate, workable and cost effective to produce?**

The notice period of between 40 and 20 days appears appropriate for the notice to the consumer, particularly as it is consistent with the notice period required under the National Electricity Retail Rules for the end date of fixed term market retail contract.

We note that the set of information required under the notice is:

- The amount in dollars that was paid by the customer under the contract
- The amount that would have been payable by the customer if the financial benefit had not applied

- The retailer's "reasonable estimate" of the amount that will be annually payable under the contract as a result of the expiry of the fixed benefit period

Rule 48A(6) then sets out the way in which this information is calculated with the use of dollar figures.

The "reasonable estimate" is based on the average energy usage of the customer over either the preceding last 12 months from invoicing, or the lesser period that the customer was a customer. Accordingly, this will need to be clearly represented to customers so that they do not have an expectation that the estimate is in fact their forward energy bill, particularly given that base prices may change over time without notice. We would expect that appropriate and clear disclaimers will be utilized by retailers in accordance with the Australian Consumer Law, such that it is clear in the minds of consumers that the estimate is just that, an estimate.

Furthermore, we would also suggest that the customer is provided with a dollar amount of 'if you do nothing' as this is what they potentially lose. This will reinforce the opportunity for the customer to take appropriate action as it will make it clear the potential loss.

6. Barriers to competition - Would the proposed rule materially increase the likelihood of consumers seeking and obtaining better deals in retail energy markets?

We are optimistic that the proposed Rule 48A will contribute to consumers being better informed and able to seek and obtain better details. That said, as the Proponent notes, consumers may not respond 'as expected' i.e. by changing their behavior.

Therefore, we encourage the Australian Energy Regulator (AER) to monitor the effectiveness of Rule 48A. We would also encourage any behavioral research to reflect on whether customers see value in the opportunity to explore their options triggered through the notices under proposed Rule 48A and if not, why not and the extent that it may be improved.

We would also suggest that the experience in South East Queensland under the Queensland derogation be considered in more detail in terms of consumer outcomes. In this regard, we acknowledge the Queensland Consumers Association's submission to this consultation which provides an account of the experience in Queensland of a similar set of requirements.

7. Costs and Benefits - Will the long-term benefits to consumers of the proposed rule change exceed the additional costs that would pass through to them?

We are not in a position to comment on the specifics of the additional costs that will be incurred by retailers as a result of the proposed Rule 48A. That said, we would expect the overall benefits to consumers, benefits that may extend to many hundreds of dollars per household, would outweigh the administrative and transaction costs associated with better notification practice.

8. Form of rule - Are there amendments that could be made to the proposed rule to better achieve the intent of the rule change request?

The Prime Minister's initial statement outlining the measures agreed with retailers indicated that the Rule would require retailers to inform their customers of better deals as part of the end of benefit period notice.⁵

⁵ Prime Minister, Treasurer and Minister for Energy, *A BETTER DEAL FOR AUSTRALIAN FAMILIES*, Media Release, 9 August 2017 available at <https://www.pm.gov.au/media/2017-08-09/better-deal-australian-families>.

As the Consultation Paper notes:⁶

The AEMC's reviews of competition in retail energy markets have consistently found that consumers' ability to change to the most cost effective offer is limited by their awareness of alternative offers and their understanding of the differences between offers.

Therefore, we support a requirement that the end of the benefit notice specifically inform customers of other available offers from that retailer that would provide the customer with a better deal. This would help to further ensure that the customer is aware of the other offers that are available to them and most importantly, encourage the retailer to provide their best offer to the customer.

As we stated in our submission to the ACCC, although electricity retailers compete on a limited range of non-financial attributes, it remains a difficult market to navigate for consumers. Most retailers are marketing multiple offers which leaves their customers with the difficult task of identifying the important differences between the various offers and relating them back to their individual circumstances to identify the best deal. Consumers find it hard to make informed decisions in the face of this complexity, particularly when they are making comparisons across multiple dimensions as they are choosing between electricity offers in terms of:

- Different prices per kilowatt hour at multiple consumption thresholds
- Varying exit fees
- Varying pay-on-time discounts
- Periodic credits etc.

This complexity undermines consumers' confidence to engage in the market.

Accordingly, we believe that an obligation on retailers to provide their best offer to the customer in the end of benefit notice would be a welcome step in the right direction in terms of putting the onus on the retailer to be accountable for better customer outcomes.

Secondly, we note that proposed Rule 48A also requires that the retailer provide the customer information on the AER's price comparison website *Energy Made Easy*. In this regard, we support the recommendation in the AEMC's 2017 Retail Energy Competition Review, namely that the "AER is resourced to run an effective awareness campaign of their Energy Made Easy website and are resourced to maintain and develop the site".⁷

Finally, we note that under the NERR retailers must provide small customers with information in relation to non-price charges and benefits and also advise the customer of when changes to prices will be notified to them by the retailer. However, the NERR does not follow the Queensland derogation (Rule 46(4)) in terms of requiring that retailers also notify customers ahead of time of changes in price to the retail market contract. We believe that this notification is consistent with the intention of proposed Rule 48A, namely to ensure consumers get appropriate notice of changes to their retail contracts that significantly alter the cost of electricity supply.

Therefore, in line with the comments of the Queensland Consumers Association, we would strongly support the content of the Queensland derogation being considered in the scope of the proposed Rule 48A or as a separate process (as suggested by the Proponent's paper) as price changes are similarly important to consumers. We would also suggest that the application of the Queensland derogation be considered for *all prices changes to retail market contracts*, not only those that are increases.

⁶ Page 6.

⁷ AEMC, *Retail Competition Review 2017, Recommendation 2*, <http://www.aemc.gov.au/getattachment/006ad951-7c42-4058-9724-51fe114cabb6/Final-Report.aspx>