

19 September 2019

Ms Anne Pearson
Chief Executive
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Anne

AEMC Reference RRC0028 – Regulating conditional discounting

Thank you for the opportunity to comment on this consultation paper.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON also receives and responds to complaints from customers (living in embedded networks) of exempt sellers and these entities have been required to become members of EWON since March 2018. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions that align with issues customers raise with EWON.

Question 1: Offer comparability

Our review of EnergyMadeEasy on 13 September 2019 identified that there are only six retailers advertising electricity market offers with pay on time discounts and one with direct debit discounts. There are only two retailers advertising gas market offers with pay on time discounts and one with direct debit discounts. All these market offers are being advertised by second-tier retailers. We note that this is a recent significant decrease in advertising of market offers with conditional discounts. This may be due to the 1 July 2019 introduction of the Default Market Offer (DMO) and Victorian Default Offer rather than being a retailer response to recommendation 33 of the ACCC's final report in July 2018; the latter being the basis for this rule change.

Although there has been a significant decrease in the number of energy retailers that are currently advertising market offers, EWON strongly cautions any interpretation of this trend as a sign that the issues raised by the proposed Rule change are now immaterial. There has not been enough time since the reduction in conditional discount market offers to meaningfully assess whether the trend represents a sustained shift versus a response to recent market price changes. Any proposed changes to the Rules around conditional discounts should therefore focus on the positive and negative impacts of such discounts in the past; and with the view that they may return to prominence in future.

The recent changes to the ACCC's Electricity Retail Code have greatly improved offer comparability of conditional discount offers through the introduction of the DMO benchmark reference price. However, the issue of which components of bills attract conditional discounts will still cause confusion.

For example:

- Some discounts may apply to total charges whereas others may apply to usage charges alone.
- Discounts can be for fixed amounts regardless of bill size, while others are presented as a percentage of total charges.
- Some offers of pay on time discounts do not apply to a final bill on account closure.

These issues raise significant concerns for customers experiencing vulnerability associated with poor numeric / language literacy or affordability.

The wide range of fees and charges that retailers may choose to apply to contracts, which include conditional discounts, also contributes to the difficulty of offer comparability. Fees such as account establishment administration fees, ongoing subscription fees, final bill administration fees and payment method fees makes direct comparison between offers difficult. These fees also vary between being fixed amounts or percentage of total charges creating further confusion.

Question 2: Excessive penalties, particularly impacting customers experiencing vulnerability

Large conditional discounts act as an excessive penalty for consumers experiencing payment difficulty, while at the same time provide a cost benefit for those consumers who are able to realise them. EWON's experience identifies three factors that demonstrate this:

1. In 2016-17, residential customers (without solar) achieved their conditional discounts 73% of the time. This is a positive outcome for these customers, however only 42% of customers on affordability / hardship programs realised the same benefit.¹ The reverse of this is that 58% of consumers who are at most need of low cost energy pay a much higher cost.

Customers currently on affordability programs should not be viewed as being an indicative measure of all customers experiencing financial difficulty. Not all customers experiencing financial difficulty are part of these programs for reasons such as lack of awareness, lack of referral by retailer contact centre staff, discomfort in admitting financial difficulty, or being refused entry to programs either at the initial request or due to prior failed adherence. Therefore, there is most probably a much greater proportion of consumers who would benefit substantially by receiving lower cost energy offered by conditional discounts who are instead paying a much higher cost.

2. Financial difficulty can also be short-term rather than long-term, such as where individuals experience unexpected financial costs such as medical bills, home/appliance repairs, auto-repairs and other urgent costs. Individuals employed on a casual basis or part of the 'gig economy' can also experience short-term vulnerability when desired work is not available or when illness prevents them from working and causes loss of income due to the lack of personal leave. For these customers, accessing conditional discounts is hit and miss.
3. EWON has observed that some retailers have structured the terms and conditions of their market offers with conditional discounts to limit or even prevent customers on payment plan or affordability / hardship programs from receiving conditional discount benefits of the market offer. For example, one retailer included the following clause in its Terms and Conditions document for market contracts providing a pay-on-time discount:

¹ ACCC, *Retail Electricity Pricing Enquiry—Final Report (2018)*, p29

With [market offer], the pay-on-time discount is not available to [hardship program] customers (except [hardship program] with direct debit).

While EWON has been able to negotiate with some retailers to have missed conditional discounts applied as part of the resolution for some payment difficulty cases, this typically occurs on a goodwill basis. We are not aware if customers, who approach their retailer directly, rather than seeking EWON's assistance, are offered this goodwill support.

Question 4: Energy offers not covered by the Electricity Retail Code

EWON strongly discourages making amendments to the Rules that would only apply to either electricity or gas unless the subject matter is unique to that specific type of energy service. As conditional discounts are not unique to electricity market offers, EWON considers that any proposed changes should apply to gas as well. Further, conditional discounts are, or have been in the past and may be again in the future, linked to a customer being supplied both electricity and gas.

Question 5: Solutions

In summary, while conditional discounts provide a benefit for most of the customers eligible for them, a significant proportion of vulnerable customers on market offers with conditional discounts do not benefit from them and as a result pay more for their energy than they should.

Limiting reducing conditional discounts to being cost reflective (which could vary significantly from retailer to retailer and be difficult to monitor/assess) or banning them altogether would result in losing a benefit for those energy customers able to realise them. An alternative approach would be to provide greater protections and entitlements around conditional discounts for customers experiencing short or long-term financial difficulty.

For example, guaranteeing conditional discounts for any customer that engages with their retailer by requesting payment assistance and then meeting their agreed affordable payment arrangement would encourage ongoing adherence to that payment arrangement. This equally applies to payment extensions, promise to pay arrangements, payment plans and affordability / hardship programs, as well as for customers who adhere to agreed arrangements via relief grants and emergency support such as the NSW Energy Accounts Payment Assistance Scheme or the South Australia Emergency Electricity Payment Scheme.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely



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