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Contact Officer: Simon Kidd
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Mr Geoff Whelan
Electricity Markets
Department of Industry, Science, Energy and Resources
GPO 2013
Canberra ACT 2601

Sent via Email: electricitycode@industry.gov.au

Dear Mr Whelan

Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019 Post-Implementation Review

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the Department of Industry, Science, Energy and Resources' (DISER) post-implementation review of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Code).

The Code establishes the framework for the AER to determine Default Market Offer (DMO) prices each year. Key functions relevant to the AER in performing this role include:

- determining DMO price, including the various factors we must have regard to in setting the price
- determining the 'model annual usage', encompassing the annual benchmark amount of electricity supplied, and the timing and pattern of that supply.

Relevant to these functions, the Code specifies:

- customer types covered by the DMO price cap¹
- the network distribution regions where the Code applies²
- the timelines and process for publishing the annual DMO determination³
- circumstances in which we must remake a decision.⁴

Overall, we consider the Code provides the AER with appropriate flexibility and discretion to make annual pricing determinations that achieve the policy objectives the Australian Competition and Consumer Commission (ACCC) established when it recommended the DMO in its 2018 *Retail Electricity Pricing Inquiry* (REPI) final report. Recent ACCC analysis

¹ *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*, s6.

² Code, s8.

³ Code, s17.

⁴ Code, s17.

found the DMO framework has achieved these objectives and has had beneficial outcomes for consumers.⁵

However, we have identified some amendments to the Code that would improve outcomes for consumers, improve the price determination process, and clarify the intent of the Code.

In particular, we consider the Code would benefit from:

- limited modifications to clarify its objectives
- broadening its scope to include certain additional consumers
- moving the final determination date closer to the start of the DMO period.

The Code also contains provisions setting out how retailers must display the reference price and other information. As the Code has been made under the *Competition and Consumer Act*,⁶ the ACCC is responsible for monitoring and enforcing compliance with these provisions.

The AER supports simplicity and consistency in the retail market regulatory framework, as this ultimately reduces costs for retailers and consumers. We therefore encourage DISER to consider how any potential amendments to the Code interact with the Better Bills guideline,⁷ which the AER is currently consulting on, as well as the AER's Retail Pricing Information Guideline,⁸ to minimise duplication or inconsistency.

As you know, the AER is undertaking its own review of the methodology for determining DMO prices as part of its DMO 2022-23 process.

While our respective reviews are covering distinctly separate issues, we look forward to continuing to work with DISER to align our reviews where possible, to avoid duplication and minimise impact on stakeholders.

Including DMO objectives in the Code

Some of the policy objectives for the DMO are specified in the Code as matters the AER must have regard to in setting DMO prices. They include taking account of electricity retail prices, and the costs incurred by retailers to supply customers, as well as the principle of enabling retailers to make a reasonable profit.⁹

However, the broader policy intent of the DMO is also set out in other sources.

The ACCC, in its final REPI report, recommended the introduction of a default market offer price to cap the price of standing offers and set a reference bill amount from which all advertised discounts must be calculated.¹⁰ The ACCC noted the DMO should be a safety-net or fall-back price for those who, for whatever reason, are not engaged in the market, to

⁵ In its May 2021 report the ACCC had found that the Default Market Offer and Victorian Default Offer are protecting standing offer customers from the highest rates, and do not appear to have had adverse effects on market offer rates. These reforms to retailer pricing and advertising have also made it easier for consumers to compare electricity plans, including the price they could be liable to pay if they do not meet any applicable conditions. ACCC, *Inquiry into the National Electricity Market - May 2021 Report*, Commonwealth of Australia, May 2021, p.5, 46.

⁶ *Competition and Consumer Act 2010*

⁷ AER, *Better Bills Guideline*, <https://www.aer.gov.au/retail-markets/guidelines-reviews/better-bills-guideline>.

⁸ AER, *Retail Pricing Information Guidelines – Version 5.0*, April 2018, <https://www.aer.gov.au/retail-markets/guidelines-reviews/retail-pricing-information-guidelines-2018>.

⁹ *Code*, s16(4).

¹⁰ ACCC, *Retail Electricity Pricing Inquiry – Final Report*, Commonwealth of Australia, June 2018, Recommendations 30, 32.

protect them from unjustifiably high prices.¹¹ The ACCC also noted the DMO was not intended to be the lowest priced or near lowest priced offer, and should not be set so low as to constrain competition and innovation, or disincentivise customer participation in the market.¹²

The Code provides the AER flexibility to have reference to these additional objectives by allowing us to take into account any matter we consider relevant to setting DMO prices.¹³ We consider this flexibility important to allow us to account for a range of matters we consider relevant in setting prices, noting these may vary over time.

However, given the prominent role these objectives play in our consideration of the DMO price, and our ongoing reference to them in our annual determination processes, we consider it would be appropriate to formally set these out in the DMO regulatory framework.

This would provide us with a more authoritative and contemporary source for referencing the objectives, and would provide clear guidance to stakeholders about the intention of the DMO policy.

Extending DMO protections to additional customers

DISER's consultation paper asks whether the Code covers all customer types who should have access to the protection of the price cap. In particular, the paper notes that customers in embedded networks, and customers who have prepayment meters or demand tariffs, are excluded from the Code.

Embedded network customers

Embedded network customers face disadvantages in the electricity market compared to retail market customers. One disadvantage is that many cannot access retail market offers and are therefore at risk of pricing that is not subject to competitive market pressure or price regulation.¹⁴

Embedded network customers who are billed by an exempt seller rather than an authorised retailer, are indirectly protected by the DMO price cap. This is because exempt sellers are subject to the AER's Exempt Selling Guideline, which requires them not to charge a price higher than the local area retailer's standing offer price (that is, the DMO price).

However embedded network customers of authorised retailers are currently excluded from the Code's price cap protections. We estimate this group to number more than 74,000 customers.¹⁵

While we recognise that many embedded network customers receive reasonable prices, this experience is not guaranteed.

The ACCC's REPI report envisaged the DMO as a protection from excessive pricing for small customers who cannot (or do not) engage in the electricity market.¹⁶ We consider embedded network customers meet the criteria of being unable to engage in the market, and that extending the DMO price cap protection to this customer group is consistent with the ACCC's initial intention for the DMO policy.

¹¹ ACCC, *Retail Electricity Pricing Inquiry – Final Report*, Commonwealth of Australia, June 2018, p. 249.

¹² ACCC, *Retail Electricity Pricing Inquiry – Final Report*, Commonwealth of Australia, June 2018, p. 249-251.

¹³ Code, s16(4)(d).

¹⁴ AEMC, *Review of regulatory arrangements for embedded networks*, Final report, November 2017, p. 47.

¹⁵ Based on AER Retail market performance data

¹⁶ ACCC, *Retail Electricity Pricing Inquiry – Final report*, Commonwealth of Australia, June 2018, p. 249.

Extending the DMO price cap to embedded network customers of authorised retailers would address one inconsistency in consumer protection standards between these customers and those of exempt sellers.

We do not consider it necessary to extend the reference price provisions to embedded network customers. As noted above, many embedded network customers cannot participate in the market and do not have a choice of retail offers. The reference price provisions would therefore be of little benefit to these customers

Prepayment meter and demand tariff customers

The industry progression towards cost reflective pricing is likely to result in a growing number of standing offer customers on demand tariffs in the future.

While we acknowledge this group would benefit from protection under the DMO price cap, there are practical challenges in doing so. In particular, challenges in estimating demand may make it difficult to set a DMO price for this group that is representative of a typical customer.

Given these challenges, and the likely small number of customers affected in DMO regions, we are not recommending the DMO price cap be extended to demand customers at this time. However, in future, consideration may need to be given to how standing offer customers on demand tariffs can be protected from excessive prices. Encouraging or requiring retailers to transfer these customers to standing offer contracts that are subject to the DMO price cap may be one option to achieve this, although any such intervention would need to take into account impacts on the policy objectives for cost reflective pricing.

Customers on pre-payment meters may be more likely to experience vulnerability than other types of customers. While retailers have not reported having any prepayment meter customers in DMO jurisdictions, this customer group would benefit from being subject to a price cap were this to change. We encourage DISER to consider how this group could be accommodated within the DMO regulations.

Moving the DMO determination date

Currently, the Code requires that DMO prices be published by 1 May each year. This usually does not allow us to include final network prices for the relevant period in DMO price determinations. This is because timelines set out in the National Electricity Rules (NER) typically mean the AER has not approved network prices before this date.

- In non-network revenue determination years, network businesses are required to submit pricing proposals by 31 March,¹⁷ and the AER is required to approve prices within 30 business days of this date (around 17 May).¹⁸
- In network revenue determination years, timelines under the NER mean final network prices are not available until the second week of June.¹⁹

¹⁷ National Electricity Rules, 6.18.2(a)(2)

¹⁸ National Electricity Rules, 6.18.8(c3)

¹⁹ The AER must publish distribution determinations no later than 2 months before the commencement of the relevant regulatory control period (that is, by 30 April for regulatory control periods starting 1 July). National Electricity Rules, 6.11.2.

A DNSP must submit an initial pricing proposal to the AER within 15 business days after the publication of the distribution determination. National Electricity Rules, 6.18.2(a)(1).

Under these times lines the DNSP could submit its pricing proposal as late as in mid-May. Having final prices being available in the second week of June assumes around 4 weeks for the AER to make its pricing decision.

The AER is exploring ways to streamline network pricing proposal submission and review timeframes in non-network determination years, which should result in earlier AER approval of pricing proposals.

Regardless of these developments, our view is that the DMO determination date should encompass the full statutory timeframe for pricing approval in non-reset years, with additional time for the AER to perform and quality assure the DMO price calculations.

In our view, a date of 21 May would provide stakeholders with a high level of confidence that we could use approved network prices in non-reset years.

We recognise that a later date, encompassing the timelines for revenue determination years, affords less time for retailers to price their offers before the DMO price comes into effect on 1 July. However, given the substantial benefits to retailers of the DMO price including approved network prices, we encourage DISER to consider how the Code framework could address this issue in revenue determination years.

We thank DISER for the opportunity to submit on its review of the Code. If you have any questions about our submission, please contact Simon Kidd on 03 9290 1913.

Yours sincerely

A handwritten signature in blue ink that reads "Jim Cox". The signature is written in a cursive style with a large initial "J" and "C".

Jim Cox

Deputy Chair
Australian Energy Regulator