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Paul Harrigan
Executive Director, DMO and Consumers
Australian Energy Regulator
GPO Box 3131
CANBERRA ACT 2601

Submitted electronically: consumers@aer.gov.au

Dear Mr Harrigan



EnergyAustralia
LIGHT THE WAY

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 9060 0000
Facsimile +61 3 9060 0006

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

AER Retail Guidelines

EnergyAustralia is one of Australia's largest energy companies with around 2.2 million electricity and gas accounts across eastern Australia, of which around 22,000 customers are supported under our hardship program (EnergyAssist).

EnergyAustralia appreciates the opportunity to participate in the AER's consultation on the Retail Guidelines. EnergyAustralia supports the AER's objective of simplifying the retail regulatory framework and improving outcomes for energy customers. We recognise that many of the changes in the Guidelines give effect to Australian Energy Market Commission (AEMC) rule changes finalised in 2025, and we accept that these obligations must be implemented. However, we have four key substantive concerns with the Guidelines and put forward alternative solutions we believe are warranted to address them:

1. The proposed commencement date is unreasonable – we recommend extending implementation requirements to at least 1 July 2027.
2. Moving to principles-based regulation has not been determined by rule makers – we recommend removing any principles-based proposals until this concept is adequately considered, and appropriate design principles are established and understood.
3. If the AER intends for 'benefit change notices' applicability to be based on an underlying variation in price – we recommend the AER consults with the AEMC on whether the AER has jurisdiction to determine this change or if the AEMC must consider this through a review or rule change process.
4. The billing design changes are based off customer research that does not reflect 'real-world' views – we recommend limiting any changes to billing that is not supported by research confirming the preferences of customers in real-world situations.

Commencement date

EnergyAustralia recommends the AER extend commencement to at least 1 July 2027.

The AER expects to publish final guidelines in September 2026, with a proposed commencement of 31 December 2026. This leaves retailers with approximately three months to implement changes across billing systems, benefit change notice processes, plan information, Energy Made Easy submissions and their customer hardship policy. The proposed three months is not a sufficient timeframe under the best circumstances; adequate resources available (not something that occurs over the December/holiday period) and assurance that business is developing based on confirmed requirements (something that cannot happen while the Guidelines are in draft form and are being consulted on).

Some obligations proposed by the draft Guidelines require substantial effort to implement, including changes to the mandatory wording for better offer messages, the structure of new benefit change notices and the standardised statements for hardship policies. Others may require further interpretation or legal advice before retailers can design a compliant system solution. If the final Guidelines are delivered in September 2026, there is insufficient time for retailers to develop and deliver the required changes.

EnergyAustralia acknowledges that there are elements of the Guideline that are a higher priority (either through regulatory timeframe requirements or perceived impacts to customers). Where proposed changes do no more than give effect to regulatory reforms which have been introduced in 2026 and do not require further implementation, we consider a shorter implementation timeframe may be reasonable. This may include changes to hardship policies which reflect reforms made on 1 July 2026. However, other proposed changes present significant departures from the existing regulatory framework, including the AER's interpretation on the scope of benefit change notices, and extension of better offer messages to "bill notifications". It is unreasonable to require implementation with less than 4 months' notice from publication of the final Guidelines.

We strongly urge the AER to consider an extension. Without a reasonable timeframe to implement, retailers will be either at risk of non-compliance, despite their best efforts, or will produce less desirable outputs in a rush to comply, both of which will result in worse outcomes for customers.

Principles-based regulation should replace, not supplement, prescriptive obligations

EnergyAustralia requests that the AER defer implementation of principles-based regulation from the Guideline, until it is confirmed by government or the rule makers that principles-based regulation is included in the energy regulatory mix and industry has a clear understanding of the expectations.

EnergyAustralia acknowledges both the intent of principles-based regulation and the objective of retailers acting 'fairly and honestly' in all customer communications. However, there has been no confirmation from either State or Federal Governments or the AEMC that principles-based regulation will become a part of the regulatory framework in the energy market.

The AER has a limited role in rule making, with power to do so deferred in most cases from the AEMC and should not proceed with principles-based regulation in the final Guidelines until such a determination is made by either government or the rule makers. This will ensure that the introduction of principles-based regulation is developed in a consultative manner and with a level of understanding from industry as to the expectations of this form of regulation. In the absence of a co-ordinated, industry-wide approach, we risk being left to implement a patchwork regulatory framework of overlapping prescriptive and principles-based rules, delivering neither the certainty of prescription nor the intent of principles.

The question of whether and how to introduce principles-based regulation into the retail energy framework — including an overarching consumer duty — is currently being actively considered through the Better Energy Customer Experiences (BECE) reform process. On 14 March 2025, Energy Ministers agreed to the approach for BECE, with DCCEE's directions paper expected to lead to recommendations to Ministers in 2027. The BECE process is the appropriate forum for determining whether and how a principles-based duty should be introduced into the retail energy regulatory framework, and critically, whether such a duty should *supplement* or *replace* existing prescriptive obligations.

EnergyAustralia's submission to the BECE consultation stated that:

"If a broad, principles-based duty is implemented, but current energy regulations are left intact, many of which are technical and prescriptive, the duty is unlikely to benefit customers or retailers. Retailers would have no choice but to continue to comply with energy rules which leave little room for differing approaches, defeating the purpose of a principles-based duty. Retailers and other captured entities could do what the regulations require and still not meet the intention of the duty".¹

The proposed 'fairly and honestly' obligation is an example of this. Imposing this duty on top of the existing prescriptive content of the four guidelines does not reduce or replace any prescriptive obligation. Further, the concept of 'honest' communications is effectively regulated by the Australian Consumer Law's prohibition on misleading or deceptive conduct.

We strongly urge the AER to await the outcome of the BECE process before making a final determination on an overarching principles-based obligation, and to ensure its approach is consistent with the policy direction being developed by DCCEE and Energy Ministers through that process.

Better offer

Notification requirements

EnergyAustralia appreciates the AER has discretion to determine the presentation of the deemed better offer message in communication documents; however, we believe that while the intention to include the better offer message is clear, the AER has not considered how the message should be tailored to suit each communication medium.

As an example, the bill notification definition now includes cover emails, SMS, and application notifications, and there has been no guidance provided on what would be a suitable tailored best offer message for these mediums. As an example, under the current Guidelines, we could assume that the entirety of a better offer message should be represented on an SMS sent to a customer proceeding an electricity bill, which is unlikely to meet the design principles of the Guideline.

Aside from the obvious length issue that this message would encounter, retailers will also have instances in which they are presenting a better offer message to a customer on an SMS notification, that is superseded by the better offer message on the physical bill. This example could occur with each communication a customer receives, including after they have just changed plans following a previous better offer message.

¹ EnergyAustralia Submission - Better Energy Customer Experiences

Customers receiving these messages will be confused and dissatisfied by the process. We therefore urge the AER to consider both:

1. A reasonable message tailored to suit each communication medium; and,
2. Limiting the better offer calculation requirements to the date of communication of the energy bill.

Customers on 'flexible plans' and other complex plans, including VPPs

We also have a concern about the operation of the better offer calculation for customers on 'flexible plans' or other complex offerings including VPPs, such as EnergyAustralia's *Battery Ease* product, which involves two-way energy flows, demand response and revenue streams from Virtual Power Plant (VPP) dispatch events. The better offer obligations should support a like for like comparison of the customer's current plan with other comparable plans of that type. E.g. VPP plans should be compared with other VPPs plans offered by the retailer, and not compared against more standard generally available plans. The AER should revisit the draft guidelines for this issue as:

- The definition of 'flexible plan' does not link to the definition of generally available or restricted plan, and therefore there does not appear to be a connection between 'flexible plan' with the better offer obligations.
- The draft definition of Restricted plan is drafted to include 'plans which require specific proprietary technology or equipment to be installed to access the plan'. However, this does not appear to assist with our issue because customers on VPP type plans will still need to be compared to standard type generally available plans, even though this would not be a like for like comparison.

Definition of restricted plans

We would also welcome more clear examples of plans that are not generally available i.e. restricted plans. Plans that may warrant explicit guidance through making them examples of restricted plans include virtual power plant and battery plans; electric vehicle plans; wholesale pass-through products; plans requiring a secondary settlement point configuration; and plans whose value depends materially on customer behaviour rather than usage alone.

Benefit Change Notices should only be triggered by changes to a 'benefit' in the retail product

EnergyAustralia supports the objective of ensuring customers receive clear and timely information when a benefit is being lost. Our concern is with the scope of the excluded change definition, which as drafted appears to require a benefit change notice where an underlying price change alters the dollar value of a percentage discount, even where the discount itself—both its structure and percentage—has not changed.

'Note: A benefit is being lost where the customer will pay more or stop receiving an additional entitlement'.² The drafting, and the AER's commentary in its Notice of Draft Instruments suggests that any time a customer pays more (even without a change to the actual "benefit") a benefit change notice would be required, rather than a 'price change' notice.³

² AER Retail Guidelines 2026 – Draft – Australian Energy Regulator – Jun 2026, clause 50(c).

³ AER Retail Guidelines 2026 – Notice of draft instruments – Jun 2026, page 9.

If the AER considers the existing 'price change' requirements are insufficient, it should consult with the AEMC.

The concept of a 'price change' is regulated under the National Energy Retail Rules (NERR).⁴ The relevant rules were amended on 1 July 2026 and regulate "variations to the tariff, charges or energy payment that affects [a] customer". The amendment did not capture changes to benefits.

The AER now considers a change to the underlying price would also change the financial value of a benefit and considers this is not a good outcome for customers as "price change notices include less information overall and no information on how the customer's benefit has changed as a result of the price change".⁵ EnergyAustralia believes it is not within the AER's jurisdiction to introduce an interpretation that potentially interferes with the operation of the NERR, and that any change to the operation of 'price change' requirements is for the AEMC to determine, in consultation with industry.

Even if the AEMC is to agree with the AER's interpretation, outlined above, we submit that from a practical standpoint the draft Guideline raises material changes which are unworkable for the following reasons:

1. *Notice requirements are impractical in the context of 'price change' rules*

The NERR provides that 5 business days' notice is the appropriate timeframe for a price change (noting jurisdiction specific amendments). By contrast, retailers must give customers between 20 to 40 business days' notice of a benefit change. Retailers may now only increase prices for customers in the NERR jurisdictions in the month of July and electricity prices either must comply with (in the case of most standing offers) or compare to (in the case of market offers) the Default Market Offer (DMO) set by the AER. The AER is required to publish a DMO determination no later than the first business day after 25 May in the previous financial year.⁶ The AER's DMO determination for FY26-27 was published on 26 May 2026, 21 business days before 1 July. If a retailer offering 'benefits' were required to deliver benefit change notices with respect to a 'price change', in line with the AER's interpretation as to the financial value of a benefit, the retailer would be required to assess the AER's DMO determination, decide on its pricing strategy, prepare benefit change notices and deliver notices to all customers within a timeframe neither workable or reasonable.

2. *Applicability of better offer for a "reasonable time"*

The requirement for a better offer message on benefit change notice to be "applicable to the customer at the time of calculation [and] remain applicable to the customer for a reasonable time following the communication date" is not possible with current retail offer processes and risks representing an incorrect better offer. We currently have customers receiving benefit change notices throughout the year, as their benefit period concludes, with our offers in market changing based on our needs to compete in the market or from wholesale and network cost factors. The complexity of these variables, exacerbated with the proposed extension of the better offer to any network tariff, will make it impossible to have better offers 'remain applicable for a reasonable time following the communication date' in line with the AER's interpretation. We recommend the AER revise this point so that better offers must be applicable on the date of the communication, consistent with the current Better Bills Guideline.

⁴ NERR version 51, rule 46.

⁵ AER Retail Guidelines 2026 – Notice of draft instruments – Jun 2026, page 9.

⁶ *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*, r 17(c).

Extended definition of “non-financial benefits” risks limiting retailer offerings

The revised definition of “non-financial benefit” in the draft Guidelines risks broadening the scope of benefit change notices to offerings that have no impact on the customer’s energy plan or contract itself. The proposed expansion to non-financial benefits “*under or associated with*” the relevant contract creates material uncertainty about what is “associated” with a contract, and what retailers should and should not notify customers of.

We recommend the AER revise the definition of “non-financial benefit” and “benefit change” to limit the scope to benefits which change the price payable for energy, or which are features of the customer’s specific contract.

The BETA research does not adequately support the weight placed on it

The *Notice of Draft Instruments* relies extensively on research conducted by the Behavioural Economics Team of the Australian Government (BETA) to justify the design of the *draft guidelines*, particularly in relation to the better offer message, the deemed better offer threshold and the design principles. We believe excessive weight has been given to the BETA research findings in a manner that does not adequately account for the limitations of behavioural research in controlled settings to establish preferences of real-world customers.

BETA’s research methodology for energy billing has relied primarily on controlled environments including online survey experiments, expert review panels, embedded pop-up surveys on Energy Made Easy, and mock bill comprehension testing. These methodologies are well-suited to measuring how customers understand and respond to bill design in controlled settings. They are less reliable as predictors of how customers behave in real-world scenarios and are therefore unlikely to achieve the intended outcomes for customers.

BETA’s research presented customers with a binary choice between the existing retailer bill design and the Better Bills Guideline design, and measured which version customers preferred and better understood. This is not a test of whether the Better Bills design is the optimal approach to achieving customer comprehension and engagement – it is only a test of whether it is better than one alternative. Customers were not presented with a range of possible bill designs reflecting different approaches to presenting billing information, particularly in how this might be interpreted in an uncontrolled real-world scenario. The research therefore cannot support a conclusion that the Better Bills design, or the design principles derived from it, represent the best available approach to achieving the customer outcomes the AER is seeking.

Notably, independent and unbiased research⁷ conducted by Energy Consumers Australia found that ‘*only 29% of Australians definitely understand how their electricity bill is calculated*’ and ‘*almost 6 in 10 Australians want a basic, passive relationship with their energy provider*’. In EnergyAustralia’s opinion this establishes the failing of the Better Bills design; customer’s energy bill/product understanding and satisfaction have not improved, as the guidelines were not designed with an appreciation for how most customers want to participate in the energy market.

EnergyAustralia recommends the AER delay any changes to customer communication until assurance can be established that any changes are justified based on effectiveness in real-world scenarios.

⁷ Energy Consumers Australia - Consumer Energy Report Card 2026

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

Regards

Travis Worsteling

Regulatory Policy Manager