



PROPOSED CHANGES TO
REGULATORY INSTRUMENTS
RELATING TO FLEXIBLE PRICING OF
ELECTRICITY

DRAFT DECISION

JUNE 2013



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OVERVIEW

This paper— *Proposed changes to regulatory instruments relating to flexible pricing of electricity – Draft Decision* — sets out the Essential Services Commission’s (the **Commission**) proposed 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 proposed Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (the **Order**).

The Order includes a provision which directs the Commission to amend the ERC so that it is consistent with the Order. The other proposed amendments in this draft decision are largely minor, consequential or administrative in nature. We believe, however, that they are necessary to give full effect to the Order and ensure consistency with the existing regulatory regime.

This draft decision offers an opportunity for stakeholders to provide their views on whether the Commission has accurately reflected the requirements and underlying policy of the Order.

The review process

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 ESC Act objectives matters to which the Commission must have regard in undertaking its functions across all industries. 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.

This Draft Decision seeks submissions from stakeholders on the proposed amendments to the ERC, Guideline 19 and Licences to facilitate the introduction of flexible pricing in Victoria



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.

This review is being undertaken in line with our *Charter of Consultation and Regulatory Practice*. The Charter sets out our approach to consultation, including our principles and processes. Due to the extensive consultation that has already occurred on the implementation of flexible pricing, and the likely ability of electricity retailers to offer flexible tariffs later in 2013, we propose to adopt the following timetable:

TABLE 1 TIMETABLE

Task	Timing
Release of Draft Decision	Wednesday 26 June 2013
Submissions close on Draft Decision	Friday 12 July 2013
Release of Final Decision	Monday 5 August 2013

Structure of this paper

This Draft Decision includes proposed amendments to the ERC, Guideline No. 19 – Energy Price and Product and Disclosure (Guideline 19) and Licences. This paper is structured as follows:

- Chapter 1: provides an introduction that provides background information and the purpose of the proposed amendments
- Chapter 2: provides the Draft Decision on proposed amendments to the Energy Retail Code
- Chapter 3: provides the Draft Decision on proposed amendments to Guideline 19
- Chapter 4: provides a discusses the Commission’s proposal to amend Retail Licences



1 INTRODUCTION

1.1 Background and legislative structure

The Victorian Government is introducing flexible pricing of electricity made possible by the rollout of 'smart meters'. The Order provides for some new customer protections and other arrangements for the introduction of flexible pricing later in 2013. The Order has been developed by DSDBI in consultation with industry and other relevant stakeholders. The Order can be found in the Government Gazette and as Attachment A in this paper.

The introduction of flexible pricing will allow electricity retailers to offer customers contracts under which prices vary due to factors such as time of day, the amount of electricity sold during the day, temperature (actual or expected) or other characteristics that vary during the day .

The Commission is responsible for licensing electricity retailers. We undertake these functions under the EI Act, which provides the basis for the establishment of the following regulatory instruments:

- ERC;
- Guideline 19; and
- Licences.

We consider that the introduction of flexible pricing requires amendments to the ERC, Guideline 19 and Licences to ensure:

- the Order operates as intended;
- there is consistency between the Order and the existing regulatory instruments; and
- consumers are provided with relevant information to inform their decisions.

1.2 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**).



The Commission is, therefore, currently undertaking a process to harmonise the ERC and associated Guidelines with the NECF. We released a harmonisation consultation paper in December 2012. When a draft decision on harmonisation is released, we will ensure it contains the relevant amendments necessary to facilitate flexible pricing as determined during the course of this consultation.

1.3 Purpose

The purpose of this draft decision is to consult on the amendments we consider necessary to the ERC, Guideline 19 and Licences to ensure a smooth transition to flexible pricing.

The outcome of this process will be to amend existing ERC, Guideline 19 and licence conditions, taking into account submissions received. To ensure the effective ongoing regulation of flexible pricing, these amendments will be reviewed prior to 31 March 2015.

1.4 Definitions

Definitions in this draft decision will be incorporated into the ERC and Guideline 19.

In this draft decision:

AMI retail 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 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 in the form set out by this draft decision. This can be used as an alternative to the price and product information statements.

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 to 31 March 2015.

1.5 Submissions

Chapters 2, 3 and 4 of this draft decision contain proposed amendments to the ERC, Guideline 19 and Licences. Submissions are invited on these proposed amendments.

Please note that the Commission is not seeking submissions on matters of policy as part of this consultation. The policy positions have already been the subject of extensive stakeholder consultation by DSDBI. We are seeking comment on the implementation of the Order insofar as it requires amendments to the ERC, Guideline 19 and Licences.

Submissions on this consultation paper are preferred in electronic format and should be provided to the Commission by **Friday 12 July 2013**.

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

By mail to: Level 37, 2 Lonsdale Street, Melbourne 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.

The Commission proposes to publish a Final Decision during August 2013.

Questions regarding this Consultation can be directed to:

Ms Kerri Heron, Project Officer, Energy on (03) 9032 1349 or by email at Kerri.Heron@esc.vic.gov.au



2 DRAFT DECISION – 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 Proposed amendment to section 24.1(b)

Section 24.1

Section 24.1(a) of the ERC generally regulates 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.*

Issue

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.

Proposed amendment

We propose to include the following words (underlined) to 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 Proposed amendment to section 31

Section 31

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.*

Issue

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.

Proposed amendment

We propose to insert the following words (underlined) to 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;”



3 DRAFT DECISION – 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.

The guideline specifies the minimum requirements in relation to:

- the process to be established 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.

3.1 Proposed amendment to section 3.3

Section 3.3

Section 3 of Guideline 19 requires specified retailers to publish price and product information statements 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.*



Issue

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

We consider that to ensure customers are aware of their option to remain on the 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.

Proposed amendment

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...”*

3.2 Proposed amendment to section 3.4

Section 3.4

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.”

*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

Issue

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.

Proposed amendment

We propose 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
 - include a website address for the relevant part of the Department of State Development, Business and Innovation website;

3.3 Proposed new section 4A

Proposed section 4A

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).

Issue

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 resembles closely 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.

Proposed amendment

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

We propose 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), a **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.”

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 Proposed amendment to schedule A

Schedule A

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



Issue

The Order may lead to the creation of further standing offers than those that exist currently in schedule A of Guideline 19. We consider 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 is used as an example.

Proposed amendment

We propose 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 ^A 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		

^A 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. While there is no requirement that retailers be issued with licences containing the same terms and conditions, this has been our practice wherever possible.

Due to the introduction of flexible pricing, we consider it prudent to insert the following conditions in Electricity Retail Licences to reflect the obligations and intent of the Order. We seek stakeholder's views on the following amendments.

4.1 New licences issues 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."

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

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."

The Commission believes 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 proposes 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."



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.

We have reached this view on the following basis. The Victorian Government has mandated the roll-out of smart meters and customers are paying for the meters through distribution charges. However, not all customers will have their meter installed or been remotely read when flexible pricing is introduced later in 2013 and we consider it appropriate to require retailers to offer a standing offer which does not differentiate on the basis of meter type. We seek submissions on this change and on the long term implications of this amendment, noting that the smart meter roll out is continuing and will be largely complete by the end of 2013. (In addition, as per section 1.3; all AMI amendments will be reviewed prior to 31 March 2015).



APPENDIX A

Advanced metering infrastructure (AMI Tariffs) Order 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

SCHEDULE

COMMON FORM DISTRIBUTION TARIFF STRUCTURE

Peak time^A: 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

^A 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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