



CHANGES TO REGULATORY  
INSTRUMENTS RELATING TO  
FLEXIBLE PRICING OF ELECTRICITY

FINAL DECISION

AUGUST 2013



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# 1 INTRODUCTION

## 1.1 Background

This paper sets out the Essential Services Commission's (the **Commission**) amendments to the Energy Retail Code (the **ERC**), Guideline No 19 Energy Price and Project Disclosure (**Guideline 19**) and Electricity Retail Licences (**Licences**). These amendments are necessary to ensure the smooth introduction of flexible pricing.

Extensive consultation has already been undertaken by the Department of State Development, Business and Innovation (DSDBI) on the introduction of flexible pricing. That consultation has taken place within the context of the development of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (the **Order**). The Order included a provision directing the Commission to amend the ERC to ensure consistency with the Order. The amendments in this final decision are necessary to give full effect to the Order and ensure consistency with the existing regulatory regime. The Order can be found on the Government Gazette and at Attachment A in this paper.

The Commission released the *Proposed changes to regulatory instruments relating to flexible pricing of electricity – Draft Decision* in June 2013 and submissions were received from stakeholders. The submissions and the Commission's response is outlined in this final decision paper.

## 1.2 Legislative structure

The Commission has responsibility for licensing electricity retailers in Victoria. The Commission's powers are outlined in the Electricity Industry Act 2000 (**EI Act**) and the Essential Services Commission Act 2001 (**ESC Act**).

The Commission's objective is to promote the long-term interests of Victorian consumers 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:



- efficiency in regulated industries and provide the incentive for efficient long-term investment;
- the financial viability of regulated industries;
- the degree of, and scope for, effective competition and promote competitive market conduct;
- the benefits and costs of regulation for consumers (including low income or vulnerable customers); and
- consistency in regulation between States and on a national basis.

The Commission also has specific energy sector objectives under the EI Act. 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.

### **1.3 Structure of this paper**

This final decision includes proposed amendments to the ERC, Guideline 19 and Licences. This paper is structured as follows:

- Chapter 1: provides background information and sets out the rationale for the amendments
- Chapter 2: provides the discussion and the Commission's final decision to the amendments to the ERC
- Chapter 3: provides the discussion and the Commission's final decision to amendments to Guideline 19
- Chapter 4: provides the discussion and the Commission's final decision to the amendments to Licences.

### **1.4 Purpose**

The purpose of this final decision is to outline the amendments the Commission considers necessary to the ERC, Guideline 19 and Licences to ensure a smooth transition to flexible pricing. These amendments will be reviewed prior to 31 March 2015 to ensure the effective ongoing regulation of flexible pricing.



## 1.5 Harmonisation of Energy Retail Code and Guidelines

On 13 June 2012, the Victorian Government announced it had decided to defer Victoria's transition to the National Energy Customer Framework (**NECF**). In July 2012, the Victorian Government requested that the Commission consider harmonising the regulations contained in its Codes and Guidelines with the NECF.

The Commission is, therefore, currently undertaking a process to harmonise the ERC and associated Guidelines with the NECF. On 18 July 2013, the Commission released the '*Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) – Draft Decision (Consultation Paper)*'. The Commission will prepare its final decision paper, which will incorporate the necessary amendments to facilitate flexible pricing as determined in this final decision paper.

## 1.6 Definitions

The following definitions in this final decision will be incorporated into the ERC and Guideline 19:

**AMI retail tariff** means an AMI tariff within the meaning of paragraph (a) of the definition of **AMI tariff** in section 46B of the Act where the electricity supplied and sold is metered by means of advanced metering infrastructure.

**Common form distribution tariff structure** is as defined in the Order schedule A where;

Peak time: 3pm to 9pm weekdays  
Shoulder times: 7am to 3pm weekdays  
9pm to 10pm weekdays  
7am to 10pm weekends  
Off peak time: 10pm to 7am all days

**Energy Price Fact Sheet** means a statement prepared by a **specified retailer** that contains information on its standing offer contracts and market offer contracts. This can be used as an alternative to a price and product information statement.

**Flat AMI retail tariff** means an AMI tariff where the component rates of that tariff do not vary by reference to:

- a) the time of day;
- b) the amount of electricity supplied or sold during the day;
- c) temperature, whether actual or forecast; or
- d) other characteristics that vary during the day.

Notes: 1. Paragraph (b) does not exclude block tariffs from being flat AMI tariffs;  
2. The definition does not exclude from being flat AMI retail tariffs, tariffs that vary seasonally.



**Flexible AMI tariff** means an AMI retail tariff that is not a flat AMI retail tariff and that was or is first made available from 24 June 2013.

**Reversion period** means the period from the date of the commencement of the Order, 24 June 2013 to 31 March 2015.



## 2 ENERGY RETAIL CODE

The purpose of the ERC is to regulate retail contract provisions pursuant to section 36 of the EI Act.

The ERC specifies the terms and conditions required in the contract for the supply or sale of energy. The ERC, in respect to electricity, applies to all domestic customers and small business customers who consume less than 40 MWh of electricity per year.

### 2.1 Section 24.1(b) - termination

Section 24.1(a) of the ERC regulates the termination by a customer of an energy contract with a retailer. Section 24.1(b) states:

*If a **customer** is not a **deemed customer** and wants to terminate an **energy contract** with a **retailer** under clause 24.1(a), the **customer** must give the **retailer** 28 days notice.*

#### Issues

The Order allows domestic customers to opt-out of flexible AMI retail tariffs during the reversion period. Upon notice, a retailer must return a customer to the previously applying AMI retail tariff or replacement AMI retail tariff. The retailer must apply the relevant tariff from not later than 2 business days after receipt of notice.

We consider that to avoid inconsistency between the ERC and the Order an amendment is required to the ERC.

#### Draft Decision

The Commission proposed to include the following words (underlined) at the end of section 24.1(b):

*“...the **customer** must give the **retailer** 28 days notice, unless the termination is necessary for, or a direct consequence of, the **customer** exercising the **customer’s** right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013.”*



## Submissions

Simply Energy submitted that it did not consider the clause amendment was required as customers must stay with their current retailer in order to revert to their previous tariff and so the parties would continue to maintain a contract with each other.

Origin Energy sought assurance from the Commission that a customer could not use reversion as a means to terminate a contract with 2 days' notice, and that the 28 days specified in the ERC would still apply in these circumstances.

## Commission response

The Commission considers that retailers may put existing customers on a new flexible pricing contract when the customer chooses a flexible AMI tariff, and as such a contract may be terminated and a new contract commenced when a customer reverts to the previously applying tariff. The amendment is necessary in these circumstances.

The Commission also confirms that the amendment applies only to reversion with the same retailer; subsequent termination of the contract by the customer would still require 28 days notice to the retailer.

## Final Decision

The Commission will amend section 24.1(b) of the ERC;

We will include the following words (underlined) at the end of section 24.1(b):

*“...the **customer** must give the **retailer** 28 days notice, unless the termination is necessary for, or a direct consequence of, the **customer** exercising the **customer's** right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013.”*



## 2.2 Section 31 – agreed damages terms

Section 31 of the ERC relates to agreed damages terms, including for an early termination fee for breach by a customer of their energy contract. Section 31(c) states:

*Any amount of an early termination fee payable by a **customer** upon the **customer** breaching their **energy contract** must be determined by reference to, and must not exceed, the total of the following direct costs incurred by the **retailer** in relation to that particular **customer** which remain unamortised at the time of termination:*

*(i) pro-rata costs of procuring the **customer** to enter into the contract;*

*and*

*(ii) \$20:*

*which comprises:*

- the additional costs of giving effect to the early termination of the contract, final billing and ceasing to be **responsible** for the **supply address**; and*
- the value of any imbalance in the **retailer's** electricity or gas hedging program to the extent that it is directly attributable to that breach of contract.*

### Issues

Section 8(9) of the Order prohibits retailers imposing a charge on customers for reversion. Specifically, the \$20 component of an early termination fee is prohibited.

We consider that to avoid confusion between the ERC and the Order, an amendment should be made to the ERC to ensure consistency between the two instruments.

### Draft Decision

The Commission proposed to insert the following words (underlined) at the beginning of section 31(c)(ii):

*“(ii) unless the early termination was a direct consequence of the **customer** exercising the **customer's** right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013, \$20;”*



## Submissions

The Consumer Action Law Centre (CALC) submission supported the inclusion of 31(c)(ii). However it raised that section 31 of the ERC did not fully define ‘*pro-rata costs of procuring a customer to enter a contract*’. CALC submitted that customers who revert could be required to pay the pro rata costs of the contract, disadvantaging them financially from trialling a flexible tariff. CALC also submitted that discounts received may be recouped in the pro rata costs and requested that the Commission define pro rata costs in the ERC to ensure this does not occur.

## Commission response

Feedback received from retailers indicates that the majority of them will not create a new contract when a customer chooses a flexible tariff and then reverts. Rather, contracts will allow for tariff structures to change if required. In these instances, the contract would not end so any pro rata costs would not be recouped. Where the retailer ends a contract and commences a new contract when the customer chooses a flexible tariff or reverts to a flat tariff, the rights of the retailer to recoup the pro rata costs remain (refer to the Order section 8 (8)).

Further, section 31 of the ERC clearly states that, beyond the \$20 limit as defined, the retailer may only recoup direct costs incurred. Discounts applied to tariffs are not direct costs of procuring the customer and cannot be recouped by the retailer. Therefore, the Commission considers that no additional amendments to the ones outlined above are required to this clause.

## Final Decision

The Commission will amend section 31(c)(ii) of the ERC;

We will insert the following words (underlined) at the beginning of section 31(c)(ii):

*“(ii) unless the early termination was a direct consequence of the **customer** exercising the **customer’s** right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013, \$20:”*



## 2.3 Section 34 - definitions

### New amendment submission

Section 34 of the ERC defines "**explicit informed consent**" as consent given:

- (a) by the **customer** directly to the **retailer** or the **retailer's marketing representative**:
  - (i) in writing or by electronic communication signed by the customer; or
  - (ii) except for the purposes of clause 5.1 and 10.1 of this Code, orally;
- (b) only after the **retailer** or the **retailer's marketing representative** has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the customer, including each specific purpose and use of the consent; and
- (c) by a person competent to do so.

Section 10.1 deals with customer agreement to a shorter billing cycle than 3 monthly. The effect of the definition above is that explicit informed consent for a shorter billing cycle cannot be oral and must be written. Section 5.1 relates to meter reading and is not relevant to this discussion.

### Submissions

AGL submitted that monthly billing is complementary to the introduction of flexible pricing, as monthly bills allow the customer to see the impact of the new tariff quickly and then assess whether the tariff suits them. AGL has requested the ERC definition be changed to remove the requirement for written explicit informed consent for section 10.1 and instead allow for oral explicit informed consent, which it says is aligned to the Order.

### Commission response

The Commission can see the merit in allowing monthly billing to be agreed to verbally between a customer and a retailer, but for this decision we are dealing only with matters that arise from the Order. However, this issue will be considered as part of the Harmonisation Project.



## 2.4 Section 20 - variations require customer's agreement

### New amendment submission

Section 20 of the ERC states (in relevant part):

- (a) The structure and nature of **tariff** and any terms and conditions of an **energy contract** between a **customer** and a **retailer** may only be varied by agreement in **writing** between the **customer** and the **retailer**.
- (b) If the structure or nature of the **tariff** changes in accordance with a term or condition of an **energy contract** previously agreed between the **customer** and the **retailer**, no further agreement is required between the **retailer** and the **customer** to effect such **tariff** change, provided that, where the contract is a **market contract**, the **customer** had given its **explicit informed consent** to the inclusion of the relevant term or condition in the **energy contract**.

### Submissions

AGL submitted that under the Order customers could enter or revert from a flexible AMI tariff with oral or written explicit informed consent, yet under section 20(a) of the ERC customers would still be required to give written notification for any variance to the structure or nature of the tariff and any terms and conditions of an energy contract in certain circumstances. AGL submitted that section 20(a) should be updated to remove the words **in writing**, to align the clause with the Order.

### Commission response

The Commission acknowledges that the Order establishes a clear policy that oral explicit informed consent is an acceptable form of consent to opt in and opt out of a flexible AMI tariff. To ensure that the ERC does not conflict with this policy position, we will amend section 20(b) to state the section does not apply to variances in accordance with the Order. This amendment allows the section 20(a) provisions in the ERC to remain unchanged for matters not relating to flexible AMI tariffs.



## Final Decision

The Commission will amend section 20(b) of the ERC;

We will insert the following words (underlined) into section 20(b):

- (b) If the structure or nature of the **tariff** changes in accordance with a term or condition of an **energy contract** previously agreed between the **customer** and the **retailer** or in accordance with the Advanced Metering Infrastructure (AMI Tariffs) Order 2013, no further agreement is required between the **retailer** and the **customer** to effect such **tariff** change, provided that, where the contract is a **market contract**, the **customer** had given its **explicit informed consent** to the inclusion of the relevant term or condition in the **energy contract**.

## 2.5 Section 26.4(b) - advice on available tariffs

### New amendment submission

Section 26.4(b) of the ERC states:

- (b) The **retailer** must give notice to a **customer** of any variation to the amount and/or structure **retailer's tariffs** that affects the **customer**. The notice must be given as soon as practicable and in any event:
- in the case of **customers** with **smart meters**, **20 business days** prior to the variation; and
  - **otherwise, no later than the** customer's next bill.

### Submissions

AGL submitted that section 8(4)(b) of the Order, which requires retailers to apply the relevant AMI retail tariff to electricity sold to the domestic customer commencing no later than 2 business days after the receipt by the retailer of the notice, will conflict with retailers' obligations under section 26.4(b).

### Commission response

The Commission agrees with AGL that this should be clarified. The Commission considers the Order takes precedence over the ERC, but to avoid doubt the Commission will amend the ERC to include the following statement.



## Final Decision

The Commission will amend section 26.4(b) of the ERC;

We will insert the following words (underlined) into section 26.4(b):

- (b) The **retailer** must give notice to a **customer** of any variation to the amount and/or structure of **retailer's tariffs** that affects the customer. The notice must be given as soon as practicable and in any event:
- in the case of **customers** with **smart meters**, **20 business days** prior to the variation, unless the variation is in accordance with the **Advanced Metering Infrastructure (AMI Tariffs) Order 2013**; and
  - otherwise, no later than the **customer's** next bill.



## 3 GUIDELINE 19 ENERGY PRICE AND PRODUCT DISCLOSURE

Guideline 19 is issued to implement the obligations created by sections 35C and 36A of the EI Act. Those sections create statutory obligations on electricity retailers to publish tariffs and terms and conditions of sale on the internet.

Guideline 19 specifies the minimum requirements in relation to:

- the process to enable small retail customers to access relevant published information; and
- the details and format for publication of energy standing offers and price and product information statements.

Guideline 19 can be found on our website at [www.esc.vic.gov.au](http://www.esc.vic.gov.au).

### 3.1 Section 3.3 – more than one tariff available

Section 3 of Guideline 19 requires specified retailers to publish price and product information statements (PPIS) on their internet sites. Section 3.3 of Guideline 19 states:

#### **3.3 More than one tariff applicable**

*Where the **specified retailer** is unable to determine, based on the information gathered about the customer, which of more than one **price and product information statement** applies, the **specified retailer** must either:*

- (a) present a **price and product information statement** for one of the potentially applicable tariffs; or*
- (b) present a **price and product information statement** for each of the potentially applicable tariffs.*

*In doing so, the **specified retailer** must electronically communicate to the customer that it is not clear, based on the information gathered about the customer, which of more than one **price and product information statement** applies.*



## Issues

The Order ensures the right of a customer to remain on their current retail tariff.

The Commission considers that to ensure that customers are aware of their right to remain on their current retail tariff, it is necessary to amend section 3.3 of Guideline 19 to require that where only one option is presented to a customer, it is not a flexible AMI retail tariff.

## Draft Decision

We propose to insert the following words (underlined) into section 3.3(a):

*“(a) present a **price and product information statement** for one of the potentially applicable tariffs which must be a flat AMI retail tariff; or...”*

## Submissions

AGL sought clarification on whether this clause meant that only one flat PPIS was required, which would alleviate the requirement for AMI Flexible tariffs to require a PPIS. Further, it queried if AMI flexible tariffs did not in fact require a PPIS, would this remove the obligation on retailers to publish a PPIS for flexible pricing on YourChoice or the DSDBI comparator website.

The CALC submission did not support the proposed amendment. Instead, CALC considered that retailers should present on their website both a flat and a flexible tariff PPIS. CALC suggested that by presenting only two offers consumers would be less likely to be confused and would be able to choose the offer that best suited their requirements.

## Commission response

Section 3.3 refers to the information a retailer must present to a customer when it is unable to determine which PPIS applies from the details provided by the customer. In this instance, the Commission’s amendment ensures that the flat AMI retail tariff must be presented in the first instance, not the flexible AMI tariff. If it is clear more than one tariff may be applicable, the retailer should present the relevant PPISs to the customer. Further, they could then present other PPISs if they wish.

The Commission notes that retailers are required to publish a PPIS on their website that is generally available in each tariff class (Order in Council Section 7AA, 25 November 2008). This would include at least one generally available flexible AMI tariff PPIS.



Regarding AGL's question whether a PPIS for a generally available flexible AMI tariff would need to be published on the YourChoice website, the Commission confirms that this amendment does not relate to the publication of offers and PPISs on the Commission's website. However, the Commission confirms that YourChoice will continue for existing generally available electricity offers. Further, the Commission will require retailers with flexible AMI tariffs to submit one generally available PPIS as a PDF for the Commission to upload on the YourChoice site. This will continue until further notice, noting that we are working with DSDBI to remove any duplication of offers in YourChoice and their comparator as soon as possible.

The Commission disagrees with CALC's submission. Section 3.3(a) allows for the flat AMI tariff PPIS to be published on the retailer's website when it is not clear which tariff would be applicable for the customer. Further tariffs can be presented as per section 3.3(b). Limiting the number of offers presented on the retailer's website to one flat and one flexible AMI tariff may exclude other potential offers available to the customer and may prevent them from choosing from the full set of available options.

### Final Decision

The Commission will amend section 3.3(a) of Guideline 19.

We will insert the following words (underlined) into section 3.3(a):

*“(a) present a **price and product information statement** for one of the potentially applicable tariffs which must be a flat AMI retail tariff; or...”*

## 3.2 Section 3.4 – information requirements

Section 3.4 of Guideline 19 states:

### **3.4 Information requirements**

*Each **price and product information statement** must at least include:*

- (a) all fees and charges separately disclosed, including the tariff and early termination fees, if applicable;*
- (b) the term of the contract and the termination notification required;*
- (c) an explanation of how the tariff and other fees and charges can change, if applicable;*
- (d) a description of the characteristics relevant to determining whether the tariff or term or condition is applicable to a customer;*



(e) the following statement:

**“About this document**

*This price and product information statement is presented in accordance with the requirements of the Essential Services Commission (ESC) - the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit [www.esc.vic.gov.au/yourchoice](http://www.esc.vic.gov.au/yourchoice).”*

*The **price and product information statement** must also include details of, if applicable:*

*(f) rebates, other than government-funded rebates;*

*(g) non-price incentives;*

*(h) where a different tariff is applicable at different times, when the different tariffs apply;*

*(i) where the **specified retailer** intends to make the tariff or any other element of the published details available only for a fixed period, the availability end date; and*

*(j) how to get further information on the terms and conditions*

## Issues

Section 8 of the Order creates the right of a customer to opt-out of a flexible AMI tariff with the same retailer and revert to the previously applying (or replacement) AMI retail tariff during the reversion period. The reversion period is from the commencement of the Order to 31 March 2015.

To ensure that customers are aware of their option to revert to the previously applying (or replacement) AMI retail tariff during the reversion period, we consider it is necessary to insert a new paragraph into section 3.4 of Guideline 19. The new paragraph will require that a clear and simple explanation be provided to customers.



## Draft Decision

We proposed to insert the following new paragraph (underlined) into section 3.4 immediately before paragraph 3.4(c):

(ba) without limiting paragraph (c), if the tariff is a flexible AMI retail tariff,

- a clear and simple explanation of ;
  - whether the right to revert exists;
  - the rights of a customer to opt-out of the tariff and revert to the previously applying AMI retail tariff;
  - where the customer can obtain further information about its rights under the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (made under section 46D of the Electricity Industry Act 2000s; and
- a website address for the relevant part of the Department of State Development, Business and Innovation website;

## Submissions

AGL raised a concern that the Commission will require a PPIS for flexible pricing to be on the YourChoice website. AGL considered that it would be sufficient to have all generally available tariffs on the DSDBI energy comparator.

The CALC submission generally supported the Commission's proposed amendments to this section. However, it requested that retailers should also be required to explain to customers in an explicit manner, prior to the customer giving their explicit informed consent; that they had the right to revert from a flexible AMI tariff. CALC also stated that the offer summary should include the reversion rights.

The Consumer Utilities Advocacy Centre (CUAC) submitted that the proposed amendments did not sufficiently describe when reversion applied, what fees or incentives may be recouped by the retailer, how these should be explained to the customer, and that the previously applying tariff may not be available and a replacement tariff could be applied.

## Commission response

AGL's submission does not relate to the Commission's proposed amendment to section 3.4. This clause relates to the information required to be included in a PPIS. We have addressed AGL's submission in section 3.1 of this report and we are working with DSDBI to remove any duplication between YourChoice and the Departments comparator site as soon as possible.



As explicit informed consent is required prior to entering into a flexible AMI tariff, the Commission does not consider that further explanation is required. The Commission also notes that the offer summary will include the reversion rights. Section 4.2(a) in Guideline 19 requires information in sections 3.4(a) to (c) to be included – this covers the new section 3.4(ba).

The Commission considers our proposed addition to section 3.4(ba) to be an appropriate amount of information to be presented in the PPIS format. Retailers must explain all aspects of reversion to a customer prior to them giving their explicit informed consent to a flexible AMI tariff (section 7 of the Order). The Commission considers this is appropriate and no further changes are required. The Commission also notes that sections 3.4(a) and (c) of Guideline 19 require retailers to disclose all fees and charges separately in the PPIS.

### Final Decision

The Commission will amend section 3.4 of Guideline 19;

We will insert the following new paragraph (underlined) into section 3.4 immediately before paragraph 3.4(c):

(ba) without limiting paragraph (c), if the tariff is a flexible AMI retail tariff,

- a clear and simple explanation of ;
  - whether the right to revert exists;
  - the rights of a customer to opt-out of the tariff and revert to the previously applying AMI retail tariff;
  - where the customer can obtain further information about its rights under the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (made under section 46D of the Electricity Industry Act 2000s; and
- a website address for the relevant part of the Department of State Development, Business and Innovation website;

### 3.3 Section 4A – relevant published offers

The proposed new section 4A would allow an electricity retailer to provide an energy price fact sheet (EPFS) as an alternative to a price and product information statement (PPIS).

### Issues



The Australian Energy Regulator (AER) requires retailers to provide an EPFS in accordance with the *AER Retail Pricing Information Guideline Version 3.0*. The information contained in an EPFS closely resembles that contained in a PPIS. To reduce the regulatory burden on electricity retailers, we propose to allow retailers to provide an EPFS in lieu of a PPIS.

## Draft Decision

We proposed to insert the words “Subject to clause 4A,” at the beginning of clause 3.4 and paragraph 3.5(a).

We proposed to insert a new heading and clause 4A as follows:

### **4A. RELEVANT PUBLISHED OFFERS (ENERGY PRICE FACT SHEETS)**

#### **4A.1 Energy Price Fact Sheet as an alternative**

In lieu of the requirements in clause 3.4 and paragraph 3.5(a), an energy price fact sheet may be prepared in accordance with the content and format requirements set out in sections 2.2, 2.3 and 2.4 of the Australian Energy Regulator’s “AER Retail Pricing Information Guideline Version 3.0” except that the retailer must omit item 6 in section 2.3.3 and instead include the statement:

“This Energy Price Fact Sheet is presented in accordance with requirements of the Essential Services Commission (ESC) – the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit [www.esc.vic.gov.au/yourchoice](http://www.esc.vic.gov.au/yourchoice).”

and must nonetheless include the explanations required by clause 3.4(ba) of this guideline.

#### **4A.2 Energy Price Fact Sheet as publication of standing offer**

An Energy Price Fact Sheet complying with the requirements of clause 4A.1 may be published by a **retailer** on its internet site in satisfaction of the requirement set out in clause 2.1(a).



## Submissions

AGL requested clarity on the intent of the amendment and queried whether the Commission's proposed change would negate the requirement to publish a PPIS or EPFS for flexible AMI tariffs on their website. AGL also questioned whether the DSDBI comparator (via the Energy made easy web portal) would allow an EPFS to be generated automatically.

## Commission response

The Commission confirms that the revised drafting of this section would result in retailers being able to choose either a PPIS or EPFS format to fulfil their obligations under section 36A of the EI Act, and Guideline 19 for relevant published offers. Retailers will therefore be able to substitute the PPIS name and format with the EPFS name and format, with the prescribed conditions.

As discussed in section 3.1 of this report, the requirement to publish a PPIS (or EPFS) for all relevant published offers does not change; flexible AMI tariffs are included in this requirement. The Commission is not responsible for the DSDBI comparator website and cannot comment if the system will generate the EPFS for retailers.



## Final Decision

The Commission will include section 4A in Guideline 19;

### **4A. RELEVANT PUBLISHED OFFERS (ENERGY PRICE FACT SHEETS)**

#### **4A.1 Energy Price Fact Sheet as an alternative**

In lieu of the requirements in clause 3.4 and paragraph 3.5(a), an **energy price fact sheet** may be prepared in accordance with the content and format requirements set out in sections 2.2, 2.3 and 2.4 of the Australian Energy Regulator’s “*AER Retail Pricing Information Guideline Version 3.0*” except that the retailer must omit item 6 in section 2.3.3 and instead include the statement:

“This Energy Price Fact Sheet is presented in accordance with requirements of the Essential Services Commission (ESC) – the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit [www.esc.vic.gov.au/yourchoice](http://www.esc.vic.gov.au/yourchoice).”

and must nonetheless include the explanations required by clause 3.4(ba) of this guideline.

#### **4A.2 Energy Price Fact Sheet as publication of standing offer**

An Energy Price Fact Sheet complying with the requirements of clause 4A.1 may be published by a **retailer** on its internet site in satisfaction of the requirement set out in clause 2.1(a).



### 3.4 Schedule A

Schedule A of Guideline 19 sets out the manner in which retailers must provide the Commission with details of their standing offers.

#### Issues

The Order may lead to the creation of further standing offers than those that exist currently in Schedule A of Guideline 19. The Commission considered that in order to ensure retailers report consistently, Schedule A should be amended to identify flexible AMI retail tariffs. The common form distribution tariff structure has been used as an example.

#### Draft Decision

The Commission proposed to insert the following new template into schedule A, to apply to residential customers, to allow retailers to provide information on flexible AMI retail tariffs:

Residential - flexible	Tariff	Unit	Ex GST	Inc GST
Domestic flexible	Peak time <sup>A</sup> 3pm to 9pm weekdays	c/KWh		
	Shoulder time 7am to 3pm weekdays	c/KWh		
	Shoulder time 9pm to 10pm weekdays	c/KWh		
	Shoulder time 7am to 10pm weekends	c/KWh		
	Off peak time 10pm to 7am all days	c/KWh		
	Supply Charge	\$/day		

<sup>A</sup> All times are standard time except when summer time is in force in which case all times are summer time.

#### Submissions

Origin Energy sought confirmation that this amendment would not result in retailers being required to have a standing offer.



## Commission Response

The Commission confirms this amendment is to provide a guide for those retailers choosing to have an AMI flexible standing offer tariff. The amendment does not require retailers to have a flexible AMI standing offer, nor does it restrict the structure of any standing offer to the common form.

### Final Decision

The Commission will insert the template into Schedule A in Guideline 19;

Residential - flexible	Tariff	Unit	Ex GST	Inc GST
Domestic flexible	Peak time <sup>A</sup> 3pm to 9pm weekdays	c/KWh		
	Shoulder time 7am to 3pm weekdays	c/KWh		
	Shoulder time 9pm to 10pm weekdays	c/KWh		
	Shoulder time 7am to 10pm weekends	c/KWh		
	Off peak time 10pm to 7am all days	c/KWh		
	Supply Charge	\$/day		

<sup>A</sup> All times are standard time except when summer time is in force in which case all times are summer time.



## 4 RETAIL LICENCE AMENDMENTS

Retail licences are issued by the Commission under Part 2 of the EI Act and allow the Commission to impose terms and conditions on licence holders. Whilst there is no requirement for retailers to be issued with licences containing the same terms and conditions, this has been the Commission's practice wherever possible.

Due to the introduction of flexible pricing, the Commission considered it prudent to insert the following conditions into Electricity Retail Licences to reflect the obligations and intent of the Order.

### 4.1 New licences issued after 1 July 2013

"The Licensee is a "relevant entity" within the meaning given to that term in the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (made under section 46D of the *Electricity Industry Act 2000*) for the purpose of that Order, with effect from the date of issue of this Licence."

#### Issues

This licence condition will be the requisite notice to new retailers as required by the Order (section 4).

#### Submissions

No submissions received on this issue.

#### Final Decision

The Commission will include in the retailers' licence condition;

"The Licensee is a "relevant entity" within the meaning given to that term in the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (made under section 46D of the *Electricity Industry Act 2000*) for the purpose of that Order, with effect from the date of issue of this Licence."



## 4.2 All existing licences held by retailers with a standing offer obligation

### Clarification of current licence condition for standing offer contracts

Licences currently contain the following licence condition:

"The **Licensee** must not enter into any contract for the sale of electricity with any **domestic or small business customer** at a tariff which is different from a tariff offered by the **Licensee** in accordance with its obligation under clause [#standing offer obligation#] unless the terms and conditions of the contract are materially different to the terms and conditions offered with that tariff."

### Issues

The Commission considers that the terms and conditions of two contracts that are otherwise substantially the same do not become materially different simply because one contract involves measurement of electricity consumption by a traditional manually read meter and the other provides for use of a smart meter.

The Commission seeks to ensure that retailers only have one standing offer tariff for customers per tariff structure, regardless of the type of meter installed at the customer's premises, so that the same price is paid for energy consumed.

### Draft Decision

The Commission proposed to codify its current interpretation of this licence condition by adding the following sentence at the end of the above clause:

*"A difference of terms and conditions, only to the extent necessary to reflect different types of meters, is not a material difference for the purpose of this clause."*

### Submissions

Origin Energy submitted that although it understood the intent of the clarification in the licence conditions, it questioned if it had relevance to flexible standing offers, as there is no requirement to publish them. Origin Energy also questioned if this amendment would work in some scenarios in the future, such as when a controlled load tariff was no longer available to one customer as the meter had changed, but may be for the next customer.



Simply Energy submitted that the distributor assigned the network tariff and therefore the terms and conditions of supply on the basis of a change in meter type, and as such it was not in the retailer's control. AGL similarly raised the issue that this may mean the retailer was not adequately recovering the costs from the network for the assigned tariff.

### **Commission Response**

The Commission has considered the submissions received and agrees that the concerns raised are valid. It appears to be possible that the terms and conditions (and therefore the network costs passed through to retailers) may be different for what is essentially the same network tariff, simply because the meter installed may or may not be an AMI meter. This could make it difficult for retailers to abide by the amended licence condition. Consequently, the Commission will not proceed with the proposed amendment.



## APPENDIX A

Advanced Metering Infrastructure (AMI Tariffs) Order, Gazette No S216 Wednesday 19 June 2013



# Victoria Government Gazette

No. S 216 Wednesday 19 June 2013  
By Authority of Victorian Government Printer

## Electricity Industry Act 2000

### ADVANCED METERING INFRASTRUCTURE (AMI TARIFFS) ORDER

The Governor in Council, under section 46D of the **Electricity Industry Act 2000**, makes the following Order:

#### 1. Purpose

The purpose of this Order is to provide for the structure, taking effect and choice of AMI tariffs, transfer between and consent to AMI tariffs, assignment of AMI tariffs, customer access to data relating to the electricity consumption of that customer, information about comparative offers for the supply and sale of electricity at specified AMI tariffs and for other matters.

#### 2. Definitions

In this Order:

*Act* means the **Electricity Industry Act 2000**;

*AMI distribution tariff* means an AMI tariff within the meaning of paragraph (b) of the definition of *AMI tariff* in section 46B of the Act where the electricity distributed or supplied is metered by advanced metering infrastructure that complies with the AMI Specifications Order;

*AMI retail tariff* means an AMI tariff within the meaning of paragraph (a) of the definition of *AMI tariff* in section 46B of the Act where the electricity supplied and sold is metered by advanced metering infrastructure that complies with the AMI Specifications Order;

*AMI Specifications Order* means the Order in Council made on 12 November 2007 under sections 15A and 46D of the Act and published in the Victoria Government Gazette S286 on that day as amended by the Order in Council made on 25 November 2008 and published in the Victoria Government Gazette S314 on that day and as further amended from time to time;

*business day* means a day other than a Saturday or Sunday, or a public holiday appointed under the **Public Holidays Act 1993**;

*contract offer* means an offer by a retailer to sell, or supply and sell electricity to a small customer, and includes a standing offer;

*cooling-off period* means a period within which a domestic customer is entitled under an electricity contract to cancel the contract;

*customer* means a person other than another retailer, who buys or proposes to buy electricity from a retailer;

*distribution determination* has the same meaning as it has in the National Electricity (Victoria) Law;

*distribution system* has the same meaning as it has in the National Electricity (Victoria) Law;

*distributor* means a distribution company;

*domestic customer* means a customer who purchases electricity principally for personal, household or domestic use at a supply point;

*electricity contract* means a contract for the sale, or supply and sale of electricity by a retailer to a small customer;

*electricity network service* has the same meaning as it has in the National Electricity (Victoria) Law;

*Energy Retail Code* means the document of that name, version 10 dated May 2012, published by the Commission as amended and in force from time to time;

**SPECIAL**

**explicit informed consent** has the same meaning as it has in the Energy Retail Code;

**flat AMI distribution tariff** means an AMI distribution tariff where the component rates of that tariff do not vary by reference to:

- (a) the time of day;
- (b) the amount of electricity distributed or supplied during the day;
- (c) temperature, whether actual or forecast; or
- (d) other characteristics that vary during the day.

Notes: 1. Paragraph (b) does not exclude block tariffs from being flat AMI distribution tariffs;  
2. The definition does not exclude from being flat AMI distribution tariffs, tariffs that vary seasonally.

**flat AMI retail tariff** means an AMI retail tariff where the component rates of that tariff do not vary by reference to:

- (a) the time of day;
- (b) the amount of electricity supplied or sold during the day;
- (c) temperature, whether actual or forecast; or
- (d) other characteristics that vary during the day.

Notes: 1. Paragraph (b) does not exclude block tariffs from being flat AMI retail tariffs;  
2. The definition does not exclude from being flat AMI retail tariffs, tariffs that vary seasonally.

**flexible AMI distribution tariff** means an AMI distribution tariff that is not a flat AMI distribution tariff and that was or is first made available from 1 January 2013;

**flexible AMI retail tariff** means an AMI retail tariff that is not a flat AMI retail tariff and that was or is first made available from 24 June 2013;

**generally available contract offer** means a contract offer by a retailer that is:

- (a) widely available to most domestic customers or small business customers; and
- (b) not exclusive to a particular customer segment,

and includes any variation to such a contract offer.

Note: A contract offer that is not generally available is one that is offered only to a specific group of domestic customers or small business customers, for instance a targeted mail out.

**interval metering data** has the same meaning as it has in the National Electricity Rules;

**metering installation** has the same meaning as it has in the National Electricity Rules;

**National Electricity Rules** has the same meaning as it has in the National Electricity (Victoria) Law;

**price comparator website** means the *Switch On* website or other website operated by the Department of Primary Industries for the purposes of price comparison;

**pricing proposal** has the same meaning as it has in the National Electricity Rules;

**reversion period** means the period from the date of commencement of this Order to 31 March 2015;

**small business customer** means a customer who is not a domestic customer and whose aggregate consumption of electricity taken from a supply point is not, or in the case of a new supply point is not likely to be, more than 40 MWh per annum;

**small customer** means a domestic customer or small business customer;

**supply point** means in relation to a supply of electricity to a person, the point at which that supply of electricity last leaves the distribution system owned or operated by a distributor before being supplied to the person, whether or not the electricity passes through facilities owned or operated by any other person after leaving that point before being so supplied;

**tariff class** has the same meaning as the National Electricity Rules;

**transition period** means the period from the date of commencement of this Order to 31 December 2015.

**3. Commencement**

This Order commences on 1 July 2013.

**4. Relevant Entity**

- (1) As at the commencement of this Order, each distributor and retailer is a relevant entity.
- (2) Where, after the commencement of this Order, a person becomes:
  - (a) a distributor; or
  - (b) a retailer,the Commission must give notice to that person that it is a relevant entity and that person becomes a relevant entity from the date specified in that notice which date may be prior to the date of the notice.

**5. Order does not derogate from other requirements**

- (1) The Energy Retail Code applies to retailers and small customers subject to this Order.
- (2) Subject to clause 5(1), this Order does not derogate from any requirement imposed on a relevant entity as a condition of its licence, including any requirement to comply with codes or guidelines issued by the Commission.

**6. Retailer must make a standing offer with a flat AMI retail tariff**

The tariffs determined by a retailer for the purposes of section 35 of the Act must include at least one flat AMI retail tariff that is available to each domestic customer.

**7. Domestic customers must opt-in to flexible AMI retail tariff**

- (1) Subject to clause 7(3), a retailer must not sell, or supply and sell electricity to a domestic customer at a tariff that is a flexible AMI retail tariff unless:
  - (a) that customer has given explicit informed consent to that tariff being that flexible AMI retail tariff; and
  - (b) the retailer has, prior to that customer giving explicit informed consent, advised the customer, either in writing or orally:
    - (i) that the customer may exercise the right conferred on him or her pursuant to clause 8(1) to opt-out from that flexible AMI retail tariff; and
    - (ii) of:
      - (1) whether that customer may be, or is liable to pay a fee in accordance with clause 31(c)(i) of the Energy Retail Code as a result of the customer giving notice pursuant to clause 8(1) or otherwise exercising the rights conferred on the customer by clause 8; and
    - (2) the amount of that fee, or if that amount cannot reasonably be determined at the time of the giving of the advice by the retailer, the manner of calculation of the fee.
- (2) Clause 7(1) applies despite anything to the contrary in the electricity contract between the retailer and the domestic customer.
- (3) A customer may give explicit informed consent to a tariff that is a flexible AMI retail tariff where the date on which that tariff is to have effect is a date prior to the date on which the customer gives that consent but only where the explicit informed consent also extends to the tariff having such an effect.

Note: See also clause 8(8).

**8. Domestic customers may opt-out of flexible AMI retail tariff during the reversion period***Opting-out from a flexible AMI retail tariff*

- (1) Subject to clause 8(3), during the reversion period, a domestic customer who:
  - (a) has given consent to a tariff that is a flexible AMI retail tariff; and
  - (b) was, immediately before he or she gave consent, not on a flexible AMI retail tariff,may, by written or oral notice to a retailer, require that retailer to cease sale, or supply and sale of electricity to him or her at the tariff that is a flexible AMI retail tariff and to commence instead:
  - (c) sale, or supply and sale at the AMI retail tariff that last applied before the retailer commenced sale, or supply and sale at the flexible AMI retail tariff (**the previously applying AMI retail tariff**); or
  - (d) if that previously applying AMI retail tariff has been replaced by or varied to another AMI retail tariff that would have applied to the customer had he or she not consented to the flexible AMI retail tariff (**the replacement AMI retail tariff**), sale or supply and sale at the replacement AMI retail tariff.
- (2) The domestic customer is not required in the notice to specify which relevant AMI retail tariff is to apply.
- (3) Clause 8(1) applies only in the following circumstances:
  - (a) the domestic customer has remained with the same retailer throughout the flexible AMI retail tariff period;
  - (b) the notice is given to that retailer;
  - (c) the notice is in relation to the same premises as those at which electricity has been sold, or supplied and sold to the customer by that retailer during the flexible AMI retail tariff period; and
  - (d) that retailer is, at the time the notice is given, still the retailer for electricity sold, or supplied and sold to the customer at those premises.
- (4) Subject to clause 8(6), a retailer must:
  - (a) comply with a notice given under clause 8(1); and
  - (b) apply the relevant AMI retail tariff to electricity sold, or supplied and sold to the domestic customer commencing from not later than 2 business days after receipt by the retailer of the notice.
- (5) The relevant AMI retail tariff that the retailer must apply may be an AMI retail tariff that is, or is otherwise:
  - (a) a closed tariff; or
  - (b) an open tariff.
- (6) A retailer is not obliged to comply with a notice given under clause 8(1) if:
  - (a) the configuration of the metering installation by means of which the electricity sold, or supplied and sold to the domestic customer under the flexible AMI retail tariff is metered, does not permit reversion to a relevant AMI retail tariff. A retailer must give written notice of that fact to a domestic customer if such is the case; or
  - (b) the notice results in a new or varied electricity contract and the domestic customer cancels that contract during the cooling-off period.

*Limitation on charges – retailers*

- (7) A retailer may not impose on a domestic customer any fee or charge as a result of that customer giving notice pursuant to clause 8(1) or otherwise exercising the rights conferred on him or her pursuant to this clause.
- (8) Clause 8(7) does not prevent a retailer from charging the domestic customer:
- (a) a fee determined in accordance with clause 31(c)(i) of the Energy Retail Code; and
  - (b) any other fee or charge that would be payable by the domestic customer independently of that customer:
    - (i) giving notice pursuant to clause 8(1); or
    - (ii) otherwise exercising the rights conferred on him or her pursuant to this clause.
- (9) To avoid doubt, clause 8(8) does not permit a retailer to charge, as a result of a domestic customer:
- (a) giving notice pursuant to clause 8(1); or
  - (b) otherwise exercising the rights conferred on him or her pursuant to this clause, the \$20 that would or might otherwise be permitted to be charged pursuant to clause 31(c)(ii) of the Energy Retail Code.

*Miscellaneous*

- (10) This clause has effect:
- (a) despite anything to the contrary in:
    - (i) the electricity contract; or
    - (ii) any other agreement or contract, between the domestic customer and the retailer; and
  - (b) notwithstanding that a new or varied electricity contract between the domestic customer and retailer is or may be required to be entered into.
- (11) In this clause:
- flexible AMI retail tariff period*** means the period commencing from immediately before the date the domestic customer gave consent to a flexible AMI retail tariff and ending on the date on which the customer gives notice pursuant to clause 8(1);
- relevant AMI retail tariff*** means:
- (a) the previously applying AMI retail tariff; or
  - (b) the replacement AMI retail tariff.
- the previously applying AMI retail tariff*** has the meaning given it by clause 8(1)(c);
- the replacement AMI retail tariff*** has the meaning given it by clause 8(1)(d).

**9. Distributor's distribution tariffs must include a choice of AMI distribution tariff**

- (1) The tariffs for each tariff class included by a distributor in a pricing proposal, where the customers of that tariff class may include domestic customers with advanced metering infrastructure, must include at least:
- (a) one flexible AMI distribution tariff; and
  - (b) one flat AMI distribution tariff.
- (2) For the purposes of clause 9(1) at least one flexible AMI distribution tariff included in a tariff class must be consistent with the common form distribution tariff structure set out in the Schedule.

**10. Distributor to assign distribution tariffs to domestic customers in accordance with a retailer's direction***Transition period – direction a retailer may give*

- (1) During the transition period, a retailer may, by notice in writing, direct a distributor to assign to a domestic customer of that retailer an AMI distribution tariff from the tariff class applicable to that domestic customer.
- (2) A direction pursuant to clause 10(1) may not be given by a retailer unless the domestic customer has:
  - (a) a deemed contract with the retailer pursuant to section 39(1) of the Act;
  - (b) a deemed contract with the retailer pursuant to section 37 of the Act but only when that contract is varied; or
  - (c) first entered into with the retailer a new or varied electricity contract for sale of electricity at:
    - (i) an AMI retail tariff; or
    - (ii) a new or varied AMI retail tariff.
- (3) During the transition period and where a domestic customer has already been assigned an AMI distribution tariff, a distributor must not assign a different AMI distribution tariff to that domestic customer except:
  - (a) in accordance with a direction; or
  - (b) where the assignment is consequent on a change of tariff class and that change is in accordance with the provisions of the distribution determination that applies to the electricity network services provided by that distributor.

*Reversion period – domestic customer giving notice pursuant to clause 8(1) – direction a retailer may give*

- (4) During the reversion period, if:
  - (a) a retailer receives from a domestic customer notice pursuant to clause 8(1); and
  - (b) at the time that the notice is given by the domestic customer, that customer is on a flexible AMI distribution tariff,the retailer may, by notice in writing, direct a distributor to assign to that domestic customer an AMI distribution tariff in accordance with clause 10(5).
- (5) The distributor must assign pursuant to clause 10(4):
  - (a) the AMI distribution tariff that last applied before the distributor commenced distribution or supply to the domestic customer at the flexible AMI distribution tariff; or
  - (b) if that AMI distribution tariff has been replaced by or varied to another AMI distribution tariff that would have applied to the customer had distribution or supply to the domestic customer at the flexible AMI distribution tariff not commenced, that replacement or varied AMI distribution tariff.
- (6) The AMI distribution tariff that the distributor must assign pursuant to clause 10(5) may be an AMI distribution tariff that is, or is otherwise:
  - (a) a closed tariff; or
  - (b) an open tariff.

*Distributor's obligations when a direction given*

- (7) A distributor must assign an AMI distribution tariff in accordance with a direction except where:
- (a) the retailer neglects or fails to specify, or sufficiently specify in the notice the AMI distribution tariff to be assigned;
  - (b) the retailer neglects or fails to provide sufficient details in the notice to enable the distributor to identify:
    - (i) the domestic customer; or
    - (ii) the metering installation of that customer;
  - (c) in the case of a direction pursuant to clause 10(1), the AMI distribution tariff specified in the notice is no longer an open tariff; or
  - (d) otherwise the distributor reasonably determines that the AMI distribution tariff specified in the notice cannot be assigned to the domestic customer.
- (8) An AMI distribution tariff assigned in accordance with a direction must be applied to the electricity distributed and supplied to the domestic customer under that tariff commencing from not later than 2 business days after receipt by the distributor of the notice containing the direction except where:
- (a) the retailer giving the direction specifies in the notice that it is a retailer to whom the domestic customer has transferred from another retailer, in which case the AMI distribution tariff must be applied to the electricity distributed and supplied to that customer under that tariff commencing from the later of:
    - (i) the date of transfer of the customer; or

Note: The *Market Settlement and Transfer Procedures* published by AEMO pursuant to clause 7.2.8 of the National Electricity Rules make provision for the date of transfer, see *MSATS Procedures: CATS Procedure Principles and Obligations*.

  - (ii) 10 business days prior to receipt by the distributor of the notice containing the direction; or
- (b) the retailer in the notice specifies another date for the assignment to take effect, being a date later than the 2 business days.

*Distributor's obligations when no direction given*

- (9) Where a retailer has not given a direction and a domestic customer has not already been assigned an AMI distribution tariff, the distributor must:
- (a) assign an AMI distribution tariff in accordance with the provisions of the distribution determination that applies to the electricity network services provided by that distributor; but
  - (b) not assign to the domestic customer the flexible AMI distribution tariff referred to in clause 9(2).

*Limitation on charges – distributors*

- (10) A distributor may not impose on a retailer any fee or charge as a result of that retailer:
- (a) giving a direction; or
  - (b) otherwise exercising the rights conferred on the retailer pursuant to this clause.
- (11) Clause 10(10) does not prevent a distributor from charging the retailer any other fee or charge that would be payable by the retailer independently of that retailer:
- (a) giving a direction; or
  - (b) otherwise exercising the rights conferred on that retailer pursuant to this clause.

*Miscellaneous*

- (12) This clause has effect despite anything to the contrary:
- (a) in any agreement or contract between the retailer and a distributor; or
  - (b) in any agreement or contract between the distributor and the domestic customer.
- (13) This clause does not:
- (a) derogate from or limit any restriction or requirement imposed on a retailer pursuant to clauses 7 and 8; or
  - (b) limit any right given to a domestic customer by those clauses.
- (14) In this clause and unless the context otherwise requires:  
**assign** includes re-assign;  
**direction** means a direction pursuant to clause 10(1) or 10(4).

**11. Distributors and retailers must make interval metering data available to small customers**

- (1) This clause 11 applies where a small customer requests interval metering data for the purposes of the price comparator website.
- (2) A distributor or a retailer must, on request by a small customer, provide the customer with interval metering data in relation to that customer.

Note: The intention here is that, where a small customer requests interval metering data for the purposes of price comparator website, the distributor or retailer must provide all data streams associated with the small customer's connection point.

- (3) The distributor or retailer must:
- (a) provide interval metering data for at least 12 complete calendar months prior to the date of the request, where available; and
  - (b) use its best endeavours to provide that data within 10 business days of the date of the request or such other period as the customer and the distributor or the customer and the retailer (as the case may be) agree.
- (4) If at least 12 complete calendar months of interval metering data is not available, the distributor or retailer must provide as much interval metering data as the distributor or retailer is able to provide.
- (5) The distributor or retailer may impose a charge for provision of interval metering data but only if:
- (a) the request is not the first request made by the small customer within the preceding year; or
  - (b) the interval data relates to a period prior to the preceding two years.
- (6) The amount of the charge that a distributor or retailer may impose pursuant to clause 11(5) must be fair and reasonable having regard to the related costs incurred by the distributor or retailer.
- (7) In this clause:  
**small customer** includes an entity authorised by a small customer and any rights conferred on the small customer by this clause may be exercised by that entity.

**12. Retailers must submit information on generally available contract offers**

- (1) For the purposes of the price comparator website, a retailer must submit information on each generally available contract offer for supply and sale of electricity at an AMI retail tariff:
- (a) using such website and template as the Minister in writing may from time to time specify; and

Note: The embedded price comparator online template on the Australian Energy Regulator Price Comparator website is one such template. The website is developed and made available pursuant to section 62 of the National Energy Retail Law.

- (b) within two business days of the offer or varied offer being made, unless the website specified by the Minister is down, in which case the retailer must submit information on the offer as soon as practicable after the website comes back online.
- (2) A retailer must:
  - (a) ensure that the information provided by it pursuant to clause 12(1) is current and accurate; and
  - (b) remove any expired offers not later than 2 business days after their expiry.

**13. Direction to the Commission – amendment of instrument**

The Commission must, as soon as practicable after the commencement of this Order, amend the Energy Retail Code so that it is consistent with this Order.

Dated 18 June 2013

Responsible Minister:

HON. NICHOLAS KOTSIRAS MP

Minister for Energy and Resources

MATTHEW McBEATH  
Acting Clerk of the Executive Council

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**SCHEDULE**

**COMMON FORM DISTRIBUTION TARIFF STRUCTURE**

Peak time<sup>A</sup>: 3 pm to 9 pm weekdays  
Shoulder times: 7 am to 3 pm weekdays  
9 pm to 10 pm weekdays  
7 am to 10 pm weekends  
Off peak time: 10 pm to 7 am all days

<sup>A</sup> All times are standard time except when summer time is in force in which case all times are summer time.

In this schedule *standard time* and *summer time* have the same meaning as they have in the **Summer Time Act 1972**.

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