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Ensuring energy contracts are clear and fair – Issues Paper

Meridian Energy Australia Pty Ltd and Powershop Australia Pty Ltd (MEA Group or Powershop) thank the Essential Services Commission (ESC) for the opportunity to provide comments on the 'Ensuring energy contracts are clear and fair - Issues Paper' (the Paper).

MEA Group is a vertically integrated generator and retailer focused entirely on renewable generation. We opened our portfolio of generation assets with the Mt Millar Wind Farm in South Australia, followed by the Mt Mercer Wind Farm in Victoria. In early 2018 we acquired the Hume, Burrinjuck and Keepit hydroelectric power stations, further expanding our modes of generation. We have further supplemented our asset portfolio by entering into a number of power purchase agreements with other renewable generators, and through this investment in new generation we have continued to support Australia's transition to renewable energy.

Powershop is an innovative retailer committed to providing lower prices for customers and which recognises the benefits to customers in transitioning to a more distributed and renewable-based energy system. Over the last five years, Powershop has introduced a number of significant, innovative and customer-centric initiatives into the Victorian market, including the first mobile app that allows customers to monitor their usage, a peer-to-peer solar trading trial and a successful customer-led demand response program. Powershop has also been active in supporting community energy initiatives, including providing operational and market services for the community-owned Hepburn Wind Farm, supporting the Warburton hydro project, and funding a large range of community and social enterprise energy projects through our Your Community Energy program.

The 2016 Independent Review into the Electricity and Gas Retail Markets in Victoria (the Review) advised of three main factors of market failure: the cost of competition, structure of the market and industry practices. MEA Group does not believe Recommendation 4 – Contract periods, practices and variations to be clear and fair (Recommendation 4) will improve any of the three key factors but conversely, only provide additional costs and regulatory burden to the market with little benefit for customers.

Almost three years have passed since those recommendations were made and both industry and government have committed to a number of improvements to market practices. This includes from 1 July 2019 the following regulations will be in force: Best Offer information for consumers, Clear Advice Entitlement, Bill (price and benefit) Notice requirements, updates to the mandatory content of Victorian Energy Fact Sheets, Victorian Default Offer (VDO), and VDO Consequential Amendments to the Energy Retail Code (ERC). It is important for the market to be allowed to absorb this unprecedented number of regulatory requirements and for the ESC to assess the impacts of these changes on consumers and the industry.

The MEA Group encourages the ESC to ensure it has enough time and data to appropriately assess if the new regulatory requirements noted above address the shortcomings identified in the Review sufficiently and provide the outcomes the Review was seeking. Following the 12 month anniversary of the regulatory reform, MEA Group believes that it is essential that the ESC consults with its stakeholders (particularly on any unintended consequences) on the impact of the reform measures and it should then provide the Victorian Government its advice in relation to Recommendation 4.

Notwithstanding the above, the MEA Group believes that Recommendation 4 is no longer required due to the introduction of these mandatory requirements. Specifically, this recommendation will overlap with what will be in force under Recommendation 1 – Basic Service Offer (implemented as the VDO) and Recommendation 3 – Marketing information on prices to be easily comparable.

The ESC should remain cognisant of ensuring any measures they wish to implement are completed in line with the ‘efficient retailer’ requirements required under the VDO. Any new regulatory requirements that duplicate or overlap with existing mandatory obligations would contradict the VDO and place unnecessary costs on consumers.

The Review criticised the structure of the retail market in Victoria, “*Tier 1 retailers are charging customers towards the top of the price range. The Tier 1 retailers do not appear to have been put under competitive pressure by the smaller retailers to lower their prices. If the competitive market was working we would not expect to see the low-cost supplier at the top of the price range and the high-cost supplier at the lower cap*”.¹

Despite this criticism, Recommendation 4 will not address the Review’s concerns on the market structure and therefore should not be a priority recommendation. Despite acknowledgment from the Review that there were discrepancies in the cost base between tier 1 and tier 2 retailers, that discrepancy was ignored in the final VDO, undermining the Review’s own findings. Moving forward, the MEA Group would prefer to see recommendations that remove the barriers for tier 2 and new entrant retailers to compete in Victoria and help further reduce the cost burdens on its customers.

MEA Group would prefer the ESCV to advise the Victorian Government of changes that would improve the market structure and provide strong opportunities for tier 2 retailers to compete and innovate, not implement additional regulatory burdens that only serve to increase the costs on consumers. The ESC should revisit the Terms of Reference and ensure that it balances the benefits and costs of each recommendation.

Due to the rushed implementation of the 1 July 2019 regulatory reforms, industry has not seen the associated costs or benefits and their impact. This may take up to 12 months. The ESC is also using the Review to undertake a review of the Energy Retail Code by December 2019 (Recommendation 9). The ESC must also review and implement new VDO rates for 1 January 2020 (non-flat rate tariffs, Embedded Networks, Retailer Reliability Obligation, Frequency Control Ancillary Services and new costs incurred since 1 July). Finally under Recommendation 8 of the Review the ESC must monitor and report on the effectiveness of the competitiveness and efficiency of the Victorian energy retail market by 3 December 2019.

Notwithstanding the resource strain on retailers to deliver on these large regulatory reforms the ESC must also engage retailers and industry in order to gather the information they require to set more realistic timeframes for the delivery on the above items before considering implementation.

Releasing the final VDO rates which included a basic error on the controlled load calculations, and the final Order in Council (OIC) on 30 May 2019 has led to unacceptable levels of personal stress amongst both head office and call centre staff across the industry. The final OIC was not clear on numerous aspects leading to the need to clarify implementation aspects right through to a week prior to launch.

Whilst it is not the concern of the ESC, the ESC must recognise that a similar process was running concurrently with the Australian Competition and Consumer Commission and the Australian Energy Regulator regarding the DMO. Ambiguity in that process again has led to unacceptable levels of stress amongst head office and call centre staff across the industry. From a consumer point of view, the rushed nature of the implementation of both the VDO and the DMO is going to inevitably lead to implementation errors and consumer confusion across the NEM. This cannot be allowed to happen again.

Our responses to the Paper’s questions are set out below.

¹ Independent Review into the Electricity and Gas Retail Markets in Victoria, August, 2017, Page ix.

1. Do you agree with how we have expressed the customer outcome [at the start of section 2.1] that recommendations 4A and 4B are intended to achieve?

MEA Group believes the customer outcomes described within the Paper are broadly aligned with the intention of providing customers certainty that their prices will not change soon after signing their contract, albeit with the potential that the fixed contract may not be the best offer for that customer. MEA Group believes locking in a price for a customer over 12 months may mean they miss the potential benefits of lower prices and discounts enjoyed by other customers. Recommendation 4B does not represent a customer outcome as it is an outcome of Recommendation 4A.

2. Please provide your views on the options outlined in table 2.1. Are there any benefits or risks we have not identified, or any operational challenges or opportunities we should be aware of for any of these options?

MEA Group advises that fixing the tariffs for 12 months under option 1 is contradictory to and ignores the information a customer receives through the Best Offer and Clear Advice entitlements. By enforcing a minimum 12 month fixed price when a customer signs a contract, any best offer advice that they receive from their retailer in future cannot be actioned without breaking the 12 month fixed contract. The implementation of option 1 must include the customer locking in to that retailer to enable the retailer to hedge appropriately. If the 12 month obligation is not reciprocal, the offer will need to allow for the risk that in a downward market the customer will switch to cheaper 12 month tariffs. Customers from 1 July will also benefit from the new bill and price change notification requirements.

These mandatory requirements make Option 1 redundant. The Paper most importantly also outlines the risks for a customer under this option and it is those risks that ultimately should take this option out of consideration. Retailers would also have more significant hedging risks which would have to be factored into their pricing, thus creating premiums which customers would need to bear.

Despite this, if the ESC pursues implementation of Recommendation 4A, Option 2a could be more succinct and less confusing for a customer. If a customer wishes to access a 12 month fixed price offer with appropriate exit costs, retailers could offer this in isolation while still offering more innovative and price favourable market offers. Option 2b is irrelevant due to the regulatory obligations taking affect from 1 July 2019.

3. Are there any other options for implementing recommendation 4A that we should consider?

There are options that are now available. The introduction of Best Offer, Clear Advice and the VDO will ensure a customer is made aware of the choices they have to ensure that they can choose the best offer suitable to them, including any fixed term contracts. No other options should be contemplated until an informed assessment can be undertaken by both industry and the ESC of the impact of the regulatory reforms.

4. How should an exemption process work? Are there any circumstances other than unforeseen changes in network costs that should be covered? Are there processes in other jurisdictions that work well or do not work well that we could learn from?

Any exemption process must capture all charges that are not under the control of the retailer (beyond the network costs highlighted in the question). The ESC should consult retailers and other market participants in order to gain a thorough understanding of these costs and utilise work completed for the VDO. MEA Group believes rather than requiring an exemption framework (again, confusing customers and industry), a clear disclosure obligation could be used.

5. What are the operational challenges and opportunities of retailers being required to disclose the length of time the offered price will be available once a customer signs up to a plan?

Most retailers should be able to offer fixed term contracts within their systems. However, since the recommendations were made in 2016 the new price notification obligations started 1 July 2019. This requirement negates the need for any duplication of disclosing a price change to a customer, but adds complexity to retailer systems dealing with multiple length contracts in the market. The methods of being notified of a price change are also confirmed in the relevant terms and conditions of the market contract.

6. Are there any other considerations we should take into account in implementing recommendations 4A and 4B?

To support the obligations coming into effect from 1 July 2019, the relevant terms and conditions for all market offer contracts typically advise customers of when their prices may change.

Recommendation 4 did not contemplate the VDO. The VDO was designed by the ESC to assist customers that do not necessarily wish to engage in the market to seek a fair priced offer. The VDO price can currently only change once every 6 months on 1 January and 1 July. If Recommendation 4 is implemented, the VDO price will need to be updated daily (or at the very minimum every month) to align with potential 12 month market offers.

7. Do you agree with how we have expressed the customer outcome [at the start of section 2.2] that recommendation 4C is intended to achieve?

The intended outcome for a customer as described under this section is clear. However the VDO and Best Offer obligations already addresses the fact that following the expiry of a customer's contract or benefit period the retailer would either move that customer onto the VDO or offer them a more competitive market offer. The VDO serves as a minimum assurance that a customer will not be on "a significantly more expensive plan".² The Paper also advises that there is a shared intention between 4C and our obligations under the VDO negating the need for Recommendation 4C.

8. Do you share our understanding of current retailer practices at the end of a contract period and end of a benefit period?

MEA Group believes the ESC's interpretation of retailer practices at the end of a contract period and end of a benefit period as noted in the Paper is broadly correct.

9. Please provide your views on the options outlined in table 2.2. Are there any benefits or risks we have not identified, or any operational challenges or opportunities we should be aware of for any of these options?

MEA Group agrees with the ESC that the VDO is the default option as this was the intention of the proposed reform. This would apply when a customer chooses not to enter into a new market offer after the expiry of their current contract. The current process with customers rolling over to a retailer's standing offer has been a long established process under the Code, followed by both retailers and customers and was clearly advised in market offer terms and conditions.

The Review advised that customers were placed onto inflated standing offer contracts or were allowed to continue on a market offer after their benefits expired, paying an increased amount compared to their initial market offer contract. This view confirms that the transfer process under the Code was not defective. The VDO now removes the key issue of inflated standing offer amounts a customer would be transferred to.

Further assistance is provided to customers through the Best Offer bill notice. When a benefit period ceases but a customer remains on the original market offer contract, any amount they pay that increases above the VDO would subsequently be advised to the customer on their next bill post the benefit expiry date and they would be notified if there is a better offer available to them.

This action incentivises a retailer to provide the customer clear advice about a potential new market offer contract that may be cheaper than the VDO. This could include renewing the benefit that expired to ensure the customer receives the best offer from that retailer.

10. Are there any other options for implementing recommendation 4C that we should consider?

MEA Group does not believe there are further options required to implement Recommendation 4C as the VDO, Best Offer and Clear Advice obligations will already provide the customer with the required protections for both contract and benefit end period notifications.

² Ensuring energy contracts are clear and fair, Essential Services Commission, June 2019, page 15.

11. Are there any other considerations we should take into account in implementing recommendation 4C?

MEA Group supports the submission from the AEC noting the unintended consequences of deterring retailers from offering benefit period incentives, significantly trending prices towards the VDO and very few low priced offers. The ESC needs to ensure as per our previous submission in relation to the VDO that competition is retained as part of their obligations under the ESC Act. This recommendation would not achieve such an outcome.

12. Do you agree with how we have expressed the customer outcome [at the start of section 3.1] that recommendation 3A is intended to achieve?

MEA Group supports a decision of either dollar or percentage terms however if a decision is made to use dollar terms we request that the ESC will look to seek consistency with the Default Market Offer (DMO) for easier administration purposes and clarity for customers and industry stakeholders.

13. What options could we consider to implement recommendation 3A for discounts on gas tariffs? What are the benefits and risks of these options?

If it is deemed after consultation with industry that standing offer gas prices require a form of regulation, MEA Group would like to discuss with the ESC the option of utilising a DMO type reference price because this would allow for a consistent approach between both fuels.

14. How should reference prices be calculated and displayed for dual fuel tariffs?

MEA Group does not believe this can be answered at this early stage of the process. Before we can consider dual fuel tariff reference prices the ESC should look to investigate gas reference pricing separately with industry first. Our VDO submission advised that an in depth review of those prices should have occurred, to ensure that the issues we highlighted are not repeated for gas or dual fuel tariffs.

15. Are there any operational challenges or opportunities we should be aware of relating to implementing a reference price (for electricity, gas and/or dual fuel tariffs)?

MEA Group believes the ESC should initiate an investigation with industry first so that these challenges and opportunities can be discovered, researched and addressed to ensure any reference applied is based on sound, robust data and industry information.

16. Are there any other considerations we should take into account in implementing recommendation 3A?

Not at this stage of the process.

17. Do you agree with how we have expressed the customer outcome [at the start of section 3.2] that recommendation 4D is intended to achieve?

The intended outcome is clear that the customer would still retain the opportunity to receive a discount despite a contract ceasing.

18. What are your views of the opportunities and challenges of implementing recommendation 4D? Are there any operational challenges we should be aware of?

This recommendation is not required. MEA Group reiterates that the combination of the VDO and the other new regulatory reforms ensure a customer would receive a minimal safety net in the event they no longer receive a discount.

19. Are there any other considerations we should take into account in implementing recommendation 4D?

Not at this stage of the process.

20. Do you agree with how we have expressed the customer outcome [at the start of section 3.3] that recommendation 4E is intended to achieve?

MEA Group believes the intended outcome for a customer is clear that the customer would only be charged on a cost reflective basis for failing to achieve a conditional discount.

21. Please provide your views on the options outlined in table 3.2. Are there any benefits or risks we have not identified, or any operational challenges or benefits we should be aware of for any of these options?

If the industry needs to adopt an approach for this recommendation, MEA Group believes that Option 2 is the only fair, viable option noting significant differences in retailer structure and cost bases. Option 2 represents what is already in place under the Australian Government's 2019 rule change request into regulating conditional discounting. This would provide consistency for retailers. MEA Group would also suggest that retailers be required to provide justification of meeting their requirements upon request rather than making justification another compliance requirement.

22. What costs should be considered in any assessment of 'reasonable costs' to a retailer of a customer failing to meet offer conditions?

MEA Group would encourage the ESC to revisit the multiple submissions that were made in relation to the VDO in April 2019 that outlined the true costs that contributed to 'reasonable costs'. The ESC can also discuss and research what the 'reasonable costs' are to each individual retailer.

25. Are there any other considerations we should take into account in implementing recommendation 4E?

Not at this stage of the process.

MEA Group would like to work with the ESC, including utilising independent advice, to determine what customer protections we are trying to seek under Recommendation 4. We are yet to discover the impacts that the VDO and other 1 July 2019 regulatory reforms will have on the industry and most importantly on the customer.

If you have any queries or would like to discuss any aspect of this submission please do not hesitate to contact me.

Yours sincerely,



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