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Essential Services Commission
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Ensuring energy contracts are clear and fair - Draft Decision

Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd (MEA Group or Powershop) thanks the Essential Services Commission (ESC) for the opportunity to provide comments on the ESC's Ensuring energy contracts are clear and fair Draft Decision (the Draft Decision).

Background on the MEA Group

MEA Group is a vertically integrated generator and retailer focused entirely on renewable generation. Powershop is an innovative retailer committed to providing lower prices for customers and which recognises the benefits to customers in transitioning to a more distributed and renewable-based energy system. Over the last five years, Powershop has introduced a number of significant, innovative and customer-centric initiatives into the Victorian market, including the first mobile app that allows customers to monitor their usage, a peer-to-peer solar trading trial and a successful customer-led demand response program. Powershop has also been active in supporting community energy initiatives, including providing operational and market services for the community-owned Hepburn Wind Farm, supporting the Warburton hydro project, and funding a large range of community and social enterprise energy projects through our Your Community Energy program.

Powershop supports the implementation of Recommendation 3A for consistency with the national framework and that harmonisation with the Australian Competition and Consumer Commission's (ACCC) Electricity Retail Code is appropriate.

Powershop does not support the implementation of recommendations 4A through to 4E as we stated in our submission to the Issues Paper on 2 July 2019. There is no quantitative or qualitative evidence presented in the Draft Decision that concludes that customers in Victoria are going to benefit from these recommendations, made in 2016. The Draft Decision does not outline expected future outcomes but rather relies on unsupported hypothesis and theoretical assumptions.

Recommendation 3A - Require retailers to market offers in dollar terms, rather than as percentages or unanchored discounts.

Draft decision 1: New objective for marketing energy offers

Retailers must market gas and electricity offers in a clear and easily understood manner.

Powershop supports the ESC and its adoption of the of the ACCC's Electricity Retail Code and by extension Australian Consumer Law (ACL), for misleading and deceptive conduct. Powershop supports the ESC in harmonising with the national framework wherever possible, to reduce the increased regulatory imposed costs on Victorian customers. However, Powershop does not support a duplication of the enforcement of these obligations when the ACCC is the relevant regulator.

We refer the ESC to the Treasury and Finance Department regulatory guide 'Victorian Guide to Regulation' and specific advice confirming duplication is not required: "where existing legislation/regulation is being reviewed or amended, consideration should be given to whether existing provisions are inconsistent with, complementary to, or duplicative of the ACL and, if so, whether those provisions are necessary to provide more effective and/or certain consumer protection".¹

Draft decision 2: Retailers must market electricity offers with reference to the VDO

The VDO must be used as a reference price for all electricity offers. Retailers must make a reference price comparison whenever they advertise, publish or offer an electricity offer to a customer.

Powershop supports this decision based on our response to Draft decision 1.

Draft decision 3: Electricity reference price requirements

An electricity reference price comparison must include:

- the difference between the VDO price and unconditional price, as a percentage of the VDO price
- for each conditional discount, rebate or credit mentioned, the difference between the unconditional price and conditional price, as a percentage of the VDO price
- the lowest possible price
- the conditions of any conditional discounts, rebates or credits
- the distribution region and type of small customer.

Powershop supports this decision based on our response to Draft decision 1.

Draft decision 4: Retailers must not advertise headline conditional discounts

Retailers must not market conditional discounts as the most prominent feature in gas or electricity advertisements, marketing or promotions.

Powershop supports this decision based on our response to Draft decision 1.

Recommendation 4A - Require retailers to commit to fix any prices they are offering for a minimum of 12 months. During this period, the market contract prices cannot change. Retailers may request an exemption from the ESC to address unforeseen changes in network costs.

Recommendation 4B - Require retailers to disclose the length of time any offered prices will be available without change.

Draft decision 5: Retailers can only change existing market contract prices when the VDO price changes.

Powershop does not support any restriction on the ability to offer various forms of market offers or products whether they are fixed term, fixed price or variable in price. Retailers should be able to offer variations on products based on direct feedback from the market and an understanding of what customers currently prefer. Customer preference and choice should dictate what kind of market offers and products that retailers offer in a free, competitive market. The Thwaites review recognised that a majority of customers are not supportive of fixed prices.

As our submission will regularly advise, the Thwaites Review and its recommendations are being implemented by the ESC in isolation, rather than using thorough analysis to ensure that recent recommendations implemented (e.g. the VDO, Best Offer and Clear Advice) have subsequently make any further recommendations such as 4A redundant. We believe off the back of previous regulations implemented in Victoria 1 July 2019 that Recommendation 4A is no longer required.

Despite rhetorical views that have been provided to the ESC regarding further price certainty being sought, a large majority of customers in Victoria consent to and benefit from a price varying contract, as is evident based on the current suite of offers from retailers on Victorian Energy Compare. If customers prefer a fixed term contract with prices fixed for a period, they are currently available and offered by many retailers.

¹ Department of Treasury and Finance Victoria, Victorian Guide to Regulation, updated July 2014, Toolkit 1: Purposes and types of regulation, page 19

Under the requirements of Best Offer, Clear Advice, Price Change and Benefit Change (in totality), customers are informed of exactly when their prices will change upon consent to contract and when a retailer is to make a change to their prices 5 days in advance. If the industry were to apply this recommendation then these 1 July 2019 regulatory changes become practically redundant.

Recommendation 4A has endured an inconsistent policy setting process, without objective evidence or data applied, and relies on subjective analysis and rhetoric. The Draft Decision now proposes an alternative approach that only 1 large retailer proposed in their Issues Paper submission, with another loose interpretation of the concept offered by another retailer. In isolation, there is no evidence nor objective analysis to determine whether this alternative approach would be successful in ensuring that the market remains viable and retains a reasonable level of competition despite price regulation. In addition there is no evidence that the ESC has tested or effectively consulted industry on this alternative approach to determine that there would be no unintended consequences or detriment to Victorians.

This alternative approach will benefit large, incumbent retailers that can manage their retail pricing risks more efficiently. This approach will reduce small retailer's ability to differentiate on price and product variation, essentially reinforcing a non-competitive monopolistic market.

Powershop noted that the ESC, unbeknown to any stakeholders chose to appoint academics Associate Professor David Byrne and Dr Gordon Leslie in order to assess that the new alternative approach could be applied to the market as opposed to options already canvassed in the Issues Paper. The results of this review were not published until the Draft Decision was published. Ideally, such a review would be performed at the Issues Paper stage so that the results could be adequately debated by stakeholders. This opportunity has not been provided.

Powershop believes that this review has no strong validity in its application and is subjective in context. The report advised that the 'Do Nothing' option would continue to incur search costs for customers despite maintaining competition and incentives for innovation (as per the Terms of Reference of the Thwaites Review). However, this draft decision would require a customer to undertake further research, at their own cost. This contradiction suggests there are inconsistencies in the application of regulatory policy that requires further analysis.

The long term intent and objective of this recommendation for customers is not evident. The ESC should review this recommendation thoroughly and formally extend the draft decision out to 30 April 2020. The ESC at its 14 January 2020 workshop encouraged even more options to be provided to them for this recommendation. Based on this action, a logical extension of the Draft Decision has to be applied so all options are tabled, debated and a reasonable outcome for all parties can be reached. The ESC should also apply an independent cost benefit analysis to ensure the recommendation's viability and that it complies to the Terms of Reference the Thwaites Review set down in 2016.

Draft decision 6: Retailers offering products that are not compatible with limiting price changes to once a year must comply with certain conditions

Retailers offering products that are not compatible with limiting price changes to once a year must:

- make customers signing up to these products aware of additional factors when obtaining explicit informed consent
- report regularly to the commission and
- conduct tariff reviews for customers on these products who become eligible for tailored assistance.

This aspect of Recommendation 4A has been expanded from the Issues Paper and consequently must also include further detail on the practical regulatory guideline or process to be applied. It will be important for the ESC to consistently apply these exemptions across all retailers and to ensure there is no adverse impact on the relevant customers.

The other critical element to the exemption process will be market and competition integrity. The ESC must ensure the receipt of competitive and commercially sensitive information on product offers is managed appropriately, whilst balancing the fairness of those exemptions.

Draft decision 7: Retailers must disclose the length of time prices will be available without change

At the point of entering a contract, as part of the existing clear advice entitlement, retailers must clearly disclose when prices will change and, if known, the magnitude of any anticipated changes. After a customer has signed up to an offer, existing rules require retailers to give advance notice of any price changes and tell the customer about their best offer.

This recommendation was devised in isolation of the VDO, Best Offer and Clear Advice requirements and based on those requirements it is no longer relevant for implementation. The same logic would apply regardless the form Recommendation 4A may eventually take (if 4A forms part of the final decision) and require retailers to advise of the fixed price change period.

Recommendation 4C - Require retailers to roll customers onto the nearest matching, generally available offer at the end of a contract or benefit period, unless the customer opts for another offer.

Recommendation 4D - Any conditional discount or other benefit offered for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.

Draft decision 8: Retailers must offer any ongoing financial benefits for the duration of a contract

Benefit and contract periods will be aligned, so customers receive any ongoing discounts, credits or rebates for the entire duration of a contract. Retailers must not decrease these benefits during the contract term.

Powershop does not support the removal of the opportunity for retailers to offer benefit periods as the ESC advises in the Draft Decision. By offering benefit periods separate in duration to the contract can help engage the customer better into seeking a better deal with that retailer towards the end of their benefit terms.

To essentially require a discount to run for the same period of a contract removes all incentive for a retailer to offer a discount at all.

This recommendation does not align with the benefits and impacts of the Best offer, Clear Advice and the Price / Benefit change notices requirements, and as such the recommendation is irrelevant and not required. We advise the ESC to defer implementation of Recommendation 4C until there is specific evidence these existing regulations are not working.

Draft decision 9: At the end of a fixed-term contract retailers must roll customers onto the VDO or best offer (for electricity and gas respectively)

At the end of a fixed-term contract, if a customer does not give explicit informed consent to move to a different offer, their retailer must automatically roll them onto the VDO (for electricity) or that retailer's best offer (for gas).

Our position has not changed, this recommendation is no longer required or relevant due to the 1 July 2019 regulatory changes. The process prescribed above is already in practice within the market for both electricity and gas.

Recommendation 4E - Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer.

Draft decision 10: Pay-on-time discounts to be capped by the commission

A pay-on-time discount cap will be determined by the commission and apply to contracts entered into from 1 July 2020.

Powershop does not support this recommendation. The issue of applying inflated discounts using an exorbitant base rate above the relevant standing offer is no longer a significant issue. Victorian Energy Compare can provide evidence to support that the number of offers with conditional discounts has decreased and that the majority of conditional discounts are now less than 10% with very few offers above this figure.

The VDO has removed many of these discounts whereby a retailer can only reference the discount of an offer where the rate is applied at a certain percentage below the VDO. This was not prevalent at the time this recommendation was made. The ESC has acknowledged in its Draft Decision and also its own 2018/19 Energy Market Report released in November that such discounts have already reduced significantly. The VDO and presentation of discounts in the market has removed this as an issue, and made offers simplified and easier to understand. Customers under the current framework are not being misled into inflated discounts, making this recommendation redundant.

However, if the ESC deems necessary to pursue this recommendation then Powershop would only support harmonisation to the Australian Energy Market Commission's (AEMC) proposed rule change on capping conditional discounts.

Draft decision 11: Aligning the methodology for capping energy pay-on-time discounts with the commission's existing methodology for water. The methodology used to determine the pay-on-time discount cap for energy retailers will be consistent with the commission's established methodology for capping water interest rates.

Please refer to our response to Draft Decision 10 with our support for harmonisation towards the AEMC proposed rule change.

Draft decision 12: Methodology for capping pay-on-time discounts

The pay-on-time discount cap will be the sum of:

- the 10-year Australian Commonwealth Government Bond Rate
- a debt risk premium
- an allowance for debt raising costs.

Please refer to our response to Draft Decision 10 with our support for harmonisation towards the AEMC proposed rule change.

Draft decision 13: Updating the pay-on-time discount cap

The pay-on-time discount cap will be updated annually. It will be based on data as of 31 May and will take effect on 1 July each year.

Please refer to our response to Draft Decision 10 with our support for harmonisation towards the AEMC proposed rule change.

Draft decision 14: Process for announcing updated pay-on-time discount cap

The commission will update its guideline and communicate any change in the level of the pay on-time discount cap in writing to energy retailers in mid-June each year.

Please refer to our response to Draft Decision 10 with our support for harmonisation towards the AEMC proposed rule change.

Draft decision 15: Retailers must honour pay-on-time discounts for customers receiving tailored assistance

Retailers must honour pay-on-time discounts for customers receiving tailored assistance.

Please refer to our response to Draft Decision 10 with our support for harmonisation towards the AEMC proposed rule change.

Including information about the Victorian Default Offer on bills

Draft decision 16: Retailers must include information about accessing the VDO on electricity bills

Retailers must include clear, plain and conspicuous information on all electricity bills about how a customer can access the VDO.

Powershop does not support the contradictory view taken by this Draft decision. Customers are receiving clear advice and best offer advice on their bills that outline from that retailer the best offer that the particular customer could receive. Unless the VDO itself is the best offer for a customer, there is no valid reason to then confuse the customer by also advising of the VDO which based on the advice a customer receives would make the customer worse off.

Powershop would support the continuation of Best Offer obligation being the regulatory tool that advises of access to the VDO and only if the VDO is the best offer for that customer. The concept of making energy easier to understand for customers does not require this Draft decision.

Changing the back-billing rules

Draft decision 17: Reducing the allowable back-billing period to four months

Retailers may only recover any amount undercharged in the four months before they notify the customer, unless the undercharging was a result of the customer's fault or unlawful act or omission.

Powershop acknowledges that on the surface a debt accrued over a 9 month period for some customers can be difficult to achieve repayment. Powershop also supports the continued review into the reasons why an undercharge can occur including where the undercharge could occur as a result of the actions another party (e.g. distributor). Many undercharging issues occur outside retailer control so these need to be explored further and assessed in order to make the correct changes to relevant regulations and codes.

Draft decision 18: Commencement date of code amendments

The code amendments giving effect to recommendations 3A and 4A-4E, the requirement to include the VDO on electricity bills and the back-billing rule change will take effect on 1 July 2020.

Powershop believe this date is inadequate when the ESC is also seeking to implement a new time varying FiT and a raft of other regulatory requirements simultaneously, alongside the AEMC's own rule change request of capping conditional discounts (which state above harmonise with this rule change in full).

Powershop is concerned that post a Draft decision, made in December 2019, the ESC then conducted an industry wide workshop on 14 January 2020, to seek further feedback on the above draft decisions. The ESC will then need to rush through a final decision by the end of February 2020 despite this further feedback. In reviewing all submissions that industry stakeholders will provide to the Draft Decision as well as digest the substantive feedback received at the workshop, we are not confident that the 18 draft decisions will be reviewed in a thorough, transparent manner.

To avoid any significant unintended consequences from this process, Powershop suggests the ESC advise DELWP that an updated Draft Decision will be provided by the end of April 2020 for a final decision on 30 June 2020. The ESC can then allow industry up to 1 January 2021 to implement these changes. This timeframe will also allow for a more thorough review of the impact that the VDO, Best Offer, Clear Advice and Price Change has had on the market.

Such a change in delivery times will also enable the ESC to apply clear, objective evidence for each recommendation, while also assessing the impacts of all the other recommendations individually and as a whole, in addition to the impact of the suite of Victorian regulations that have applied since 1 July 2020.

If you have any queries or would like to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely,



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