



# **VARIATIONS TO STANDING OFFER TARIFFS FOLLOWING THE REMOVAL OF THE CARBON PRICE**

FINAL DECISION PAPER

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# 1 INTRODUCTION

## 1.1 Background

The *Clean Energy Legislation (Carbon Tax Repeal) Act 2014 (Cth)* (**Carbon Tax Repeal Act**) was passed by the Commonwealth Parliament on 17 July 2014 with some sections having retrospective application from 1 July 2014.

The Carbon Tax Repeal Act amends the *Competition and Consumer Act 2010 (CCA)* to:

- prohibit carbon pricing related price exploitation and false or misleading representations about the carbon pricing repeal;
- provide the Australian Competition and Consumer Commission (**ACCC**) with additional price monitoring powers in relation to the repeal; and
- require retailers to provide a carbon tax removal substantiation statement to the ACCC and a statement to energy customers on the estimated customer savings for the 2014-15 financial year.

In February 2014, the Australian Government directed the ACCC to monitor prices, costs and profits to assess the general effect of the carbon pricing scheme in Australia in preparation for the removal of the carbon price. The direction is in effect from 1 March 2014 until 30 June 2015 with quarterly reporting obligations. The monitoring will establish baselines that will then be utilised to determine the impact of the removal of the carbon price and ensure the ACCC is capable of challenging any potential price exploitation in relation to the removal of the carbon price.

The Australian Government has stated that it is committed to ensuring that energy consumers directly benefit from the removal of the carbon price with lower energy bills.

### **Potential impediments to varying standing offer tariffs to reflect the removal of the carbon price**

In Victoria, section 35 of the *Electricity Industry Act 2000 (EIA)* and section 42 of the *Gas Industry Act 2001 (GIA)* prohibit retailers from varying standing offer tariffs that have been in effect for less than six months and variations cannot take effect until one month after they have been published in the Government Gazette.

### **National approach to standing offer tariff variations to reflect the removal of the carbon price**

The Australian Energy Regulator (**AER**) has issued a compliance statement indicating that it will not take enforcement action against retailers for possible breaches of



provisions of the National Energy Retail Law (**NERL**) in circumstances where retailers introduce lower prices to reflect savings from the removal of the carbon price.

The AER will permit retailers operating in jurisdictions who have transitioned to the National Energy Customer Framework (**NECF**) to lower their standing offer tariff once immediately following the removal of the carbon price without invoking enforcement action from the AER. Retailers will be able to begin billing customers on the basis of the varied tariff immediately (as opposed to waiting until 10 business days following publication of the varied tariff).

The AER compliance statement is not applicable to Victorian retailers, as Victoria has not transitioned to the NECF.

### **Standing offer tariffs in Victoria**

In Victoria, the EIA and GIA impose time restrictions on when a retailer can vary its standing offer tariff, which ensures a level of price stability for standing offer customers. However, this could result in standing offer customers not immediately receiving a benefit from the removal of the carbon price, depending on when a retailer last varied its standing offer tariff.

Section 60C of the CCA allows “any other relevant matter that may reasonably influence the price” to be considered when deciding if a corporation is engaging in price exploitation in relation to the removal of the carbon price. A relevant matter may include whether state legislation prevented an immediate price variation. In Victoria, retailers are prevented from varying their standing offer tariff until they have met the six month time requirement under the EIA and GIA. Therefore, Victorian customers on standing offers may not see a decrease in their energy bills until several months after the removal of the carbon price if their retailer has varied its standing offer tariff within the last six months.

## **1.2 Position Paper**

On 18 June 2014, the Commission released the ‘*Variations to Standing Offer Tariffs Following the Removal of the Carbon Price – Position Paper*’ (**Position Paper**) for public consultation.

The Position Paper set out several options the Commission considered were available to it to address the removal of carbon pricing with regard to varying standing offer tariffs. The Commission’s preferred option was to permit one variation outside the parameters of the EIA and GIA. The other options included maintaining the status quo and permitting multiple variations for a three month period.



The Commission considered that only allowing one variation ensured that standing offer customers could immediately obtain the benefits from the removal of the carbon price while maintaining a level of price stability. This approach was also consistent with the compliance approach taken by the AER.

### 1.3 Submissions

The Commission received submissions from the following stakeholders:

- AGL Energy Limited (**AGL**);
- Alinta Energy Retail Sales Pty Ltd (**Alinta**);
- EnergyAustralia Pty Ltd (**EnergyAustralia**);
- Energy Retailers Association of Australia (**ERAA**);
- Lumo Energy Australia Pty Ltd (**Lumo**);
- Origin Energy Retail Ltd (**Origin**);
- Red Energy Pty Ltd (**Red**); and
- Simply Energy (**Simply**).

### 1.4 Regulatory powers of the Commission

The Commission's powers are outlined in the EIA, GIA and the *Essential Services Commission Act 2001* (**ESC Act**).

The ESC Act also outlines the objective of the Commission, which is to promote the long term interests of Victorian customers with regard to the price, quality and reliability of essential services. In seeking to achieve this objective, the Commission must have regard to the following matters to the extent that they are relevant in any particular case:

- efficiency in the industry and incentives for long term investment;
- the financial viability of the industry;
- the degree of, and scope for, competition within the industry, including countervailing market power and information asymmetries;
- the relevant health, safety, environmental and social legislation applying to the industry;
- the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for:
  - consumers and users of products or services (including low income and vulnerable consumers);
  - regulated entities;
- consistency in regulation between States and on a national basis; and
- any matters specified in the empowering instrument.

The Commission also has specific energy sector objectives under the EIA and GIA.



These are:

- to promote a consistent regulatory approach between the electricity industry and the gas industry, to the extent that it is efficient and practicable to do so; and
- to promote the development of full retail competition.

## 2 ISSUES RAISED IN SUBMISSIONS

### 2.1 Impact on January standing offer tariff variation

AGL, Alinta, EnergyAustralia, ERAA, Lumo, Origin and Red requested clarity on how the carbon price tariff variation would affect subsequent tariff variations, in particular the traditional January tariff variation to accommodate network price changes.<sup>1</sup> Red suggested that the Commission expand its preferred option to allow two variations – one following the removal of the carbon price and one in January 2015.<sup>2</sup>

The Commission will not pursue enforcement action against a retailer who varies its standing offer tariff within six months after its carbon price-exclusive standing offer tariff variation takes effect, if the retailer would have otherwise been in compliance as its standing offer tariff variation prior to the carbon price-exclusive variation was more than six months earlier. For example, if a retailer varied its standing offer tariff in July 2014 and then in September 2014 it published its carbon price-exclusive standing offer variation, the retailer would be able to next vary its standing offer tariff in January 2015.

The Commission considers this approach to be consistent with the outcomes sought by Red and other retailers, which is to ensure that the carbon price-exclusive standing offer tariff variation is not a barrier to retailers being able to vary their standing offer tariff in January 2015 following network price changes. However, the Commission is only permitting one variation outside the parameters of the EIA and GIA for the specific purpose of allowing retailers to pass through the savings from the removal of the carbon price by introducing a carbon price-exclusive standing offer tariff. All other standing offer tariff variations that a retailer implements must be made in accordance with the EIA and GIA.

ERAA stated that it believed the Commission's intent with its preferred position was to allow each retailer to adopt the one additional variation at its discretion to either address the removal of the carbon price or a subsequent price variation.<sup>3</sup> The Commission is not allowing an additional variation to be used at a retailer's discretion,

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<sup>1</sup> AGL's submission, p. 1, Alinta's submission, p. 1, EnergyAustralia's submission, p. 1, ERAA's submission, p. 2, Lumo, p. 1, Origin, p. 1 and Red, p.1.

<sup>2</sup> Red's submission, p. 1.

<sup>3</sup> ERAA's submission, p. 2.



but is explicitly allowing the one variation outside the parameters of the EIA and GIA to be used to remove the carbon price from a retailer's standing offer tariff, and the variation must occur as soon as the retailer is practically able to do so.

A retailer who decides to utilise the one additional variation to introduce a carbon price-exclusive standing offer tariff must notify the Commission at the time it publishes its carbon price-exclusive standing offer tariff that it is doing so. Even a retailer who would otherwise be permitted under the EIA and GIA to vary its standing offer tariff (because its last variation was more than six months ago), must notify the Commission if it is seeking to utilise the one additional variation to remove the carbon price. If the Commission does not receive the notification then it will deem that the retailer is making a regular tariff variation, which will prohibit a retailer from varying its standing offer tariff for a period of six months.

## **2.2 Backdating from 1 July 2014**

AGL requested that the Commission consider allowing retailers to backdate the effective date of the carbon price-exclusive standing offer tariff to allow the date to coincide with the effective date of the removal of the carbon price (i.e. 1 July 2014). AGL stated this would promote consistency between Victorian regulation and the Carbon Tax Repeal Act, as well as benefit consumers.<sup>4</sup>

The Commission agrees that retailers should be able to backdate the carbon price-exclusive standing offer tariff variation to the effective date of the removal of the carbon price. This will allow retailers to bill customers at the lower tariff from 1 July 2014.

## **2.3 20 business days notification for smart meter customers**

Clause 26.4 of the Energy Retail Code version 10a (**ERC v10a**) requires retailers to provide customers with notice of tariff variations as soon as practicable, and no later than the customer's next bill. For customers who have smart meters, the ERC v10a requires that the notification must be 20 business days prior to the variation.

AGL, EnergyAustralia, ERAA, Lumo, Origin, Red and Simply stated that the 20 business days notification requirement for customers who have smart meters is a potential barrier for retailers being able to quickly pass through the savings from the removal of the carbon price to Victorian energy consumers.<sup>5</sup>

Following the close of submissions, the Commission released the Energy Retail Code version 11 (**ERC v11**) which harmonised the Victorian code, to the extent possible, with the NECF while preserving Victorian-specific consumer protections. The ERC v11

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<sup>4</sup> AGL's submission, p. 2.

<sup>5</sup> AGL, p. 1, EnergyAustralia, p. 2, ERAA, p. 2, Lumo, pp. 1-2, Origin, p. 1, Red, p. 2, and Simply Energy, p. 1.





will commence on 13 October 2014. However, the Commission has provided retailers with a transitional period wherein retailers may begin to comply with the ERC v11 from 15 July 2014, with full compliance required by 13 October 2014. Under the ERC v11, retailers are not restricted by the 20 business days notification requirement, and can begin billing customers at the lower tariff immediately while providing customers with notice of the new tariff as soon as practicable, and no later than the customer's next bill.

For the purposes of consistency between the requirements under the ERC v10a and the ERC v11, retailers will be able to begin billing customers who have smart meters immediately at the lower tariff.

## **2.4 Timeframe for retailers to introduce a carbon price-exclusive standing offer tariff**

AGL sought clarity on when the Commission expected retailers to introduce a carbon price-exclusive standing offer tariff variation, specifically requesting that the Commission take a "realistic view of achievable timeframes".<sup>6</sup> The Commission understands that businesses follow certain processes when instituting a tariff variation, and that there may be added complexities in introducing a carbon price-exclusive standing offer tariff due to the necessity of giving full effect to the Carbon Tax Repeal Act. The Commission expects the retailer to use the additional variation to introduce a carbon price-exclusive standing offer tariff as soon as the retailer is practicably able to do so, which will vary by retailer.

## **3 ONE VARIATION PERMITTED OUTSIDE THE PARAMETERS OF THE EIA AND GIA**

The Commission will allow retailers to vary their standing offer tariffs following the commencement of the Carbon Tax Repeal Act to reflect savings from the removal of the carbon price, without invoking enforcement action for any possible contravention of section 35 of the EIA or section 42 of the GIA. This variation to introduce a carbon price-exclusive standing offer tariff will be considered to be outside the parameters of the EIA and GIA, and will not impact on a retailer's ability to make future variations. All stakeholder submissions supported this approach.

Retailers will be required to publish their carbon price-exclusive standing offer tariff variation in accordance with section 35(3) of the EIA and section 42(3) of the GIA, but the Commission will allow retailers to immediately begin billing customers at the lower tariff without having to wait until the notice period has expired. The Commission will

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<sup>6</sup> AGL's submission, p. 2.



also allow retailers to backdate the carbon price-exclusive standing offer tariff variation to 1 July 2014.

A retailer who decides to utilise the one variation outside the parameters of the EIA and GIA to introduce a carbon price-exclusive standing offer tariff will be required to notify the Commission at the time it publishes the carbon price-exclusive standing offer tariff. If the Commission does not receive the notification then it will deem that the retailer is making a regular tariff variation, which will prohibit the retailer from making subsequent variations to its standing offer tariff for a period of six months.

The Commission is releasing a compliance statement which sets out its decisions stated above (refer to Annexure A). This compliance statement will be published on our website. The Commission will periodically update the relevant webpage to list the retailers who have notified us that they are giving effect to the removal of the carbon price by utilising the one additional variation outside the parameters of the EIA and GIA.



## ANNEXURE A – COMPLIANCE STATEMENT

### COMPLIANCE STATEMENT

#### Variations to standing offer tariffs following the removal of carbon pricing

The Essential Services Commission (**Commission**) is issuing this compliance statement to address variations to standing offer tariffs to reflect the removal of the carbon price.

In Victoria, section 35 of the *Electricity Industry Act 2000* (**EIA**) and section 42 of the *Gas Industry Act 2001* (**GIA**) prohibit retailers from varying standing offer tariffs that have been in effect for less than six months (**six months rule**) and a variation cannot take effect until one month after it has been published in the Government Gazette.

The Commission has the objective to promote the long term interests of Victorian consumers with regard to price, quality and reliability of essential services, and has discretion in deciding when it will pursue enforcement action against a retailer for potential breaches of the EIA and GIA. The Commission has decided that pursuing enforcement action for potential breaches of the EIA and GIA is inappropriate when a retailer is reducing its standing offer tariff by introducing a carbon price-exclusive tariff. By permitting retailers to vary their standing offer tariffs as soon as practicable to ensure all Victorian consumers receive the tariff reductions associated with the removal of the carbon price in a timely manner, the Commission considers that it is achieving its objective.

#### **One variation outside the parameters of the EIA and GIA**

The Commission will not pursue enforcement action against a retailer for potential breaches of section 35 of the EIA or section 42 of the GIA for varying its standing offer tariff, on one occasion only, as soon as practicable following the commencement of the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth) (**Carbon Tax Repeal Act**), to introduce a carbon price-exclusive standing offer tariff.

The variation which results in a carbon price-exclusive standing offer tariff will not be considered by the Commission in determining whether a retailer has breached the EIA and GIA six months rule when the retailer next varies its standing offer tariff. For example, if a retailer varied its standing offer tariff in July 2014 and then in September 2014 it published its carbon price-exclusive standing offer tariff, the retailer would next be able to vary its standing offer tariff in January 2015.



Retailers will be required to publish the carbon price-exclusive standing offer tariff variation in the Government Gazette in accordance with section 35(3) of the EIA and section 42(3) of the GIA, but the Commission will permit retailers to begin to bill customers immediately at the lower tariff after the variation is published in the Government Gazette. A retailer may backdate the carbon price-exclusive standing offer tariff to take effect from 1 July 2014.

### **Energy Retail Code – tariff variation notification**

Retailers are required to provide notice of the carbon price-exclusive standing offer tariff in accordance with the Energy Retail Code. Clause 26.4 of the Energy Retail Code version 10a (**ERC v10a**) states that retailers must provide notice of tariff variations to customers as soon as practicable, and no later than the customer's next bill. For customers who have smart meters, the ERC v10a requires that the notification be at least 20 business days prior to the variation.

The Commission has recently released the Energy Retail Code version 11 (**ERC v11**) which harmonised, to the extent possible, with the National Energy Customer Framework while preserving Victorian-specific consumer protections. The ERC v11 will commence on 13 October 2014. However, the Commission has provided retailers with a transitional period wherein retailers may begin to comply with the ERC v11 from 15 July 2014, with full compliance required by 13 October 2014. Under the ERC v11, retailers are not restricted by the 20 business days notification requirement, and can begin billing customers at the lower tariff immediately while providing customers with notice of the new tariff as soon as practicable, and no later than the customer's next bill.

For the purposes of consistency between the requirements under the ERC v10a and the ERC v11, retailers will be able to begin billing customers who have smart meters immediately at the lower tariff.

### **Mandatory notification to the Commission**

The Commission requires any retailer seeking to utilise the one variation outside the parameters of the EIA and GIA to notify the Commission. When a retailer publishes its carbon price-exclusive standing offer tariff, the retailer must send an email to [energy.submissions@esc.vic.gov.au](mailto:energy.submissions@esc.vic.gov.au) confirming that the variation is due to removing the carbon price, as opposed to a regular variation. If the Commission does not receive the notification then it will deem that the retailer is making a regular standing offer tariff variation, which will prohibit the retailer from varying its standing offer tariff for a period of six months.



The Commission will periodically update the relevant webpage to list the retailers who have notified us that they are giving effect to the removal of the carbon price by utilising the one additional variation outside the parameters of the EIA and GIA.