ESSENTIAL SERVICES COMMISSION

Maximum prices for embedded networks and other exempt sellers

Draft Decision

29 April 2020

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Summary

We have made a draft decision on the maximum prices exempt sellers may charge customers in embedded networks

This paper sets out our draft decision on the maximum prices exempt sellers may charge customers for the supply of electricity services. Exempt sellers refer to those who supply electricity in an embedded network. Embedded networks may include caravan parks, retirement villages, shopping centres, apartment buildings, and rooming houses for example.

Currently, exempt sellers may charge their customers up to the standing offer prices in place on or immediately prior to 27 May 2019. These maximum prices apply until we decide new prices.

We consider embedded network customers should be able to access price protections that are as consistent as possible with those applying to customers more readily able to access market offers.

Our draft decision is that the maximum price for residential and small business customers (those consuming no more than 40 megawatt hours of electricity per year) within embedded networks will be set at the level of the Victorian Default Offer (VDO). This covers most embedded network customers.

For a relatively small group of customers, including large businesses, we have not applied the VDO as the maximum price. The detail and reasons are set out in Chapter 3. For these customers, the maximum prices would remain at current levels.

Our draft decision reduces the maximum prices that can be charged to most customers

Our draft decision means many customers in embedded networks could save hundreds of dollars a year. Residential and small business customers would not pay more than the VDO price relevant to their distribution zone. Based on estimates of the impact of the current VDO on standing offer prices prevailing in May 2019, savings could reach around $180 to $370 for residential customers and $900 to $2,200 for small business customers annually. The exact impact will vary depending on the distribution zone and the nature of existing contractual arrangements. We also note that exempt sellers may charge their customers prices below the maximum we set.

New pricing arrangements are proposed to apply from 1 September 2020

The new maximum prices would apply from 1 September 2020, instead of the 1 July 2020 proposed in our consultation paper, which we released in early February 2020.

We consider that making a final decision to have new prices in place by 1 July would not provide a reasonable timeframe for stakeholders to provide feedback on our draft decision, particularly given the community impacts of the coronavirus pandemic. A later implementation date may also assist

exempt sellers that are small businesses (such as many caravan parks) transition to the new pricing arrangements. Some of the 34 submissions made in response to our consultation paper supported a longer period for implementation of the new pricing arrangements.

We are seeking additional feedback before making a final decision in July

This paper provides a further opportunity for stakeholders to provide feedback before we make our final decision. Submissions should be made by 15 June 2020 through Engage Victoria or by mail. Chapter 1 provides details about how to provide feedback.

Contents

1. Introduction

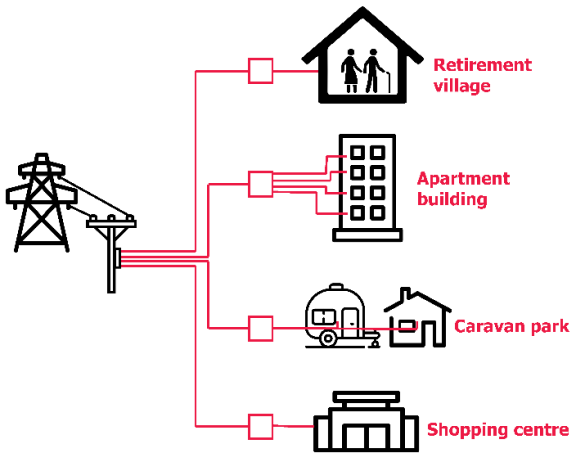
This paper sets out our draft decision on the maximum prices exempt sellers may charge customers for the supply of electricity services.

Some providers of electricity services are exempt from holding a retail licence. The General Exemption Order (the exemption order) gives power to the Essential Services Commission (commission) to set maximum prices for those holding exemptions.[1] For the purposes of our draft decision we call any provider or person holding an exemption an "exempt seller", noting there are several exemption categories in the exemption order.[2]

Overview of exempt sellers and customers in embedded networks

Exempt sellers include owners and operators of caravan parks, retirement villages, shopping centres, apartment buildings, rooming houses and others who sell electricity to customers through an embedded network. Generally, an exempt seller buys electricity at a 'gate' meter and on-sells it to individual customers within the embedded network (figure 1).

Figure 1 Types of embedded networks



[1] Order in Council made under section 17 of the Electricity Industry Act 2000 (EI Act), published in the Victorian Government Gazette No. S 390 on 15 November 2017, amended by subsequent orders dated 30 May 2019 and 9 July 2019.

[2] Exempt sellers include persons selling electricity under deemed and registerable exemptions and multiple activity exemptions. See Appendix A for list of exemption categories.

In recent years, there has been an increase in the number and scale of embedded networks. This reflects the mix of housing shifting towards higher density living, such as apartments and townhouses. While there are a number of more traditional embedded networks like caravan parks and retirement villages, more recently there has been a move towards business models that install and operate embedded networks, particularly in apartment complexes. In return for providing this infrastructure these businesses can sometimes commit the owner's corporation to lengthy contracts and in effect become a monopoly provider of energy to customers in the complex.[3]

The exempt sellers that are registered with the commission in Victoria sell electricity to:[4]

- 104,125 residential, caravan park and retirement village customers
- 18,141 small and large business customers.

These numbers do not include customers who are sold electricity by smaller exempt sellers who are not required to register with the commission.[5]

Policy and regulatory context

Embedded network customers face barriers accessing retail market competition and protection.[6] For example, the cost of metering or network re-configuration can be too expensive, or energy retailers may not choose to sell to a customer inside an embedded network. The Australian Energy Market Commission found many embedded network customers are not sharing in the cost savings experienced by many exempt sellers, often paying more than they would in a competitive market.[7]

In September 2017, the Department of Environment, Land, Water and Planning delivered a final position paper setting out policy positions for improving the efficiency and effectiveness of the licence exemptions framework. This formed the basis for updating the exemption order, and led to the commission being given a role to formulate a maximum price for exempt sellers.[8] The intent of

[3] The Australian Energy Market Commission 2019, Final report: Updating the regulatory frameworks for embedded networks, 20 June, p. ii.

[4] Essential Services Commission, 'Embedded electricity network data and customer numbers', accessed 17 April 2020, https://www.esc.vic.gov.au/electricity-and-gas/licences-and-exemptions/electricity-licensing-exemptions/embedded-electricity-network-data-and-customer-numbers.

[5] The General Exemption Order defines two broad categories of exempt sellers, deemed and registrable.

[6] Department of Environment, Land, Water and Planning 2017, Review of the Victorian electricity licence exemption framework – Final position paper, p. 25.

[7] The Australian Energy Market Commission 2019, Final report: Updating the regulatory frameworks for embedded networks, 20 June, p. iv.

[8] Order in Council made under the Electricity Industry Act 2000, op. cit.

the policy is that customers of exempt sellers should be given comparable protection as customers of licensed retailers, having regard to the nature of the exempt selling activity.[9]

Under clause 10 of the exemption order[10] it is a condition of a retail licence exemption that the prices or range of prices at which electricity may be sold by an exempt seller must not exceed the relevant maximum price formulated by the commission. Similarly, clause 18 provides for a maximum price for multiple activity exemptions which cover activities such as solar lease arrangements or community energy projects, for example.

Exempt sellers that do not meet the pricing conditions would lose the benefit of their exemption, and unless they obtained the appropriate licences, would be in breach of the licensing requirements of the Electricity Industry Act 2000 (EI Act).

Overview of draft decision

From here, our draft decision proceeds as follows:

- Chapter 2 – describes how we have considered our statutory framework.
- Chapter 3 – outlines the categories of exemption our maximum price or prices applies to.
- Chapter 4 – discusses our considerations in formulating a maximum price.
- Chapter 5 – discusses tariff types and compliance matters.
- Chapter 6 – outlines our implementation considerations.

Our consultation so far and next steps

We released a consultation paper in early February 2020. In response to our consultation paper we received 34 submissions which are available on our website and listed in Appendix F.[11]

We are committed to providing opportunities for stakeholders to engage with us and provide views on our draft decision, consistently with the requirements of our stakeholder engagement framework.[12] We are particularly mindful of our obligations to stakeholders as engagement practices and circumstances change in order to support the wider effort to contain coronavirus.

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[9] Department of Environment, Land, Water and Planning, op. cit., p.11.

[10] Made in accordance with section 17(2)(j) of the Electricity Industry Act.

[11] Submissions to our consultation paper can be viewed on the commission's website at Maximum electricity prices for embedded networks and other exempt sellers review 2020.

[12] The commission's Charter of Consultation and Regulatory Practice is available on our website.

The key timelines are:

- Late May 2020 – we intend to host an online public forum to inform stakeholders of our draft decision and provide an opportunity for stakeholders to raise questions they may have about our draft decision. We request interested parties register their interest at Eventbrite or alternatively you can email us at retailenergyreview@esc.vic.gov.au.
- 15 June 2020 – submissions on the draft decision close.
- July 2020 – the commission will publish its final decision on the maximum price(s) for exempt sellers.
- 1 September 2020 – proposed implementation date for new maximum prices to take effect.

Both general comments and formal submissions to our draft decision should be made by **5pm 15 June 2020**. We may place lower weight on, or may not be able to consider, submissions received after this deadline.

To make a submission on this paper please go to Engage Victoria's website: https://engage.vic.gov.au/review-maximum-prices-embedded-networks

Submissions should be submitted through our Engage Victoria. If this presents an issue please email us at retailenergyreview@esc.vic.gov.au to discuss other options for making a submission. All submissions come under the commission's submissions policy.

Submissions will be made available on the commission's website, except for any information that is commercially sensitive or confidential. Submissions should clearly identify which information is sensitive or confidential. Anonymous submissions will generally not be accepted.

2. Addressing our statutory requirements

The General Exemption Order[13] (exemption order) gives the commission the function and power to formulate maximum prices at which electricity and related services may be sold or supplied by exempt sellers.[14]

This power exists in the context of a scheme of regulation of exempt sellers set out by the exemption order.[15] We note that a transitional pricing rule applies to the sale and supply of electricity to each customer of an exempt seller until such time as the commission formulates a maximum price applicable to that category of exemption.[16] If the commission were to formulate maximum prices that apply only to some categories of customer, all other customers of exempt sellers would instead remain covered by the transitional pricing rule.

In exercising its power to formulate maximum prices, the commission is subject to the requirements of the exemption order. The exemption order requires that the commission must have regard to commercial market data. Also, we can take into account any other matter we consider relevant. We are also guided by our objectives under the Essential Services Commission Act 2001 (ESC Act) and the Electricity Industry Act 2000 (EI Act). The commission's decision must be published on its website and in the Government Gazette at least 14 days before it takes effect.

The exemption order provides that the commission may formulate one or more maximum price for the sale or supply of electricity services by exempt sellers.[17] The maximum price may differ based on category of exemption, category of customer, pricing structure adopted by the exempt seller, or any other reasonable basis which the commission considers relevant.

The commission has had regard to its statutory objectives and relevant commercial market data.

The objective of the commission under the ESC Act is to promote the long-term interests of Victorian consumers, having regard to the price, quality and reliability of essential services. In

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[13] Order in Council made under the Electricity Industry Act 2000, op. cit.

[14] Both those satisfying the exemption order's express 'deemed exemptions' and those who are on the Register of Exempt Persons maintained by the Commission under section 33C of the EI Act.

[15] The exemption order contains most of the regulation and gives the commission a limited role only through the Retail Code and the Distribution Code, and the pricing power with which this draft decision is concerned. The commission is also obliged to maintain the Register of Exempt Persons by the EI Act.

[16] Order in Council made under the Electricity Industry Act 2000, op. cit., clause 27.

[17] Order in Council made under the Electricity Industry Act 2000, op. cit., clauses 10 and 18, in identical terms for retail and network exemptions and for 'multiple activity' exemptions respectively, interpreted in light of clauses 25A and 27.

achieving this objective, we must have regard to specific matters to the extent that they are relevant to the particular decision being made.[18] We have considered that there are a number of matters that have some relevance to our decision.

In many circumstances the customer of an exempt seller has little or no choice of provider, which highlights the importance of our consideration of the degree of and scope for competition in our decision. For customers in this situation, where there is essentially no competitive pressure on prices, the maximum price plays an important role. However, there may be cases where countervailing market power is present (for large business customers, for example), which we have considered in this decision. Considering different regulatory or pricing approaches to different categories of exempt sellers also considers the benefits and costs of regulation.

We also consider that efficiency is an important consideration for our decision. Many exempt sellers simply on-sell retail electricity services, so efficient cost benchmarks from the competitive market are likely to represent what an efficient exempt seller should be able to achieve.

A related matter is the consideration of long-term incentives for investment and financial viability. We note that reforms introduced by the Australian Energy Market Commission (AEMC) aim to deliver more competitive outcomes for embedded network customers.[19] As such, the long-term investment signal for exempt sellers is that there will be greater consistency between their prices and the competitive market. Our decision also considers financial viability of the industry as set out in the ESC Act rather than individual firms' circumstances.

The commission also has a number of objectives to consider under the EI Act. Of particular note is the objective to promote protections for customers and the development of full retail competition.

Taking these matters and objectives into account, the commission continues to see merit in applying the Victorian Default Offer (VDO) prices as a maximum price for embedded network customers. The VDO is a simple, trusted and reasonably priced electricity option that safeguards customers unable to engage in the electricity retail market. The VDO also reflects a price that is based on the efficient costs of providing retail electricity services. The following chapters explain our decision and provide further detail of how we have addressed our statutory obligations.

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[18] ESC Act 2001, s8A.

[19] AEMC, 'Updating the regulatory frameworks for embedded networks', accessed 17 April 2020, https://www.aemc.gov.au/market-reviews-advice/updating-regulatory-frameworks-embedded-networks.

3. Application to categories of exempt sellers

We have considered the different categories of exemption and their customers in deciding on the maximum prices for electricity that exempt sellers can charge.

This chapter allows readers to identify whether the VDO maximum prices apply to them. We explain our reasoning and note what protections currently exist for customers serviced by these sellers under the exemption order. Our rationale for why the VDO reflects a reasonable price for on-selling electricity is discussed in the next chapter.

Our consultation paper

Our consultation paper sought feedback from stakeholders on implementing the VDO as a maximum price for categories of exempt sellers, and for different customer types. We noted the existing protections for customers of exempt sellers, including the maximum price cap applying under the transition rules in the exemption order. We considered that applying the VDO as the maximum price for exempt sellers would align protections for embedded network customers to those able to access market offers.

Stakeholder feedback

We received feedback on which customer types a VDO maximum price should cover. Some sought clarification on how the maximum price would apply to different exemption categories, and whether it applies to customers using over 40 megawatt hours of electricity per year.[20]

EnergyAustralia submitted that maximum prices should not apply to large customers.[21] It considered these customers are likely to be more sophisticated in understanding and negotiating electricity prices and are unlikely to require price protection.[22]

Mondo was concerned about the application of a maximum price to customers consuming over 40 megawatt hours per year, suggesting this type of customer should have the ability to opt-out of

[20] Shopping Centre Council of Australia 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, p. 2; WINconnect 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, p. 3.

[21] It defined these as business customers with a peak demand of over 500 kilovolt-amps, or consumption of 160 megawatt hours or more per year.

[22] EnergyAustralia 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 5.

the price cap.[23] We note that providing an ability to opt-out of the maximum pricing framework is a matter for government, not the commission, as it would require changes to the exemption order.

We also received feedback from stakeholders regarding the application of a maximum price to customers of exempt multiple activity providers.

Origin Energy submitted that the VDO is a suitable maximum price for customers in embedded networks, and that any decision on a maximum price should also apply to multiple activity exemptions.[24] By contrast, Mondo submitted that customers of exempt multiple activity providers may prefer and currently benefit from innovative offers such as 100 per cent renewable energy or energy independence from the grid. They also noted the application of the VDO as a maximum price could impose a barrier to these types of offers.[25]

Our draft decision

Appendix A provides detail on our draft decision and how it applies to each category of exemption in the exemption order and the customers they serve.

The following sections explain our considerations in arriving at our draft decision. In making our draft decision, we have considered the differences between the categories of sellers and their customer segments, and how setting a maximum price on each category would affect consumers and impact efficiency in the market. These considerations have included the:

- nature of the parties and incentives involved in the electricity sale transaction,
- extent of countervailing bargaining power of certain customer types, and
- extent to which certain customer types or exemption categories will already have access to customer price protection.

We note that some types of embedded networks are covered by protections relating to pricing and concession eligibility under the Residential Tenancies Act 1997. The Act prevents landlords and owners of caravan parks from seeking payment from customers for utility charges that are more than the amount that the relevant supply authority would have charged the resident.[26]

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[23] Mondo 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, pp. 1-2.

[24] Origin Energy 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 2.

[25] Mondo, op. cit., p. 2.

[26] Residential Tenancy Act 1997, 56(1) and 166(1)

Customers covered by the new maximum price

In formulating our draft decision, we considered residential and small business customers (consuming up to 40 megawatt hours of electricity per year) within embedded networks should have access to a comparable level of price protection as customers of licensed retailers.[27] This is consistent with the coverage of the Energy Retail Code[28] and requirements of the exemption order.

We have therefore applied the maximum prices to customers of exempt sellers who would otherwise have access to the VDO, were they an on-market customer. This supports consistency of protection for embedded network customers, which by extension acknowledges disparity in bargaining power in comparison to on-market customers.

To give effect to this, our draft decision is to apply the VDO price as the new maximum that exempt sellers may charge residential and small business customers (consuming up to 40 megawatt hours of electricity per year) for most categories of exemption (see appendix A).[29]

This means the vast majority of exempt sellers and customers in embedded networks such as caravan parks, apartment buildings, retirement villages and most small businesses will be covered by the new maximum price. We note that among embedded networks, all residential customers and most businesses are likely to consume less than 40 megawatt hours of electricity per year.[30]

Arrangements for other customers

The maximum price exempt sellers may charge is currently set at the local area retailers' standing offer prices in place on or immediately prior to 27 May 2019 (the 'existing cap').

Our draft decision means that the existing cap will continue to apply to customers of exempt sellers using more than 40 megawatt hours of electricity per year.

In making this decision we have considered the relevant costs of serving these customers, the protections available to similar customers in the competitive market and the relative bargaining power of larger customers. As the VDO is set based on the costs to serve customers consuming

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[27] Small customers are defined in this document, as residential and small commercial customers consuming up to 40 megawatt hours of electricity per year.

[28] Section 3B(1) of the Energy Retail Code, states that 'this Code applies to small customers only'.

[29] Noting there are some categories of exemption for which we have not formulated a new maximum price.

[30] Based on internal analysis and customer numbers in the retail electricity market more broadly, we estimate that over 80 per cent of business customers within an embedded network consume less than 40 megawatt hours per year. Noting larger businesses are more able to exit embedded network arrangements, we believe that our decision will likely cover a higher proportion of customers than this analysis suggests. These estimates are derived using reported business customer numbers and applying the relevant usage thresholds from the 2018-19 Victorian Energy Market Report.

up to 40 megawatt hours per year, it is unlikely to represent the costs for customers consuming more than that amount. This is particularly the case with respect to network and wholesale costs, which represent the largest components of the VDO cost stack. In addition, large customers in the competitive market do not have access to the VDO. We are concerned that providing access to these customers in embedded networks only would introduce inconsistent protections for customers depending on whether they were in an embedded network or not.

As these customers have higher annual consumption, the incentives for them to opt out of their embedded network and access an on-market retail offer may be higher. It may also mean that on market retailers are more likely to make them an energy only offer to achieve this. As a result, the barriers for these types of customers to access a market offer are likely to be lower.

Sellers with multiple activity exemptions

The exemption order allows us to formulate a maximum price that sellers with multiple activity exemptions may charge for electricity. Our draft decision is to maintain the existing cap for this category of exemption because of the more competitive nature of the service and the customer access to other price protections provided by a licensed retailer.

The nature of activities provided by exempt multiple activity providers are different to embedded networks, because they supply to a customer behind that customer's on-market meter – that is the activities are likely to be competitive.[31] Customers engaging with exempt multiple activity providers are likely to be seeking to satisfy bespoke preferences for electricity.[32] As a condition of their exemption these customers should have access to supply from a licensed retailer (to meet needs when their own electricity generation is not enough) and therefore should also be able to access the VDO.

Examples of multiple activity exemptions include a community energy project where a community initiates, develops, operates and benefits from a renewable energy resource or, a solar power purchase agreement under which a business installs and operates a solar panel system and a customer purchases electricity at an agreed price and for an agreed period.

[31] An example may be a solar power purchase agreement under which a business installs and operates a solar panel system and a customer purchases electricity for an agreed price and an agreed period.

[32] For example, they may consider factors other than cost, such as a desire to source local renewable generation.

Other categories of exempt sellers to which we have not applied VDO prices

Table 1 outlines our considerations in relation to other exempt seller categories for which we have not applied the VDO as the maximum price.[33] The existing cap will also continue to apply to these customers.

Table 1 Considerations regarding other categories of exempt sellers

Exemption category	Considerations
Exempt sellers on construction sites (VD4)	These exemptions are granted where the sale is an incidental supply to facilitate bona fide construction and commissioning of new facilities on the same or an adjoining site (for instance a builder taking temporary supply for electricity). In such instances, we would expect the incentives to be aligned between customer and exempt seller, and/or for the terms of electricity sales to be governed by the construction contract competitively struck between them, such that additional customer protection is not warranted for these electricity sales.
Customers of exempt sellers who are related parties (VD5)	In these transactions we would expect the incentives to be aligned between the customer and the exempt seller such that additional customer protection is not warranted.
Exempt sellers who are providing telecommunication services (VD6)	This category covers situations where the sale of electricity is incidental to communications services (such as a data centre and associated electricity services). It does not cover situations where a customer chooses to buy their electricity and telecommunications services from a single business. Because the electricity sales are part of a competitively procured service by a non-residential customer, we would expect that additional customer protection is not warranted for these electricity sales.
Exempt sellers who are providing services to large customers (VR5)	We consider that large customers are likely to be well informed, sophisticated customers with comparable bargaining power to that of the exempt sellers they are entering into agreements with. The burdens of regulatory intervention on these agreements are likely to exceed the benefits created.

[33] These exemption categories are defined in the exemption order, which sets out sets out the two broad categories of retail exemptions; registerable and deemed.

Our draft decision on application

Our draft decision is to apply the relevant VDO prices as the maximum price exempt sellers may charge residential and small businesses customers (with usage up to 40 megawatt hours of electricity per year).

There are a number of categories, where we do not believe the VDO is the appropriate maximum price. Our draft decision means the VDO will not apply as the maximum price for the following categories:

- Customers of exempt sellers on construction sites taking temporary supply (VD4)
- Customers of exempt sellers who are related parties (VD5)
- Customers of exempt sellers in conjunction with telecommunications services (VD6)
- Customers of exempt sellers who are supplied through an exempt multiple activity provider
- Customers with annual electricity consumption above 40 megawatt hours.

For these categories, the maximum price exempt sellers may charge will be the local area retailers' standing offer prices in place on or immediately prior to 27 May 2019.

Appendix A provides detail on our draft decision and how it impacts the price protection framework applying to different categories of exemption in the exemption order.

4. Approach to establishing a maximum price

Under the exemption order the commission has the function to formulate maximum prices for the sale and supply of electricity by exempt sellers. In developing our framework for formulating maximum prices the exemption order requires we have regard to:

- commercial market data, and
- any other matter the commission considers relevant.

As noted in the previous chapter, our draft decision is to apply the VDO as the maximum price exempt sellers may charge residential and small businesses customers (with usage of up to 40 megawatt hours of electricity per year), excluding some categories of exemption such as customers of exempt sellers who are related parties or taking temporary supply. This chapter explains how we have arrived at establishing a maximum price for these exempt sellers and customers.

Our consultation paper

Our consultation paper considered the VDO sets an appropriate benchmark for the cost of selling retail electricity in Victoria by an exempt seller to residential and small business. We considered:

- The approach we took in developing the methodology and calculating the VDO was consistent with the requirement in the exemption order, as the commercial market data for the retail market is comparable to costs in the exempt provider market. We considered the VDO took into account commercial market data as it contemplated issues such as latest market-based estimates of forward energy prices, network and jurisdictional costs (including metering), as well as, other costs associated with selling electricity.[34]
- The benefits of applying the VDO framework to exempt sellers outweigh the cost associated with alternative approaches (such as assessing a cost-stack specifically for exempt sellers).
- The protection offered by a maximum price promotes the long-term interests of customers of exempt sellers and aligns protections for embedded network customers with other Victorian households and small businesses that are currently protected under the VDO.

[34] Including retail operating costs, customer acquisition and retention costs, retail margin, other costs (e.g. regulatory and license fees, ancillary charges).

- A consistent methodological approach is likely to support stability and trust in the regulatory environment, and the retail electricity sector and has regard to the costs and benefits of regulation.

Stakeholder feedback

We sought feedback from stakeholders in our consultation paper about the VDO forming the basis of a maximum price for embedded networks. We also sought stakeholder views on our framework for formulating maximum prices and whether there is any other information we should consider in having regard to commercial market data.

Retailers, customer representative groups and most exempt sellers agreed that the VDO represents an appropriate benchmark for the cost of selling retail electricity in Victoria by an exempt seller.[35] Retailers, customer representative groups and customers generally considered both on market and off market embedded network customers should have the same maximum price cap with similar customer protections.[36]

Most submissions considered our proposal to use the VDO was appropriate in the circumstances.[37]

AGL noted the VDO should be the absolute maximum price set by the commission given the VDO includes customer acquisition and retention costs that would not be relevant to embedded networks.[38] EnergyAustralia said the retailer costs of supplying embedded network customers moving on market would be substantially the same as the cost to supply standard customers.[39]

Some exempt sellers suggested they faced unique costs or circumstances. While WINconnect supported the VDO as the best available option, it submitted the assumption an embedded

[35] Victorian Caravan Parks Association (Vic Parks) 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 1; Origin, op. cit., p. 1. AGL 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 1; EnergyAustralia, op. cit., p. 1.

[36] Origin, op. cit., p. 1. AGL 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 1; EnergyAustralia, op. cit., p. 1; WINconnect 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p.1.

[37] EnergyAustralia, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, pp.1-3; Origin, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, p. 1; Momentum, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, p. 1.

[38] AGL, op. cit., pp.1-2.

[39] EnergyAustralia, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, p.3.

network operator has no customer or acquisition costs was incorrect and exempt sellers faced risks that a retailer does not.[40] Active Utilities considered efficient exempt seller costs are materially different from an efficient retailer and proposed a premium on top of the current cost stack used to calculate the VDO.[41]

The Consumer Action Law Centre and Victorian Council of Social Service noted difficulty for customers in being able to choose an alternate energy retailer.[42] We agree that customers in embedded networks face additional barriers to on-market customers in getting a competitive offer.

Many submissions highlighted that embedded network customers find it difficult to exercise choice and access the pricing protections available to other customers.[43] Darebin Council highlighted how this has contributed to patterns of financial abuse and contributed to the disempowerment of older people who are vulnerable and financially disadvantaged.[44]

Other customers questioned the incentives exempt sellers have to pass on price efficiencies from bulk buying electricity.[45] Customer submissions note that they often don't know what they are paying for, and whether the benefits of innovation are flowing through to them.[46] Some customers raised that they would like to be able to access options regarding green power.[47] One customer questioned the value that embedded networks create for customers:[48]

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[40] WINconnect, op. cit., p. 2.

[41] Active Utilities 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 5.

[42] VCOSS 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, pp.1-2; CALC 2020, submission to the Essential Services Commission Maximum prices for embedded networks and other exempt sellers: Consultation Paper, March, pp. 1-3.

[43] Anonymous 1; Anonymous 2; Anonymous 3; Anonymous 6; Anonymous 7; Anonymous 9; Anonymous 11; Anonymous 12; Anonymous 14, 2020, submissions to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, February and March.

[44] Darebin Council 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, pp.1-6.

[45] Anonymous 4, op. cit., submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, February; Victoria Johnson 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 1.

[46] Anonymous 4, op. cit.; Anonymous 5 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p.1.

[47] Anonymous 2, op. cit.; Victoria Johnson, op. cit.; Peter Hatley 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March.

[48] Anonymous 1, op. cit., p.1.

> From a consumer's perspective, there is no foreseeable benefit to the "innovation" that embedded networks create - at least, none that have accrued to me as a consumer stuck in an embedded network…

One customer raised the appearance of some instances where exempt sellers are recovering the costs of the equipment within the embedded network from customers.[49] We have discussed cost recovery of internal network charges further below.

Our draft decision

As noted earlier, our draft decision is to apply the VDO as the maximum price exempt sellers may charge residential and small businesses customers (with usage up to 40 megawatt hours of electricity per year), subject to the exclusions noted in Chapter 3.

We consider the VDO reflects the efficient costs of the sale of electricity in the Victorian electricity market, and that the approach we took in developing the methodology and calculating the VDO is consistent with the requirements of the exemption order.

In considering whether the VDO meets the requirements of commercial market data, we note the VDO considered market-based estimates of future wholesale electricity and environmental costs. It also considered approved network tariffs, a retailer margin, and benchmarks for other costs to serve.[50] Differences in VDO prices reflect different wholesale and network costs incurred by retailers in each network distribution zone and between customer types.

As noted above, some exempt sellers raised concerns that their costs differ to the allowance provided for under the VDO cost stack. That is, the costs levels differed, or exempt sellers' activities differed from that of a licensed retailer. Our draft decision considers these claims below.

The maximum price is a protection for customers of exempt sellers. It recognises that many customers serviced by an exempt seller cannot otherwise access the default offer protection afforded to customers of licensed retailers through the VDO. In many situations, it may be an even more important protection because it is harder in practice for these customers to get access to competitive retail offers. Submissions received to our consultation paper highlighted the difficulties many customers face in embedded networks.[51]

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[49] Anonymous 5, op. cit., p.1.

[50] Such as retail operating costs and customer acquisition and retention costs.

[51] Anonymous 1, op. cit.; Anonymous 2, op. cit.; Anonymous 3, op. cit.; Anonymous 4, op. cit.; Victoria Johnson, op. cit.; Anonymous 5, op.cit.; Anonymous 6, op. cit.; Anonymous 7, op. cit.; Anonymous 8 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, February.;

In this context, if a reasonable price protection benchmarked to the competitive retail market is insufficient to fund the activities of an exempt seller, it brings into question whether its supply arrangements are efficient relative to the competitive market and if these arrangements are in their customers' interests. This view was supported by South Street Energy which noted:[52]

> If the additional cost to operate the embedded network means that residents and/or commercial tenants pay more than they otherwise would if purchasing electricity directly from a licensed retailer, the site should not be operated as an embedded network.

We note feedback from some exempt sellers on costs were that embedded networks have: [53]

- customer acquisition and retention costs.
- additional compliance costs, including risks of retailers not paying network charges for on-market embedded network customers in implementing reforms.[54]
- internal network infrastructure operating costs beyond those considered in the VDO.

We note that costs to acquire, educate and retain customers are provided for in the VDO.

WINconnect submitted the churn rates are higher than the average retailer (for example, for high rise apartments leading to higher customer acquisition and retention costs. We note WINconnect has not provided the magnitude of this difference or supporting information.

We also question the link between churn and customer acquisition and retention costs for exempt sellers. Customers simply moving in and out of a premise need to be onboarded into a billing system, but this appears to represent a cost to serve as the exempt seller would not incur costs acquiring the customer. Further, we note even if this were the case the levels provided for in the VDO reflect a reasonable price for the sale of electricity to customers (not the lowest price).

In relation to additional compliance costs regarding the role of embedded network managers we note exempt sellers have means available to manage risks for recovering costs of on-market customers. For example, network charges for on-market customers can be charged to the

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Anonymous 9, op.cit.; Anonymous 10 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March.; Anonymous 11, op. cit.; Anonymous 12, op. cit.; CALC, op. cit., pp.1-2; VCOSS, op. cit., p. 2.

[52] South Street Energy 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p.1.

[53] WINconnect, op. cit., p. 2; Network Energy Services 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 6; ENSA 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p. 1.;Active Utilities, op. cit., p. 8.

[54] Such as those proposed to Council of Australian Governments in the Australian Energy Market Commission's (AEMC) embedded networks frameworks review.

customer directly rather than through their on-market retailer. We consider this role also benefits the exempt seller and other embedded network as it is reducing their exposure to cost recovery risks.[55]

Some submissions raised that the embedded network manager role has extra costs relative to a licenced retailer.[56] We were not provided with cost data to support this claim. Nor are we convinced these costs could be considered efficient costs to supply an electricity retail service.

In relation to own infrastructure operating costs we note other regulators have deemed that the embedded network's own infrastructure costs within that network should not be separately recoverable by the embedded network service provider (or exempt seller).[57] Instead the shadow network costs of the local distributor for a customer (within the embedded network) who is served by a competitive retailer are considered to be a reasonable benchmark. We agree with this view and consider that our VDO cost estimates are consistent with this approach.

Active Utilities submitted that exempt sellers should receive an allowance above what is provided for in the VDO.[58] To support this Active Utilities provided summary level data showing that its 2020 network costs had higher annual growth than allowed for in the 2020 VDO.

We do not consider this relevant to our task because we are not seeking to provide cost pass through of exempt seller costs. Even if we were seeking cost-pass through, these growth rates do not establish that the level of those network charges incurred at the gate meter is higher than included in the VDO. We similarly do not consider Active Utilities position on wholesale cost mark-up and higher operating costs are justified.

[55] Energy and Water Ombudsman Victoria (EWOV) 2018, Factsheet 39 - Switching for customers in embedded networks, August.

[56] WINconnect, op. cit., p. 2

[57] For example, the AEMC's Final report Updating the regulatory frameworks for embedded networks (July 2019) proposed that the embedded network service provider 'set network charges at a level no greater than the amount that the customer would have paid had it been directly connected to the service providers distribution network to which the embedded network is connected (the 'shadow price')'.

[58] Active Utilities, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March 2020, pp. 2-12.

Our draft decision on price level

Our draft decision is to apply the VDO as the new maximum price exempt sellers may charge most residential and small businesses customers (with usage up to 40 megawatt hours of electricity per year), subject to the exclusions noted in Chapter 3.

Appendix B and Appendix C set out the maximum prices that exempt suppliers may charge for residential and small business customers, respectively.

5. Tariff types covered by our maximum prices

Customers can be charged a variety of different tariff types for electricity. The most common is usually referred to as a flat, peak only or single-rate tariff structure that comprises a daily supply charge and a single or anytime usage charge calculated on a per kilowatt hour basis.[59]

Under current arrangements, the maximum price that embedded networks can charge their customers is the published standing offer of the local area retailer as at 27 May 2019.[60]

Our consultation paper

Our consultation paper flagged the need to consider tariff structures currently charged to customers located within embedded networks, noting some exempt sellers may offer non-flat tariff types (such as time-of-use or flexible tariffs). We also sought stakeholder views on the application of the following VDO tariff types in formulating a maximum price for exempt sellers:

- A flat rate tariff for both residential and small business customers – including a daily supply charge and a flat anytime usage charge calculated on a per kilowatt hour basis.
- A flat rate tariff with a controlled load for residential customers only – including a daily supply charge and a flat anytime usage charge, as well as a separately metered controlled load tariff.
- A maximum annual bill (for non-flat tariffs) for both residential and small business customers – which forms a cap on the amount a retailer can charge a customer for a specified level of usage, applicable to customers on a non-flat tariff (e.g. a flexible, time-of-use or demand tariff).

Stakeholder feedback

In response to our consultation paper, we received several submissions relating to the tariff structures currently levied to customers within exempt selling arrangements. Consumer Action Law Centre (CALC) and EnergyAustralia told us that most customers are supplied electricity via a flat tariff, and that non-flat tariffs are uncommon in exempt selling arrangements.[61]

The availability of non-flat tariffs was supported by some retailers and exempt sellers:

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[59] For the avoidance of doubt a flat tariff does not vary by reference to the time of day, the amount of electricity distributed or supplied during the day, temperature (whether actual or forecast), or other characteristics that vary during the day.

[60] Order in Council made under the Electricity Industry Act 2000, op. cit.

[61] CALC, op. cit., p. 3 told us that non-flat tariff structures are uncommon in embedded networks, while EnergyAustralia, op. cit., p. 5 suggested exempt sellers generally structure and charge flat rates.

- South Street Energy noted it has several flexible tariff structures available to residents and commercial tenants. Momentum Energy and Origin also noted that a range of tariff types are currently available to its embedded network customers.[62]
- Network Energy Services noted the wide variation in consumption profiles and overall demand of consumers in their on-selling communities, and the need to shape tariffs that support this diversity in customer needs.[63] The Victorian Caravan Parks Association (Vic Parks) noted its agreement with Network Energy Services submission. [64]
- Mondo's submission sought to preserve the ability for exempt sellers to innovate its customer offers.[65] ENSA told us they preferred a capped pricing methodology (like the Australian Energy Regulator's Default Market Offer) suggesting it provides flexibility in rate setting.[66]

EnergyAustralia suggested the commission should prescribe all tariffs (rather than non-flat prices being determined by exempt sellers under the compliant maximum annual bill), this was proposed based on the simplicity and transparency it would provide both customers and exempt sellers.[67] Mondo questioned how offers would be compared to the maximum bill.[68] We have provided illustrative worked examples on the maximum bill in Appendix D.

Our draft decision

A flat tariff structure generally refers to charges that comprise a daily supply charge and a single usage charge calculated on a per kilowatt hour basis. This is the most common tariff structure that applies to customers in an embedded network. Therefore, in most circumstances the flat rate tariff structure will apply.

A flat tariff structure also forms the basis of a compliant maximum annual bill mechanism, which provides for non-flat and cost reflective tariff structures which may be currently offered in some exempt selling arrangements. The maximum annual bill mechanism is used to determine compliance with the maximum price when customers in embedded networks are on a non-flat tariff (this includes time-of-use, demand, or other flexible tariff types).

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[62] Momentum Energy, op. cit., pp. 1-2; Origin, op. cit., pp. 1-2

[63] Network Energy Services, op. cit., p. 6.

[64] Vic Parks, op. cit., pp. 1-3.

[65] Mondo, op. cit., pp. 1-2.

[66] ENSA, op. cit., p. 2.

[67] EnergyAustralia, op. cit., p. 5.

[68] Mondo, op. cit., pp. 1-2.

Flat rate tariffs

It is our view that a flat tariff structure meets the needs of most consumers located in embedded networks, because:

- it provides simplicity for consumers
- it reflects the structure of tariffs currently levied to most consumers within embedded networks

Noting stakeholder support for the approach set out in our consultation paper, we intend to adopt a similar approach to the VDO tariff structures in formulating a maximum price for exempt sellers, having regard to different capabilities of exempt sellers. Calculated for each of Victoria's five distribution zones, VDO flat rate tariff structures include:

- A flat rate tariff for both residential and small business customers – including a daily supply charge and a flat anytime usage charge calculated on a per kilowatt hour basis.
- A flat rate tariff with a controlled load for residential customers only – including a daily supply charge and a flat anytime usage charge, as well as a separately metered controlled load tariff.

If an exempt seller charges their customer a flat rate tariff (as described above), they must not exceed the VDO flat tariff rates set by the commission. As identified in stakeholder submissions, the VDO reflects the structure of tariffs currently levied to most customers of exempt sellers and customers are familiar with a flat rate structure.[69] We also note that in the business of on selling retail electricity to its network (which is typically a secondary business activity), many exempt sellers will find simplicity in administering bills under a flat rate tariff structure.[70]

Compliant maximum annual bill

In order to allow exempt sellers to continue to charge tariffs that are not flat or comprise a combination of a flat and non-flat components, we propose the VDO compliant maximum annual bill mechanism will apply to exempt sellers that do not charge a flat rate tariff. To ensure compliance with the maximum bill, exempt sellers will be required to provide information to their customers on how their prices compare with the maximum annual bill. In line with the exemption order this should be on an annual basis and as directed by the customer or commission.[71]

Non-flat tariffs can include time of use and flexible tariffs, or tariffs that include demand charges. Exempt sellers that supply electricity under a non-flat tariff must ensure that the total annual

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[69] Consumer Action Law Centre, op. cit., p. 3 told us that non-flat tariff structures are uncommon in embedded networks.

[70] We note that where an exempt seller faces tariff structures that are not flat, the VDO compliant maximum annual bill is available.

[71] General Exemption Order, clause 9.

amount levied to a customer is under the compliant maximum annual bill. The maximum bill is simply based on:

- the flat-rate VDO determined for a distribution zone, and
- a customer's electricity usage.

We consider that calculating the maximum bill at a single annual reference consumption amount best meets our statutory obligations. Our draft decision proposes an annual reference level of customer usage at 4,000 kilowatt hours per year for residential customers and 20,000 kilowatt hours per year for small business customers and uses this reference amount to calculate the compliant maximum bill amount for each distribution zone. Appendix D provides worked examples on how an exempt seller could ensure it is compliant with the maximum annual bill amount for a given distribution zone.[72] Appendix D also provides compliant maximum annual bill amounts for both residential and small business customers for each of Victoria's five distribution zones.

Equivalent to the flexibility afforded to licensed retailers under the VDO,[73] our draft decision also permits exempt sellers to issue a representative profile of customer usage or relevant usage allocations that together make up a representative profile of customer usage, at the applicable annual reference consumption amount. The profile of customer usage or relevant usage allocations must be reasonably representative of the profile of usage by customers on that tariff type over a 365-day period.[74]

The Department of Environment, Land, Water and Planning's final position paper considered that customers of exempt sellers should receive a level of protection comparable to customers of licensed retailers while continuing to have regard to the nature of exempt selling activities.[75] We have applied this principle in our decision and sought to be consistent with the obligations in the Retail Code for exempt sellers.[76].

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[72] Also see: South Street Energy, op. cit. This submission describes ensuring that the annual cost of electricity for a tenant is not more than if the relevant VDO were applied to the same metered consumption values.

[73] Essential Services Commission 2019, Victorian Default Offer Price Determination 2020: 1 January 2020 – 31 December 2020, November, sections 5.2, 5.3 and 5.4.

[74] An exempt provider must not vary its published representative profile of customer usage or relevant usage allocations for a non-flat standing offer tariff type more than once in a 365-day period unless mitigating circumstances exist (for example the profile is no longer representative and may cause harm to their customers). In changing the representative profile, the exempt provider must comply with its information disclosure requirements.

[75] For example we consider the requirement in the VDO for retailers to gazette profiles is not appropriate for exempt sellers given the nature of their selling activities.

[76] The provisions in the Retail Code provide important information to customers to understand and manage their electricity usage, as well as providing them with reasonable timeframes in which to pay bills. It also provides customers

In meeting the requirements of information disclosure we consider where an exempt seller seeks to offer a tariff by way of a representative customer profile or usage allocation, the exempt seller must make available for disclosure the customers usage (or relevant usage allocations) to the customer, in writing, at the start of their tenancy/residency or agreement, and then on an annual basis, and at any time on request. It is important to note that the information provision obligations in the exemption order state information must be provided to customers once a year and any other time the customer requests.

Draft decision on tariff structures

Our draft decision applies to all tariff structures offered by exempt sellers. The commission proposes to adopt VDO tariff structures in formulating a maximum price for exempt sellers that supply to residential and small business customers (consuming up to 40 megawatt hours per year).

When an embedded network customer is on a flat tariff that customer must be charged no more than the applicable flat tariff VDO rates.

The compliant maximum annual bill applies when a customer of an exempt seller is on a non-flat tariff and is equivalent to the flat-rate tariff at the specified level of consumption. Non-flat tariffs include time-of-use, demand and flexible tariffs.

Calculated for each of Victoria's five distribution zones, VDO flat rate tariff structures include:

- A flat rate tariff for both residential and small business customers – including a daily supply charge and a flat anytime usage charge calculated on a per kilowatt hour basis.
- A flat rate tariff with a controlled load for residential customers only – including a daily supply charge and a flat anytime usage charge, as well as a separately metered controlled load tariff.

The commission proposes to set the VDO compliant maximum annual bill[77] based on the flat rate VDO, and a representative usage profile for the customer group:

with certainty about how they can pay their bills, to query how their bill has been developed and how they will be reimbursed when overcharged.

[77] Bill amounts are specified in Appendix D.

- For residential customers there will be five maximum annual bills (one for each distribution zone), calculated for a representative customer consumption of 4,000 kilowatt hours per year
- For small business customers there will be five maximum annual bills (one for each distribution zone), calculated for a representative customer consumption of 20,000 kilowatt hours per year.

Where an exempt seller seeks to offer a tariff by way of a representative customer profile or usage allocation (an offer that is not specified under our maximum annual bills – Appendix D), the exempt seller must make available for disclosure a particular customers usage (or relevant usage allocations) to the customer, in writing, at the start of their tenancy/residency or agreement, and then on an annual basis, and the commission at any time on request.

6. Implementing the maximum price framework for exempt sellers

This chapter explains when and how our decision will come into force.

Exempt sellers are generally regarded to be selling electricity as incidental to their main business.[78] While this is the case, there is a diversity of approaches and capabilities across different categories of exemption. Categories of exempt sellers may include: Caravan and holiday parks[79]; apartment buildings, including those served by third party agents; retirement and lifestyle villages[80]; and shopping centres.

We have considered this diversity and ancillary role relative to their core business when deciding on the timeframe for implementing our decision. The timeframe has also been informed by the fact that the interim cap already applies to all exempt sellers, and the current community focus on responding to the coronavirus pandemic.

Our consultation paper and stakeholder feedback

Our consultation paper proposed a 1 July 2020 implementation date for a maximum price for customers in embedded networks.

In implementing a maximum price for embedded networks, we have balanced between ensuring appropriate levels of consumer protections and giving exempt sellers sufficient time to implement price changes. Stakeholders views were varied in response to implementation:

- Consumer Action Law Centre (CALC) supported 1 July implementation date.[81]

[78] Essential Services Commission 2018, Registration Guideline for Exempt Persons: Information requirements for persons exempt from having a Victorian licence for the sale or supply of electricity, 17 May.

[79] Considered to be an area of land on which movable dwellings are situated for occupation on payment, whether immovable dwellings are also situated there.

[80] The majority of which are for the purpose of retired persons who are provided with accommodation and services other than services that are provided in a residential care facility; and at least one of whom, before or upon becoming a member of the community, pays or is required to pay an in-going contribution.

[81] CALC, op. cit., p. 1.

- One customer supported the 1 July implementation date, however, noted the differences in capabilities between different categories of exempt sellers and considered certain categories like caravan parks may need longer.[82]
- Origin considered in order to limit implementation and system change costs, the application of a maximum price in embedded networks should be aligned with the application of the VDO to mass market customers.[83]
- EnergyAustralia suggested a 30-business day notice period was appropriate.[84]
- Active Utilities believe implementation should occur on 1 January 2021 for greenfield developments due to costs involved in conducting price changes.[85]

Our draft decision

Our preferred position is for customers to have access to pricing protections as soon as possible. We consider stakeholders have had reasonable notice, noting a maximum price has been in place since 2019 amendments to the exemption order. We have also previously signalled to stakeholders our intention to implement the VDO as a maximum price, noting both our consultation paper and 2019 VDO draft decision stated the VDO price would apply to exempt sellers.

We are conscious, however, of the impact of the current community focus on responding to the coronavirus pandemic, and the possible impact on at least some exempt sellers (such as owners and operators of caravan parks and other small businesses), as well as customers in embedded network arrangements.

As such, while our consultation paper proposed an implementation date of 1 July 2020 for the new maximum price to apply, our draft decision proposes an implementation date of 1 September 2020. It is likely many exempt sellers should be able to implement maximum prices that comply with the VDO before this date. Under the exemption order, there is nothing to prevent exempt sellers ensuring their electricity charges are compliant with the VDO price. We are seeking stakeholder views on implementation timeframes. Any submissions recommending a later implementation date should explain why 1 September 2020 may not be desirable or achievable, and the costs and benefits of a later implementation date for customers.

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[82] Anonymous 12, op. cit., p. 1.

[83] Origin, op. cit., p. 2.

[84] EnergyAustralia, op. cit., p. 5.

[85] Active Utilities, op. cit., p.11.

Draft Decision on implementation date

The commission draft decision is our formulated maximum prices will apply from 1 September 2020.

Glossary

Term	Definition
Controlled Load	Electricity supply to specific built-in appliances, such as electric hot water systems.
Demand tariff	Part of a non-flat electricity tariff structure. A demand tariff is charged by an electricity retailer to a customer and is based on a customer's maximum electricity usage during 'peak' times in the billing period multiplied by the dollars per kilowatt.
Embedded network	An electricity network that supplies all premises within a specific area or building. Examples include apartment buildings, caravan parks and retirement villages.
Exempt Multiple Activity Provider	Person with an exemption from obtaining a license for persons carrying out the generation, distribution, supply and sale of electricity. Examples include a solar power purchase agreement or a community energy project.
Exemption order	General Exemption Order
ESC	Essential Services Commission
EWOV	Energy and Water Ombudsman of Victoria
Exempt seller	A provider of (or persons selling) electricity services, who are exempt from holding licenses for the sale of electricity under the General Exemption Order 2017.
Existing cap	The 2019 amendments to the General Exemption Order set out that until a maximum price is formulated by the commission prices will be capped at local area standing offer prices in effect prior to the 27 May 2019.
Flat tariff	This includes a daily supply charge and a flat anytime usage charge calculated on a per kilowatt hour basis.
Flexible tariff	This type of tariff is a non-flat tariff e.g. a flexible, time-of-use or demand tariff.
Gate Meter (or Parent Meter)	A meter that records the total amount of energy consumed within an embedded network. Also referred to as a parent meter.

Greenfield development	A new embedded network site with no pre-existing supply of electricity or metering infrastructure.
Kilowatt	A measure of electricity. One kilowatt is equal to 1000 watts.
Licenced retailer	Anyone generating, transmitting, supplying or selling electricity, supplying gas or selling gas to retail customers in Victoria must hold a licence unless they are exempt under the exemption order. Licenced retailers sometimes supply electricity to customers in embedded networks.
Local area retailer	The local area retailer is the authorised retailer who must provide you with an energy contract if you need to establish a new connection to the electricity network (for example, if you build a new home). Who your local area retailer is depends on your location and distribution network.
Maximum annual bill	This is a mechanism for determining compliance with the cap on the amount a retailer can charge a customer for a specified level of usage. This tariff type would apply when a customer is on a non-flat tariff e.g. a flexible, time-of-use or demand tariff.
Network costs	Represents the costs of building, operating and expanding the electricity distribution and transmission networks.
Small customer	Residential or Small Commercial Customers with annual electricity consumption under 40 megawatt hours.
Standing offer	An offer to supply electricity made by energy providers. Generally, a higher price than market offers, with no available discounts.
Time-of-use tariff	Part of a non-flat electricity tariff structure. Time-of-use tariffs apply different prices to customers electricity usage depending on the time of day the energy is consumed. Time-of-use tariffs are usually comprised of peak, shoulder and off-peak prices.
VCOSS	Victorian Council of Social Service
VDO	Victorian Default Offer
Vic Parks	The Victorian Caravan Parks Association

Appendix A – Applicable exemption categories

As a result of this draft decision, all exempt sellers will be subject to either:

- The VDO flat-rate tariff or maximum annual bill outlined in this draft decision, or
- The existing cap in the exemption order which froze the maximum price exempt sellers may charge at the local area retailers' standing offer prices that were in effect on or immediately prior to 27 May 2019.

The table below sets out which cap applies to each exemption category or customer type. In this table small business refers to small commercial customers consuming up to 40 megawatt hours (MWh) per annum.

Exemption category	Description	Customer class	Flat-rate/ compliant maximum annual bill	Existing cap
VR1	Persons selling metered electricity to **10 or more small commercial/retail customers** within the limits of a site that they own, occupy, or operate.	Small business	Applies to use up to 40MWh per year.	Applies to use above 40MWh per year.
VD1	Persons selling metered electricity to **fewer than 10 small commercial/retail customers** within the limits of a site that they own, occupy, or operate.	Small business	Applies to use up to 40MWh per year.	Applies to use above 40MWh per year.

Exemption category	Description	Customer class	Flat-rate/ compliant maximum annual bill	Existing cap
VR2	Persons selling metered electricity to **10 or more residential customers** within the limits of a site that they own, occupy, or operate, excluding sales to residents of retirement villages, caravan parks, holiday parks, residential land lease parks and manufactured home estates.	Residential	Applies (incl. flat rate with controlled load) to use up to 40MWh per year.	Applies to use above 40MWh per year.
VD2	Persons selling metered electricity to **fewer than 10 residential customers** within the limits of a site that they own, occupy, or operate (excluding retirement villages, caravan parks, holiday parks, residential land lease parks, and manufactured home estates)	Residential	Applies (incl. flat rate with controlled load) to use up to 40MWh per year.	Applies to use above 40MWh per year.
VR3	**Retirement villages** selling metered electricity to residential customers within the limits of a site that they own, occupy, or operate.	Residential	Applies (incl. flat rate with controlled load) to use up to 40MWh per year.	Applies to use above 40MWh per year.
VD3	Persons selling metered electricity to occupants of **holiday accommodation** on a short-term basis (excluding caravan parks, holiday parks, residential land lease parks, and manufactured home estates).	Residential	Applies (incl. flat rate with controlled load) to use up to 40MWh per year.	Applies to use above 40MWh per year.

Exemption category	Description	Customer class	Flat-rate/ compliant maximum annual bill	Existing cap
VR4	Persons selling metered electricity in all **caravan parks, holidays parks, residential land lease parks,** and **manufactured home estates**.	Residential	Applies (incl. flat rate with controlled load) to use up to 40MWh per year.	Applies to use above 40MWh per year.
VD4	Persons temporarily selling electricity on construction sites, where the sale is an incidental supply to facilitate bona fide construction and commissioning of new facilities on the same or an adjoining site.		NA	Applies
VR5	Persons selling metered electricity to large customers.	Does not apply – consumption above 160MWh per year.	NA	Applies
VD5	Persons selling electricity to a related company.		NA	Applies
VD6	Persons selling electricity on or within the person's premises to customers in conjunction with, or ancillary to, the provision of telecommunications services. Includes internet, telephone, mobile phone, fibre optic, hybrid fibre cable, television, radio, Wi-F or other communications technology.		NA	Applies

Exemption category	Description	Customer class	Flat-rate/ compliant maximum annual bill	Existing cap
VD7	Government agencies selling metered electricity to non-residential customers for purposes that are ancillary to their primary functions or objectives under the laws under which they are established.		NA	Applies to use above 40MWh per year.
Multiple activity exemptions	Generating or distributing electricity on: i) premises not owned or occupied by the person, ii) a portion of premises occupied by the person for the purpose of the generation and distribution, where the premises are not owned by the person and the remainder of the premises is not occupied by the person. Supplying or selling the electricity: i) to the owner of occupier of the premises on which generation occurs (the customer); or ii) to a licenced retailer.		NA	Applies

Appendix B – Draft decision tariffs: residential customers

Maximum prices for embedded networks and other exempt sellers – flat rate tariffs for general usage and general usage plus controlled load usage by relevant distribution network service provider for the period 1 September 2020 to 31 December 2020.

Residential customers

Charges inclusive of GST

Distribution zone	Supply charge ($ per day)	Usage charge structure	Usage charge (not controlled load) ($ per kWh)	Usage charge: controlled load ($ per kWh)
AusNet Services	$1.1408	**Block 1** (up to 1020kWh used in a quarterly period) **Block 2** (balance of usage in a quarterly period)[86]	$0.3072 $0.3272	$0.2230
CitiPower	$1.1309	Anytime	$0.2517	$0.1954
Jemena	$1.0431	Anytime	$0.2787	$0.2086
Powercor	$1.2619	Anytime	$0.2640	$0.2008
United Energy	$0.9236	Anytime	$0.2927	$0.2080

[86] Blocks refer to electricity used in a quarterly period or pro-rated for any other period.

Appendix C – Draft decision tariffs: small business customers

Maximum prices for embedded networks and other exempt sellers – flat rate tariffs for general usage by relevant distribution network service provider for the period 1 September 2020 to 31 December 2020.

Small business customers

Charges inclusive of GST

Distribution zone	Supply charge ($ per day)	Usage charge structure	Usage charge ($ per kWh)
AusNet Services	$1.1408	**Block 1** (up to 1020kWh used in a quarterly period) **Block 2** (balance of usage in a quarterly period)[87]	$0.3407 $0.3795
CitiPower	$1.3386	Anytime	$0.2667
Jemena	$1.1816	Anytime	$0.2904
Powercor	$1.3898	Anytime	$0.2619
United Energy	$0.9863	Anytime	$0.3004

[87] Blocks refer to electricity used in a quarterly period or pro-rated for any other period.

Appendix D – Draft decision: VDO compliant maximum annual bill worked examples and maximum amounts

The VDO compliant maximum annual bill – example 1

Five-day time of use (residential)

In practice the maximum bill is calculated by taking the flat-rate rate VDO for the relevant distribution zone and calculating an annual bill for a given consumption amount (i.e. 4,000 kilowatt hours (kWh) per year for a residential customer). The annual consumption for a residential customer is 4,000 kilowatt hours per year split by 52 per cent allocated to peak periods and 48 per cent allocated to the off-peak period (as specified in the allocation table in Appendix E – Representative usage profiles). In this example the peak and off-peak usage tariffs are multiplied by the consumption quantity to estimate the total yearly cost in dollars. Similarly, the daily supply charge is multiplied by the number of days in the regulatory period, to give the total costs for that component.

As shown in the table below, this results in a bill of $1,300.00 which does not exceed the maximum annual bill. Therefore, this proposed five-day time of use tariff will comply with the maximum annual bill mechanism.

General usage (4,000 kWh /year)			
	Consumption (kWh)	Rate (c/kWh)	Total
Peak	2,080	28.2403	$587.40
Off-peak	1,920	20.4693	$393.01
Service Charges			
	Days	Daily rate ($/day)	
Daily Charges	366	$0.8732	$319.59
Subtotal			$1,300.00
Illustrative VDO compliant maximum annual bill			$1,300.00

The VDO compliant maximum annual bill – example 2

General usage with demand (small business)

For illustrative purposes, we have assumed maximum bill for this distribution zone for a small business customer is $5,000.00. In practice the maximum bill would be calculated by taking the flat tariff standing offer tariffs for the relevant distribution zone and estimating the annual bill for 20,000 kilowatt hour small business customer. The annual consumption for this customer type is 20,000 kilowatt hours per annum that is split across summer and non-summer usage. Despite this, the general usage rates under this proposal do not differ between periods. In this scenario the proposed demand charges do differ between summer and non-summer periods. The maximum demand calculated for the summer and non-summer periods is equal to 2.5 times the average daily consumption in the relevant period. Similarly, the daily supply charge differs between summer and non-summer, with each rate multiplied by the number of days in the relevant period, to give the total costs for that component. This usage profile is not based on analysis of actual data but is used for illustrative purposes. As shown in the table below, this results in a bill of $5,000.00, which does not exceed the maximum annual bill. Therefore, this proposed general use with demand charge standing offer tariff will comply with the maximum annual bill mechanism.

	Summer			Non-summer			
General usage (20,000 kWh /year)							
	Consumption (kWh)		Rate (c/kWh)	Consumption (kWh)		Rate (c/kWh)	Total
Peak	9,400		19.8583	10,600		19.8583	$3,971.65
Demand charge							
	Maximum demand (kW)	Days	Rate (c/kW/day)	Maximum demand (kW)	Days	Rate (c/kW/day)	Total
	5.71	122	47.2950	4.57	244	19.8583	$550.59
Daily Charges							
	Days		Daily rate ($/day)	Days		Daily rate ($/day)	Total
	122		$1.2599	244		$1.3281	$477.76
Subtotal							$5,000.00
Illustrative VDO compliant maximum annual bill							$5,000.00

Compliant maximum annual bill amounts

Specified non-flat standing offer tariff types & VDO compliant maximum annual bill amounts by distribution zones of relevant distribution company.

Distribution zone	Specified non-flat tariff standing offer tariff types	VDO compliant maximum annual bill amount – residential customers (4,000kWh usage; annual bill calculated using VDO fixed flat tariffs)	VDO compliant maximum annual bill amount – small business customers (20,000kWh usage; annual bill calculated using VDO fixed flat tariffs)
AusNet Services	Tariff types 1 & 2	$1,646	$7,849
Ausnet Services	Tariff type 3 (small business customers only)	Not applicable	$7,849
CitiPower	Tariff type 1 & 2	$1,420	$5,823
Citi Power	Tariff type 3 (small business customers only)	Not applicable	$5,823
Jemena	Tariff type 1 & 2	$1,496	$6,240
Jemena	Tariff type 3 (small business customers only)	Not applicable	$6,240
Powercor	Tariff type 1 & 2	$1,517	$5,746
Powercor	Tariff type 3 (small business customers only)	Not applicable	$5,746
United Energy	Tariff type 1 & 2	$1,508	$6,368
United Energy	Tariff type 3 (small business customers only)	Not applicable	$6,368
United Energy	Tariff type 4	$1,508	$6,368
United Energy	Tariff type 5	$1,508	$6,368

Notes to Appendix D:

1. **Description of non-flat standing offer tariff types referred to in Appendix D**

- Tariff type 1 - flexible price (3 part time of use)
- Tariff type 2 - 5-day time of use
- Tariff type 3 - 7-day time of use (small business customers only)
- Tariff type 4 - 5-day time of day 9pm off peak (United Energy distribution zone only)
- Tariff type 5 - 5-day time of day (United Energy distribution zone only)

2. Calculation of VDO compliant maximum annual bill amount

The VDO compliant maximum annual bill amount for a non-flat standing offer tariff type specified in this appendix have been calculated by taking the applicable annual reference consumption amount (ARCA) specified for prescribed customers on standing offers in (see point 3 – below), being broadly representative of the levels of consumption of electricity by these types of customers in a 365 day period, and applying the relevant regulated VDO fixed flat tariffs for the relevant customer type in the relevant distribution zone in which that specified tariff type applies, to the applicable ARCA, assuming a supply period of 365 days, and that the amount of electricity consumed is the same on each day of the year, to calculate a VDO compliant maximum annual bill amount for that tariff type.

3. Annual reference consumption amount (ARCA)

The annual reference consumption amount (ARCA) used to calculate the VDO compliant maximum annual bill amounts above are:

- for a residential customer – 4,000kWh per year;
- for a small business customer – 20,000kWh per year.

Appendix E – Representative usage profiles

Representative profile of customer usage and related usage allocations for specified non-flat standing offer tariff types listed in Appendix D.

Specified non-flat standing offer tariff type	Representative profile of customer usage		
	Usage allocation - peak	Usage allocation - shoulder	Usage allocation - off-peak
Tariff type 1 - flexible price (3 part time of use)	0.25	0.45	0.30
Tariff type 2 - 5-day time of use	0.52	0.00	0.48
Tariff type 3 - 7-day time of use (small business customers only)	0.74	0.00	0.26
Tariff type 4 - 5-day time of day 9pm off peak (United Energy distribution zone only)	0.25	0.20	0.55
Tariff type 5 - 5-day time of day (United Energy distribution zone only)	0.32	0.20	0.48

Note to Appendix E:

1. Representative profile of customer usage and related usage allocations

The representative profile of customer usage and related usage allocations specified in the schedule above (Appendix E) represents a profile of use of electricity by prescribed customers (both residential and small business) on each non-flat standing offer tariff type listed this schedule over a 365 day period under which electricity usage has been allocated between usage periods (peak, shoulder, off-peak) in which retailer tariffs for electricity usage will differ.

Appendix F – List of submissions to our consultation paper

Name of submission	Date received
Anonymous 1	11/02/2020
Anonymous 2	11/02/2020
Anonymous 3	12/02/2020
Anonymous 4	14/02/2020
Anonymous 5	16/02/2020
Anonymous 6	18/02/2020
Anonymous 7	18/02/2020
Anonymous 8	19/02/2020
Anonymous 9	19/02/2020
Victoria Johnson	19/02/2020
Chris Currie	20/02/2020
Neil Coxall	26/02/2020
Errol Muir	3/03/2020
Peter Hatley	4/03/2020
Anonymous 10	4/03/2020
Anonymous 11	5/03/2020
CALC	6/03/2020
Momentum Energy	6/03/2020
Anonymous 12	6/03/2020
Origin	10/03/2020
Victorian Council of Social Service (VCOSS)	10/03/2020

South Street Energy	10/03/2020
Victorian Caravan Parks Association (Vic Parks)	10/03/2020
Anonymous 13	10/03/2020
Mondo	10/03/2020
City of Darebin	10/03/2020
Active Utilities Pty Ltd	10/03/2020
AGL	10/03/2020
ENSA	10/03/2020
Network Energy Services	10/03/2020
EnergyAustralia	10/03/2020
Shopping Centre Council of Australia (SCCA)	10/03/2020
WINconnect	13/03/2020
Anonymous 14	13/03/2020