Energy & Water Ombudsman NSW
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26 June 2020

Mr Benn Barr
Chief Executive
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Barr

EWON submission on Deferral of Network Charges – AEMC Ref ERC0302

Thank you for the opportunity to comment on this consultation paper Deferral of Network Charges.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from consumers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from consumers on metering work and electricity supply interruption issues relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues consumers raise with EWON, or with our organisation's operations as they relate to this rule change.

EWON is supportive of the proposed rule change. The proposal to defer retailer payments to networks for consumers receiving assistance through payment plans and or debt deferral could assist with reduced COVID-19 related cash flow for affected retailers.

However, there is a need for broader thinking. Australia is likely only at the beginning of what could be a long-term economic crisis as a result of COVID-19. As a result, the current structural mechanisms for dealing with the delivery of essential energy to consumers experiencing financial difficulty, including a growing cohort that may experience new or an increased level of financial difficult, have the potential to be overwhelmed and new/additional approaches may need to be considered and established before this happens.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

Janine Young

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COVID-19 Impacts

Consumer impacts

With the economy slowing significantly there is likely to be a rapid growth in unpaid debt. Casual workers and low paid workers are those most likely to be affected, especially when government income support is reduced. Added to this is the large number of people working from home who will have significantly increased winter energy bills. This will result in large numbers of people who previously had secure income being in a tenuous financial position.

Business consumers will also be affected. While social distancing measures remain in place, small business remains at risk. In many business tariffs fixed charges outweigh consumption charges which means that, despite less activity, energy bills will not reduce significantly. This, combined with reduced profit margins, exposes many small businesses to crisis, especially those dependent on significant passing trade such as cafes and food outlets.

The real impacts are yet to flow through the system and will become more apparent once higher levels of income support are withdrawn. At this point we believe that pressures on consumers, and therefore on retailers, will rapidly increase.

Retailer impacts

Cashflow exposure arising from impacts of COVID-19 on retailers are likely to occur with contributing factors including:

- hedging profiles that do not match disrupted consumption patterns which have occurred, i.e. increased domestic consumption and significantly decreased business / commercial consumption
- exposure to small business debt caused by reduced operational hours and / or closure (due to COVID-19 government restrictions, as well as long term due to COVID-19 induced insolvency)
- increased residential consumer calls for affordability assistance, payment plans etc
- reduced competition – customer churn.

In response to the COVID-19 crisis, on 27 March 2020, the Australian Energy Regulator (AER) issued a Statement of Expectations, aimed at protecting consumers and the energy market during COVID-19. In summary 10 expectations were imposed on energy businesses including:

- provision of a payment plan / hardship arrangement to all customers who indicated they were experiencing financial stress
- disconnection protection until at least 31 July 2020
- deferral of debt collection / credit listing until at least 31 July 2020
- waiver of specified contract related fees and daily supply charges for small businesses which had ceased operation until at least 31 July 2020.

The NSW Government increased emergency funding through its Energy Account Payment Assistance (EAPA) program and made EAPA available, for the first time, from Service NSW online and via its offices.

These measures have provided initial relief and, combined with increased Federal Government income support through JobSeeker and JobKeeper payments, deferred the emergence of significant affordability problems for many COVID-19 impacted consumers and small businesses.

The AER rule change request

The AER recognises that its Statement of Expectations, combined with other impacts of COVID-19 could have adverse consequences for some retailers. Particularly, there is energy sector, AER and government concern about potential retailer failure and, in the event that affects multiple retailers, implications arising from enacting of Retailer of Last Resort (ROLR) responses.

Retailer failure concerns have emerged due to the financial implications on retailers resulting from the potential divergence between incoming cash flows from consumers affected by the pandemic and outgoing cash flows required to satisfy their obligations to pay wholesale and network market charges.

In response, the AER proposal to defer certain network payments for six months through a rule change to the National Electricity Rules (NER), would enable all retailers to defer until 31 December 2020 the payment of network charges for any consumer who, after 1 March 2020, entered into:

- a payment plan or instalment arrangement
- any arrangement as a hardship consumer
- any deferred debt arrangement.

Retailers would be required to pay the network charges in full at the end of the deferral period, meaning network businesses would remain entitled to recover the full amount of their regulated revenues as determined by the AER. The AER proposes that it should also be given discretion to extend the period of deferral if it judges circumstances warrant further intervention.

EWON strongly supports this rule change in principle. It goes towards addressing valid concerns the impact of COVID-19 on retailers and the potential for ROLR events which historically, have resulted in customer confusion and complaints. Further, it provides retailers with COVID-19 affected cashflow, additional ability to extend to their customers time to address broader financial difficulty in order to establish agreed affordable payment plans.

The timeframe

In responding to the rule change request, the AEMC sought views on whether the proposed six-month deferral is appropriate considering the financial impacts of COVID-19. It also asks for views on the proposal to give the AER discretion to extend the deferral period if necessary.

With the scheduled end of JobSeeker and JobKeeper in September, the financial pressure on consumers, and therefore retailers, will rapidly increase. This will be compounded by larger winter bills due to isolation measures for residential consumers. Small businesses will also be struggling to return to profitability over the same period. The AER Statement of Expectations is scheduled to expire in July. Even if the AER were to extend it, this would only shift debt and the associated cashflow problems generated further into the future. Regardless, it is likely that the substantial financial impacts both for consumers and retailers will not fully manifest until late 2020 and into 2021.

EWON supports the proposed six-month deferral and the AER's request to be given the discretion to extend the deferral period if the circumstances indicate that necessity.

Class of consumers

The AEMC also seeks views on which class(es) of consumers for which retailers would be eligible to defer paying network charges.

Large consumers

The AER request includes consumers on a "deferred debt arrangement". The AEMC points out in its consultation paper that this could include large consumers. In NSW, large consumers are defined as any consumer with an annual consumption of more than 100MWh. In determining eligibility for assistance, EWON has a wider definition that considers staff numbers, annual turnover, and the capacity of the business to seek redress elsewhere. If the final rule excluded all large consumers under the simplistic National Energy Retail Law definition, many small business operators with high energy usage could be excluded from 'deferred debt arrangements' which would assist them to maintain operations / solvency.

When considering retailer impacts, those which specialise in the C&I / small-to-medium enterprise sector could be considered most at risk and excluding this sector is therefore at odds with the intention of the AER proposal.

Vulnerable residential consumers

Also excluded in the current proposal are vulnerable residential consumers who were on a payment plan or participating in a hardship program prior to 1 March 2020.These consumers are most likely to experience further adverse impacts as a result of the economic slowdown generated by the crisis. Included in this sector are casual and intermittent workers excluded from JobKeeper, i.e. younger and unskilled workers, single parents, and newly arrived migrants.

Consumer eligibility should be extended to all consumers on payment plans or participating in affordability regardless of when they entered into those arrangements.

Retailer authorisation strengthening

EWON recognises that cashflow for some retailers will be significantly impacted by COVID-19. However potentially, some of these retailers were already experiencing cashflow impacts. It is not unusual for newly authorised retailers to raise concern about the cost of joining EWON, including referencing impacts on their financial viability. This can then be evidenced by regular late payment of EWON fees associated with increasing complaints to EWON, potentially due to under-resourcing of customer service staff. It is worth noting that EWON costs are minimal when compared to hedging or market costs.

Reconsideration of the authorisation process for new retailers which includes comprehensive consideration of their ongoing financial viability may contribute to preventing retailer failure as a result of a crisis such as COVID-19.

More is needed

In February 2020, the AER published a report commissioned from the Consumer Policy Research Centre (CPRC) on regulatory approaches to consumer vulnerability. This report stated:

> *"From a market-outcomes perspective, it is efficient and effective for regulators, government, community organisations and industry to prioritise early and pre-emptive interventions wherever possible, rather than focusing on 'bottom of the cliff' measures that wait for problems to emerge or become more advanced".*[1]

The AER Statement of Expectations provided necessary protection for consumers, with unintended cashflow implications for some retailers. This rule change is a positive response to those unintended consequences. Retailers will still carry the burden of the consequences, albeit with a deferred

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[1] Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator CPRC February 2020, p8

timeline. It does not address the potential need for a different approach for consumers experiencing vulnerability, particularly those with complex affordability challenges which may be exacerbated by ongoing impacts of COVID-19.

The CPRC report concluded that:

> *"…regulators and business have little choice but to commit to vulnerability strategies. Significant structural issues require a regulatory response, even if responsibility for directly addressing those issues does not reside with essential services regulators, such as the impact of low or irregular incomes and high housing costs on energy affordability. Very significant consequences can arise from not properly addressing consumer vulnerability in the energy sector, ranging from inadequate energy use for health and wellbeing, to the snowballing effect of energy debts on other areas of life (such as the affordability of food, housing and children's education), to the risk of further harm to family violence victim-survivors."*[2]

Further actions will be required to ensure that consumers and industry can recover from the ongoing impacts of COVID-19. A cross-sector taskforce could help in this regard. It could ensure, as much as possible, that energy affordability initiatives (whether commissioned or overseen by the taskforce or by other agencies) are well-considered, carefully co-ordinated, and properly implemented. The taskforce should bring together decision-makers from key government agencies, community organisations, consumer advocates, industry participants and regulators to develop and coordinate cohesive, cost-effective energy hardship initiatives. This could range from providing advice on high-level policy and strategy, through to the detailed design and implementation of initiatives.

Initiatives could include:

- Increased resourcing of retailer affordability programs, including network and government contributions, with encouragement for the programs to consider innovative responses
- An urgent review of government concessions to improve more effective and targeted support
- Additional financial counselling resources, perhaps aligned with the recommendations made in the 2019 Sylvan Review
- Extending home energy efficiency programs including solar installation, targeted towards consumers experiencing financial vulnerability who reside in social / community housing as well as those who own their own homes.

Enquiries

Enquiries about this submission should be directed to Janine Young, Ombudsman, on (02) 8218 5204 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

[2] Ibid, p57