

21 January 2020

Essential Services Commission

Lodged online: <https://engage.vic.gov.au>

## **Ensuring energy contracts are clear and fair – Draft decision**

Sumo welcomes the opportunity to comment on the Essential Services Commission's Draft Decision 'Ensuring energy contracts are clear and fair' dated 10 December 2019.

### **Fixing market contract prices**

The Draft Decision proposes to permit retailers to change existing market contract prices only when the VDO price changes (subject to a number of exceptions), typically on 1 January each year.

This approach is quite different from the existing practice adopted by many retailers of offering fixed price contracts. The rule would impact existing fixed price contracts by effectively extending the fixed price period until the next VDO price change. For example, under the proposed new rule, a retailer who entered into a 12-month fixed price contract with a customer in January 2020 would not be entitled to vary those prices until 1 January 2022, almost 24 months later, notwithstanding the retailer had set the prices based on its forward view of costs over a 12-month horizon.

If introduced, we propose a transitional arrangement for existing fixed term contracts. That is, for fixed price contracts already in existence when the new rules commence on 1 July 2020, retailers should be entitled to vary the price when the fixed price period under those contracts come to an end.

### **Protecting customers at the end of benefit and contract periods**

The Draft Decision proposes to require retailers to continue offering any ongoing financial benefits for the duration of a contract.

Many customers are currently on evergreen supply contracts with fixed benefit periods. For contracts with fixed benefit periods as at 1 July 2020, this rule change will effectively lock in that benefit indefinitely, an outcome that was not intended by the retailer or the customer when they entered into the contract. While the customer is free to switch to another plan or another retailer at any time, the retailer is not. Accordingly, this would appear to impact retailers detrimentally in a retrospective way.

We propose that new rule 46B only apply to new market retail contracts entered into on or after 1 July 2020, and not to those in existence prior to that date.

### **Changing the back-billing rules**

The Draft Decision proposes to limit the amount of undercharging that can be recovered to the four months before the retailer notifies the customer.

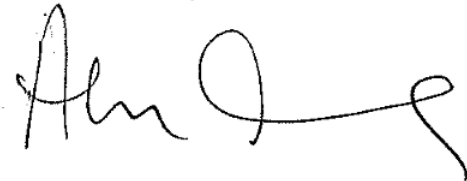
Sumo's view is this rule change is unnecessary and penal. The best of systems and processes will occasionally go wrong, and undercharging is an inevitable consequence. Denying retailers the ability to recover revenue from customers for legitimate energy charges does not make sense. The foregone revenue will necessarily be passed onto all consumers as additional cost.

In any event, reducing the back-billing limitation from nine months to four raises an issue with retrospective transfers. AEMO procedures allow for financial responsibility at an electricity supply address to be retrospectively transferred 130 business days (six months) and for a gas supply address 118 business days. Retrospective transfers are often used when another retailer transfers the customer away in error. If a customer is transferred back to a retailer on a retrospective date six months earlier, the proposed new rule would presumably prohibit that retailer from billing the customer for energy charges over that full period, through no fault of its own, and despite incurring network and wholesale costs for that supply address. This would not seem fair. It would make more sense to align the back-billing limit and the retrospective transfer period – so, six months in the case of electricity.

Where detailed billing or undercharging arose due to problems with metering data provided (or not provided) by the distribution network business, the distributor should also not be entitled to recover more than 4 months undercharging from the retailer.

I would be happy to discuss any of the matters raised in this letter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alex Fleming', with a long, sweeping tail extending to the right.

Alex Fleming  
**GM – Legal, Regulatory & Compliance**