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General Manager – Strategic Policy and Energy Systems Innovation Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Submitted via email to: [ConsumerPolicy@aer.gov.au](mailto:ConsumerPolicy@aer.gov.au)

## **Draft Better Bills Guideline – Tango Energy submission**

Tango Energy thanks the Australian Energy Regulator (AER) for the opportunity to comment on the Draft Better Bills Guideline published on 20 December 2021.

Tango Energy is the wholly owned subsidiary retail arm of Pacific Hydro Australia (PHA). PHA was founded in 1992, and is a leading owner, operator and developer of renewable energy assets. It operates a high quality, diversified portfolio of wind, hydro and solar assets with an installed capacity of 665 MW; it also has a development pipeline of substantial projects totaling over 1100 MW of potential capacity, as well as over 300 MW of energy storage solutions.

We are a relatively new and growing retailer with approximately 130,000 small and large customers as of January 2022. While our customer base is predominantly in Victoria, Tango Energy also recently started selling to small customers in New South Wales, Queensland, and South Australia and expects to grow our presence in those jurisdictions.

## **Billing Guideline System Implementation (questions 1 and 2)**

Tango Energy understands that the implementation date for the draft guideline has been pushed back to the 4 August 2022, with retailers given the option to 'opt-in' to part or all of the guideline by the full implementation date of 31 March 2023. We agree that this gives further flexibility to implement the necessary changes as well as allowing time for system tests to be conducted fully before the bills go live in conjunction with the guideline.

Given the current circumstances of the energy market, consideration needs to be given to the number of regulatory changes currently in the short-term pipeline throughout the energy market. Over the next 12 months, retailers will be required to juggle implementation of the final guideline with other regulatory changes that have substantial market implications. This includes but is not limited to the Consumer Data Right, the Energy Fairness Plan, the proposed Energy Retail Code of Practice, the proposed Victorian performance reporting changes as well as other future rule changes. Each of these will be large projects to take on and will also take up a substantial portion of

retailers time, and assistance will be needed from the AER throughout the transition to the full implementation of the guideline.

The new tiering requirements, design principles and prescriptive requirements (such as the proposed 'better offer' and 'standardised plan summary') will require retailers to redesign their bills, with some only needing minor adjustments while others will require significant overhauls. We request that the AER undertakes further consultation to understand the work and effort needed across industry for each one of these individual changes.

The tier system appears initially to be the simplest adjustment needed, as it specifically states which information will need to be present and on what page it is required. The design principles and prescriptive requirements, however, will pose a more significant challenge from a design, implementation, and cost standpoint. The principles-based approach allows flexibility for creative freedom in bills, however the AER in its guideline has stated that regular testing will need to be conducted to ensure that the bill fits these principles. This not only has cost implications of regularly conducting consumer testing for bills which can result in only minor benefits due to only minor changes occurring. Significant research and consumer testing obligations would also create disproportionate cost burdens for smaller retailers, who may not have the capacity to conduct the regular testing and significant research studies that the AER, or larger retailers, may have been able to undertake. As the AER would understand given its own experience in undertaking consumer research (roughly 7 months from March to October 2021)<sup>1</sup>, consumer research and testing requires a significant amount of time to undertake. This should be factored into any timeframes for any future changes the AER requires to the billing guideline.

The AER stated in their draft instrument of the guideline that, as the information for the 'standardised plan summary' is already present in the bill, implementing it will be a low cost to retailers. We disagree with this statement, as our initial scoping work indicates that billing systems will be required to develop the plan summary from scratch, and then spend the necessary amount of time to implement and test its efficacy. This process will not only take significant time to ensure the bills are compliant but will also be a costly development project to implement the changes, in addition to ongoing maintenance, monitoring and quality assurance costs. We consider that various detailed scenarios also need to be carefully considered. For example, clarity has not been given as to the potential implications of a customer changing plans in their billing cycle and whether the customer would be required to receive two different standardised plan summaries for in their bill that specific period. This may have even further development implications and costs burdens, as a separate bill may need to be developed specifically for customers who switch plans during a reporting period. We request that the AER address these concerns and provide guidance for this specific situation, as the purpose of the 'better

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<sup>1</sup> <https://www.aer.gov.au/retail-markets/guidelines-reviews/better-bills-guideline/preparation>

offer' proposal is to increase customer switching which is likely to increase the instances where a customer receives bills after a plan change.

#### **Design Principles (question 4)**

As per our previous submission, Tango Energy continues to hold the view that a principles-based approach will allow retailers to tailor their bills to their own customer base. The design principles proposed by the AER are based on this approach, and we believe that this gives flexibility to retailers to enhance market development and innovation. However, as we also raised in our previous submission, we are concerned that the compliance and enforcement regime currently do not enable a principles-based approach.

The purpose of a principles-based approach is for customers to understand their bills, however we believe that further consideration needs to be given to the principles themselves to assess their achievability. Some, such as ensuring that the most important information is prominent, can be achieved through both the tier system as well as basic consumer feedback.

Other aspects of the guideline, for example using a 'conversational tone' when communicating through a bill, may prove difficult due to the ambiguity over what is considered a 'conversational tone' for a diverse audience of consumers. What one individual could consider to be simple language another might find difficult to understand, which has potential repercussions resulting in a consumer not understanding a bill that has conformed with the design principles completely. Consumer research will not solve this issue entirely, as an audience with different comprehension levels may return conflicting results, even some that may contradict the principles entirely. In these situations, the AER will need to determine whether the fault lies in the retailer who has followed the guideline or the guideline itself. It is also unclear how escalated Ombudsman complaints are expected to be treated if one customer indicates a difference in preference for 'conversational tone' to another, and whether a retailer would be expected to constantly change the language and tone used on its bills in response to every complaint received.

We also request the AER clarify how retailers can avoid abbreviations without making the bill too over-complex through unrecognisable words and terms, as shortening these words allow for bills to be simplified and less cluttered (evident by the AER themselves requiring them to be used in their standardised plan summary).

We further request that the AER identify the processes that will be in place to assess whether a bill is a 'well designed bill'. The AER has already stated this as a potential grey area due to their lack of design expertise, and we believe that assessing a bill design to ensure that it conforms with the draft guideline will be difficult to regulate.

In light of the broad civil penalties that may be imposed for non-compliance with the guideline (under the new rule 25(1) of the National Energy Retail Rules (NERR)), we request clarity on the AER's intended approach to enforcement and compliance with specific aspects of the guideline, in particular subjective areas such as the ones above. We consider that such rules within the guideline create a misalignment with the AER's general compliance and enforcement strategy towards retailers, which appears to lean towards seeking punitive enforcement action for technical non-compliance<sup>2</sup>. Rather, a principles-based rule within the guideline would work better with a collaborative and education-based compliance and enforcement approach so that the AER and industry, through experience in implementing the guideline, can understand what may form an acceptable, practicable and implementable "middle-ground" that is consistent with the intent of the rule.

We also propose that paragraph 18 of the draft guideline, relating to retailers applying practices to improve customer comprehension, be amended to remove any necessity to test a bill design through consumer research every time it is required to be changed. Not only does this impose a challenge on an ongoing basis having to continually conduct research when any adjustment is made but will also be an ongoing costly task that disproportionately impacts smaller retailers in the market with minimal benefit, resulting ultimately in higher costs being passed on to consumers. Consideration has also not been given to situations where the consumer research results has determined an outcome for a bill that contradicts the other design principles, resulting in possibly some of the principles not being upheld. This requirement would also have no change to tier 1 information, being the most prominent information, which would therefore result in any need to test changes providing minimal benefit to the consumer.

### **Tier System (question 5)**

We support the need for a tier system to allow customers to locate necessary information as easily as possible, however flexibility needs to be emphasised to ensure that it does not become too prescriptive and bills market-wide become too 'cookie cutter' in their opening format as well as inconsistent with principles-based approaches.

We propose that this tier system is amended to allow certain additional information to be present on the front page of a bill on the basis that this information can be defined as 'primary information' for the customer. Flexibility allows retailers to continue certain practices that provide significant benefits to customers, such as advertising certain plan deals currently being offered as well as any potential concessions available. This will

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<sup>2</sup> <https://www.aer.gov.au/publications/corporate-documents/aer-compliance-enforcement-policy>  
<https://www.aer.gov.au/retail-markets/compliance-reporting/aer-compliance-and-enforcement-update-july-to-december-2021>

also enhance the consumer experience, allowing consumers to presently identify offers that their energy provider may have as well as readily available concession information.

An alternative proposal would be to allow tier 2 information and additional information to appear on the same page, given that it follows the design principles in the draft guideline. This allows for a bill to potentially be shortened from being an extra page, reducing development and ongoing costs, and also gives retailers a stronger opportunity to provide customers with key additional information that they may otherwise miss or look over.

### **Review Moratorium**

We propose that the AER implement a provision into the final guideline that requires the guideline to be reviewed and amended for material changes only once every two years, with the first two-year period commencing from the final implementation date of 31 March 2023. Two years between each review period appears to be a reasonable timeframe that allows for the guideline time to adjust to any market or regulatory changes that have occurred, and allows extended time for consultation with retailers to ensure that the changes made are fit for the entire market. Exceptions would only apply where manifest errors are detected within the guideline, or where there is a substantial change to other obligations requiring a change to the guideline.

If you would like to discuss this submission in detail, please contact me at the details provided with the submission.

Yours sincerely,

Matthew Frost  
Assurance and Compliance Analyst  
Tango Energy Pty Ltd