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

## **Developing the Better Bills Guideline – Tango Energy submission**

Tango Energy thanks the Australian Energy Regulator (AER) for the opportunity to comment on the Better Bills Guideline.

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 110,000 small and large customers as of August 2021. 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 and Regulatory Framework (questions 3a, 3b, 5 to 7)**

Tango Energy provides a number of observations and points in relation to the consultation questions above for the AER to consider. In building a regulatory framework for billing, we understand the AER is trying to strike the right balance between prescription and principles-based approaches.

From a retailer's point of view, compliance is facilitated by a level of prescription. This is desired so that requirements are clear and can be easily set up in systems and monitored for quality and compliance using analytical tools, particularly given the high volumes of bills being issued. Retailers also have an incentive to provide customers with collateral that is easy-to-read and understand and reflects brand values and positioning. Sufficient flexibility needs to be given for this to occur. We consider that the current Rule 25 of the National Energy Retail Rules (NERR) strikes this appropriate balance.

The research conducted so far by various parties appears to us to be inconclusive as to what level of information a consumer seeks or desires, as it has not been able to take into account the depth and different needs of each consumer, and the different level of information each consumer, based on various factors such as their demographic or customer profile, seeks. The research does not seem to have been able to take into account the frequently changing preferences of diverse groups of consumers. Hypothetically, this may encourage a shift towards a more principles-based approach, which might be desired to allow retailers to tailor their bills to

their customer base. Under such a framework, a retailer may potentially be allowed to have one type of bill for a customer on an energy-only “plain vanilla” product, and another type of bill for a customer with solar panels, and yet another type of bill with different information for an environmentally conscious customer; the provision of additional information may form a point of differentiation or part of the product offering. A base information set would still be required by the Guideline. We consider that the Consumer Data Right datasets<sup>1</sup> may provide the AER with a good starting point.

It is likely that there is some form of balance between prescription and principles-based bill regulation that the AER can choose; in doing so, it is crucial that the framework considers the aims of the AER’s enforcement regime. A purely principles-based approach would work best with a collaborative, education-based approach that appears to be at odds with the AER’s shift towards conducting greater compliance, enforcement, and litigation activities<sup>2</sup>. If a strong focus on technical compliance, enforcement and litigation is preferred by the AER, then a relatively more prescriptive regime would be preferred, sacrificing some innovation for increased certainty about compliance, and be more consistent with the wider regulatory framework in setting clear expectations of compliance and the AER having a focus on taking enforcement actions for non-compliance.

We caution against leaning towards either over-prescription or an overly principles-based approach. For example, if a fully-prescriptive approach, such as the one taken in the AER’s Hardship Policy Guidelines, where retailers have to apply “Standardised Statements” to the exact format and punctuation, is applied to bills, and customers find themselves confused about the information on the bill or a standardized statement, retailers will not be able to manage these complaints, and will not be able to make changes to their bills in response to the complaints.

#### **‘Best Offer’ information (Question 4)**

We understand that the AER is considering adopting ‘best offer’ information on energy bills, similar to the requirements under the Victorian Energy Retail Code (ERC), and while Tango Energy does not hold definitive views with respect to this matter, we consider that adopting such a proposal will sharpen a focus on price, potentially at the expense of other attributes, which may be inconsistent with a principles-based approach, as we describe above. Notwithstanding, we also consider that there are benefits to consumers of the ‘best offer’ proposal in terms of increased transparency, and that it may also serve as a positive step ahead in harmonising the national framework with the Victorian framework, reducing costs to serve in different jurisdictions.

In terms of implementation, we ask the AER to consider that the ERC is generally a prescriptive code based on technical regulation. The AER should consider its preferred position on the prescription/principles-based spectrum discussed above in drafting the best offer rule. Further, the AER may already be aware that the Victorian Government is making drafting changes to the

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<sup>1</sup> <https://treasury.gov.au/consumer-data-right/energy-sector-consumer-data-right>

<sup>2</sup> [https://www.aer.gov.au/system/files/AER-Strategic-Plan\\_2020-2025.pdf](https://www.aer.gov.au/system/files/AER-Strategic-Plan_2020-2025.pdf)

ERC as part of its Energy Fairness Plan reforms<sup>3</sup>. We therefore ask the AER to be cognisant of any differences that may arise so that the benefits of a consistent application across different jurisdictions can be fully realised.

In addition, the NSW Social Programs for Energy Code<sup>4</sup> has requirements that may be rendered irrelevant if 'best offer' information is required on future bills. We recommend that the AER liaise with the NSW Government to ensure that customers do not get conflicting or confusing information. We also request that sufficient time be given for any 'Best Offer' implementation as this is potentially the most complex part of the billing rule change. The best offer calculations are complex and would require significant consideration on the AER's part with respect to complex multi-part tariff structures, and may also require retailers to make significant system changes. Implementation timeframes are discussed in greater detail below.

## **System Implementation**

Under the final rule, the proposed billing guideline will be made available to retailers by 1 April 2022 with the principles of the guideline to come into effect on 4 August 2022. We understand that the AER has discretion to specify different commencement dates for certain provisions of the guideline after the effective date of 4 August, so long as they all come into effect by 31 March 2023, and, in light of the points raised in this submission, we encourage the AER to fully utilise this discretion.

In our submission to the AEMC during the rule change process, we requested that retailers be given a minimum 9-month period between the AER's publication of the guideline and the effective date of the guideline. We are concerned that the AER has been given 12 months to consider and implement the guideline, but retailers have only been given 4 months to implement what are potentially complex system changes. Given the ACCC's experience with the technical complexities of the Consumer Data Right, and previous system failures<sup>5</sup>, we are concerned that regulators and policymakers continue to consistently under-estimate the amount of time needed for significant regulatory and system changes.

The following is a high-level description of a regulatory change process indicating the minimum amount of effort and time required to implement a straightforward regulatory change. Regulatory requirements are translated into business process, and IT system requirements; business processes and IT systems are developed to meet those new requirements; training of staff occurs for changes to business processes; and IT systems are tested to ensure they work correctly, particularly with the high volumes of bills being produced.

Organisations collect, synthesise, and use data in various formats. Energy retailers generally handle a large amount of complex datasets that are shared between various market

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<sup>3</sup> <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code/making-energy-retail-code-practice>

<sup>4</sup> <https://www.energy.nsw.gov.au/government-and-regulation/legislative-and-regulatory-requirements/social-programs-energy-code>

<sup>5</sup> <https://www.smh.com.au/business/companies/competition-regulator-blocks-vodafone-and-tpg-telecom-merger-20190508-p51lcs.html>

participants. To produce data in a specific and new format requires an assessment of whether the data is being collected in that data format structure in the first place, and if this does not already occur, new business processes or IT systems will need to be set up and tested to be able to collect data in that new format.

Therefore, if the billing guideline results in any major change to the data structures or data needed to be provided, this is likely to require significant IT changes across industry and complicate the regulatory change process described above as it may include the coordination of cross-participant development and testing. We consider it is crucial that any proposed changes should also be consulted on with AEMO's Information Exchange Committee<sup>6</sup>. In light of the uncertainty surrounding what those changes will be at this stage, we consider that 31 March 2023 appears to be, at best, a workable deadline for compliance with any significant changes to the billing guideline requiring major data changes, especially given the intention to impose civil penalties for non-compliance with the provisions.

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

Yours sincerely,

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<sup>6</sup> <https://aemo.com.au/en/consultations/industry-forums-and-working-groups/list-of-industry-forums-and-working-groups/information-exchange-committee>