6 May 2025

Mr Andrew Lewis
Chief Executive Officer (Acting)
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

Online via: www.aemc.gov.au

Dear Andrew

RRC0058 Delivering more protections for energy consumers: changes to retail energy contracts Draft determination

Thank you for the opportunity to comment on this draft determination.

The comments contained in this submission reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman South Australia (EWOSA), and Energy and Water Ombudsman Queensland (EWOQ). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, and Queensland.

We have collectively reviewed the draft determination, and we have only responded to those matters that align with issues customers raise, or with each respective organisation's operations as they relate to the draft determination.

If you require any further information regarding our submission, please contact Dr Rory Campbell, Manager Policy & Systemic Issues (EWON) on 02 8218 5266, Mr Antony Clarke, Policy and Governance Lead (EWOSA) on 08 8216 1861, or Mr Jeremy Inglis, Manager Policy and Research (EWOQ) on 07 3212 0630.

Yours sincerely

Janine Young
Energy & Water Ombudsman
New South Wales

Sandy Canale
Energy & Water Ombudsman
South Australia

Jane Pires
Energy and Water Ombudsman
Queensland

RRC0058 Delivering more protections for energy consumers: changes to retail energy contracts Draft determination

We support the overall intent of the four rule changes to improve outcomes for customers and strengthen consumer trust in the energy market.

Timing is critical – so the gap of over a year before the rule changes come into place from 1 July 2026 is of concern. We understand that the timing is intended to give sufficient time for retailers to prepare for the multiple changes, and for the Australian Energy Regulator (AER) to review and update the *Benefit Change Notice Guidelines* and *Retail Pricing Information Guidelines*. Perhaps some retailers can implement changes early – like multiple retailers did with introducing *Better Bills Guideline* changes in advance of the 1 October 2023 due date.

Ensuring energy plan benefits last the length of the contract

The draft rule will prevent new and existing customers being charged more than the standing offer price after their energy plan's benefits change or end. This builds on existing arrangements for fixed term contracts and fixed benefit periods in the National Energy Retail Rules (NERR) and National Energy Retail Law (NERL).

We also agree that the AER's *Benefit Change Notice Guidelines* must be reviewed and updated to ensure that notice requirements are still fit for purpose and that reasonable exceptions are clear. We look forward to contributing to the AER's consultation.

Rule 115 of the NERR

The draft determination introduces a new change in relation to fixed term contract expiry. Rule 115 of the NERR allows a retailer to de-energise a customer on a deemed customer retail arrangement for not complying with Section 54(6) of the NERL. Section 54(6) requires a carry-over or move-in customer to enter into a customer retail contract (which is either a standard retail contract or a market retail contract) as soon as practicable. The draft rule deletes Rule 115, with the intent to:

- bring protections for customers on deemed customer retail arrangements in line with protections for other customers, by preventing them from being de-energised if the sole reason is not engaging with their retailer
- allow de-energisation of customers on deemed customer retail arrangements under other provisions instead (such as for non-payment under Rule 111 of the NERR), which generally have more steps/notice requirements before de-energisation than Rule 115.

De-energisation is a serious and potentially harmful consequence for customers which should be avoided whenever possible. In principle, we therefore support the intent to address gaps in protections for customers who are unable to, choose not to, or have difficulty, engaging with their retailer. However, the idea to delete Rule 115 with no changes to other rules requires more careful consideration, because:

- the draft determination primarily considers the scenario of a carry-over customer whose fixed term contract has expired, instead of considering a range of deemed customer retail arrangement scenarios
- the draft determination assumes that the main factor that leads to someone becoming a carry-over customer is being disengaged, but there are likely to be numerous different factors
- there could be issues or unintended consequences if Rule 115 is removed without also considering changes to other rules.

Consider different scenarios / factors

The Commission should examine whether there are circumstances where de-energisation for not establishing a customer retail contract may be reasonable, and consider an alternative approach such as:

- refining the applicable circumstances for Rule 115
- bringing the steps/notice requirements of Rule 115 in line with the other provisions.

The draft determination specifically considers the scenario of a customer who entered into a fixed term contract with a retailer but, after contract expiry, became a carry-over customer on a deemed customer retail arrangement. The draft determination does not fully consider other common deemed customer retail arrangement scenarios, particularly a move-in scenario where the customer never entered into a customer retail contract at the outset.

The draft determination also assumes that the main reason for becoming a carry-over customer following fixed term contract expiry is disengagement. There are other factors that could lead to a carry-over scenario, such as:

- a need for information / education
- life challenges that are much more critical to the customer than reaching out to their energy retailer
- the retailer not meeting notice requirements.

Consider implications for other rules

The Commission should more thoroughly consider how Rule 115 interacts with other rules. There could be issues or unintended consequences if Rule 115 is removed without any other changes. For example, the current messaging for deemed customer retail arrangements required by Rule 115 is consistent with other rules, as:

- Rule 115 requires a retailer to give the customer a notice of its intention to de-energise for not complying with the requirements of section 54(6) of the NERL, followed by a disconnection warning notice
- Rule 110 of the NERR requires a disconnection warning notice to state the matter giving rise to the de-energisation, which in relation to Rule 115 is a customer's failure to enter into a customer retail contract
- Rule 53(1) of the NERR (or Rule 48(4) of the NERR for some carry-over customers) requires a retailer to give information to a customer on a deemed customer retail arrangement, including:
    - options for establishing a customer retail contract
    - consequences for the customer if they do not enter into a customer retail contract (with that or another retailer), including de-energisation.

If Rule 115 is removed without changes to other rules, customers may instead receive confusing and/or contradictory information about what they need to do to comply with energy rules and ensure continued supply. For example, a customer could receive both:

- written information in accordance with Rule 53(1) instructing them to enter into a customer retail contract
- a disconnection warning notice in accordance with Rule 111 and Rule 110 instructing them to make a payment.

It is not a suitable outcome for a customer to make payments to avoid de-energisation without resolving the underlying issue of being on a deemed customer retail arrangement. For instance, if a customer has a deemed account in the name of Occupier, Energy Consumer or similar, it will prevent

them from being able to apply for payment assistance vouchers[1]. Lack of clarity for a customer about the reason for de-energisation could also inadvertently help to mask an underlying problem such as a transfer in error, transfer without consent or cross-metering.

Removing unreasonable conditional discounts

The draft rule would:

- for customers on conditional discounts that are more than the retailer's reasonable costs, require the retailer to apply the discount whether or not the customer meets the payment condition unless/until the customer agrees to a new retail contract
- for customers with high fees linked to payment conditions, require the retailer to reduce the fees to reasonable levels.

We support this approach which addresses "grandfathered" contracts established before the implementation of the 2020 rule which limited contract conditional fees and discounts to a retailer's reasonable costs.

Preventing price increases for a fixed period

In our consultation paper submission[2], we pointed out that complaints to our offices continually indicate:

- the negative impact of price uncertainty on consumers
- the importance of effective notice requirements for price changes
- that customers value and expect certainty for feed-in tariffs along with usage tariffs.

We therefore support the draft rule as it:

- improves customer price certainty by generally restricting price increases to once every 12 months for existing and new market contracts, with limited exceptions, while still providing some flexibility for retailers
- strengthens notice content requirements and extends the notice period from 5 business days to 20 business days
- includes feed-in tariffs in the requirements.

Removing fees and charges

In our consultation paper submission[3], we pointed out that complaints to our offices indicate customers at risk of, or experiencing, vulnerability and/or affordability difficulties are particularly impacted by additional fees. We therefore strongly support the draft rule prohibition for ancillary fees and charges for customers on affordability programs and payment plans; customers receiving concessions and customers affected by family violence. We also support that the draft rule:

- limits ancillary fees and charges for all customers to a retailer's reasonable costs
- prohibits account establishment fees and special meter read fees for move-in/out
- requires retailers to provide at least one free payment method that is commonly used and easily accessible for their customers.

This balanced approach allows retailers to recover reasonable costs while also allowing for:

---

[1] The payment assistance schemes in our jurisdictions are the Energy Accounts Payment Assistance (EAPA) scheme in New South Wales, the Emergency Electricity Payment Scheme (EEPS) in South Australia, and the Home Energy Emergency Assistance Scheme (HEEAS) in Queensland.

[2] EWON, EWOSA, EWOQ Joint submission, Delivering more protections for Energy Consumers – Consultation Paper, 16 January 2025

[3] Ibid

- jurisdictional differences
- improved transparency for customers
- protection of vulnerable customers
- protection of customer cohorts like renters who may have to move more often, and sometimes not by choice.

We also agree that the AER's *Retail Pricing Information Guidelines* must be reviewed, as they have not been updated since 2018. We look forward to contributing to the AER's consultation.