



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

POSITION PAPER

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1 INTRODUCTION

1.1 Background

The Australian Government is seeking to remove the carbon price. The *Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 (Carbon Tax Repeal Bill)* passed the House of Representatives in November 2013, but it was rejected by the Senate in March 2014. The Australian Government is likely to reintroduce the Carbon Tax Repeal Bill after the new state senators take their seats on 1 July 2014.

If the Carbon Tax Repeal Bill comes into effect, it would amend the *Competition and Consumer Act 2010 (CCA)* to:

- prohibit carbon pricing related price exploitation and false or misleading representations about the carbon pricing repeal; and
- provide the Australian Competition and Consumer Commission (**ACCC**) with additional price monitoring powers in relation to the repeal.

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 upon 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 offers to reflect the removal of the carbon price

State and national energy legislation restrict the variation of standing offer tariffs to no more than once every six months, which could result in standing offer customers not immediately receiving a benefit from the removal of the carbon price (depending on when the bill is passed and when the retailer last varied its standing offer).

National approach to standing offer variations following the removal of the carbon price

The Australian Energy Regulator (**AER**) has issued a compliance statement indicating that it would 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 would permit retailers to lower their standing offer one time immediately following the removal of the carbon price without invoking enforcement action from the AER, and retailers would 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).

Standing offers in Victoria

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 offers 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. This ensures a level of price stability for standing offer customers.

The proposed drafting of section 60C of the CCA allows “any other relevant matter” 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 be if state legislation did not permit an immediate price variation. Based on the current drafting of the Carbon Tax Repeal Bill, Victorian retailers would be required to vary their standing offer as soon as they met the time limitations under the EIA and GIA, but not before. The practical application would be that Victorian consumers on standing offers may not see a decrease in their energy bills until several months after the removal of the carbon price.

1.2 Purpose of this paper

This paper outlines options available to the Commission in relation to the variation of standing offer tariffs following the removal of the carbon price and sets out the Commission’s preferred approach.

1.3 Regulatory powers of the Commission

The Commission has responsibility for licensing electricity and gas retailers in Victoria. The Commission’s powers are outlined in the EIA, GIA, and the *Essential Services Commission Act 2001* (**ESC Act**).

The ESC Act outlines objectives to which the Commission must have regard in undertaking its functions across all industries. The Commission’s primary objective is to protect the long-term interests of Victorian customers with regard to the price, quality and reliability of essential services. In seeking to achieve this primary objective, the Commission must have regard to the following objectives:



- to facilitate efficiency in regulated industries and provide the incentive for efficient long-term investment;
- to facilitate the financial viability of regulated industries;
- to prevent the misuse of monopoly or non-transitory market power;
- to facilitate effective competition and promote competitive market conduct;
- to ensure that regulatory decision making observes the relevant health, safety, environmental and social legislation applying to the regulated industry;
- to ensure that users and customers (including low income or vulnerable customers) benefit from the gains from competition and efficiency; and
- to promote consistency in regulation between States and on a national basis.

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 PREFERRED OPTION

2.1 One variation permitted outside the parameters of the EIA and GIA

The Commission has discretion on whether to pursue enforcement action for potential breaches of the EIA and GIA. The Commission is considering whether it is appropriate to permit retailers to immediately vary their standing offer tariffs following the removal of the carbon price to reflect any 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. Retailers would have to publish their varied standing offer tariffs in accordance with section 35(3) of the EIA and section 42(3) of the GIA, but the Commission would permit retailers to immediately begin billing customers on the basis of the carbon exclusive prices prior to waiting until the variation takes effect.

Allowing the additional variation would ensure all Victorian energy customers could immediately obtain the benefits from the removal of the carbon price while still maintaining a level of price stability for standing offer customers by limiting the number of variations. This approach is consistent with the approach taken by the AER.



3 OTHER OPTIONS

3.1 Status quo

The Commission is not required to take any action in relation to this matter. There is no direct inconsistency between the proposed obligations under the Carbon Tax Repeal Bill and the relevant sections of the EIA and GIA regarding varying standing offers. If the carbon tax is repealed then retailers would be able to vary their standing offer tariffs to reflect the savings from the removal of the carbon tax in accordance with the EIA and GIA.

The Commission considers this option to be a detriment to Victorian standing offer customers, as they may not see any direct benefit from the removal of the carbon price for several months (depending on when the retailer last varied its standing offer). This option would also be inconsistent with the AER's position. Section 8A of the ESC Act states that the Commission must have regard to consistency in regulation between the States and on a national basis.

3.2 Multiple variations permitted outside the parameters of the EIA and GIA

The Commission could allow retailers to vary their standing offer tariffs multiple times for a three month period following the removal of the carbon price. This approach would allow retailers to pass through the savings as they receive them, as opposed to potentially having to forecast the savings.

This option would introduce a great deal of price instability for standing offer customers, and price stability is one reason why variations to standing offers are limited. Retailers currently have to forecast potential costs, as they are only permitted to vary standing offer tariffs twice per year. The Commission considers that only allowing one variation best reflects the current regulatory framework and helps ensure a level of price stability for standing offer customers. This option would also introduce a compliance burden on the Commission in monitoring a potentially significant number of standing offer variations during the three month period to ensure variations are limited to those arising from the removal of the carbon price.

4 NEXT STEPS

4.1 Submissions

The Commission invites submissions from stakeholders on this Position Paper.



Submissions on this paper are preferred in electronic format and should be provided to the Commission by **5pm on Wednesday, 2 July 2014.**

By email to: energy.submissions@esc.vic.gov.au

By mail to:
Level 37
2 Lonsdale Street
Melbourne VIC 3000

Submissions will be made available on our website, except for any information clearly identified as commercially confidential or sensitive. Any material that is confidential should be clearly marked as such.

Questions regarding this consultation can be directed to:
Ms Barbara Blake, Compliance Officer, Energy on (03) 9032 1379 or
barbara.blake@esc.vic.gov.au.

4.2 Release of a compliance statement

The Commission expects to release a compliance statement on this issue by the end of July 2014, after it considers stakeholder submissions.