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## **ACAT Response to Issues Paper – Report No 12 of 2019**

### **Standing offer prices for the supply of electricity to small customers from 1 July 2020**

#### **ACT CIVIL AND ADMINISTRATIVE TRIBUNAL**

The ACT Civil and Administrative Tribunal was established by the *ACT Civil and Administrative Tribunal Act 2008* and commenced operation on 2 February 2009. ACAT brought together a large number of ACT tribunals, including the former Energy and Water Consumer Council.

Under Part 12 of the *Utilities Act 2000*, the ACAT is responsible for determining hardship applications and resolving non-hardship complaints made by consumers and customers of ACT energy and water utilities. These may include complaints about:

1. Contravention by a utility of a customer contract, or customer retail contract or customer connection contract made under the *National Energy Retail Law* (ACT);
2. Contravention by a utility of an industry code dealing with utility service standards;
3. Failure (or potential failure) of a utility to provide a utility service to a consumer, or the withdrawal (or potential withdrawal) of a utility service from a consumer, where such failure or withdrawal causes, or is likely to cause, substantial hardship to the customer or a consumer;
4. Contravention by a utility in relation to the protection of personal information;
5. Contravention by a utility of an obligation under the *Utilities Act 2000* or the *Utilities (Technical Regulation) Act 2014* in relation to network operations;
6. Acts or omissions of an authorised person for a utility in relation to network operations;
7. The amount of a capital contribution charge imposed by a utility (water only). (s 172)

The ACAT is the jurisdictional energy ombudsman for the Australian Capital Territory by regulations under the *National Energy Retail Law (South Australia) Act 2011 (SA)* (NERL).

In addition, for more than 25 years, the ACAT and its predecessor agencies (the Energy and Water Consumer Council (EWCC) and the Essential Services Review Committee) have

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exercised legislative power (under the *Utilities Act 2000* and the *Essential Services (Continuity of Supply) Act 1992*) to protect energy and water consumers in the ACT from disconnection for utility debt, including by directly case managing the accounts of customers who have been unable to meet their payment commitments. In 2018-19, ACAT Energy and Water received 481 new electricity hardship applications and, over the life of the scheme, the ACAT has case managed more than 10,000 energy hardship customers.

The comments which follow in this submission are made in the context of the responsibilities and experience of the ACAT as described above.

## **GENERAL COMMENTS**

Over the years that the regulated standing offer price for electricity (the TFT) has operated in the ACT, the ACAT (and its predecessor the EWCC) have been strongly supportive of the TFT and the Commission's methodology for setting its level. The ACAT supports this form of price regulation, considering that it is in the interests of low income and vulnerable consumers, and that it has made an important contribution to keeping residential electricity prices in the ACT at the lowest level in Australia.

The ACAT has consistently supported the cost component build up model adopted by the Commission and strongly supported the decisions of the Commission in each of its previous Determinations to exclude Customer Acquisition and Retention Costs (CARC costs) as a retail cost component.

The ACAT notes that the Commission has also been asked on this occasion (ToR 4) to consider whether changes could be made in the Territory to promote improved transparency and comparability of both regulated price offers and unregulated market offers in the ACT. The ACAT has made a submission to:

- the Australian Energy Regulator (AER) on the Default Market Offer Price (December 2018); and
- the Australian Energy Market Commission (AEMC) on the proposed conditional discounting rule (September 2019).

Copies of these submissions are attached, as they may be relevant to this Term of Reference.

## **2. COMMISSION'S PRICING MODEL AND INPUTS: SPECIFIC COMMENTS**

### **2.1. Price control approach**

#### 2.1.2 Form of price control

The ACAT considers that the new regulated tariffs from 1 July 2020 should be used as the reference point for comparison of competing market offers. If this is the case, the ACAT suggests that the form of price control be altered from the current discretionary basis to the following:

1. The Commission sets a maximum percentage increase and the nature and number of the suite of default price offers which are to be used for comparative purposes;

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2. ActewAGL Retail (AAR) develops the required suite of regulated default price offers and submits them to the Commission for approval;
3. The Commission examines the proposed price offers and approves them if they fall within the maximum price increase and are appropriately structured for comparative use.

A suite of price offers should be developed and approved each year, taking into account annual resets in the regulated price and any serious problems encountered in the market comparison process.

#### 2.1.3 and 2.1.4: Annual recalibrations and cost pass-through arrangements

The ACAT supports the annual recalibrations and cost pass-through arrangement proposed by the Commission.

### **2.2 Pricing Model**

The ACAT supports the Pricing Model proposed by the Commission, noting that it is similar to previous years and has been modified appropriately by the Commission's 2019 methodology review.

#### 2.2.1: Appropriate average electricity consumption for reporting

The ACAT is not aware why the annual average consumption levels used by the AER, the AEMC and the Commission vary from 7,010 kWh to 8,000 kWh. A consistent figure would appear desirable.

An important consideration in use of "average annual bills" in communications with the public is that actual electricity use varies widely between households for a great many reasons (building envelope, appliances, behaviour, health needs, etc). In the ACAT's experience, too much concentration on the annual cost to an average household can be counter-productive and can lead to significant customer disaffection, particularly amongst high users.

#### **2.2.2 Components of the current pricing model**

##### Step 1: ACT load profile

The ACAT strongly supports the development of a heuristic based on the ACT's load profile. It is our experience that the ACT has a distinctly different load profile than exists elsewhere in Australia, primarily because of winter temperatures and the high number of gas customers in the ACT.

##### Step 3: Forward price margin and period

The ACAT supports a forward price margin of 5%, and a period of 40 days, noting that this period is based on the advice of an experienced consultancy company to the Victorian ESC.

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### Volatility allowance

There do not appear to be any special ACT factors in setting a volatility allowance. It would be appropriate to follow the Victorian ESC, as proposed.

### Regulatory cost of debt

The ACAT does not have the expertise to comment on this issue, but asks whether the Victorian ESC decision on the electricity VDO may be more appropriate comparator than a cost of debt based on a water business.

### Energy losses

The ACAT supports the use of new loss factors if the AEMC changes its methodology to calculate them.

### Retail operating costs

The ACAT is strongly opposed to the introduction of an allowance for customer acquisition and retention costs (CARC). This will simply raise prices for all domestic customers in Canberra to promote “competition” among retailers in relation to market offers. We note also that there is a slowly increasing penetration of the ACT residential electricity market by national retailers, particularly Origin Energy, which is occurring without an allowance for CARC costs.

In relation to the overall level of retail operating costs, the ACAT observes that the Victorian retail environment is likely to be more expensive than the ACT because of additional regulatory burdens in Victoria (e.g. the wrongful disconnection penalty, the smart meter roll-out, etc) and the high level of churn in that market.

### Update of the retail operating costs allowance

The ACAT supports an annual update of the retail operating cost allowance based on AAR’s customer numbers and CPI.

### EEIS costs

The ACAT supports the EEIS program which has delivered considerable energy efficiency benefits to ACT customers, including vulnerable customers.

### Retail margin

The ACAT recommends setting the retail margin at a relatively low level to reduce costs to end users. A good starting point is the Commission’s determination for the 2017-20 regulatory period.



### 3. TRANSPARENCY AND COMPARABILITY OF ELECTRICITY OFFERS IN THE ACT

#### Discount offers in the ACT

The ACAT observes the range of discounts on offer in the ACT through two mechanisms:

- the discounts offered in market offers to our hardship clients; and
- complaints to ACAT about discounts and other tariff issues.

Although a small number of the ACAT's hardship clients transfer to other retailers in response to discount offers, there are also other important drivers, including churning to get away from existing utility debt.

AAR currently has a very positive approach to discounts for its hardship customers (including AAR clients under ACAT hardship case management), namely they are offered the best available discount for their usage without any conditionality.

Discount issues are a relatively small part of the overall customer complaints made to the AQCAT. The few complaints we receive involve problems such as miscommunication about the offer or conditions, timing problems where the customer transfers retailers, and backdating/start dates.

#### Tariff structures in the ACT

The ACAT supports a mix of tariff structures for small customers in the ACT, including flat rate tariffs, time-of-use tariffs, and demand tariffs. However, step down tariffs should be prohibited as they encourage increase usage of electricity and are inequitable.

Step down and step up tariffs may be appropriate in the highly competitive large customer electricity market, but only if the step are inextricably linked with demand management initiatives which provide significant advantages to the stability and management of the national grid.

Finally, the ACAT wishes to draw to the Commission's attention its belief that tariff structures are poorly understood by many customers in the ACT, and that many customers do not understand the tariff implications of the installation of a smart meter or a roof-top solar array. Note also that a rapid expansion in home battery storage may in future have a significant impact on tariffs, particularly time of use tariffs.

If you have any questions in relation to this submission, please contact me.

Yours sincerely



Graeme Neate AM  
President  
14 October 2019

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19 December 2018

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### **Response to AER Position Paper – “Default Market Offer Price” - November 2018**

The ACT Civil and Administrative Tribunal (ACAT) has the statutory role of jurisdictional energy ombudsman for the ACT. In this capacity, the ACAT has an important role in ensuring the effective operation of the energy market in the ACT. The ACAT also has a statutory remit to ensure that the rights of customers who make complaints against utilities are protected (*Utilities Act 2000*, s 171).

In addition, for more than 25 years, ACAT and its predecessor agencies (the Energy and Water Consumer Council and the Essential Services Review Committee) have exercised legislative power (under the *Utilities Act 2000* and the *Essential Services (Continuity of Supply) Act 1992*) to protect energy and water consumers in the ACT from disconnection for utility debt, including by directly case managing more than 10,000 utility customers who were unable to meet their payment commitments.

The comments which follow in this submission are made in the context of the responsibilities and experience of ACAT as described above, but recognising that the Default Market Offer (DMO) Price will not apply initially to the ACT.

### **Application of the Default Market Offer Price in the ACT**

The ACAT notes that the DMO will not apply initially to the ACT as the ACT has a regulated retail electricity price mechanism determined by the ACT Independent Competition and Consumer Commission (ICRC). The ICRC sets a default standing offer price for the major incumbent retailer, ActewAGL Retail (AAR), but does not regulate market offers by AAR or other retailers.

The level of retail competition for residential and small business customers in the ACT is fairly low, with only two other retailers (Energy Australia and Origin Energy) active in the market with a total market share less than 10% of residential customers. The electricity market for medium and large business customers in the ACT is very competitive, and has no price regulation.

The ICRC uses a cost build-up methodology to set the regulated price, and does not include any allowance for customer acquisition and retention costs in the regulated price. The current price regulation covers the period to 30 June 2020, with a price reset on 1 July 2019 based on applying current market data to a pre-determined methodology.

In the second half of 2019, the ACT Government will determine its policy on electricity price regulation from 1 July 2020. It will have a choice between continuing with the special ACT price regulation arrangements, managed by the ICRC, or looking at joining the national DMO arrangements.

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## **General Observations on the Proposal**

While the DMO will not directly apply to the ACT electricity market in 2019-20, the ACAT considers that the ACT and its key policy agencies have an important role in the development of the DMO scheme for two main reasons:

- the ACT experience with electricity price regulation can inform the development of the proposed national scheme; and
- the ACT may make a policy choice to join the national DMO scheme on 1 July 2020 when the current regulatory scheme administered by the ICRC ceases.

The AER proposes that the DMO will be the maximum price for the default offer by each retailer selling in that jurisdiction, leaving retailers open to make market contract offers which discount below the DMO. Because of jurisdictional differences and different costs for such things as distribution, and green costs, a DMO will be set for each distribution zone in the participating States.

The AER proposes that the initial DMO will be set for 12 months and will be based on an averaging process of all comparable retail offers for each zone at October 2018, adjusted for some changes in the cost stack and other factors between then and the DMO determination date.

### Question 1: The Queensland Uniform Tariff Policy (UTP)

This is primarily a matter for discussion between the AER and the Queensland Government as it relates to the existing unique arrangements for Queensland regional customers (which have some similarities to the WA arrangements). The DMO set for South East Queensland should not affect the level of the DMO set in other States.

### Question 2 – Residential customers

We agree that the DMO should be focussed on flat rate customers and could be extended to controlled load (off-peak) offers where these have a significant presence in the particular distribution zone.

We suggest that consideration be given to not including Time of Use (ToU) tariffs in the DMO as those tariffs tend to be associated with off-setting solar credit arrangements and (at least in the ACT) tend to be poor value for money for many residential customers, particularly where their largest electricity expenditure is on space heating. ToU tariffs for residential customers will also become increasingly affected by an expansion in battery storage capacity.

### Question 3 – Small business customers

We consider the DMO could benefit many small business customers as a similar proportion of them are as inactive in seeking better offers through market contracts as residential customers. The DMO would be highly inappropriate for medium and large customers. In our experience, this market is already highly competitive (including in the ACT).

#### Question 4 – Factors in determining DMO prices

For reasons of time and practicality, the AER proposes to set the original DMOs by reference to existing standing and market offers in each distribution zone, with some adjustments between a benchmark of October 2018 and the DMO determination date. We support this approach. This methodology provides for only a limited and somewhat discretionary use of a cost component build-up to determine an efficient price, and therefore Question 4, in the short term, does not have to be answered in a comprehensive manner.

#### Question 5 – Factors and risks

For reasons of time and practicality, the AER proposes to set the original DMOs by reference to existing standing and market offers in each distribution zone. We support this approach.

However, the approach to be adopted by the AER for 2019-20 may be less suitable in subsequent resets as it would become, to a considerable extent, self-referencing, and may not properly account for changes in the market, particularly in respect of wholesale electricity costs.

We consider there could be fruitful discussions between the AER and the ICRC on cost stack methodologies once the 1 July 2019 DMOs have been set. We understand that the ICRC may be conducting a review of its own methodology in the first half of 2019, but this will not necessarily affect the already established price set methodology for 2019-20.

#### Questions 6 to 11 – Pricing approach

We support the approach outlined by the AER at steps 1, 2 and 3 in part 2.3.1 of the Position Paper.

In relation to points 4, 5 and 6, we note that there will be data after October 2018, which the AER can usefully use to set the DMOs for 2019-20, including:

- AER determinations of network costs;
- wholesale electricity price trends; and
- the AEMC retail price trends report.

Use of this data is compatible with the AER's preferred approach, which we support for the 2019-20 DMO.

As mentioned earlier, we suggest that the AER should give further consideration to its pricing methodology for 2020-21 and subsequent years, in consultation with stakeholders, and in light of initial outcomes of the scheme.

#### Question 12 – How should DMO prices be specified

We agree that the DMO should be specified as an annual bill amount in the first DMO price set. This an amount useful to residential customers and aligned to the budget practices of small business. We also recommend that retailers have the flexibility to calibrate the overall amount into fixed and variable components.



For other customer purposes, the ACAT generally specifies energy usage as a fortnightly, annually averaged amount. This assists hardship customers to appreciate their real level of usage and to pay fortnightly from their Centrelink or salary payment.

Question 13 – Duration of first DMO determination

We agree that one year is the appropriate period for the initial DMO determination.

We suggest that the AER should be open to review of the first one-year DMO determination if certain highly material events occur:

- to allow pass through of a significant tax increase, for example the reintroduction of a carbon tax;
- to respond to a very significant, fast acting and durable increase or decrease in the wholesale cost of energy.

We agree with the AER that it is most likely that the impact of any such market event would manifest over a period, which allowed it to be incorporated in the annual reset process.

If you have any questions in relation to this submission, please contact me.

Yours sincerely



Graeme Neate AM  
President

Australian Energy Market Commission  
Via "lodge a submission" at [www.aemc.gov.au](http://www.aemc.gov.au)

**ACAT SUBMISSION:  
AEMC, NATIONAL ENERGY RETAIL AMENDMENT (REGULATING  
CONDITIONAL DISCOUNTING) RULE, CONSULTATION PAPER, 1  
AUGUST 2019**

Please find below a Submission from the ACT Civil and Administrative Tribunal (ACAT) commenting on the above AEMC Consultation Paper.

**Summary of submission**

The AEMC proposes a Rule Change to Rule 45A of the National Energy Retail Rules, and new Rules 46C and 46D, to regulate the level of conditional discounts for gas and electricity retail offers. The proponents of the Rule Change propose that conditional discounts be restricted to the reasonable cost savings that a retailer expects to make if a consumer satisfies the conditions attached to the discount.

The ACAT supports the proposed Rule Change.

**The role of the ACT Civil and Administrative Tribunal (ACAT)**

Under Part 12 of the *Utilities Act 2000* (ACT), the ACAT is responsible for determining hardship applications and resolving non-hardship complaints made by consumers and customers of ACT energy and water utilities. These may include complaints about:

1. Contravention by a utility of a customer contract, or customer retail contract or customer connection contract made under the *National Energy Retail Law* (ACT);
2. Contravention by a utility of an industry code dealing with utility service standards;
3. Failure (or potential failure) of a utility to provide a utility service to a consumer, or the withdrawal (or potential withdrawal) of a utility service from a consumer, where such failure or withdrawal causes, or is likely to cause, substantial hardship to the customer or a consumer;
4. Contravention by a utility in relation to the protection of personal information;
5. Contravention by a utility of an obligation under the *Utilities Act 2000* or the *Utilities (Technical Regulation) Act 2014* in relation to network operations;
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7. The amount of a capital contribution charge imposed by a utility (water only). (s 172)

The ACAT is the jurisdictional energy ombudsman for the Australian Capital Territory by regulations under the *National Energy Retail Law (South Australia) Act 2011 (SA)* (NERL).

In addition, for more than 25 years, the ACAT and its predecessor agencies (the Energy and Water Consumer Council and the Essential Services Review Committee) have exercised legislative power (under the *Utilities Act 2000* and the *Essential Services (Continuity of Supply) Act 1992*) to protect energy and water consumers in the ACT from disconnection for utility debt, including by directly case managing the accounts of more than 15,000 ACT utility customers who have been unable to meet their payment commitments.

The comments which follow in this submission are made in the context of the responsibilities and experience of the ACAT described above.

### **General Comments**

#### Conditional discounts

The ACAT notes that conditional discounting has not been a major element of energy complaints in the ACT in the past year. There were a considerable number of complaints in 2017 and 2018 concerning an ActewAGL Retail (AAR) discount conditional upon direct debit arrangements.

In the past year, AAR, the dominant retailer in the ACT, has focussed its attention on headline discounts from the ICRC-regulated electricity price, bundling discounts for both electricity and gas, and conducting “win-back” marketing when an existing customer advises a transfer to a new retailer. The price for gas before discount is not regulated and is set by AAR, but movements in that price seem to reflect the level of, and changes in, the NSW IPART-regulated gas price.

Two other large retailers – Origin Energy (OE) and Energy Australia (EA) - make market offers to customers in the ACT, however their share of the small customer market (while growing) is still relatively small. Discount offers such as pay on time discounts have been the subject of complaints to ACAT by OE customers. In our experience, OE and EA provide similar energy offers in the ACT to those they offer in NSW and the price before discount is often based on their general NSW tariff structure, and not on the ICRC-regulated electricity price.

There are some smaller retailers operating in the ACT, usually on a niche basis such as solar credit customers only. No conditional discount issues have arisen in relation to these retailers.

### Default Market Offers (DMO)

As the Consultation Paper points out, the ACCC Electricity Retail Code of Conduct which implements the DMO does not apply in the ACT because the ACT has a form of electricity price regulation administered by the ACT Independent Competition and Regulatory Commission (ICRC). The ACT is, however, covered by the National Energy Retail Law (NERL) and Rules (NERR) and therefore the proposed Rule changes will have an impact on the regulatory framework for electricity supply in the ACT and on ACT small electricity customers.

The ACAT supports the proposed Rule Change. It notes that the drafting of the amended Rules must be consistent with the DMO Code and also operate on a stand-alone basis to ensure that the changes work properly in both Code and non-Code jurisdictions.

The Rule Change is desirable because:

- The Code covers only electricity retailers; and
- Problems around conditional discounting may arise in the ACT and Tasmania where the DMO has no application.

### **Responses to Questions**

#### Question 1: Offer Comparability

- (a) Yes. The Code does not apply in the ACT.
- (b) It is noted that the larger interstate retailers such as OE and EA tend to make market offers based on their NSW or Victorian offers, and not tailored specifically to the ACT.

#### Question 2: Excessive Penalties

- (a) It is appropriate to characterise the substantially higher prices paid by customers when they miss a “pay on time” condition as excessive penalties. Market intervention to reduce this practice is justified.
- (b) The potential for failure to meet conditionality requirements is very high and is not restricted primarily to vulnerable and hardship customers. The ACAT has observed situations where:
  - administrative error by the customer, the utility or the bank causes a direct debit payment failure.
  - a customer receives a higher than expected bill and their bank account does not have sufficient funds to cover the bill;
  - the utility issues an incorrect and unduly high bill and takes this higher amount out of the customer’s bank account without notice and on a unilateral basis.



Anecdotally, this often seems to occur on the weekend, leaving the customer without funds until they can contact the utility on the following Monday.

(c) In the ACAT's experience, the preferable payment arrangement for vulnerable and hardship customers is by CPay from their Centrelink income support payment or family tax benefit. CPay has several distinct advantages:

- Payment is taken out of the customer's Centrelink payment at source on a fortnightly basis which reduces failure rates and, importantly, turns energy supply into a pay as you go arrangement rather than a quarterly credit arrangement.
- There are no charges to the customer for CPay payments or failure of CPay arrangements.
- The level of CPay can be annualised to spread the payment load away from seasonal peaks.
- CPay is a voluntary payment arrangement, determined by the customer.

CPays need to be adjusted annually to reflect changes in household energy consumption and price rises.

(d) The ACAT has not discussed this issue with OE or EA. There are few apparent problems.

AAR offers a non-conditional discount to all of its energy hardship customers and has extended this offer to ACAT energy hardship clients who are AAR customers and who make a personal request to AAR for application of the discount.

### Question 3: Key Data Needed to Establish Materiality

The ACAT does not have data of the type requested by the AEMC.

### Question 4: Energy Offers Not Covered By The Code

(a) The ACAT considers that gas offers should be subject to conditional discount limitations in line with electricity offers for several reasons:

- gas and electricity are often bundled in the one market offer;
- gas and electricity supply should be subject to a similar customer regulatory framework to the extent that this is practical; and
- in the past, gas discount offers and payment arrangements have been the subject of a larger volume of complaints to ACAT than electricity offers and arrangements.

(b) There has been no apparent impact, but it is still early days.

- (c) Hopefully not, but gas market offers have been a significant area of complaints to ACAT in the past, particularly in relation to direct debits, even pay, CPay and marketing.

Question 5: Solutions

The ACAT supports Option 4.

- (h) If the “reasonable cost” limitation was managed by the retailer rather than through an AER guideline, ACAT currently may not have power to determine whether the amount was “reasonable” in the event of a customer complaint.

This question of power to make an order about “reasonable cost” should be resolved on 1 July 2020 if the ACT *Consumer Protection Code* is amended, as currently proposed by the ICRC, to require a utility to act “ethically, fairly and honestly in all dealings with a Customer”. (Proposed new section 5(1)).

Please contact the Tribunal if you would like any further information about ACAT and its operations.

Yours sincerely



Graeme Neate AM  
President

19 September 2019