Public Interest Advocacy Centre

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Default Market Offer prices 2022-23: Draft determination

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Australian Energy Regulators (AER) Default Market Offer (DMO) prices 2022-23 draft determination (the Draft).

PIAC supports the function of the DMO in protecting consumers and helping to improve the operation of the retail electricity market in delivering outcomes for all consumers.

PIAC strongly supports the decision to adopt a bottom-up methodology for determining the DMO. This change provides much needed transparency and a basis for more objective analysis and discussion of the constituent aspects of the DMO. It also helps make clear what assumptions underpin the AERs decisions and provides a basis to examine how individual aspects align with objectives and principles of the DMO and the AER.

The Draft better reflects the range of stakeholder perspectives compared to previous DMO processes where stakeholder input at times appeared to be aggregated or presented selectively. The AERs work developing a strategy to address consumer vulnerability prioritised decision-making centred on consumer experience to promote inclusive market and regulatory design. PIAC strongly supports this, particularly in relation to consideration of the DMO

While we support the broad approach taken, there are several aspects of the Draft that warrant further consideration. Specifically, PIAC highlights:

- The Draft justifies the AERs decisions on retail costs and margins with reference to the requirement in the Code that the AER 'consider' the costs associated with acquiring and retaining customers (CARC). PIAC agrees the AER is required to consider these costs, but contends there is no requirement for them to be included explicitly in allowed retail costs to serve. The AER may, as PIAC has previously recommended, consider that CARC can be recovered more appropriately through other means. This could involve recovery from those customers being acquired and retained (that is through market offers), or indirectly through the 'reinvestment' of retail margin for the purposes of business growth.

- The Draft notes PIACs concerns regarding the lack of transparency in the costs of advanced metering installation and metering services. However, these issues are not sufficiently addressed in the Draft. The average costs presented in the Draft do not distinguish between costs of installation and the ongoing costs associated with advanced metering. How much of the cost is related to installation and has been, or is currently being, recovered directly from the consumer through upfront, ongoing or exit charges? This question is particularly relevant in relation to standing offer consumers with advanced meters. These meters are more likely to be a legacy from previous consumers and may not have been installed by the current retailer. In either case the current retailer may not be incurring any costs related to the installation of the meter.

- There is a question as to whether advanced metering costs should be recovered through the DMO at all unless the DMO becomes a more general default offer for consumers. The DMO currently only applies to small proportion of the market who are already exposed to significantly higher margin. PIAC questions whether it is justifiable to recover a notional, generalised cost of advanced metering from these consumers.

- Until there is greater public transparency regarding how metering costs are comprised, how they are incurred by retailers and how they are being recovered by retailers, there should be no additional allowance for these costs in the DMO. PIAC recommends that the AER delay any decision to explicitly include advanced metering costs in the DMO until the AEMC completes its review of metering, and better understands how costs are incurred and recovered.

- Moving to a consistently applied allowance for retail margin is a welcome improvement. PIAC strongly supports this. It is not clear why the Draft then proposes to apply a different margin for residential and small business DMOs. The rationale behind the different levels of margins chosen (10 and 15 percent respectively) appears to be inconsistent. The 10 percent margin for residential appears to be an average at the upper end of existing margins, while the 15 percent small business appears to be at the lower end of existing margins. In both cases the level chosen appears to be subjective. If the decision on the level of 'reasonable' margin is subjective, it is not clear why there are different margins.

  Setting aside the issues inherent in using existing current margins to determine the reasonable level of future margins, the variation in margin and basis for deciding what is 'reasonable' should be reconsidered.

- Transition of the DMO for residential consumers in areas where the allowed retail margin will increase is consistent with the DMOs role as a protection for consumers against unjustifiable prices. PIAC does not agree that the same justification can be used to smooth the reduction of margin for small business DMO consumers. The explicit purpose of the DMO is to address unjustifiable prices. Where the AER has determined that margins are unjustifiable, reductions should be applied immediately to protect consumers.

The parallel DMO review processes undertaken by the AER and the Department of Industry, Science, Energy and Resources (DISER) did not examine the objectives of the DMO, how it aligns with the National Energy Objective (NEO) or how it applies key principles for addressing consumer vulnerability. Regardless of the final decisions made in this DMO process, PIAC strongly recommends the AER initiates or recommends a review of the overarching objectives of the DMO and the principles guiding its application. Key elements of the current objectives, such as the reliance upon undefined concepts of 'unjustifiable' prices, are problematic and a source of ongoing contention.

A review of the objectives of the DMO should also include a review of how and where defaults apply. The National Energy Retail Rules rely on explicit informed consent (EIC), but the current application of defaults is not consistent with this. As the AER recognises in the draft, consumers who have previously made an 'explicit choice' often end up on deals with terms other than those they consented to when their ‘benefits’ lapse. This leaves them on equivalent (if not worse) terms as standard offers, but unrecognised in the AERs statistics, as noted in the Draft.

PIAC welcomes the opportunity to discuss these matters further with the AER and other stakeholders.

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