

19 December 2018

Australian Energy Regulator
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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.

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



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President