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Ms Angela Bourke
Acting General Manager – Consumer and Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email RPIGconsultation@aer.gov.au

26 July 2019

Dear Ms Bourke,

**Submission to the Australian Energy Regulator (“AER”):
Retail Pricing Information Guidelines Review 2019**

The Energy and Water Ombudsman (SA) Limited (“EWOSA”) welcomes the opportunity to comment on the AER’s Retail Pricing Information Guidelines (“the Guidelines”) Review 2019.

EWOSA is an independent Energy and Water Ombudsman Scheme in South Australia. It receives, investigates and facilitates the resolution of complaints by customers with regard to (*inter alia*) the connection, supply or sale of electricity, gas or water.

Background

Issues related to the standing offer framework have been well established by stakeholders. In its submission to the ACCC Inquiry into Retail Electricity Supply and Pricing, the Energy and Water Ombudsman NSW (“EWON”) raised multiple issues related to the rising standard offer price including sharp price rises and impacts for customers at the end of a contract, move-in customers and customers with a poor credit history.¹

In the ACCC Retail Electricity Pricing Inquiry Final Report, the ACCC made four recommendations related to the standing offer (recommendation 30, 32, 49 and 50). These recommendations were designed to address two deficiencies in the operation of the standing offer:

¹ EWON (2018) Submission to the AER Position Paper on Default Market Offer at <https://www.aer.gov.au/system/files/EWON%20-%20AER%20Default%20Market%20Offer%20-%20Submission%20to%20Position%20Paper%20-%206%20December%202018.pdf>

- “In non-price regulated jurisdictions, the standing offer and standard retail contract are no longer fit for purpose. The standard retail contract is not operating as an effective default offer, nor is it delivering essential consumer protections that justify the high price of the offer.
- In recent times, standing offer prices have often been set at a high level to enable retailers to advertise high headline discounts for market offers.”²

On 22 October 2018, the Commonwealth Treasurer and Minister for Energy requested that the AER begin immediate work on developing a default market offer (“DMO”), consistent with the ACCC’s recommendations. The AER was also asked to develop a reference bill for each network distribution region as part of this. The reference bill was intended to be a point from which headline discounts could be calculated.³

In the process of responding to the Commonwealth Treasurer and Minister for Energy, the AER has stated that the DMO is “intended to be a service which all retailers in a non-price regulated distribution zone are obliged to offer customers that do not otherwise take up a market offer for the provision of electricity retail services. That is, it is to replace retailer-set standing offers.”⁴

The AER made its DMO Final Determination on 30 April 2019. Given that there are substantial savings to be made for small electricity customers currently on standing offers, as well as substantial savings to be made from switching from standing offers to market offers, EWOSA generally considers that the proposed DMO prices strike a reasonable balance between providing electricity bill relief for many of those customers currently on standing offers and enabling ongoing competition in the retail electricity market. However, we note that one of our main concerns with the implementation of DMO prices is that customers on lower standing offers and on lower priced market offers are found to be worse off as a result. As for example cautioned by the South Australian Energy Minister, “In South Australia there is a significantly higher proportion of customers on market offers compared to standing offers. This results in a larger portion of the market who may be worse off under the default offer than those who will benefit.”⁵

Legislative Framework

The Department of the Environment and Energy released a public consultation paper on the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019 (“the Electricity Code”) in February 2019. This paper notes that Commonwealth Government committed to working with the states and territories to introduce a DMO under the National Energy Retail Law (“NERL”). However, as the state and territory governments were unable to reach full agreement about the NERL changes required, the Commonwealth proposed to introduce the DMO and reference bill through regulations made under the *Competition and Consumer Act 2010* (“the Act”).⁶ The Electricity Code is the instrument that was made under the Act and was registered on 5 April 2019.

² ACCC (2018) Retail Electricity Pricing Inquiry – Final Report at https://www.accc.gov.au/system/files/Retail%20Electricity%20Pricing%20Inquiry%E2%80%94Final%20Report%20June%202018_0.pdf p.240

³ The Hon Josh Frydenberg, Treasurer and the Hon Angus Taylor, Minister for Energy, Letter to the AER, 22 October 2018. 8. Available at: <https://www.aer.gov.au/system/files/Letter%20to%20the%20AER%20Chair%20-%20default%20pricing.pdf>

⁴ AER (2019) Final Determination Default Market Offer Price 2019-20 at <https://www.aer.gov.au/system/files/AER%20Final%20Determination%20-%20Default%20Market%20Offer%20Prices%20-%20April%202019.pdf> p.14

⁵ Hon Dan van Holst Pellekaan MP, Letter to Department of the Environment and Energy at <https://www.environment.gov.au/submissions/electricity-code/sa-gov.pdf> p.2

⁶ Department of the Environment and Energy Public Consultation Paper at <https://www.environment.gov.au/system/files/consultations/6ad36235-5acd-4453-bfef-f3c97b672c93/files/electricity-code-consultation-paper.pdf>

The Electricity Code contains the legislative framework for implementing DMO prices and the reference price.

Part 2 of the Electricity Code prescribes it is a mandatory industry code under which:

- standing offer prices for small customers must not exceed a price determined by the AER
- small customers must be told how a retailer's prices compare with the AER reference price
- conditional discounts must not be the most prominent price-related feature in an advertisement, and any conditions on other discounts must be clearly displayed.

Part 3 of the Electricity Code proscribe the price setting functions of the AER including:

- the model annual usage or average household annual usage
- the 'DMO' or reference price⁷

EWOSA supports the development of a reference price because of its action of limiting standing offer prices and as it is likely to enhance the ability for consumers to compare market offers. In relation to the second point, the use of a reference price has the potential to be helpful for residential consumers in comparing different energy offers and reduce the confusion that currently exists for some consumers in making such comparisons. Framed correctly the reference price could provide transparency and clarity around the extent of discounts being provided by retailers in their market offers.

While EWOSA supports the broad intent of the Electricity Code, we submit that some aspects of the Electricity Code require further attention. We anticipate a need to review the Electricity Code within a relatively short time frame from commencement of the Electricity Code. We believe that it is vital that the reference price reforms succeed and early attention to address any resultant customer detriment will be in the long-term interest of the reforms.

The following issues have been identified:

- the term 'reference price' is not easy to understand and its use in advertising may be confusing for customers
- as per the EWON submission to the AER DMO Position Paper, the DMO should cover all customers on time of use standing offers
- there is a need for further investigation of whether advertising of discounts should be in dollars instead of as a percentage
- the use of the term price cap is ambiguous as the DMO does not cap the total cost of electricity for above average consumers and does not represent the maximum price that some customers will pay for their electricity in any given year.

While we understand that review of the Electricity Code is out of jurisdiction for the AER, we wish to draw the AER's attention to these matters for information.

The Guidelines

The AER may develop and amend Retail Pricing and Information Guidelines under the National Energy Retail Law. The AER has advised that the Guidelines fulfil the following functions, namely to:

- specify the manner and form in which retailers must provide pricing information to customers when advertising and marketing energy plans

⁷ <https://www.legislation.gov.au/Details/F2019L00530>

- provide direction to energy retailers about providing data and information to the AER for the purposes of Energy Made Easy.⁸

In fulfilling these functions, the AER aims to help empower consumers to engage in the retail energy market.

In developing the draft Guidelines, the AER advises that this is to set out retailer responsibilities in light of the requirements of the Electricity Code and the introduction of the DMO. The draft Guidelines have three sections, one each for non-Electricity Code distribution regions (Part A) and Electricity Code-affected distribution regions (Part B) and Part C applies to all retailers who are required to comply with Part A and/or Part B.

Changes in Part A of the draft Guidelines from the previous version are not substantive.

Part B

There appears to be a drafting error at section 4.6.1 125 where it refers to clauses 4.6.1 123 (a) – (f) which should be clauses 4.6.1 124 (a) – (f).

The changes in Part B of the draft Guidelines compared with the version 5 are significant.

The following clauses are specific references to the Electricity Code:

- 4.6.1 124 a)
- 4.6.1 124 b)
- 4.6.1 124 c)
- 4.6.2 126 b)

The following clause aligns the existing information with the provisions of the Electricity Code:

- 4.6.2 126 a)

For the purposes of the following commentary, the above two clause categories will be referred to as the draft Guidelines Electricity Code clauses.

EWOSA believes that the draft Guidelines Electricity Code clauses create unnecessary regulatory duplication. Retailers will be accountable to both the ACCC and AER for implementation of the Electricity Code and subject to penalties in both regimes. This creates complexity and increased risk for retailers. Instead of specific references to the Electricity Code, EWOSA believes that all of the draft Guidelines Electricity Code clauses should be replaced with one clause stating that retailers must abide by the Electricity Code.

The following clauses are not in the Electricity Code but do appear in the ACCC Guide to the Electricity Retail Code:

- 4.6.2 128 a) – e)
- 4.6.2 129

EWOSA notes the use of these clauses in the Guidelines. The ACCC Guide to the Electricity Retail Code is only intended as a guide for electricity retailers about their responsibilities under the Electricity Code and “is not a substitute for legal advice, nor is it intended to comprehensively encapsulate the responsibilities of electricity retailers under the Electricity Code”.⁹ The AER has advised that development of the draft Guidelines is to set out retailer responsibilities in light of the requirements of the Electricity Code and the introduction of the DMO, not the ACCC Guide to the Electricity Retail Code.

⁸ AER (2019) <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-pricing-information-guidelines-review-2019>

⁹ ACCC (2019) *Guide to the Electricity Retail Code* p.1

In a parallel point to the above paragraph, EWOSA highlights the following sections:

- Language requirements
- 6.1

These sections in the draft Guidelines go further than even the ACCC Guide to the Electricity Retail Code. EWOSA notes that these sections go beyond what is directly in the Electricity Code itself.

Thank you for consideration of this submission. Should you require further information or have any enquiries in relation to this submission, please contact Jo De Silva via jo.desilva@ewosa.com.au or phone (08) 8216 1851.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jo De Silva', with a stylized, cursive script.

Jo De Silva
Policy and Communications Lead
Energy and Water Ombudsman SA