energy networks association

27 March 2014

Mr John Pierce
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth St
Sydney NSW 2000

via website: submissions@aemc.gov.au

Dear ~~Mr Pierce~~ John,

AEMC Rule change – National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 (RRC0001) Consultation Paper - ENA submission

Thank you for the opportunity to make a submission in response to the AEMC Rule change *Consultation Paper – National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014* (RRC0001) released on 13 February 2014.

The rule change request outlined in the consultation paper proposes to prohibit retailers from including terms in their contracts that allow them to change prices during fixed period market retail contracts.

The ENA has two concerns with respect to the proposed changes;

- the proposal unnecessarily constrains the flexibility of customers and retailers to negotiate contracts by mutual agreement, limiting choice and innovation; and
- if it is implemented without careful drafting of consequential provisions, the proposal may unintentionally prevent the recovery of legitimate costs by distribution network service providers.

1. Regulatory Interference in Customer Contracts

As a key principle, the ENA considers that frameworks that provide for competitive and rivalrous market behaviour outcomes promote the long-term interests of consumers. Proposed regulatory interventions should be based on establishment of an identified market failure, and proportionate interventions should only be implemented where it is clear that the benefits of the proposed measure outweigh the costs (including the costs of potential unintended consequences). ENA does not currently consider that any of these pre-conditions have been met with respect to the rule change proposal.

The proposed rule change seeks to prohibit, in effect, an entire type and class of contract between a retail energy firm and its customers. In doing so, it seeks to limit and define the scope of market contracts available in competitive energy retail markets. This would unnecessarily constrain the choices and market interactions of both energy retail firms and their actual and potential customers, reducing the scope for firms to offer contracts with a range of risk-sharing characteristics.

ENA considers that, prima facie, it is not in the long-term interests of consumers to remove their ability to select between a flexible range of differentiated, market-based offerings. Such a measure is not a necessary or proportionate regulatory response to the issues identified by CUAC or CALC. Rather, as in other competitive markets, the competitive process itself represents the best way to ensure that consumers are able to access a flexible range of service offering with terms and conditions tailored to their preferences.

The key concern appears to be the risk that a customer does not recognise the difference between a "fixed term" contract and a "fixed price for the term" contract. If the AEMC were to conclude this risk does require regulatory intervention, then ENA considers a less intrusive measure would be appropriate. In the first instance, consideration could be given to a requirement that ,where a market fixed term contract with variable price is offered, part of the standard wording (such as the contract "title") should make this clear. Requirements for the customer to provide explicit informed consent could specifically address this point. This would appear to align with the proposal in Victoria for overcoming this potential customer misunderstanding which is currently being consulted on by the Victorian Department of State Development, Business and Innovation.

2. Distributor cost recovery risks

A significant concern for energy network businesses is that the rule change has the potential to unintentionally alter the established allocation of risks between networks, retailers and consumers in a way that increases the risk profile of network firms. This has the potential to disadvantage network businesses due to provisions of the *National Electricity Rules* and *National Gas Rules* governing the recovery of network charges from energy retailers. Clause 6B.A3.1(a) of the *National Electricity Rules* and Rule 508 (1) of the *National Gas Rules* states that: *"If a retailer is not permitted to recover network charges from a shared customer under the NERL or the NERR, then neither is the Distribution Network Service Provider permitted to recover those charges from the retailer".*

Consequently, the ENA recommends that in considering any proposed changes to the Rules to prohibit fixed period market retail contracts from containing terms that allow prices to change, the AEMC should l explicitly ensure that the outcome do not unintentionally prevent distributors from recovering increases in regulated network charges from retailers.

The ENA notes that the recently completed AER *Rate of Return Guideline* provided an approach to cost of capital based on Network Service Providers having the clear capacity under the Rules to fully recover regulated revenues, including through tariff and price changes within a regulatory period.[1] Any rule change which significantly impacted the capacity of providers to fully recover approved network charges on a legally certain basis would necessarily alter the risk characteristics of networks in a manner inconsistent with the AER's current rate of return assumptions and approaches. This in turn would require a reassessment of the basis for the cost of capital parameter estimates contained in the AER's Rate of Return Guideline.

If you have any questions in relation to this submission, please do not hesitate to contact me on 02 6272 1510 or Jim Bain on 02 6272 1516.

Yours sincerely

John Bradley
Chief Executive Officer

[1] See AER Rate of Return Guideline – Explanatory Statement (December 2013), p.33