9 April 2021

Mr Joe Dimasi
Senior Commissioner
Independent Competition and Regulatory Commission
PO Box 161
Civic Square ACT 2608

Lodged electronically: icrc@act.gov.au

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Dear Mr Dimasi

Improving the transparency and comparability of retail electricity offers – Draft Report – 10 March 2021

EnergyAustralia is one of Australia's largest energy companies with around 2.5 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation capacity.

We appreciate the opportunity to provide feedback on the Commission's draft ACT Retail Electricity (Transparency and Comparability) Code (draft Code), and generally on its intention to introduce reference pricing, best offer on bill notifications and customer entitlements for clear advice in the ACT.

We believe that customers gain the most benefit from retail markets where they are properly educated about energy products, and have the appropriate tools to help them make sense of the information that is available. Retailers are under more pressure to offer competitive pricing, better service quality and innovative products where customers have high confidence in approaching the market and can establish trust once they sign up with their chosen retailer. Achieving these conditions, in the face of evolving technology and customer expectations, is a responsibility that is shared by energy companies, customer representatives, governments and regulators. New regulations introduced by the Commission should be appropriately targeted to enable the market to deliver appropriate outcomes, while minimising unnecessary costs and compliance burden for retailers operating in the ACT. This is a critical point as the ACT market is relatively small, is dominated by ActewAGL as the incumbent retailer, and the payoffs for any retailer efforts are therefore very small.

The Commission should be clear on how customers will benefit from changes

We support the concept of reference pricing as a way to provide customers a broad measure to compare value in the market. We also support customers being provided 'clear advice' at the time they enter into an energy contract — we believe this is prudent practice for any retailer seeking to satisfy customer needs around service quality and in establishing solid relationships with customers. We are, however, less supportive of 'best offer' notifications on bills, as we do not believe they will have a material impact on customer engagement and involve disproportionately high implementation costs, although we appreciate the motivation behind this proposed change.

As raised in our prior submission[1], we recommend that the Commission undertake behavioural testing to understand what information, in a 'real life' level of detail, would help customers better understand pricing and offers in the market. The Commission's 2019 survey results identified that customers are in favour of the concepts of benchmark comparison price and bill notifications[2], however it is critical to understand how these concepts are translated into reality, and whether they meaningfully address known barriers to engagement. For example, the Commission's proposed reforms will not educate customers on different tariff types, reduce the number of offers available, or reduce complexity in the contractual terms that retailers offer. The introduction of reference pricing in other jurisdictions has actually seen retailers move away from using 'headline' discounts and towards a range of inconsistent product features as regulatory disclosures for benchmark consumption, distribution zones etc are unworkable in most forms of advertising media. As noted below, reference pricing does not work well with innovative offers and services now being seen in the market. Retailers have always been able to, and do, cater for customers who want simplicity via 'no frills' type offers with basic pricing structures. Regulations around pricing information and disclosures need to recognise these market drivers and eventual changes in underlying retail products.

The Commission's survey also indicated a significant lack of awareness and trust in existing tools developed specifically to enable product comparability, namely government comparator sites. In addition to educating customers on market basics like tariff structures, we recommend the Commission devote resources to educating ACT customers about Energy Made Easy, as this is likely to be more cost-effective and will do more to assist customers in getting a better deal than imposing requirements on retailer marketing and communications. Importantly, there is a level of distrust around comparator sites, and having retailers promote awareness of a particular site will be less effective than communications coming from governments or independent regulators.

The Commission should also be mindful of the significant market reforms under the Consumer Data Right (CDR) to be implemented in the energy sector in the second half of 2022. The CDR will enable customers to disclose data to accredited providers, who will use that data to identify and move customers onto better deals, and do this often, thereby reducing perceived and actual switching barriers in the retail market. That is, the CDR will directly target and most likely capture much of the benefits intended from information requirements like reference pricing and best offer notifications.

In summary, the Commission should set clear expectations on how customers will benefit from its proposed interventions, and in doing so identify objective measures for success that track improvements over time, in a changing market, and with concurrent interventions in the same space. This will be important as the Code will eventually need to be refined in response to how retailers exercise discretion in pursuing different objectives therein. Having well-defined measures of success for interventions is also good regulatory practice, particularly for those involving high implementation costs, and we encourage the Commission to hold itself to a high evidentiary standard.

[1] https://www.icrc.act.gov.au/__data/assets/pdf_file/0007/1440925/Submission-4-Energy-Australia.pdf
[2] https://www.icrc.act.gov.au/__data/assets/pdf_file/0003/1474761/YourSay-Survey-final-results.pdf

We will work with the Commission regarding the optimal timing of changes

We appreciate the Commission has been directed to implement changes by the Minister for Water, Energy and Emissions Reduction, and note the ACT Parliament's intent to have changes in place "by 2021".[3]

As the Commission is aware, it is not an opportune time to introduce ACT-specific reference pricing and billing requirements, to the extent consistency with other jurisdictional requirements is desired. The Commonwealth Government is currently reviewing its regulations around the Default Market Offer (DMO), and the AEMC recently finalised rules[4] that require the AER to publish billing guidelines for retailers by 1 April 2022.

The Commission has recognised that the ability to maintain consistent regulations across jurisdictions is a key factor affecting implementation costs. We appreciate its willingness to bring together stakeholders to minimise unnecessary divergence, and we recognise that some differences will be needed to deliver intended benefits to ACT customers.

We consider it would be prudent for the Commission, if possible, to delay implementation and consultation around reference pricing requirements. It would be regrettable if the ACT Code and DMO Code diverged on the treatment of some matters simply because of review timing differences, rather than any substantive 'policy' difference across jurisdictions. The review of the DMO Code is being conducted on the basis of stakeholder research (including updates to data collected last year) and the findings of this are yet to be released. Hence while we have outlined our specific issues and suggested changes around reference pricing in the next section, there are many stakeholders party to the DMO Code review that will not be providing feedback to the Commission. The Commission's consultation is also compressed, with some risk it has underestimated the issues in adopting reference pricing provisions from the DMO Code.

The timing outlined in the Commission's report appears to contemplate implementation as early as 1 July, noting this would coincide with regulated network price changes and so potentially suit the imposition of new pricing requirements, given retailers may reprice existing offers or alter acquisition offers in line with new network tariffs.

We would, however, have serious concerns about a 1 July implementation date. While we would endeavour to fully comply with any legislated requirements, such a short timeframe (a maximum of around eight weeks from finalisation of requirements) would likely incur significant costs on behalf of customers, and also carry risks of poor customer outcomes e.g. if time constraints did not allow for appropriate testing of new processes before going live. 'Best offer' requirements would effectively involve us establishing 'shadow' billing for individual customers across the range of products we offer. Although systems already exist for our Victorian customers, extending them to ACT customers would still be a burdensome process involving ingestion of different data and testing, through to generation and validation of different bill outputs.

Reference pricing and providing clear advice can be done on a shorter timescale however any requirements affecting pricing and customer communications, if taking effect from 1 July, would need to be known now if they are to be accommodated in our preparations,

[3] https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0003/1654077/Parliamentary-Agreement-for-the-10th-Legislative-Assembly.pdf
[4] https://www.aemc.gov.au/rule-changes/bill-contents-and-billing-requirements

noting that EnergyAustralia services customers in other jurisdictions with likely price changes around this date. Retailers would also need appropriate forewarning of the calculation of the ACT's reference price(s) which we expect would be determined following consultation with all affected stakeholders, again affecting implementation dates.

We are also accommodating network price changes on financial years in Victoria for the first time from 1 July 2021, with changes to tariff structures as the networks commence their new revenue determinations. Anticipated repricing for the subsequent pass through of Victorian network prices into the Victorian Default Offer, expected around August or September, will require further effort from our affected retail pricing and marketing teams.

These events all coincide with preparations for the imposition of 5-minute settlement from 1 October, which is a major market systems change.

[Confidential text removed]

Overall, we propose the Commission and the ACT Government adopt a 1 November effective date for its package of requirements. We consider this would minimise unnecessary retailer burden given other changes in the market. It would also allow the Commission to consider and accommodate likely changes to the DMO Code this year, again reducing the prospect of costs arising from administering different processes across jurisdictions. We do not consider this timing would result in withholding any material benefits to ACT customers, who, as we have suggested above, should be first subjected to an information campaign ahead of changes taking effect in order to maximise their impact.

Ideally the Commission would further delay best offer requirements in anticipation of AER billing guidelines to be introduced in April 2022, however we appreciate this would be beyond the ACT Parliament's desired timeframes. To that end, we recommend the Commission provide for potential Code revisions in exceptional circumstances which might accommodate significant national billing changes. The new ACT Code should also contain provisions for a scheduled review, appropriately sequenced around reviews of the corresponding national and Victorian regulations.

Finally, we look forward to working with the Commission around draft amendments to the Utilities Act, and jointly understanding how concurrent legislative changes might affect these proposed code requirements and potential implementation dates.

Reference pricing requirements need to be refined in light of DMO experiences

We are generally supportive of the Commission's approach to instituting reference pricing for small customers in the ACT. Note this is subject to the Commission setting clear expectations around what this is expected to achieve. Our view is that reference pricing is useful as a rough indicator of value across retailers, and that customers will still need to spend some effort in understanding different offers and how they translate into their individual circumstances, including by engaging with retailers and in using comparator tools.

Reference pricing regulations have been useful in arresting retailer practices of presenting essentially meaningless discounts that were calculated off different bases (i.e. their own unregulated standing offers). As noted above, retailers have and will continue to offer simple pricing for customer segments that value it, and similarly pursue differentiation outside of reference pricing for other market segments by means of credits, reward programs, bundling, subscription offers etc that reference pricing cannot feasibly accommodate.

Our primary feedback on the draft Code provisions, and also in reflection of the DMO Code, is that customers and offer types should be explicitly identified where they are to be subject to disclosure requirements. The DMO Code currently operates by exclusion i.e. customers with pre-payment meters, in embedded networks, and customers on demand tariffs are not subject to regulation. This means all other offer types and customers are covered by implication, including new products that are yet to be developed. We have found this to be an inhibitor in developing and marketing innovative products. We therefore recommend that the most common product and pricing types i.e. time-of-use and flat tariffs, be explicitly nominated as covered by reference pricing, with other products outside the scope of regulation. This would not expose customers to detriment as those on demand tariffs and more innovative product designs tend to be already capable of comparing products beyond simplified reference pricing disclosures.

We have already raised issues around subscription offers and others with the ACCC which, when presented in terms of annual billed amounts as if they were standard 'price per kWh' products, generate nonsensical results. We expect the treatment of innovative products to be reflected in changes to the DMO Code later this year, and in eventual amendments to the Victorian ERC. We would be happy to separately brief the Commission on our product designs to illustrate these issues.

We also consider the Commission should explicitly define what is a conditional discount, specifically in the treatment of 'sign-up' credits that relate to circumstances at the time the customer enters into the retail contract. The DMO Code and the ERC generally treat sign-up credits as unconditional. However, the ACCC's DMO guide creates uncertainty by citing circumstances unrelated to how the retail contract is entered into, such that some sign-on credits should not be included in the unconditional price (i.e. be treated as conditional discounts).[5] Some sign-up credits will be conditional on eligibility that cannot be known ahead of understanding a particular customer's characteristics. A question then arises about whether reference pricing disclosures should presume price communications are seen mostly by eligible customers (which would mean offers are presented with a lower unconditional price and higher discount) or should be presented in a more conservative manner (i.e. at a higher price, assuming customers are ineligible). We consider it would provide all stakeholders certainty if all sign-up credits were treated in the same manner, and that it would be very difficult to draft regulations that accommodate both conditional and unconditional sign-up credits. Our view is that the ambiguities arising from the ACCC's guide are likely to be eventually resolved. We will be advocating that sign-up credits be explicitly listed as an example in the DMO Code as part of its review this year (i.e. be amended in line with the Victorian ERC definition of 'conditional discount').

[5] https://www.accc.gov.au/system/files/Guide%20to%20the%20Electricity%20Retail%20Code%20-%20June%202020%20v2.pdf, see page 7.

Our other feedback on the draft Code provisions on reference pricing are as follows:

- we support maintaining alignment, to the point of duplicating language, across the Victorian ERC and DMO Code around definitions and calculations for conditional and unconditional pricing, lowest possible prices, and presenting unconditional discounts "conspicuously"

- consistency should also be maintained on whether reference pricing is invoked for price change communications. Although we consider it of low value to the customer, our expectation is that the DMO Code provisions around 'communications' will be largely retained as an outcome of upcoming review

- we also have issues with record keeping requirements that have been raised with the ACCC under its DMO guide. Again we would be keen to discuss these requirements with the Commission before similar requirements are introduced in the ACT, and will also be putting views forth as part of the DMO Code review.

The Commission would already be aware of the research prepared for the AER and ACCC on different reference pricing forms.[6] This research has implications on the design and effectiveness of reference pricing requirements:

- there are benefits in using more descriptive language, and in ensuring comprehension of key concepts used in reference price disclosures

- some customers may perceive reductions in value where the base of discounts is changed to a single reference price

- awareness of who sets "the reference price" is also critical.

It may be the case that this and further behavioural research will shape specifics of DMO Code amendments later this year and are therefore further matters the Commission should take into account.

We question the net benefit of best offer on bill notifications

In the case of best offer requirements, the Commission states that it has an "overarching objective of prompting customers to shop around and potentially find a better deal for their circumstances without placing significant burden on retailers by requiring more personalised messages."[7]

We support this objective but question whether specific bill notifications will measurably increase the instances of customers shopping around. At the same time, the requirement for retailers to gather information and conduct best offer calculations will impose considerable costs. In addition to the prospect of these costs being passed onto customers, the Commission may wish to consider any 'threshold' point where new administrative or compliance burdens of retailing in the ACT, which is a relatively small market, presents a barrier to entry or prompts retailers to exit.

[6] https://www.aer.gov.au/publications/corporate-documents/testing-comprehension-of-the-reference-price-research-by-aer-and-accc https://www.accc.gov.au/system/files/BIT%20Final%20report%20-%20Testing%20comprehension%20of%20the%20reference%20price.pdf

[7] ICRC, *Improving the transparency and comparability of retail electricity offers*, Draft report, 10 March 2021 p. 22.

We are yet to see any research or direct behavioural testing in Australia which supports the notion that customers would increase their level of engagement with the market on the basis of information provided on bills. Earlier research by Ofgem on its 'cheapest tariff messages' in 2017 suggested that only 3 per cent of customers who switched were prompted to do so because of this message.[8] We note that the Commission may not strictly regard higher switching as an objective of this change, and Ofgem's data does indicate some improvement in customers checking and comparing offers. As we highlighted above, setting specific measures for the success of reform will be important.

The Essential Services Commission's (ESC) commentary around its most recent market monitoring report suggests that its recent reforms are "delivering a less confusing market… making it easier for customers to compare energy deals."[9] The report indicates that electricity offers with conditional discounting now make up 7 per cent of products in the market, compared to around a third over a year ago.[10] The report also contains some observations on the impact of its broader awareness campaign 'It's Your Energy', which informs customers of clear advice entitlements, the existence of the VDO and best offer obligations. None of the ESC's monitoring reports to date, however, have measured or explored how reference pricing or best offer on bill requirements have affected how customers engage with the market. We recommend the Commission reach out to the ESC to understand its broader communications campaign as something similar may be beneficial in the ACT.

The Commission states that the draft Code adopts a "lower cost approach" by allowing retailers to customise messages, provided they work to achieve the objective of identifying whether a better offer is available.[11] That is, the draft Code does not require retailers to determine a dollar estimate of the savings for the customer or even consider all their plans, rather retailers must use reasonable endeavours to assess whether they may have a plan that would be cheaper.

Much of the implementation cost involved in best offer notifications comes with the calculations for the 'best offer check' rather than prescribed bill contents. A further key factor affecting retailer effort and cost will be whether the Commission's decision on the timing of changes reflects concurrent retail and market interventions over the coming year, rather than creating avoidable 'bottlenecks'.

[Confidential text removed]

We will obviously seek to minimise any implementation costs associated with best offer checks and do not have suggestions on improvements to the associated draft Code provisions.

In terms of improving the effectiveness of the messages, we recommend that the Commission provide retailers discretion on the text used in how customers are informed of whether a better offer is available or not. The prescriptive text in draft clauses 3.4(3)(a) and 3.4(4)(a) appear to be largely the same irrespective of whether the

[8] https://www.ofgem.gov.uk/system/files/docs/2018/05/annex_2_-_summary_of_evidence_used_to_inform_our_proposals_0.pdf see page 3.
[9] https://www.esc.vic.gov.au/media-centre/energy-reforms-simplifying-energy-deals
[10] https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/victorian-energy-market-report
[11] ICRC, p. 21.

customer is on the best offer or not, namely an assertion, or a question, about whether the customer "could save money". The example notifications in the Commission's factsheet[12] illustrate these similarities. As titles within a separately bordered section on bills, additional disclosures underneath may not catch the eye. We note the text in draft clause 3.4(3)(a) mirrors clause 70S(4)(a) of the Victorian ERC, however prescribing the same text for every bill has a higher chance of being ignored. Giving retailers the ability to change wording over time, including as a result of their own customer testing, might better capture the customer's attention.

The draft Code also does not appear to contemplate additional disclosures, and the reference to retailer discretion as appears in Victorian ERC clause 70S(3) could be mirrored in the ACT Code.

Beyond best offer messages, cheaper and more effective alternatives to helping customers find better offers may simply be more targeted information on how to switch, provided at times when the customer is most receptive to receiving that information. This is what Ofgem opted for after reviewing and removing its obligations for a 'Cheapest Tariff Message' from bills.[13] To that end we support providing customers information on accessing Energy Made Easy, as this allows customers to compare a wide range of retailer offers after inputting detailed and customised usage data.

Clear advice and best offer requirements should only cover generally available offers

The requirement to consider alternative offers under draft clause 4.3(1)(d) should be limited to those that are generally available. We acknowledge the Commission's position that retailers should consider all plans available to the customer, irrespective of whether they are restricted, to ensure the customer is provided with the best deal.[14] The Commission's specific example of informing customers of plans being suitable for concession customers are already addressed under retailer hardship programs, where concession customers often are assessed to be hardship customers (e.g. EnergyAustralia takes into account reliance on government assistance grants when assessing whether a customer is eligible for its hardship program). EnergyAustralia's hardship policy (which covers the ACT) includes a commitment to check for and transfer the customer to a better energy plan with their consent[15], which provides a similar outcome to clear advice entitlements. All retailers must perform these energy plan checks under section 44(f) of the National Energy Retail Law, which requires retailers to have processes to review the appropriateness of a hardship customer's market retail contract.

It is important for product innovation that retailers retain the ability to offer trial plans which may include partner programs and other eligibility criteria. We note the Commission's view that the caveats in the draft Code about being "available to the small customer" should be sufficient, for example in excluding 'save' plans. However, determining eligibility may be problematic, and maintaining consistency with the Victorian ERC provisions seems to be a simpler and less costly approach. It would be similarly preferrable to not introduce an instrument in the ACT that took a contradictory

[12] https://www.icrc.act.gov.au/__data/assets/pdf_file/0010/1729351/Consumer-fact-sheet-on-the-draft-code.pdf
[13] https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier-customer_communications_rulebook_reforms.pdf
[14] ICRC, p. 25.
[15] EA_AER_Hardship Policy_Plain English.pdf (energyaustralia.com.au) (see section 2.4).

approach to the AER's Retail Pricing Information Guidelines, which apply in the ACT. We also note that Vic Energy Compare excludes restricted offers, and this is also likely to be the case for CDR based on consultation to date.

Note these comments equally apply to draft provisions for conducting best offer checks.

If you would like to discuss this submission, please contact me on [redacted] or [redacted].

Regards

[redacted]
Regulatory Affairs Lead