



Notice of final instrument

AER Retail Pricing Information Guideline

September 2011

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Shortened forms

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AER	Australian Energy Regulator
MCE	Ministerial Council on Energy
QCA	Queensland Competition Authority
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
Retail Regulations	National Energy Retail Regulations
SCO	Standing Committee of Officials

1 Retail consultation procedure

The AER has published this notice and the attached Retail Pricing Information Guidelines (Guideline) in accordance with the retail consultation procedure set out in r. 173 of the National Energy Retail Rules (Retail Rules).

This is the final stage of the AER's consultation on these instruments. As advised in the Standing Committee of Officials Bulletin No 190 of 21 March 2011, all activities carried out by the AER prior to the commencement of the National Energy Retail Law (Retail Law) and Retail Rules (such as consultation, making instruments and decision making) will be supported by appropriate transitional provisions enacted by participating jurisdictions to ensure instruments and decisions made as a result of these activities are valid and take effect on commencement of the National Energy Retail Law and Rules.

2 Purpose of the guideline

Under the Retail Law, the AER may develop and amend Retail Pricing Information Guidelines. The purpose of this Guideline is to provide guidance to retailers in the presentation of their standing offer prices and market offer prices. This assists small customers to consider and compare standing offer prices and market offer prices offered by retailers.

The AER considers it important to ensure that energy consumers have access to clear and relevant information on available retail offers. This information enables customers to make informed switching decisions for the provision of electricity and gas.

By specifying the manner and form in which information is presented by retailers, the AER aims to create a 'standard' form of presenting information to customers, giving them confidence in the accuracy and comparability of this information. To that end, the AER is of the view that this Guideline is an important part of educating consumers and empowering them to make more efficient and effective switching decisions.

It is anticipated that the Guideline will create a consistent and streamlined national price disclosure regime for retailers to adhere to. Further, the centralising of current jurisdictional regimes in a single framework, with accountability to a single regulator, will create savings for retailers in the management of these obligations.

The AER acknowledges that the Guideline contains requirements that are of a prescriptive nature. However, it considers that these requirements are ultimately in the interests of end customers. The AER considers that the benefit afforded to customers and the broader functioning of the market outweighs any compliance burden on retailers.

2.1 Development of the guideline

The AER commenced preliminary consultation on the Guideline with an initial issues paper published in March 2010. This was followed by the release of a position paper and an earlier draft Guideline in September 2010. As part of the formal consultation procedure outlined in the Retail Rules, the AER also released a notice of draft instrument and Guideline in May 2011. These documents set out the AER's views on a range of issues and outlined how the Guideline would apply to the presentation of retail offer information. Appendix B to this document lists the organisations which responded to our May 2011 notice of draft instrument and Guideline.

The final Guideline has been informed by submissions received to the issues paper, position paper, notice of draft instrument as well as market research undertaken by Wallis Consulting Group (Wallis). Copies of the earlier consultation documents, along with the submissions received to the above papers are available on the AER website.

The AER's considerations and responses to the most recent submissions on the Guideline are set out at Appendix A.

To further inform the Guideline, the AER hosted public forums in May and October 2010. These forums were attended by representatives from consumer organisations, ombudsmen, retail businesses and State Government departments.

As advised in the Ministerial Council on Energy's Standing Committee of Officials (SCO) Bulletin No. 190 on 21 March 2011, all activities carried out by the AER prior to the commencement of the Retail Law, Retail Rules and Retail Regulations (such as consultation, making instruments and decision-making) will be supported by appropriate transitional provisions enacted by participating jurisdictions. This is to ensure that AER instruments and decisions made as a result of these activities are valid under the Retail Law and Rules and take effect on their commencement. This means that the guideline released with this notice will take effect on 1 July 2012.

Appendix A

Response to submissions

Comment	AER response
<p data-bbox="188 472 696 504">Interaction with comparator website</p> <p data-bbox="188 544 1066 651">One retailer noted that information that is contained in an Energy Price Fact Sheet is generic, and will not allow customers to make an accurate comparison of offers.</p> <p data-bbox="188 879 1077 986">Another retailer stated that not all ‘generally available’ offers will be available in the long term, and sought confirmation that the AER will update its price comparator website in a timely manner.</p>	<p data-bbox="1113 507 2047 799">The AER considers that Energy Price Fact Sheets present customers with information in a standardised format, making it simpler for consumers to understand and compare specific details of one offer against another. For customers seeking more personalised information, the AER’s price comparator website will be available to complement the information provided in the fact sheet. The AER’s comparator website will, however, also have a disclaimer to ensure users understand the website provides a guide only.</p> <p data-bbox="1113 879 2047 1241">We note that generally available offers are those which are widely available to small customers (see Guideline for specific definitions). We acknowledge that these differ to offers that are only available to a specific class of customers, or offers that are available for a limited time period. The AER is currently undertaking consultation on the method through which pricing information will be provided for the purposes of the price comparator website. The guideline may ultimately be amended to reflect the final determination made on this issue. The AER also notes that the Retail Law (s. 62 (7)) compels it to update new or changed offers ‘as soon as practicable.’</p>

<p>An electricity distributor noted that the AER’s price comparator website may offer more information on <i>available</i> retail offers, but not necessarily more customised information. It suggested that the current statement about the AER’s price comparator website should be changed to read: ‘<i>visit AER comparator site to compare retail offers</i>’.</p>	<p>Whilst we note these concerns, the AER’s price comparator website will be used to provide information that is more representative of an individual’s circumstances than information contained in the retailer price fact sheets. This is because the comparator website will ask users to input a suite of information (specific to them) which will allow the comparator to (amongst other things) identify specific offers available to each customer based on their geographical area and meter type, and will be able to provide cost estimates under those offers, based on a user’s consumption or estimated consumption. On that basis we have maintained the position in our draft guideline.</p>
<p>Overall structure/content of pricing fact sheet</p> <p>Several retailers noted that the current information requirements for fact sheets are too detailed, which could lead to confusion for customers. One retailer argued that the information requirements, (coupled with a requirement to provide price fact sheets for all generally available offers) create an administrative burden for retailers. Another retailer argued that while it was generally comfortable with the guideline, there was no clear customer for this regulatory approach. Another retailer suggested a two page maximum length for fact sheet.</p> <p>A community group suggested that price fact sheets should be available in major languages other than English (spoken in that distribution zone). It also suggested that an interpreter service should</p>	<p>The AER acknowledges the requirements for retailers with respect to the content and distribution of fact sheets are quite prescriptive. This is because, as mentioned in the earlier <i>Notice of draft instrument</i>, the AER considers standardisation to be a fundamental goal of the Guideline, because it allows customers to make more effective comparisons across retail offers. We do agree, however, that fact sheets that contain too much information may be counter productive. To that end, the Guideline specifies that fact sheets can be a maximum of two pages in length for all retail offers except for dual duel or bundled offers which have a maximum of three pages.</p> <p>The AER understands the need to provide information to people from diverse lingual backgrounds. To this end, we are putting in place measures to manage these needs as part of the AER online price comparison service. We consider that the price comparator tool will be a</p>

be available in the absence of a translated fact sheet.

Some consumer groups suggested that the Energy Price Fact Sheet include the retailer's contact number, for customers without internet access. One group also argued that fact sheets should include information about cooling off periods. It also argued that retailer's website should include a 'clear and obvious' link to relevant price fact sheet.

An ombudsman scheme sought clarification on whether the fact sheet was designed to fulfil the purpose of a Price and Product Information statement, or a disclosure statement, or both. It noted that an offer summary *and* disclosure statement would be difficult to cover in one document.

more effective and more accessible tool for customers who need information on fact sheets translated into languages other than English. The AER is currently consulting on this (a copy of the issues paper can be found on the AER's website at www.aer.gov.au).

The AER agrees that a retailer's contact number should be provided for customers without internet access and has therefore updated the Guideline to reflect this. The AER has also amended the Guideline to include information on fact sheets about cooling off periods. Further, the AER is also examining possible measures for providing information about available energy offers to customers without internet access, for example through a telephone helpline.

The purpose of the Energy Price Fact Sheet is to help customers compare offers and better inform their decision making. The fact sheets are not a substitute for information that retailers are obliged to provide prior to or after the formation of a contract. Specific terms and conditions of each contract will be made available to customers separately, and customers should consider these before making a decision to take up any retailer offer. However, retailers may use the layout of the fact sheet to provide required information (e.g. information stipulated in section 53, rr.62-64 of the Retail Rules) to customers if they wish, providing that the fact sheets meet the layout and length requirements prescribed in the Guideline.

Pricing information

One retailer suggested that information on the fact sheet should include product and price information, metering arrangements, network zone, as well as tariff information for different metering configurations.

Several stakeholders supported the combination approach for the presentation of pricing information. The distributor noted that the combined approach to pricing allows a clear annual cost comparison between offers.

The AER notes that the proposed fact sheets already include information about tariff information for different metering configurations. It also includes requirements on retailers to provide relevant information about the price of an offer, any additional elements of the offer, as well as customer eligibility for an offer based on distribution zone. This is set out in the Guideline at sections 2.3.3 and 2.3.5. One of the aims of the fact sheet is to provide information to customers in a readable, easy to understand format. The AER that the level of information required in the Energy Price Fact Sheets strikes the balance between these two objectives.

As noted during development of the Guideline, the AER does see merit in the combined pricing approach, and understands the value of customers being able to see an estimated annual bill amount (and that this information will impact their decision on which retailer to choose) as well as the unit price of the offer. That said, the AER does not consider the Energy Price Fact Sheets the appropriate vehicle through which to deliver the more detailed information. To promote customer access to both types of information, the Energy Price Fact Sheets will direct customers to the AER's price comparator website. This site will provide personalised annual cost estimates for individual users. The AER considers that the website is the best tool to provide customised information to users about annual costs, rather than estimates provided on Energy Price Fact Sheets.

The AER notes that consumer research undertaken by the Wallis Group (available on the AER's website www.aer.gov.au) indicates that

<p>Several stakeholders noted that defining units of measurement is not helpful for customers, and restricts space on the price fact sheet. A distributor also noted that section 2.2 of the guideline should be updated to provide guidance on display of capacity charges and demand charges.</p> <p>A user group noted that the price fact sheets should be used to notify customers of tariff variations (this is currently optional for retailers). It considered that informing customers of price changes in a 'standard' form allows for comparison between offers and that customers should receive prior notification of price changes (as this provides customers with an opportunity to seek out better offers before the price changes come into effect).</p>	<p>customers find definitions of energy measurement useful. We consider that it provides useful context for customers, which assists them in better understanding their energy consumption. We have therefore maintained this requirement in our guideline.</p> <p>The AER considers that providing information on capacity and supply charges is not useful, noting that many customers may not know what these charges are or how they are relevant to them. The Guideline aims to minimise information that is difficult for customers to understand, or does not add value in their decision making process.</p> <p>The AER notes that there are currently provisions in the Retail Law and Retail Rules on when customers must be informed of tariff changes. Specifically, r. 143 (3) of the Retail Rules sets out the requirement on when and how notice of tariff variations must be given. Requirements with respect to the notification of tariff variations are outside of the scope of this Guideline. The AER considers that this issue is sufficiently dealt with in the Retail Rules. We also note that the prices on the AER's price comparator site will reflect the retailers' current tariffs.</p>
<p>Inclusion of discounts in price sheets</p> <p>One retailer noted that visible or upfront discounts should be included in quoted prices, as this will enable customers to better compare offers. It further stated the fact sheets should list contingent discounts separately. One distributor also noted that the Guideline should specifically indicate whether prices should be inclusive or exclusive</p>	<p>The AER considers that prices shown on the price fact sheet should be exclusive of discounts. This creates a simpler 'base' price which customers can use to compare offers, and avoids unnecessary confusion with contingent discounts such as 'pay on time' discounts. The AER will amend the Guideline to reflect this requirement. Discount information will still be available on the fact sheet, and will appear on the AER's price comparator website. This will ensure that customers are</p>

<p>of discounts. Several stakeholders preferred that prices be shown as exclusive of any discounts.</p>	<p>fully informed of any discounts which might impact their choice of retailer.</p>
<p>Provision and publication of fact sheets</p> <p>In Queensland, retailers must submit pricing fact sheets to the regulator (the Queensland Competition Authority - QCA) 10 days before any changes take effect. It argued that the AER should follow this approach (rather than the current requirement to provide 2 days after).</p> <p>One ombudsman scheme argued that the Guideline should require retailers to suspend marketing activity until a fact sheet is provided to the customer (the retailer can then contact the customer and ask if they wish to proceed).</p> <p>Ten business days is too long for the provision of a fact sheets, five days more appropriate (and reasonable).</p>	<p>The AER does not have a role in ‘approving’ the Energy Price Fact Sheets prior to their publication or being offered to customers. The AER will, however, use the fact sheets to assist in its compliance activities, for example, by ensuring consistency between the information provided for the price comparator website and the fact sheets received through this process. Therefore, the AER considers that the current requirement (to provide the fact sheet to the AER 2 days after the offer becomes available) provides the necessary advance information to the AER.</p> <p>The requirement to suspend marketing activity is outside of the scope of the Guideline. The Australian Consumer Law (ACL), the Retail Law and Retail Rules contain specific provisions on marketing activities. Further, while the provision of Energy Price Fact Sheets to customers is important, the sheets themselves are unlikely to form the sole basis for a customer’s choice of retailer. We consider that, in most cases where direct marketing has already occurred, the fact sheet will provide supplementary information which will be useful to the customer as a point of reference.</p> <p>We agree that 10 days may be too long a timeframe to allow for retailers to provide fact sheets to customers. In particular, the AER considers that it is in the retailer’s best interests to provide the fact sheet to customers as soon as possible. In light of this, the AER considers that five days is a</p>

	<p>reasonable amount of time to require a retailer to provide a fact sheet. The AER notes that this is consistent with requirements in the ACL, which provides that where an unsolicited sales agreement is negotiated by telephone, a copy of the contract must be provided to the customer within 5 business days. As such, the AER expects retailers will already have mechanisms in place to meet such a timeframe and the Guideline will specify that the retailer must send the fact sheet within 5 business days. The AER notes this timeframe does not cover the number of days it takes for the customer to receive the fact sheet once it leaves a retailer's control.</p>
<p>Fees</p> <p>An ombudsman scheme noted that retailers should disclose retail or network fees and charges (for example, disconnection fees) separately. These should also be disclosed before the contract is signed.</p>	<p>Requirements on retailers to disclose key fees are already included in the Guideline (these key fees include disconnection fees). The Guideline also stipulates that the fact sheet should alert customers to other fees/charges they may be responsible for in the event of certain circumstances. The Guideline places a requirement in retailers to alert customers to where this information on 'other' fees/charges can be accessed. With respect to information to be provided to customers prior to and after the formation of a contract, this is dealt with in section 53 of the Retail Rules (rr. 62-64).</p>

Appendix B

The following stakeholders made submissions on the AER's draft Guideline:

- ActewAGL
- AGL
- COTA
- Consumer Utilities Advocacy Centre (CUAC)
- Energy and Water Ombudsman of NSW (EWON)
- Energy and Water Ombudsman of Victoria (EWOV)
- Ethnic Communities Council of NSW
- Origin Energy
- TRUenergy
- Queensland Council of Social Services (QCOSS)