



21 April 2023

Consumer Energy
Electricity Markets
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
Canberra ACT 2601

Via Email: electricitycode@dcceew.gov.au

Dear Consumer Energy Team

Default Market Offer Post-review consultation – Implementation of the 2022 review outcomes of the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019

Thank you for the opportunity to comment on this consultation paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. 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 customers raise with EWON, or with our organisation's operations as they relate to this rule change.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Systemic Issues, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman

Default Market Offer Post-review consultation – Implementation of the 2022 review outcomes of the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019

1) The application of the Reference Price to complex offers. This includes ensuring comparative advertising is available for complex offers

The paper acknowledges that the complex nature of some offers does not readily allow a meaningful comparison to the Reference Price. It further proposes defining the types of non-complex offers that are seen as providing ongoing value to a consumer when compared to the reference price.¹ EWON supports this approach. However, to avoid grey areas that may allow for non-compliance, it is equally as important to define complex offers or provide guidance on specific examples of what fits into each category.

For example, in 2021 EWON received complaints from customers about the use of sign-up credits by one retailer when calculating the discount off the reference price when advertising market offers. Customers were of the view that they had signed up to a contract with a sign up credit that was separate to the discount off the reference price only to later find that the retailer included it.

The retailer was confident that it had correctly followed the ACCC's guide for calculating the reference price, but the case clearly illustrates that without appropriate definition and guidance by regulators, customer confusion will arise.

Framework for complex offers

In Direction 2 Outcome of the Department of Industry, Science, Energy and Resources – Review outcomes - Post-implementation review of Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019,² the Government supported establishing a framework for advertising complex offers that encourages innovation and will enable useful comparison of complex offers for consumers.

As the market develops more sophisticated tariffs, customers will find themselves only able to take up complex offers. For example, in many distribution areas a demand tariff is now the default tariff after a meter upgrade. As the roll out of smart meters accelerates as proposed by the Australian Energy Market Commission, with the intention of a significant saturation rate by 2030, there is a risk that a growing number of customers will fall into the bracket of not having the price protection offered by the Default Market Offer.

While it is important to encourage innovation, it is also important that this does not override the intention of consumer protections that are already in place. The department should consider how to ensure that the Code can encourage innovation, while ensuring clear and transparent information is available for all customers.

¹ Directions paper, p7

² [Code Review Outcomes.pdf \(energy.gov.au\)](#)

If the reference price is limited to defined types of non-complex offers, EWON would support the development of a framework for advertising of complex offers, as outlined in the Direction 2 Outcome³.

Updating the AER's Retail Pricing Information Guidelines (RPIG)

The last review of RPIG commenced in 2019 but was discontinued due to external developments, policy issues and COVID-19⁴. If the RPIG is to be utilised as the AER's source of guidance for advertising of complex offers, it is imperative that the AER recommence the review, or commence a complete review of the RPIG to ensure that it is fit for purpose. We strongly suggest that DCCEEW work consult with the AER about recommencement of the review.

Advertisement of energy offers on price comparator websites

There is an inconsistency between the operation of the AER's RPIG, and the application of the Code regarding the obligations of third-party comparator websites. This is detailed in EWON's submission to the Post Implementation Review - *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* consultation paper⁵.

EWON strongly recommends expanding the application of the reference price to third parties, such as price comparator sites. This would align the two instruments.

If the operation of the Code is not extended to third party comparator sites, and the AER RPIG is instead amended to align with the application of the Code, energy consumers using the highly advertised / internet promoted comparator services will be left with less protections when comparing electricity offers. This will further erode trust in the energy sector.

2) Amending the name of the Reference Price

The paper proposes that retailers be required to use the term “comparison price set by government” when stating a comparison to the Reference Price. EWON supports the use of this clearer terminology in the way energy offers are published and advertised. This simpler wording approach will assist customers in the ability to make informed decisions when comparing available energy offers.

Clear, understandable and transparent information is key in the energy sector to bridging gaps in consumer confidence. Eliminating the use of vague and complicated wording such as ‘Reference Price’ also supports the aim and approach of other regulator initiatives, such as the AER's Better Billing Guidelines.

3) Extending the price cap protection provided by the DMO to customers in embedded networks.

The paper proposes extending pricing protections by ensuring prices offered by retailers to customers in embedded networks do not exceed the local standing offer.

³ Ibid

⁴ [Retail pricing information guidelines review 2019 | Australian Energy Regulator \(aer.gov.au\)](https://www.aer.gov.au/retail-pricing-information-guidelines-review-2019)

⁵ [EWON Submission Post-Implementation Review of Electricity Retail Code - October 2021.pdf](#)

EWON strongly supports the approach of extending the operation of the Code and the definition of 'distribution region' to include connected embedded networks who are on-sold electricity by authorised retailers to ensure that all consumers in this sector receive the same level of price protection.

While customers that are on-sold electricity by exempt sellers are already afforded price protection by the AER's Exempt Selling Guideline, EWON's complaint data reflects that most embedded network customers in NSW are now on-sold electricity by authorised retailers, rather than exempt entities. It is essential that this regulatory consumer gap is addressed as soon as possible.

NSW specific protections

The NSW Government has recently consulted on its Draft Ministerial Statement of Expectations: Protecting NSW customers of embedded networks⁶, as part of its response to the recommendations made in Report No 3/57 of the Committee on Law and Safety – *Embedded networks in NSW*.⁷

The draft provides that from 1 July 2023, authorised retailers selling electricity through embedded networks should comply with the relevant Default Market Offer (DMO) maximum price set out by the Australian Energy Regulator under the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019 and EWON strongly supported this expectation in our submission to the consultation.

Extending the application of the Code to embedded network customers would be in line with the steps that the NSW Government has taken and would make protections equal across Australia. While we support the NSW Government's position, a national requirement would be an easier transition for authorised retailers, by having to comply with the same requirements in each jurisdiction in which they operate.

EWON recommends that the DCCEEW liaise with the NSW Government on any insights it has gained from its consultation into the Draft Ministerial Statement of Expectations for embedded networks.

Implementation of protections

In our October 2021 submission⁸ to the Post Implementation Review – *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* consultation paper, we expressed our concerns that embedded network consumers may not have these protections from 1 July 2022 and potentially not until after the next review of the Code.

While ongoing regulator consultation shows that it is recognised that the consumer protections for those living in embedded networks need to be aligned with other customers, embedded network customers still go without equal protections. EWON supports these changes to the Code being expedited and implemented as soon as possible.

The proposed introduction of new network tariffs for embedded networks and its impact on the price paid by customers living in embedded networks.

The Australian Energy Regulator (AER) is currently consulting on the NSW networks regulatory proposals for 2024-29.

⁶ [NSW Ministerial Statement of Expectations 202303.pdf](#)

⁷ [Report - Embedded Networks in New South Wales.pdf \(nsw.gov.au\)](#)

⁸ [EWON Submission Post-Implementation Review of Electricity Retail Code - October 2021.pdf](#)

Two NSW electricity distributors, Ausgrid and Endeavour Energy, are proposing to introduce embedded network tariffs (over a transition period) for the 2024-2029 regulatory period⁹.

The aim of these new network tariffs is to better reflect the costs that embedded networks impose on networks, and therefore ensure that embedded network customers are making a fair contribution to recovering the cost of the networks. The policy and economic basis for introducing network tariffs for embedded networks is reasonable, however the increased costs associated with these new tariffs will be passed on to embedded networks residents.

This may be reasonable if residents in embedded networks were currently on lower tariffs in recognition that embedded network operators are not currently charged 'service to property fees' by networks as occurs with energy retailers on the open market.

However, in EWON's experience this is not the case and therefore if new network tariffs are introduced, it will mean that the minimum price for energy paid by embedded network customers living in these two network areas will increase over time. Accordingly, EWON is of the view that an embedded network specific Default Market Offer should be introduced. Further, lack of retail competition in embedded networks, is an additional driver for an embedded network specific DMO.

Enquiries

Enquiries about this submission should be directed to Rory Campbell, Manager Policy & Research, on (02) 8218 5266.

⁹ [Ausgrid - Determination 2024–29 | Australian Energy Regulator \(aer.gov.au\)](https://www.aer.gov.au/australian-energy-regulator/2024-29-determinations)