

Fixed benefit periods - notification obligations for energy retailers

Draft Decision

17 November 2017

An appropriate citation for this paper is:

Essential Services Commission 2017, *Fixed benefit periods - notification obligations for energy retailers: Draft Decision*, 17 November

Copyright notice

© Essential Services Commission 2017



This work, *Fixed benefit periods - notification obligations for energy retailers*, is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0/]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

Summary

On 7 November 2017, the Australian Energy Market Commission (AEMC) determined a change to the National Energy Retail Rules (NERR). The determination related to obligations on energy retailers to notify customers in jurisdictions that have adopted the National Energy Customer Framework (NECF) about changes to the benefits they receive as part of their energy contract.

The AEMC made the change via its expedited rule change process on the basis that the proposal met the criteria for a non-controversial rule change. This approach was not opposed by stakeholders.

The new rules were made because of concerns that customers may remain on contracts, either unknowingly or due to inaction, after the benefit period has ended. This was seen to potentially undermine competitiveness in electricity and gas retail markets because customers in this circumstance would not be active in seeking out better deals. This was also seen to erode confidence in the market.

We note the AEMC expects the new requirements to prompt customers to review their energy deal and promote engagement with the energy market as customers seek to identify whether they are on the best available offer. As a result, the new rules are expected to cause a reduction in the number of customers who remain on a contract after the benefits have expired.

The AEMC's new requirements will apply in circumstances where a customer receives benefits – such as discounts on their energy bill – which end, or change, before their contract expires. Under the new AEMC rules, retailers will be required to notify a customer when these changes occur. The new obligations will be implemented in two phases:

- Phase one – from 1 February 2018 retailers will be required to provide a simple set of information to customers.
- Phase two – from 1 October 2018, retailers will be required to provide more detailed information, pursuant to a guideline from the Australian Energy Regulator.¹

Over the past three years in our pricing reports and Victorian Energy Market Reports, we have highlighted the additional costs that customers may face if they do not meet conditions attached to discounted offers. Customers may face similar costs if they remain on a contract once a benefit period has ended.

¹ The guideline will be available from 1 July 2018.

After having regard to our objectives, in particular to promote protections for consumers, including customers facing payment difficulty, we have reached the conclusion that amendments to the Energy Retail Code (Code), consistent with the phase one changes determined by the AEMC, are in the long term interests of Victorian consumers. We also consider that implementing such amendments would promote retail competition and be in the interests of national consistency in regulation.²

We are therefore consulting on changes to the Code that will ensure that customers are made aware that their fixed benefit period has ended and are given an opportunity to seek out the lowest cost offer available at that time.

Our draft decision mirrors the phase one retailer obligations set out in the NERR rule change. In due course we will consider the merits of the phase two obligations, in light of the Victorian Government's response to the recent Victorian *Review of Electricity and Gas Retail Markets*.³

New requirements

The Code would be amended to mirror the changes made by the AEMC in relation to the first phase of the new obligations, and would create the following obligations.

Obligations

Retailers would be required to send notices with simple information to relevant customers 20-40 business days before the benefits cease or change. The information includes:

- the customer's metering identifier
- a statement that the customer's benefit will change and the date on which this will happen
- reference to the Victorian Government's price comparator website Victorian Energy Compare
- reference to a customer's ability to request historical billing data, which can be useful when using Victorian Energy Compare⁴
- any early termination charges payable under the contract.

² The NERR do not apply in Victoria. The NERR apply in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia.

³ *Independent Review into the Electricity and Gas Retail Markets in Victoria Final Report*, August 2017 (<https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>),

⁴ The ability to request historical billing data is established by clause 28 of the Energy Retail Code.

Summary

Coverage

The proposed retailer obligations would apply to small customers on market retail contracts for gas and electricity, where those contracts provide a benefit for a minimum period or a fixed benefit period that does not continue for the life of the contract.

Commencement

The proposed obligations would apply from 1 February 2018.

Feedback on the proposed amendments

We are now seeking feedback from stakeholders on our draft decision. We invite submissions from interested parties, including energy licence holders and other stakeholders.

Submissions should be submitted preferably in electronic format by 5.00pm on 5 December 2017.

Submissions can be emailed to energy.submissions@esc.vic.gov.au.

You can also send submissions by mail, marked Submissions to Energy Division, to:

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne Victoria 3000

Summary

Contents

Summary	iii
New requirements	iv
Feedback on the proposed amendments	v
1. Introduction	1
Purpose	1
Context to the draft decision	1
Structure of this document	2
2. Proposed amendments to the Energy Retail Code	3
Proposed amendments	3
Commencement	4
3. Analysis	5
Our decision-making framework	5
Statement of reasons for our proposed amendments	5
4. Next steps	8
We are seeking stakeholder views on the proposed amendments	8
Process for reaching our final decision	8
Key dates	8
Abbreviations	9
Glossary	10
Appendix A – Legal context	11
Objectives of the Commission	11
Matters the Commission must have regard to	11
Appendix B – List of references	13
Appendix C – Amendments to the Energy Retail Code	14

1. Introduction

Purpose

This document is to set out our draft decision on amendments to the Energy Retail Code that will ensure customers are notified about changes to benefits associated with their energy contracts.

Context to the draft decision

On 7 November 2017, the Australian Energy Market Commission (AEMC) determined a change to the National Energy Retail Rules (NERR). The determination related to obligations on energy retailers to notify customers in jurisdictions that have adopted the National Energy Customer Framework (NECF) about changes to the benefits they receive as part of their energy contract.

The AEMC made the change via its expedited rule change process on the basis that the proposal met the criteria for a non-controversial rule change. This approach was not opposed by stakeholders.

The new rules were made because of concerns that customers may remain on contracts, either unknowingly or due to inaction, after the benefit period has ended. This was seen to potentially undermine competitiveness in electricity and gas retail markets because customers in this circumstance would not be active in seeking out better deals. This was also seen to erode confidence in the market.

The NERR does not apply in Victoria.⁵ In Victoria, energy retailers are required to comply with the Energy Retail Code as a condition of their energy licence.⁶

This draft decision sets out amendments we propose to make to the Code that will ensure that Victorian energy customers are made aware when a fixed benefit period has ended, and are given an opportunity to seek out the lowest cost offer available at that time.

The proposed amendments to the Code will be made under section 25 of the *Electricity Industry Act 2000* and section 31 of the *Gas Industry Act 2001*.

⁵ The NERR apply in Queensland, New South Wales, the Australian Capital Territory, Tasmania and South Australia.

⁶ The licence conditions requiring retailers to comply with the Code are made under Section 20(2) of the EIA and Section 28(2) of the GIA.

Structure of this document

After this introduction, our draft decision has three main sections:

- Section 2 sets out the proposed amendments to the Code, including their scope and date of commencement
- Section 3 explains why we consider the amendments are necessary having regard to our objectives
- Section 4 sets out the next steps, including the process for making a submission in response to our draft decision.

2. Proposed amendments to the Energy Retail Code

Proposed amendments

This draft decision sets out a proposal to amend the Code to ensure that Victorian energy customers are notified when a fixed benefit period in their contract with their retailer ends.

The amendments are consistent with the phase one obligations on retailers to issue notifications to small customers⁷ in certain circumstances as determined by the AEMC on 7 November 2017.⁸ In due course we will consider the merits of the phase two obligations, in light of the Victorian Government's response to the recent Victorian *Review of Electricity and Gas Retail Markets*.

A summary of the proposed new obligations on retailers as a result of the amendments to the Code are set out below. The proposed amendments to the Code are set out in Appendix C. These are identical to the equivalent amendments made by the AEMC to the NERR.

New obligations

Retailers will be required to send notices with simple information to small customers 20-40 business days before the benefits cease or change. The information includes:

- the customer's metering identifier
- a statement that the customer's benefit will change and the date on which this will happen
- reference to the Victorian Government's price comparator website Victorian Energy Compare
- reference to a customer's ability to request historical billing data, which can be useful when using Victorian Energy Compare
- any early termination charges payable under the contract.

Coverage

The proposed requirements would apply to retailers with small customers on market retail contracts for gas and electricity, where those contracts provide a benefit for a minimum period or a fixed benefit period that does not continue for the life of the contract.

⁷ *Small customer* means a small customer within the meaning set out in clause 3 of the Energy Retail Code.

⁸ Australian Energy Market Commission, *National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No.2*.

Commencement

The proposed obligations would apply from 1 February 2018.

3. Analysis

Our decision-making framework

In making decisions, the Essential Services Commission is guided by its overarching objective, which is:

- to promote the long-term interests of Victorian consumers⁹

as well as specific objectives enshrined in the relevant industry acts, which include:

- to promote the development of full retail competition; and
- to promote protections for customers, including in relation to customers facing payment difficulty.¹⁰

When making decisions, we must also have regard to certain matters to the extent they are relevant in any particular case¹¹, including in particular:

- the benefits and costs of regulation... for consumers and users of products or services (including low income and vulnerable consumers) and regulated entities,¹² and
- consistency in regulation between States and on a national basis.¹³

Statement of reasons for our proposed amendments

Benefits and costs to Victorian customers

We consider that the proposed amendments will result in benefits to Victorian customers.

Customers who are made aware that their fixed benefit period is about to end, will have the opportunity to identify and accept offers, either from their existing retailer or from other retailers. All

⁹ Section 8(1) *Essential Services Commission Act 2001*.

¹⁰ Sections 10(b) and (c) *Electricity Industry Act 2000* & Sections 18(b) and (c) *Gas Industry Act 2001*.

¹¹ Section 8A *Essential Services Commission Act 2001*.

¹² Section 8A(1)(e) *Essential Services Commission Act 2001*.

¹³ Section 8A(1)(f) *Essential Services Commission Act 2001*.

things being equal, this will result in lower energy costs than if they remained on their existing contract.

We agree with the AEMC that the amendments are likely to prompt greater consumer participation in the energy market by encouraging customers to actively seek a better offer. This increase in market activity should promote greater competition between retailers.

Benefits and costs to retailers

We recognise that these changes will result in some additional costs being incurred by energy retailers. However, in light of the fact that most retailers in Victoria also operate in the NECF jurisdictions, we consider that the incremental cost to implement phase one of the AEMC amendments in Victoria will be small.

We note that the AEMC concluded that the potential benefits to consumers will outweigh the likely implementation costs that will flow through to consumers. The AEMC noted that no persuasive evidence was presented to its rule change process suggesting that the costs flowing through to consumers will outweigh the potential benefits that may be available to consumers who engage with the market.¹⁴

In reaching its conclusion, the AEMC noted that retailers have a range of practices at the end of customer benefit periods, and that some of those practices are already substantially in line with the obligations established by the new rule. It also said it understood at least one retailer may incur system development costs in the millions in the dollars, and that a proportion of these costs may be passed through to consumers. However, it said that these costs are outweighed by the savings available, which may be hundreds of dollars per affected customer.¹⁵

The AEMC also took account of the impact on retailers of the new rule when setting out a staged implementation. The approach was a modification to the approach proposed by the rule change proponent, who had proposed that all new obligations take effect from 1 January 2018. The AEMC noted that in making this modification to the original rule change request, it had already allowed for a more reasonable and less costly implementation work program for retailers.

Conclusion

Having particular regard to our objective to promote protections for consumers, including customers facing payment difficulty, we have reached the conclusion that amendments to the

¹⁴ AEMC 2017, Notification of the end of a fixed benefit period, Rule Determination, 7 November 2017, Sydney, p32.

¹⁵ Ibid.

Code consistent with the phase one changes determined by the AEMC is in the long-term interests of Victorian consumers. We also consider that implementing such amendments would promote retail competition and be in the interests of national consistency.

4. Next steps

We are seeking stakeholder views on the proposed amendments

We are now seeking feedback from stakeholders on this draft decision. We invite submissions from interested parties, including energy licence holders and other stakeholders.

Submissions should be submitted preferably in electronic format by 5.00pm on 5 December 2017. Early submissions will be welcomed.

Submissions can be emailed to energy.submissions@esc.vic.gov.au.

You can also send submissions by mail, marked Submissions to Energy Division, to:

Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne Victoria 3000

The commission's normal practice is to make all submissions publicly available on its website. Please identify clearly any confidential or commercially sensitive information that you do not wish to be disclosed publicly.

Process for reaching our final decision

Once we have received and considered the comments and input from stakeholders, we intend to issue a final decision in late December 2017 or early January 2018.

Key dates

Date	Milestone
5 December 2017	Submissions due
December 2017 - January 2018	Final Decision
1 February 2018	Obligations commence (proposed)

Next steps

Abbreviations

Term	Definition
AEMC	Australian Energy Market Commission
ERC	Energy Retail Code (Victoria)
NERR	National Energy Retail Rules
NECF	National Energy Customer Framework

Appendix A – Legal context

Objectives of the Commission

Essential Services Commission Act

The objective of the Commission, as stated in section 8 of the *Essential Services Commission Act 2001*, is:

- (1) In performing its functions and exercising its powers, the objective of the Commission is to promote the long term interests of Victorian consumers.

Electricity and Gas Industry Acts

The objectives of the Commission that are set out in the electricity and gas industry acts are as follows:

Section 10 of the *Electricity Industry Act 2000* (relevant subsections):

- (b) to promote the development of full retail competition, and
- (c) to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.

Section 18 of the *Gas Industry Act 2001* (relevant subsections):

- (b) to promote the development of full retail competition, and
- (c) to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.

Matters the Commission must have regard to

Essential Services Commission Act 2001

The matters which the Commission must have regard to, as stated in section 8A of the *Essential Services Commission Act 2001*, are:

- (1) In seeking to achieve the objective specified in section 8, the Commission must have regard to the following matters to the extent that they are relevant in any particular case –
 - (a) efficiency in the industry and incentives for long term investment;
 - (b) the financial viability of the industry;
 - (c) the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;

- (d) the relevant health, safety, environmental and social legislation applying to the industry;
 - (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for –
 - (i) consumers and users of products or services (including low income and vulnerable consumers);
 - (ii) regulated entities;
 - (f) consistency in regulation between States and on a national basis;
 - (g) any matters specified in the empowering instrument.
- (2) Without derogating from section 8 or subsection (1), the Commission must also when performing its functions and exercising its power in relation to a regulated industry do so in a manner that the Commission considers best achieves any objectives specified in the empowering instrument.

Appendix B – List of references

Australian Energy Market Commission (AEMC) 2017, Notification of the end of a fixed benefit period, Rule Determination, 7 November 2017, Sydney.

Australian Energy Market Commission, *National Energy Retail Amendment (Notification of end of fixed benefit period) Rule 2017 No.2*

Essential Services Commission Act 2001 (www.legislation.vic.gov.au)

Electricity Industry Act 2000 (www.legislation.vic.gov.au)

Energy Retail Code Version 11 (<https://www.esc.vic.gov.au/document/energy/27356-energy-retail-code-version-11-2/>)

Gas Industry Act 2001 (www.legislation.vic.gov.au)

Independent Review into the Electricity and Gas Retail Markets in Victoria Final Report, August 2017 (<https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>),

Appendix C – Amendments to the Energy Retail Code

1 Nature and commencement of this instrument

- (1) This instrument amends the *Energy Retail Code*.
- (2) This instrument comes into operation on 1 February 2018.

2 Amendment of clause 45A (definitions)

Insert the following definitions in clause 45A in the appropriate alphabetical positions:

“benefit change means a change to, or the expiry of, a benefit (such as a price discount) provided to a customer for a minimum period or a fixed benefit period under a market retail contract during the term of that contract (whether or not as a result of a variation to the contract).

benefit change date means the date on which the benefit change will take effect.

benefit change notice means a notice provided by a *retailer* to a *small customer* under clause 47A.

price comparator means a facility available on a website to assist a *small customer* to compare:

- (a) the tariffs available to a *customer* under a *standing offer*; and
- (b) the tariffs that are generally available to classes of *small customers* under *market retail contracts*,

in accordance with guidelines issued by the *Commission* under section 36A(2) of the *Electricity Industry Act* or section 43A(2) of the *Gas Industry Act*.

relevant benefit period, in respect of a benefit change notice provided to a *small customer*, means the period in which the benefit that is changing was provided to the *customer* under a *market retail contract*.”.

3 Clause 47A inserted

After clause 47 insert:

“47A Retailer notice of benefit change

- (1) If a *market retail contract* provides for a benefit change, the *retailer* must, in accordance with this clause, notify the *small customer* of each benefit change.
- (2) The benefit change notice must be given:
 - (a) in writing; and
 - (b) no earlier than 40 *business days* and no later than 20 *business days* before the benefit change date.
- (3) The benefit change notice must state:

- (a) the *small customer's metering* identifier; and
 - (b) that a benefit change will occur and the benefit change date; and
 - (c) that the *small customer* may use the price comparator to compare offers that are generally available to classes of *small customers* in their area; and
 - (d) the name and web address of the price comparator; and
 - (e) that the *customer* can request historical billing data (and, if they are being sold electricity, *energy* consumption data) from the *retailer* that will assist the *customer* to use the price comparator to compare offers that are generally available to classes of *small customers* in their area; and
 - (f) any early termination charges payable under the market retail contract.
- (4) A *retailer* is not required to comply with this clause in respect of a benefit change that has a benefit change date occurring less than 20 *business days* after 1 February 2018.”.