12 March 2019

Energy Division
Electricity Retail Code
Department of the Environment and Energy

By email: electricitycode@environment.gov.au

Dear Sir/Madam

Submission to Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019: Public consultation paper.

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the Commonwealth Department of the Environment and Energy's consultation on regulations to implement the AER's Default Market Offer (DMO) and reference prices for non-price-regulated regions within the National Electricity Market (NEM).

PIAC considers the introduction of a DMO mechanism represents an opportunity to reshape the operation of the market to support better and more equitable outcomes for consumers in the delivery of an essential service. PIAC has been involved in the consultation process around the development of the DMO, and we have included our formal submission to that process as an attachment to this letter.

Issues with the consultation paper and draft code

PIAC considers that the Draft Code significantly departs from the recommendations made by the ACCC. PIAC is concerned that a number of elements of the consultation paper, and the draft code, undermine the intent of the Default Market Offer (DMO) reform and so limit its potential to have a positive impact upon the retail electricity market and its consumers.

Specifically:

- **Incompatibility between the proposed mechanism and that proposed by the ACCC.** The consultation paper, including the draft code, refers to the DMO as a 'cap on standing offers'. The ACCC recommendation 30,[1] which is cited as the basis for the DMO reforms, involved abolishing standing/standard retail offers, and replacing them with a retailer-specific default offer, that is required to be at or below the price set by the AER.

  Importantly the ACCC recommended that the price set by the AER represent the 'efficient cost of operating in the region'. This is a fundamentally different mechanism to the 'standing offer cap' proposed in the consultation paper, with the proposed 'cap' not

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1 ACCC Retail Electricity Pricing Inquiry- Final Report, June 2018, P.252

achieving the key purposes intended by the ACCC recommendation, including:

- **The proposed cap provides no protection for consumers**
  A price cap provides no default protection for consumers so that, when their chosen deal or its benefits expire, they will continue to pay a 'fair price' for the provision of an essential service. While the number of consumers on 'standing offers' continues to decrease, it is incorrect to assume that all other consumers are being served by offers which are 'reasonable', fair or efficiently priced for the provision of an essential service.

  The number of consumers who 'switch' in a 12 month period (and hence are likely to be receiving the headline benefits of their market offer) represent less than 30% of the market. As a result the majority of consumers are currently 'defaulting' to conditions that are functionally equivalent to standing offers.

  The ACCC identified this as a cause of widespread consumer detriment, and a key reason to abolish standing offers in favour of a default offer mechanism that ensures consumers would be afforded appropriate protection of an offer which reflected the efficient cost of providing and essential service. As a high 'cap', the proposed mechanism outlined in the consultation paper fundamentally fails to offer this protection, allowing consumers to remain on offers which are manifestly inefficient.

- **The proposed cap does not provide consumers with crucial market information**
  To be able to engage effectively in the market, and make more informed choices regarding other offers and services when they do, consumers need a consistent indicator of a 'fair price' from their retailer (i.e. a deal that represents the intrinsic value of the essential service, or the efficient cost of the provision of that service). The current framework of standing offers fails because it offers consumers no transparency of the intrinsic value, or efficient cost of a retail electricity service. The proposed cap alone fails to remedy this and provide consumers with information regarding the efficiency of the AER determined price.

  As a cap, the proposed mechanism is functionally no different to the current standing offer, where market offers and discounts are opaque and confusing because the reference point from which they are calculated does not transparently relate to the actual costs of the provision of service.

  The intended role of the default offer as proposed in the ACCC recommendation was to provide a consistent reference point for market offers and discounts that was tied to the efficient costs of service provision, giving consumers a 'value anchor' to make informed decisions regarding offers that may be higher or lower than the default, reasonable price. The proposed cap in this consultation paper fails to provide this information to the market and consumers.

- **The proposed criteria of 'small customer' excludes many consumers**
  PIAC is concerned that the draft code excludes a wide range of consumers, entrenching disadvantage for some vulnerable consumers who are most in need of the potential protections of an effective default offer mechanism. Specifically:

  - **Consumers in embedded networks**
    There are hundreds of thousands of consumers currently supplied by embedded networks,[2] including the low-cost apartment blocks, retirement homes, and long-stay caravan parks that vulnerable, low income consumers rely upon.

[2] The Queensland department of Energy and Water supply estimated that, in Queensland alone in 2015, there were likely to be over 300,000 consumers being supplied under an embedded network arrangement.

The Australian Energy Market Commission (AEMC) is currently reviewing the regulatory framework for embedded networks, with a view to addressing the significant differences between the protections and opportunities available to consumers in embedded networks compared to those in the National Electricity Market. Access to fairer price protections and competition are key to the AEMCs reforms, and the proposed criteria in the code would undermine the potential of those reforms to benefit consumers in embedded networks.

- **Consumers with 'varying' tariffs**
  While there are complications in determining an appropriate method for estimating a default offer comparison for tariff structures that include a time of use or demand variation, such that at this time the AER might consider doing so to be problematic, this should not be an exclusion criterion.

  With the roll-out of smart metering and ongoing reform towards more cost reflective pricing (at least at a network level), the already significant proportion of consumers with 'varying' tariffs, is likely to rapidly increase. Further, in many cases consumers have little understanding or agency regarding the switch to these tariffs structures and require information and protection that an effective default price can provide.

  If the AER is to provide indicative modelling on 'usage' to serve as a basis for the creation of default prices, it is also possible for similar indicative profiles to be created for time of use and demand tariffs. Proceeding with the Code as drafted would curtail the AERs scope to pursue this avenue in the interests of effective market retail market information, and the broad interests of consumer protection and benefit.

- **The code inappropriately directs the AER to have regard to a retailers' profit.**
  The wording of division 4(b) in Division 4 of the draft code specifically requires the AER to have regard for the principle that a retailer should make a profit, in determining what is a reasonable price per customer.

  PIAC considers this an inappropriate direction. The subjective and vague language is likely to undermine the objectivity of any determination. A clause more in step with regulation across the industry, and reflecting the specific language utilised by the ACCC in its recommendation, would direct the AER to *'have regard to a reasonable margin, determined by national and international benchmarking, in the efficient provision of retailer electricity services*.'

- **The code directs the AER to have regard to the costs related to acquiring and retaining customers.**
  While the ACCC recommendation also referred to the inclusion of this cost in calculating the efficient cost of providing an electricity service, PIAC disagrees that this level of prescription in the Code is helpful. As we set out in our submission to the AER, there is no means by which an efficient or reasonable cost of customer acquisition and retention can be determined. PIAC contends that in the current retail market this is an inefficient cost.

  Retailers can internally subsidise acquired and retained customers by ensuring that the majority of their customer base (the 70% who are either on standing offers or market offers with expired benefits that are functionally the same as standing offers) are paying inflated costs, well above what is efficient. In this context PIAC contends that the only efficiency that can be applied to these costs is to make no explicit allowance for them, with retail businesses being required to make their own internal business decisions regarding the use of their retail margin (i.e. they can either retain this margin as profit, or 'spend' it to buy customers and growth).

- **The Code requires the AER to have regard to the prices charged by retailers in setting its price.**
  PIAC considers that it is not appropriate to consider retailers' actual pricing in determining what is an efficient, reasonable or fair price. The purpose of this reform is to respond to evidence that retailers are offering prices that are unreasonable, inefficient, which are having widespread negative impacts upon consumers in the provision of an essential service. As set out in our submission to the AER attached to this letter, reference to opaque, inefficient and unreasonable pricing provides no objective guidance to the AER in making its own determinations regarding default prices. Requiring the AER to have regard to retail prices is helpful, but it is important this does not complicate the AER's role or provide more avenues for the opacity and unjustifiable dispersion of offers in the market to distort the final price determination.

We note the release this week of the Victorian Essential Services Commission (ESC) draft Victorian Default Offer (VDO)[3], and the difference in both principle and application, between it and those outlined in the consultation paper and Draft Code. PIAC contends that the Draft VDO more appropriately reflects the intent of the ACCC recommendations upon which this process is predicated, and better implements objective principles that will benefit consumers and the effective operation of a competitive retail market.

PIAC strongly recommends that the Department consider the draft VDO, with particular reference to the rationale and architecture it outlines, with a view to ensuring that the finalised code better reflects the recommendations made by the ACCC, and the consumer benefits they are intended to deliver.

Continued engagement

PIAC would welcome the opportunity to meet with the staff at the Department, and other stakeholders to discuss these issues in more depth. We looks forward to providing further detail on the issues explored in this submission. For further engagement please contact Douglas McCloskey.

Yours sincerely,

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3 Victorian Essential Services Commission – Draft Victorian Default Offer

Appendix - previous submission to AER DMO consultation

Mark Feather
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Australian Energy Regulator

By email: DMO@aer.gov.au

Dear Mr Feather,

Submission to Default Market Offer Price position paper

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the AER's position paper on the development of a Default Market Offer (DMO) price for retail electricity. PIAC strongly supports the need for significant reform to default retail pricing, and welcomes the recognition that, as it stands, the retail electricity market does not operate in the interests of consumers. The introduction of a DMO mechanism represents an opportunity to reshape the operation of the market to support better and more equitable outcomes for consumers in the delivery of an essential service.

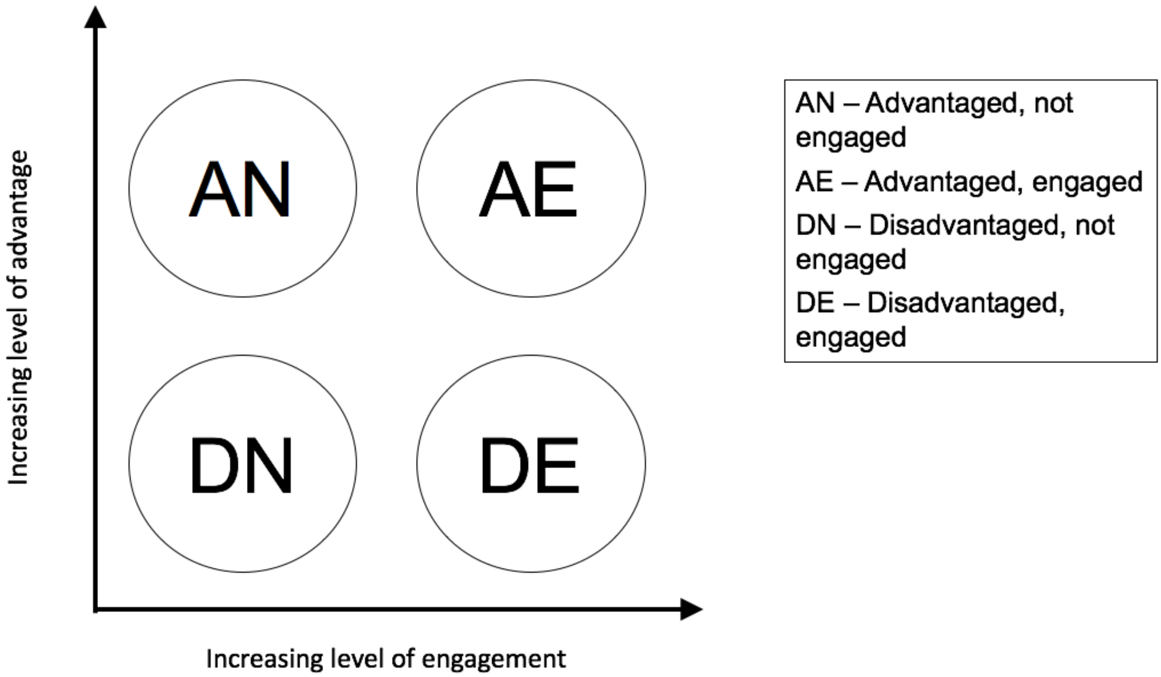
The market implications of considering electricity as an essential service

Electricity is an essential service. The recent Thwaites review presented a guiding principle which should frame any considerations of the shape and structure of the retail electricity market, namely:

> 'Energy is an essential service and underpins our health and wellbeing, and our economic participation. As an essential service, consumers must purchase energy and must participate in the retail market even if they are not interested in the product and regardless of continued price rises. Energy must be accessible, affordable and reliable for all.
> Consumers are entitled to obtain easily understandable energy offers and enter into energy contracts that provide value for money and don't contain negative surprises.' [4]

Getting a fair deal in the current energy market relies upon a high degree of consumer understanding and engagement. Consumers are required to remain informed about the available choices in the market, regularly assess those choices and 'switch' within or between retailers on a regular basis. The failures of the market are well documented, with most

4 Thwaites, *Independent review into electricity and gas markets in Victoria*, page 51.



consumers are paying above the lowest price for energy and many are paying above an efficient price.

In this context PIAC considers that the current 'outcomes' for consumers are a function of the interaction between their level of engagement and their level of potential 'advantage', which can be expressed in 4 broad categories.

Advantaged/able, not engaged (AN)
This consumer cohort is disengaged from the energy market. While they do experience higher bills through suboptimal retail contracts, their potential socio-economic advantage means that they are often ignored in discussions regarding the operation of the competitive market and consumer outcomes, as they are considered to be able to be capable of dealing with the impacts of their lack of engagement. Increasingly however, evidence is showing that even consumers in middle incomes, are struggling with the cost of energy and are experiencing negative impacts as a result of their lack of engagement with the market[5]. PIAC considers the structure of the market framework and consumer protections are still relevant to this cohort, notwithstanding their current level of socio-economic advantage.

Disadvantaged/vulnerable, not engaged (DN)
This consumer cohort, who most closely match those often referred to as 'vulnerable consumers', consistently have the worst outcomes. The combination of energy market disengagement and relative socio-economic disadvantage means that these consumers are unable to take advantage of better market contracts from energy retailers. Market frameworks should support them having the opportunity to benefit from engagement where possible, but it is critical that supporting frameworks must not require them to be engaged in order to pay a fair price for access to an essential service. Most importantly, the goal should be to improve the relative level of 'advantage' (that is move people from the DN cohort to the AN cohort), while giving them the opportunity to move to the AE cohort but not obliging them to do so.

Advantaged/able, engaged (AE)
This energy consumer cohort are the only consumers able to operate as the current framework intends, and therefore only ones broadly getting good outcomes today. The combination of energy market engagement and relative socio-economic advantage means these consumers

5 Choice, *Consumer Pulse Report: July 2016*, page 8-9

are more likely to be on favourable retail energy contracts, and choose (and can afford) to be adopters of energy technology such as solar PV, energy storage and demand management systems. Competitive opportunities for these consumers should be encouraged, while recognising they are, by and large, the least at risk of disadvantage. PIAC considers all consumers should have the opportunity – but not an obligation – to move into this cohort. Importantly, the positive outcomes achieved by this cohort, are to some extent cross subsidised by the higher prices paid by those groups who are not engaged and able to negotiate better deals, particularly where 'loss-leading' contracts are involved.

Disadvantaged/vulnerable, engaged (DE)

While this cohort still requires similar support to the DN cohort, their potential and preference for engagement means that they are able to ameliorate some impacts of disadvantage through more active participation in the energy market. However, PIAC's recent report on disconnections demonstrates that the constant requirement to remain informed and engaged is a significant burden for a cohort that is often burdened by compounding and overlapping vulnerabilities[6]. Further, their potential disadvantage (even something as simple and fundamental as being a renter) means that the potential benefits of their engagement are limited. Accordingly, the goal for this group should be ensuring that the framework provides the same protections of access to a fair price, while giving them the choice and opportunities to benefit from competition in the same way that the AE cohort has. It is important that these consumers do not continue to be burdened with the risk of not engaging (and the ongoing cost of engagement), and that they have the protection of a fair price for an essential service.

The current, largely deregulated market framework operates upon the assumption that any negative consumer outcomes can be improved by facilitating greater consumer information and engagement. However, the independent review of electricity and gas in Victoria presented an alternative perspective, which reflects PIAC's own consumer framework, and suggests that the essential service nature of electricity requires another approach:

> 'the lack of consumer engagement in energy markets can be viewed as consumers simply acting as if energy was still a monopoly product. It is possible the essential service nature of energy is responsible for this: consumers cannot exit the energy market, they need to use energy, and the amount of energy they purchase stays the same no matter which retailer they are with.'[7]

This is fundamental to the consideration of a DMO, its intended role and the most suitable and efficient structure to fulfil that role. The key considerations in determining the role and objective of the DMO are that:

- electricity is an essential service, which all consumers have a right to access equitably and, for a fair price,
- overall benefit to consumers as a whole, be weighed against potential impacts for particularly consumer cohorts,
- competition is a mechanism intended to deliver consumer benefits, not an end in itself or an intrinsic good in and of itself,
- competition of any kind must be evaluated 'qualitatively' as well as quantitatively, and that a more effective competitive market may involve a smaller number of competitors, with the scope to compete on a range of service aspects instead of (and in addition to) price, and
- the 'choice to choose or not to choose', should be a fundamental right for consumers in an essential service market, such as electricity. Active participation should not be required to ensure a fair price.

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6 PIAC & UMR. Close to the Edge: A qualitative and quantitative study, November 2018. Pp 12-20

7 Thwaites, *Independent review into electricity and gas markets in Victoria*, page 38

PIAC accepts that any DMO that achieves such objectives will limit the ability of some retailers to continue with current business models, in particular those business models that today provide little or no discernible value for their customers. PIAC fundamentally rejects the notion that establishing a strong default mechanism that is designed to constrain consumer bills to a relatively efficient price is somehow anathema to market competition and innovation; to the contrary, a strong default mechanism places the incentive to innovate in a manner that will better serve customers though differentiation in service, rather than just price.

Establishing a Default Market Offer Price

In the context of the framework and objectives outlined above, the primary considerations to draw from the ACCC's recommendations relating to the DMO are:

- That the standing offer and standard retail contracts be abolished and replaced with a default market offer at or below the price set by the AER,
- That retailers are required to supply consumers under a DMO on request or where a consumer does not make an explicit choice of market offer,
- That the DMO price should be the *efficient*[8] cost of operating within the region, including a reasonable cost of customer acquisition and retention (CARC), and
- That AER should publish a reference bill amount for each distribution zone, using AER household benchmarks and the DMO price.

Customer Acquisition and Retention

In establishing a DMO mechanism for an essential service such as electricity, the consideration of what represents an 'efficient cost of operation' is fundamental. While the ACCC explicitly recommends that an allowance for 'reasonable CARC' be included in the formulation of a DMO, PIAC notes that there is no reliable means of determining a reasonable allowance for CARC that could be regarded as efficient. In its own final report, the ACCC sites a range of evidence to support this conclusion, including:

- That there is a positive correlation between 'switching rates' and an increase in CARC[9], suggesting that increased activity related to a small number of customers is simply loading more costs into retail businesses,
- That the retail cost to serve (CTS) and CARC have moved in opposite directions over the last 5 years, with average retail CTS per residential customer falling by $25 to $90, where the average CARC per customer has steadily increased by 20% to $48 over the same period[10]. While this seems a relatively small number, it is important to consider that this is averaged over all residential customers, and represents the cost of acquiring and retaining a relatively small proportion of 'desirable' customers who are churning (26% in Victoria and 19% in New South Wales),
- The difference between average CARC ($40 for 'big 3' retailers and $87 for other retailers) and CARC per acquired customer ($283 for 'big 3' retailers and $198 for other retailers)[11] illustrates the significant extent of effective cross subsidy as a result of costs imposed upon the majority of relatively static consumers for small number of 'acquired customers', and
- That retailers are engaging third party services that charge in excess of $200 per acquired customer[12]. This represents a substantial, unproductive cost added into the supply chain,

[8] Emphasis added
[9] ACCC, Retail Electrcity Pricing Inquiry- Final Report, June 2018, pg.229
[10] Ibid, pg.222
[11] Ibid, pg.230
[12] Ibid, pg.231

that is neither transparent, nor, because it can be smeared across the remaining customer base, subject to significant drivers of efficiency.

CARC are driven by decisions made by retailers making choices, for very opaque business-specific reasons, about which customers they believe to be desirable. It is difficult to argue this discretionary spending by retailers is a reasonable or efficient cost of business. PIAC contends that the only practical efficiency that could reasonably be applied to CARC, in the context of the formulation of a DMO, is to make no explicit allowance for it.

As an alternative, the formulation of an efficient price basis for the DMO should simply make allowance for efficient retail costs, and an additional 'fair' margin (which could be benchmarked and evenly applied across all jurisdictions). This would leave scope for the DMO price to allow retailer discretion to continue to 'spend' on CARC if they so choose, but not allow this to be unreasonably borne by consumers. More importantly it would introduce an efficiency incentive for any CARC incurred by retailers, something which does not currently exit. PIAC notes that this conclusion was supported by the ACT Independent Competition and Regulatory Commission[13], and the Independent Review into Victorian retail energy Markets.

Pricing approach

The AER proposes to apply a 'top down' approach to the formulation of the DMO price in each distribution zone, utilising the median market offers and median standing offers for benchmark household consumption, and selecting some point between these as an indication of an efficient price. PIAC appreciates that there are a number of pragmatic considerations, including short externally imposed timeframes and difficulty accessing sufficiently detailed and accurate market information, behind the decision to employ a top-down approach in this initial process. However, we have significant concerns with the intended approach and the assumptions underpinning it. Specifically:

- It is well established that standing offers are significantly 'overpriced' and, as such, do not bear any relationship to efficient costs. Utilising even the 'median' point of standing offers as an upper boundary for calculation of a proxy for an efficient price is likely to significantly over-estimate and inflate the resulting price. PIAC recommends that as this process will involve abolishing them, standing offers not be part of the consideration of an efficient price.
- The position paper assumes that available market offers in 'competitive markets' are likely to reflect retailers' efficient costs, and be a practical proxy for them. This assumption is flawed because:
    - it does not recognise the significant (and largely intentional) price dispersion that retailers create across their offers, often specifically to manipulate comparison tools (that is, offering multiple deals across a wide range that differ by a small and immaterial amount (such as $1) that would qualify as 'unique offers' under the proposed framework),
    - It depends on data that is not available, on how many consumers are on each deal. Retailers create a spread of offers, which range from significantly above efficient costs, to potentially below efficient costs. The efficiency of any particular offer, then, is not discrete and depends upon how many customers remain on a given deal relative to others that retailers offer, and
    - It does not recognise that market offers are expressed as inclusive of discounts. These offers are mostly dependent upon conditions that may or may not be met by consumers (particularly consumers experiencing various forms of payment difficulty who have trouble paying on time). This undermines the value of these 'headline'

[13] Independent Competition and Regulatory Commission (ICRC) 2017, Standing offer process for the supply of electricity to small customers from 1 July 2017, Report 6 of 2017, Final Report June 2017, p.28

prices as they are not necessarily a reflection of what consumers are actually paying. Additionally, the ACCC report and Independent report into Victorian retail markets also recognised that the quantum of the discounts that these deals involve do not relate to the efficient costs of meeting (or failing to meet) those conditions; for example, a 30% on-time payment discount is not related to the costs borne by the retailer should the customer not pay on time.

PIAC accepts that there is a time imperative in relation to the current process that is likely to make a 'top down' approach a matter of pragmatic necessity. However, bearing in mind the concerns raised, PIAC recommends that the flaws of this approach be explicitly recognised as part of this process, and that an initial 'top down' method be augmented by the following:

- That standing offers not be part of the top-down consideration at all,
- That market offers be utilised as the only basis for calculation of an indicative 'efficient price',
- That the market offers used be expressed including all discounts, and
- That the resulting median of all available market offers (including all discounts) be tested against a desktop estimation of an efficient or fair price (such as that proposed in the ACOSS submission to this process), that could be calculated by adding:
    - Wholesale energy costs – this can be calculated by applying the premium of wholesale energy costs over wholesale spot prices that was observed in the AEMC's most recent price trends reports to a forecast of wholesale spot prices for 2018/19 that is based on ASXEnergy swap prices for 2018/19.
    - Costs of complying the Large-scale Renewable Energy Target (LRET) and Small-scale Renewable Energy Scheme (SRES) – which can be based on retailer's percentage obligations for 2018/19 and observed prices for Large-scale Generation Certificates (LGCs) and Small-scale Technology Certificates (STCs).
    - Network tariffs – which can be based on published network use of system (NUOS) tariffs for each distribution area in the NEM.
    - Network losses - based on published loss factors.
    - Market fees, ancillary services costs and costs of complying with any relevant jurisdictional schemes - based on the AEMC's most recent prices trends reports.
    - Retail operating costs, and the retail margin, can be based on recent regulatory allowances.
        - The allowance for retail operating costs based on retail operating costs from IPART's 2013 review of regulated retail prices for 2013 to 2016, or ACIL Allen's analysis for the Queensland Competition Authority for 2015/6, or similar work, adjusting for inflation to 2018/19.
        - The allowance for the retail margin: This retail margin is from IPART's 2013 review of regulated retail prices for 2013 to 2016; it reflects a regulated allowance rather than an estimate of the retail margin that retailers are actually earning (as reported by the ACCC[14]).
        - No specific allowance for CARC, and
- That this process involves an explicit commitment that subsequent processes for determining the DMO price will be carried out using a 'bottom up' approach, that has more scope for accuracy.

[14] ACCC, Retail Electricity Pricing Inquiry- Final Report, June 2018, pp.145-147

Specifying the DMO

PIAC recommends that the DMO and reference bill be expressed in both dollar terms for bill and as a c/kWh.

Expressing the DMO as a quarterly or annual bill (based on a single, or ideally several benchmark consumption points) will enable people to compare between offers.

Expressing the DMO also in c/kwh, may also provide a means for consumers to better estimate what their total bill might be at different times of the year (depending on their climate zone), and also to adjust for any potential differences in the way that different retail offers may split between fixed and usage charges.

Addressing the risks

Critics of a default offer mechanism often cite the risk that such a mechanism will encourage consumer inertia. PIAC agrees that there is a likelihood that a significant proportion of consumers (any of the vast majority who regard electricity as an essential service for which they simply want to pay a fair price) may be encouraged to remain on the default offer. As set out in our framework for understanding consumers, PIAC contends that should be regarded as a positive outcome for all consumers if:

- The default price is set as close to an efficient price as possible, to ensure that those consumers who remain on it, do so in the knowledge that they are paying a 'fair' price for their essential access to electricity.

  PIAC recommends against regarding only to protect against the most egregious price impacts. Such an approach would have limited impact upon the large number of consumers who regard energy as an essential service, and would see many of them potentially remain on a default offer under the false assumption that they were being protected by a fair price. Such an approach would still allow for the continuation of a significant 'opaque' internal cross-subsidy between retail customers and would do little to address the significant detrimental impacts currently being experienced by many consumers.

- There is recognition that it is not merely 'standing offers' which are currently problematic, and that many consumers who currently appear to be on 'market offers' may still be on contracts which are priced significantly beyond any reasonable point of efficiency. The common retail practice of long or 'evergreen' retail contracts, in combination with 'benefit' periods which expire within the term of the contract, means that many consumers who appear to be, or assume they are on, a market offer, may be subject to conditions similar to those of a standing offer (without actually defaulting to a standing offer and being captured in those figures).

  Accordingly, the provisions of any DMO should explicitly state that the DMO applies not only in all conditions where a consumer currently defaults to a standing offer, but in all conditions where the benefits of the offer that a consumer explicitly consented to, expire. This would address the significant confusion currently experienced by many consumers, while providing retailers with a further incentive to engage their customers.

- The choice to engage in the competitive market is genuinely retained as a choice, rather than a requirement. Where consumers are guaranteed a 'fair' price for electricity, they are able to engage in the retail market as and when they choose (similar to any other competitive market). This provides retailers with a strong incentive to innovate and create services and offers which are likely to draw consumers attention.

  Because 'fair' price is guaranteed, it is true that there may be more limited scope for price-only competition, though it will still be possible (with below cost honeymoon offers, 'all-you-can-eat' deals, bundling, peak demand rebate deals, etc). Importantly, the burden of risk and cost for engagement will be more evenly shared between consumers and retailers.

Continued engagement

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth, and looks forward to providing further detail on the issues explored in this submission. For further engagement please contact Douglas McCloskey.

Yours sincerely,

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