



**SACOSS' Submission to the  
Department for Energy and Mining on the Review of South  
Australia's National Energy Retail Law (Local Provisions)  
Regulations 2013**

**October 2024**

*SACOSS' Submission to the Department for Energy and Mining on the Review of South Australia's National Energy Retail Law (Local Provisions) Regulations 2013*

First published in October 2024 by the South Australian Council of Social Service

47 King William Road

Unley, SA, 5061 Australia

Ph (08) 8305 4222

Fax (08) 8272 9500

Email: [sacoss@sacoss.org.au](mailto:sacoss@sacoss.org.au)

Website: [www.sacoss.org.au](http://www.sacoss.org.au)

© South Australian Council of Social Service, 2024

This publication is copyright. Apart from fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries should be addressed to the Communications Coordinator, South Australian Council of Social Service.

## Contents

Introduction .....	4
Summary of submissions .....	5
Regulation 6A - Tariff structures .....	5
Regulation 9 – Re-energisation after de-energisation.....	12
Conclusion.....	13

## Introduction

The South Australian Council of Social Service is the peak non-government representative body for health and community services in South Australia, and has a vision of *Justice, Opportunity and Shared Wealth for all South Australians*. SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians.

SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low-income consumers in South Australia. With a strong history of community advocacy, SACOSS and its members aim to improve the quality of life for people disadvantaged by the inequities in our society.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows that the cost of basic necessities, like water and electricity, impacts greatly and disproportionately on people experiencing vulnerability and disadvantage.

SACOSS would like to thank the Department for Energy and Mining (DEM) for the opportunity to provide our views on the [Review of South Australia's National Energy Retail Law \(Local Provisions\) Regulations 2013: Consultation Paper](#), **(the Consultation Paper)**, dated September 2024.<sup>1</sup> This submission will provide specific feedback on:

- Regulation 6A - Tariff structures, and
- Regulation 9 - Re energisation after de energisation (specifically feedback centred on SACOSS' call for the prohibition of remote de-energisation for non-payment).

SACOSS also strongly supports and endorses the submissions made by Sally Wilson and Brad Riley from the Australian National University (ANU) to this consultation, dated 27 September 2024, on:

- Regulation 8 – Extreme weather events, and
- Regulation 11 – Use of prepayment meter systems.

SACOSS broadly supports DEM's stated proposed courses of action in relation to the remaining Regulations outlined in the Consultation Paper, and we will be making a separate submission on the proposed small claims compensation regime.

---

<sup>1</sup> Department for Energy and Mining, [Review of South Australia's National Energy Retail Law \(Local Provisions\) Regulations 2013: Consultation Paper](#), September 2024

## Summary of submissions

In summary, SACOSS makes the following submissions in relation to the review of the *National Energy Retail Law (Local Provisions) Regulations 2013*<sup>2</sup> (the Regulations) and we welcome further engagement with the Department in support of those submissions:

- In line with the ACCC's 2018 recommendations, SACOSS strongly supports retailers being required to retain a choice of flat rate tariff for both standing offer and market offer smart meter customers in South Australia.
- SACOSS supports the Department's proposal to introduce a requirement under Regulation 6A for all retailers to offer a single rate tariff structure for standing offer smart meter customers.
- In line with section 22(1a) of the NERL, the requirement for retailers to offer flat rate standing offers **must apply to all** smart meter customers, not just those affected by the accelerated roll-out.
- Given the limitations of the application of section 22(1a) to standing offer customers only (and in line with the ACCC's 2018 recommendations relating to *all* smart meter customers), we are additionally seeking the Department investigate options for requiring retailers to provide a flat rate *market offer* for all South Australian smart meter customers under the Regulations.
- SACOSS considers the Regulations offer the appropriate mechanism to ensure South Australian smart meter customers continue to be offered meaningful protection from disconnection from an essential service, and we are calling for the inclusion of a prohibition on remote disconnection for non-payment within the Regulations.

## Regulation 6A - Tariff structures

As outlined in the Consultation Paper, on 28 September 2020, the South Australian Government invoked Section 22(1a) of the National Energy Retail Law (NERL) and introduced a regulatory requirement (Regulation 6A),<sup>3</sup> that **the retail tariff structure** of the standing offer for smart meter customers must reflect the TOU network tariffs approved by the AER in SA Power Networks' Tariff Structure Statement (TSS).<sup>4</sup>

As a result, retailers in South Australia are currently required to have a standing offer for smart meter customers that includes:

- SAPN's TOU tariff structure OR

---

<sup>2</sup> [National Energy Retail Law \(Local Provisions\) Regulations 2013 Regulation 6A](#)

<sup>3</sup> See: Section 22(1a) of the [National Energy Retail Law 2011](#) (NERL) and Regulation 6A [National Energy Retail Law \(Local Provisions\) Regulations](#)

<sup>4</sup> A 'solar sponge' or time of use (TOU) tariff was approved by the Australian Energy Regulator (AER) as the default **network tariff** for smart meter customers in South Australia as part of SA Power Networks 2020-25 Regulatory Determination. Due to COVID-19, network tariff assignment was delayed to 1 July 2021. SA Power Networks, [2020-25 Tariff Structure Statement Part A](#) (AER edited), June 2020, p. 10

- SAPN’s Demand tariff structure for residential prosumer OR
- A tariff structure determined by the retailer (which could be flat tariff), if the retailer has a generally available TOU market offer that is approved by the Minister.

SACOSS has not been advised of any ‘generally available market offers’ that have been approved by the Minister.

Whilst this jurisdictional requirement only applies to standing offer customers, we know that retailers in South Australia are mandatorily transferring **all** smart meter customers to TOU retail tariffs, with no option to choose a flat-rate tariff if that better suits the household.

In line with the Consultation Paper, SACOSS considers it is important to highlight the number of households in South Australia currently paying for their electricity usage under a TOU retail tariff structure. The AER’s most recent available data from Q3 2023/24 clearly shows the mandatory transfer of smart meter customers to TOU **retail** tariffs undertaken by major South Australian energy retailers over the past few years:

- In 2020/21, 3.6% of South Australian smart meter customers were on a TOU retail tariff, and **83.8% of SA smart meter customers** are on a TOU retail tariff as at Q3 2023/24:
  - 90% of AGL’s smart meter customers in SA are on a TOU retail tariff
  - 97.7% of Alinta’s smart meter customers in SA are on a TOU retail tariff
  - 100% of Origin’s smart meter customers in SA are on a TOU retail tariff.
- Around 39% of **ALL energy customers** (or 298,175 customers) are currently on time of use (TOU) retail tariffs in South Australia. Many (if not most) of these households and small businesses do not know they are on a TOU, and even if they do know, cannot change energy usage patterns and are at risk of experiencing extreme bill shock.<sup>5</sup>

Notably, the ACCC’s December analysis of TOU plans in South Australia found that in 2023-24, for three retailers (anonymised), between 85% and 100% of market-offer customers were paying tariffs that were at or above the Default Market Offer (DMO).<sup>6</sup> The DMO is not designed to be the cheapest offer in the market, but is a cap on standing offers and is there to protect ‘disengaged’ consumers from ‘unjustifiably high’ prices.

---

<sup>5</sup> SACOSS, [Submission to the AEMC on the Draft Rule Determination: accelerated smart meter deployment](#), 3 June 2024

<sup>6</sup> ACCC, [Inquiry into the National Electricity Market Report](#), December 2023, p. 56

In relation to network tariffs, SA power Networks analysis for its 2024/25 Pricing Proposal shows 51.16% of residential customers and 32.76% of small business customers are on a TOU network tariff:<sup>7</sup>

	Customer type	Ratio of customer type	Consumption (kWh)	2022-23	2023-24	2024-25	\$ change in 2024-25	% change in 2024-25
Residential Single Rate	Residential	48.84%	3,814	\$726.65	\$739.13	\$810.58	\$71.45	9.67%
Residential Time of Use	Residential	51.16%	3,688	\$706.26	\$718.74	\$787.92	\$69.18	9.63%
Business Single rate	Small business	39.92%	6,557	\$1,236.44	\$1,295.04	\$1,415.72	\$120.68	9.32%
Small Business Time of Use	Small business	32.76%	18,319	\$2,613.65	\$2,724.70	\$2,984.83	\$260.13	9.55%

Over the past few years, SACOSS has consistently and repeatedly raised the risks and negative customer impacts associated with the mandatory re-assignment of smart meter households to TOU retail tariffs in South Australia (both standing and market offers) - which to date has occurred with no customer consent, no advanced notification, no education and no option to choose a flat rate retail tariff option. We refer the Department to the following submissions:

- SACOSS, [Submission to the Department for Energy and Mining on Proposed Tariffs to Incentivise energy use in low demand periods for SA](#), 9 July 2020
- SACOSS, [Submission to the Australian Energy Regulator on the DMO 2022-23 Options Paper](#), 23 November 2021
- SACOSS, [Submission to the AER on the Draft Consumer Vulnerability Strategy](#), 28 February 2022
- SACOSS, [Submission to the SA Department for Energy and Mining on the accelerated roll-out of smart meters in SA](#), 18 February 2022
- SACOSS, [Submission to the Essential Services Commission of SA on the Inquiry into Retail Energy Prices](#), 15 December 2022
- SACOSS, [Submission to the AER on the DMO 2023-24 Issues Paper](#), 5 December 2022
- SACOSS, [Submission to the AEMC on the Regulatory Review for Metering Services Draft Report](#), 9 February 2023
- SACOSS, [Submission to the AER on the Retail Guidelines Review Issues Paper](#), 7 August 2023
- SACOSS, [Submission to South Australia's Green Paper on the Energy Transition](#), August 2023
- SACOSS, [Annual SACOSS Briefing to the Minister for Energy](#), August 2023
- SACOSS, [Submission to the AER on the DMO 2024-25 Issues Paper](#), 8 November 2023

<sup>7</sup> SA Power Networks, [AER-Stakeholder Report – SAPN – 2024-25 Annual Pricing Proposal](#), updated 17 July 2024

- SACOSS, [Submission to the AER on the Retail Guidelines Review: Draft Instrument](#), 22 March 2024
- SACOSS, [Submission to the AER on SAPN’s RD 2025-30 Issues Paper](#), May 2024
- SACOSS, [Submission to the AEMC on the Draft Rule Determination: accelerating smart meter deployment](#), 3 June 2024
- ACOSS, ACTCOSS, Justice and Equity Centre, QCOSS and SACOSS, [Letter to the AEMC requesting urgent tariff reform with smart meter upgrades](#), 8 July 2024
- SACOSS, [Submission to the AER on the Review of consumer protections under the NECF](#), July 2024
- SACOSS, ACOSS, QCOSS and ACTCOSS, [Submission to the AEMC on consumer safeguards for the accelerated smart meter deployment: Directions Paper](#), 13 September 2024

As outlined in many of the submission referred to above, SACOSS has long argued for the repeal of Regulation 6A, on the basis that mandating TOU structures for standing offer smart meter customers will not shift usage patterns, removes choice, creates additional complexity and increases the risk of bill shock and distress for South Australian households relying on the protection of the DMO. It is unclear whether Regulation 6A has impacted retailers’ decisions to transfer all smart meter market offer customers to TOU retail structures in South Australia, but in any event, most South Australian smart meter households currently have no ability to choose a flat rate market offer with their current retailer, or to default to a flat rate standing offer (DMO), which is an unacceptable outcome.

In addition, SACOSS strongly questions the ‘cost reflective’ rationale underpinning the imposition of default TOU network tariffs for smart meter customers, and we refer DEM to Energy Consumers Australia’ recent analysis: ‘*Cost-reflective network tariffs aren’t very cost reflective*’.<sup>8</sup> The risks and usefulness of price signals to shift energy usage patterns has long been called into question by researchers and consumer advocates. Research from 2020 on household responses to TOU tariffs by the Victorian Energy Policy Centre<sup>9</sup> found that:

- *The ratio of peak to off-peak prices in TOU tariffs has little influence on the ratio of peak to off-peak electricity consumption.*
- *Whether a household installs rooftop photovoltaics does not affect responsiveness to peak and off-peak prices.*
- *Households in the lowest socio-economic areas do not respond to time-varying prices.*

---

<sup>8</sup> Energy Consumers Australia, [‘Cost-reflective network tariffs aren’t very cost reflective’](#),

<sup>9</sup> Kelly Burns and Bruce Mountain, Victorian Energy Policy Centre, [‘Do Households respond to Time-of-Use tariffs? Evidence from Australia’](#), VEPC Working Paper WP2001, June 2020

- *Despite significant advancements since TOU tariffs were studied in the 1980's, the elasticity of substitution is little changed.*
- *This evidence does not support the imposition of TOU tariffs as default pricing policy.*

These findings align with international research. A more recent study<sup>10</sup> on TOU tariffs and child caregivers (parents or carers) in China and the United State found that the:

*...timing and sequencing of peak activities for caregivers in both countries were largely structured by institutional and family rhythms, though with considerable differences in extent and timing of influences due to diverging childcare cultures. The necessity to follow these rhythms leaves caregivers little room to adjust their peak activities to ToU tariffs, turning this well-intended measure into an inequitable financial burden on the group.*

Further, research by Dr. Lee White and Nicole Sintov found:<sup>11</sup>

*The elderly and those with disabilities face greater increases in electricity bills and worse health outcomes under some time-of-use electricity rates. This suggests that vulnerable groups should be considered separately in time-of-use rate design, and future rate designs should be tested to ensure that they do not increase hardship.*

To address the equity concerns surrounding TOU rates, researchers have recommended that:<sup>12</sup>

- *Policies are needed to ensure that demand-side response does not increase hardships for vulnerable groups.*
- *Different vulnerable groups will have different capacities to respond to rates using price signals, so demand-side measures should be **carefully targeted rather than 'one size fits all'**.*
- *Potential time-of-use rates should be tested using scientifically rigorous methods **before widespread implementation**, with separate evaluation of impacts on different groups.*
- *People who are elderly, have disabilities and/or are members of minority groups will likely require particular attention in future pilots and policies.*

---

<sup>10</sup> Pui Ting Wong, Henrike Rau, 'Time of Use Tariffs, childcare and everyday temporalities in the US and China: Evidence from time-use and sequence network analysis' Elsevier, Energy Policy 172 (2023) 113295

<sup>11</sup> L. V. White. & N. D. 'Health and Financial impacts of demand side response measures differ across sociodemographic groups', Sintov Nature Energy <https://doi.org/10.1038/s41560-019-0507-y> (2019).

<sup>12</sup>White, L.V., Sintov, N.D. Policy Brief, 16 December 2019, Varied health and financial impacts of time of-use energy rates across sociodemographic groups raise equity concerns <https://www.nature.com/articles/s41560-019-0515-y>

Notably, there were no trials to test customer impacts prior to the introduction of Regulation 6A or the mandatory and widespread application of TOUs to smart meter households in this State. The introduction of Regulation 6A was based on theoretical analysis of network tariff impacts undertaken by SA Power Networks in support of its TSS.

In 2018, prior to the introduction of Regulation 6A, the ACCC warned against mandating cost reflective structures in retail tariffs and highlighted the risks to customers of mandatory TOU tariffs. Recommendation 14 of the ACCC's *Retail Electricity Pricing Inquiry Report* stated (SACOSS' emphasis):<sup>13</sup>

***Retailers should not be obligated to reflect the cost-reflective network tariff structure in their customers' retail tariffs, but should be free to innovate in the packaging of the network tariff as part of their retail offer.***

***Given the potential for negative bill shock outcomes from any transition to cost-reflective network tariffs should retailers pass these network tariffs through to customers, governments should legislate to ensure transitional assistance is provided for residential and small business customers. This assistance should focus on maximising the benefits, and reducing the transitional risks, of the move to cost-reflective pricing structures. This includes:***

- ***a compulsory 'data sampling period' for consumers following installation of a smart meter***
- ***a requirement for retailers to provide a retail offer using a flat rate structure***
- ***additional targeted assistance for vulnerable consumers.***

In line with the ACCC's recommendations, SACOSS strongly supports retailers being required to retain a choice of flat rate tariff for both standing offer and market offer smart meter households in South Australia.

We acknowledge the application of section 22(1a) and Regulation 6A is limited to standing offer customers, and we have raised this issue with the Australian Energy Market Commission (AEMC) as part of its consultation on customer safeguards for the accelerated smart meter roll-out, noting that:<sup>14</sup>

- ***The retention of a flat rate tariff structure is limited to standing offers under section 22(1a) of the National Energy Retail Law, which in effect means smart meter households will only be able to access a TOU market offer, or a Default Market flat-***

---

<sup>13</sup> ACCC, [Retail Electricity Pricing Inquiry Report](#), June 2018, p. xix

<sup>14</sup> SACOSS, ACOSS, QCOSS and ACTCOSS, [Submission to the AEMC on consumer safeguards for the accelerated smart meter deployment: Directions Paper](#), 13 September 2024

*rate Offer (which is not designed to be the cheapest offer in the market, but rather is designed to protect customers from unjustifiably high prices).*

- *The requirement for retailers to offer flat rate standing offers for smart meter customers may improve choice from the standpoint of ‘no choice’ in tariff structure, but could more properly be characterised as the retention of a more limited choice (between a TOU market offer, or the Default Market Offer) when compared to a selection of flat rate and TOU market offers.*

Whilst acknowledging the limitations of the application of Regulation 6A, we support DEM’s proposal contained in the Consultation Paper to introduce a requirement under Regulation 6A for all retailers to offer a single rate tariff structure for standing offer smart meter customers. In line with section 22(1a) of the NERL, the requirement for retailers to offer flat rate standing offers **must apply to all** smart meter (type 4 and 4a) customers, irrespective of when the meter was (or is) installed.

Relevantly, we note the AER’s obligation to determine both a flat rate and TOU DMO price for residential customers under the *Competition and Consumer (Industry Code – Electricity retail) Regulations 2019*. Whilst only 7.1% of residential customers are on standing offers in South Australia,<sup>15</sup> the DMO does operate as a reference price for market offers, and it is therefore extremely important that the 300,000 TOU market offer customers in SA are able to compare their offers against a TOU DMO price.

It is worth noting the AER’s cap on standing offer prices does not apply to customers on demand tariffs or small business customers on TOU tariffs (15.5% of small business customers are on a standing offer in South Australia, and 32.7% of small businesses are on a TOU network tariff). This may have billing implications for small businesses on TOU standing offers.

Given the limitations of Regulation 6A, and in line with the ACCC’s 2018 recommendations, we are additionally seeking the Department investigate options for requiring retailers to provide a flat rate market offer for *all* South Australian smart meter customers under the Regulations. We note that section 34 of the NERL provides for the establishment of minimum requirements under the National Energy Retail Rules (NERL) for market retail contracts, and Rule 14(2) of the NERR provides that:

*‘Nothing in these Rules prevents the inclusion in a market retail contract of a term or condition that is the same or substantially the same as a term or condition of standard retail contracts that is not otherwise applicable to market retail contracts.’*

SACOSS would welcome further discussions with the Department around whether the minimum requirements for market contracts could extend to the inclusion of a jurisdictional term or condition relating to flat rate tariff structures, or whether the Regulations under

---

<sup>15</sup> AER, [Default Market Offer Prices 2025-26: Issues Paper](#), October 2024, p. 45

review could more broadly provide for the appropriate mechanism to ensure all smart meter customers in South Australia retain a choice of tariff structure. This retention of choice is vital now, but will become more pressing with the accelerated roll-out of smart meters from 2025-2030.

## **Regulation 9 – Re-energisation after de-energisation**

SACOSS acknowledges the consultation on Regulation 9 is limited to re-connection after disconnection, but we consider this Review represents an important opportunity to provide stronger protections from disconnection for smart meter customers experiencing payment difficulty. We are therefore seeking the Department consider the inclusion of a new Regulation 9A prohibiting retailers from engaging in remote disconnection for non-payment.

SACOSS understands retailers have commenced remote disconnections for non-payment in South Australia, and we have significant concerns about the impact of this practice on residential customers experiencing extreme cost of living pressures, increasing energy costs and increasing energy debt levels in this State. We are strongly of the view that remote disconnection for non-payment will further exacerbate existing vulnerabilities and consider the current protections from disconnection under the NECF do not adequately cover circumstances surrounding smart meters and remote disconnection.

SACOSS acknowledges the benefits of remote disconnection and reconnection in certain circumstances, but we are firmly of the view that remote disconnection for non-payment is not in the best interests of customers in vulnerable circumstances. In Victoria, where there has been a state-wide roll out of smart meters, there appears to have been a strong link between smart meters and increases in disconnection completion rates, as well as increases in households experiencing multiple disconnections.<sup>16</sup> SACOSS understands the stronger disconnection safeguards implemented in Victoria as part of its Payment Difficulty Framework (where the onus of proof is on retailers to show they have complied with the payment difficulty processes), were in response to increases in disconnections.

Together with industry and other consumer organisations, SACOSS has worked with the Energy Charter in the development of a voluntary industry Code supporting retailers and networks to engage in a ‘knock to stay connected’ program.<sup>17</sup> This involves a face-to-face visit by the distribution network service provider prior to disconnection, where the customer is provided with leaflets outlining supports available and encouraged to contact their retailer to gain access to supports and remain connected to their energy supply. A trial of SA Power Networks’ pre-visit service resulted in more than 50% of disconnection for non-

---

<sup>16</sup> St Vincent de Paul Society & Alvis Consulting, *Households in the Dark II: Mapping electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland*, by Sophie Labaste, August 2019. <https://alvisconsulting.com/wp-content/uploads/2019/10/Households-in-the-Dark-II-Report.pdf>

<sup>17</sup> Energy Charter, [Knock to stay Connected Customer Code](#)

payment service orders being cancelled.<sup>18</sup> SA Power Networks' program has been picked up by Essential Energy in NSW as BAU, with even greater success (an 80% disconnection cancellation order in their pilot 'knock before you disconnect' program).<sup>19</sup> This highlights the importance of maintaining a disconnection process that involves personal contact, in order to ensure households have access to the supports to which they are entitled under the NECF.

Remote disconnection for non-payment will remove the distributor from the disconnection process. As a result, the 'last chance safety-net' of face-to-face contact, and offers of assistance under the Knock to Stay Connected program will no longer be available. SACOSS considers the Regulations offer the appropriate mechanism to ensure South Australian smart meter customers continue to be offered meaningful protection from disconnection from an essential service, and we are calling for the inclusion of a prohibition on remote disconnection for non-payment within the Regulations.

## Conclusion

Thank you for the opportunity to provide feedback in relation to the review of the NERL (local provisions) Regulations. We would welcome the opportunity to expand on any of our submissions through further engagement, if required. Please do not hesitate to contact Georgina Morris on [REDACTED], or [REDACTED] if you have any questions in relation to this submission or require any further information or clarification.

---

<sup>18</sup> 875 sites were "pre-visited" and 492 disconnection for non-payment service orders were cancelled prior to schedule date (56.23% successful pre-visit).

<sup>19</sup> Essential Energy's personal contact approach to reducing disconnections was commended by the Energy Charter's Independent Accountability Panel in [its Assessment of achievement of better outcomes for Australian energy consumers in 2019-20](#), December 2020