

Attachment 1 – Guideline 1 (2023): Form and content of deemed best offer messages

23 November 2023

Energy retailers are required to provide customers information telling them whether or not they are receiving their deemed best offer at least once every three months for electricity and at least once every four months for gas. The commission provides the following guidance on the requirements of energy retailers to provide deemed best offer messages to customers under the Energy Retail Code of Practice (**the code of practice**).

Purpose and application

This guideline sets out the commission’s expectations for what best offer messages must say and how they should appear on bills, bill summaries and bill change alerts.

Many of the terms in this guideline are defined in the code of practice. **Case studies** demonstrating different scenarios where retailers are required to provide customers with best offer messages are set out in blue boxes.

Examples of better practice that retailers should consider implementing are set out in orange boxes.

The relevant requirements, set out in Part 5, Division 5 of the code of practice (clauses 105, 106 and 108–112), relate to retailers’ obligations for customers on market retail contracts and standard retail contracts.

Guideline format

This guideline has three parts:

- Part A – Objective.
- Part B – Content requirements of deemed best offer messages.
- Part C – Form requirements of deemed best offer messages.

Note:

- SRC: Standard retail contract.
- MRC: Market retail contract.

Part A: Objective

The obligations to provide deemed best offer messages on bills, bill summaries and bill change alerts are in Part 5, Division 5 of the code of practice.¹ The objective of the Division is stated in clause 105:

105 Objective

- (1) The objective of this Division is to give *small customers* assistance to engage confidently with the *energy* market by:
 - (a) giving *small customers* an entitlement to clear, timely, easily understood information to allow them to evaluate the ongoing suitability of their *customer retail contract*, before any changes that will affect their bill occur, and the steps the *small customer* can take to find an alternative *customer retail contract*;
 - (b) giving *small customers* an entitlement to prominently displayed, helpful information that enables them to easily:
 - (i) identify whether they are on their *retailer's deemed best offer*;
 - (ii) understand how to access their *retailer's deemed best offer*, if they are not already on the *retailer's deemed best offer*; and
 - (iii) understand how to access offers from other *retailers* via the *price comparator*; and
 - (c) providing *small customers* with a mechanism to consider and compare the features and prices of different *energy* plans so as to assist the *small customer* to assess the suitability of, and select, a plan.

The objective of the best offer requirements is for small customers to be well informed to:

- allow them to evaluate the ongoing suitability of their plan, and
- understand how to access the deemed best offer or offers from other retailers.

Retailers must consider and give effect to the objectives of the Division when applying the more specific requirements of the Division. Those specific requirements link back to the overarching objective of the Division.

¹ The requirements for best offer messages on bills, bill summaries and bill change alerts differ. Refer to the code of practice regarding these specific requirements.

Application of the objective: bills and bill summaries

The obligation to give deemed best offer messages on bills and bill summaries in clauses 111(5) and (6) of the code of practice require retailers to have regard to the objectives of the decision. These clauses relevantly state:

111 Form and content requirements of deemed best offer message (SRC and MRC)

- (5) A deemed best offer message is not required to use the words “best offer”, but must be written in a way which clearly and simply conveys the meaning of *deemed best offer*, having regard to the objective of this Division.
- (6) Nothing in subclauses (3) and (4) [see [positive deemed best offer messages](#) and [negative deemed best offer messages](#) below] otherwise limits a *retailer* in providing other information to *small customers* in connection with a *best offer message* in a manner and form that promotes the objective of this Division.

Clause 111(6) of the code of practice permits retailers to give other information relevant to a best offer message, in addition to the required minimum content, as long as it is given in a manner and form that **promotes** the objective of the Division. This means that the additional text must advance the objective in clause 105 of the code of practice and cannot detract from it, nor can it be neutral.

Application of the objective: bill change alerts

Retailers must also have regard to the objective of the Division when preparing bill change alerts (including but not limited to deemed best offer messages).

Clause 106(1) of the code of practice relevantly provides:

106 Minimum standards – Notice of price or benefit change to be given (SRC and MRC)

- (1) If a *benefit change* or a *price change* is to take effect, the *retailer* must provide the *small customer* who is party to the relevant *customer retail contract* with a *bill change alert* in accordance with this Division.

As bill change alerts must be given in ‘in accordance with this Division’, retailers need to ensure that the contents of bill change alerts comply with all relevant aspects of the objective outlined in clause 105 of the code of practice.

Part B: Content requirements of deemed best offer messages

This part of the guideline sets out our expectations of the wording of positive and negative deemed best offer messages to promote compliance with the code of practice.

Positive deemed best offer messages

Clause 111(3) of the code of practice specifies minimum requirements that apply to positive deemed best offer messages provided on bills, bill summaries and bill change alerts.

111 Form and content requirements of deemed best offer messages (SRC and MRC)

- (3) *A retailer has discretion over what to include in a positive deemed best offer message, provided that the retailer:*
- (a) *ensures that it is clear to the small customer that they are on one of the retailer's lowest cost customer retail contracts available to the small customer having regard to the customer's annual usage history;*
 - (b) *includes the name and web address of the price comparator and how to access it, including a hyperlink on electronic bills.*

Guidance

Case study 1: A retailer's positive deemed best offer message states 'You're on our best rates! You can compare offers from other retailers by visiting Victorian Energy Compare at compare.energy.vic.gov.au'.

This deemed best offer message makes it clear that the customer is on one of the retailer's lowest cost contracts available to the customer from their retailer. However, it is not clear that the retailer had regard to the customer's annual usage history, which is contrary to the requirements of clause 111(3)(a) of the code of practice.

See **Better practice example 1** for an example of a positive deemed best offer message.

Having regard to a customer's annual usage in best offer messages

The method of calculation requirements mean that the positive deemed best offer message must not only clearly convey that the customer is on the lowest cost available contract available to the customer, but also that they are on lowest cost available contract **having regard to their usage**.

While there is no requirement that a retailer use the exact words 'based on your past usage' (unlike in negative deemed best offer messages), we expect retailers to advise customers how the deemed best offer check result was obtained (that is, using the customer's annual usage history).

Price comparator reference

To comply with clause 111(3)(b) of the code of practice, retailers are required to include both the name and web address of the price comparator as well as a hyperlink on electronic bills (including .pdf documents).² It is not sufficient to include a web address on its own without the name of the price comparator (or vice versa).

Further, when giving information about the price comparator, we expect retailers to have regard to the objective of the Division, as outlined in Part A of the guideline.

Better practice

Better practice example 1: Positive deemed best offer message

A retailer's positive deemed best offer message on an electronic bill includes:

- reference to the customer's annual usage history
- information that helps a customer understand how to access offers from other retailers, consistent with the objective of the Division
- the name and web address of the price comparator (and a hyperlink as the bill is given electronically).

'You're on our best offer! Based on your annual usage, you are already on one of our lowest cost offers. To view offers from other retailers available in your area, visit Victorian Energy Compare at compare.energy.vic.gov.au'.

Negative deemed best offer messages

Clause 111(4) of the code of practice provides what information must be included in a negative deemed best offer message.

111 Form and content requirements of deemed best offer message (SRC and MRC)

- (4) A negative deemed best offer message:
- (a) must contain a title using the exact words "Could you save money on another plan";
 - (b) must contain the exact words "Based on your past usage, our" followed by the name of the deemed best offer plan, followed by the exact words "may cost you up to", followed by the dollar amount of the deemed best offer

² The 'price comparator' is Victorian Energy Compare (web address: compare.energy.vic.gov.au).

check result, followed by the exact words “less per year than your current plan”;

- (c) where the deemed best offer is subject to conditions, may provide that conditions apply and the nature of those conditions; and
- (d) must contain clear and simple instructions on how to switch to the deemed best offer.

The mandatory requirements in this clause apply to negative deemed best offer messages provided on bills, bill summaries and bill change alerts.

Guidance

Prescribed wording

When providing negative deemed best offer messages on bills, bill summaries or bill change alerts, retailers must ensure that they comply with the prescribed wording requirements set out in clauses 111(4)(a) and (b) of the code of practice.

Conditions

Clause 111(4)(c) of the code of practice permits retailers to include information about conditions associated with their offers within a negative deemed best offer message. However, the commission expects that retailers do not include too many conditions and disclaimers as this may affect the prominence of a deemed best offer message. This is explored further in [Part C of this guideline](#).

Retailers should also consider whether the additional information (that is, information not specified in clause 111(4) of the code of practice) is given ‘in a manner and form that promotes the objective of the Division’, as required by clause 111(6) of the code of practice. This requirement means that any additional information should not distract from the retailer’s deemed best offer message. It must also promote the objective of the Division by giving small customers prominently displayed, helpful information regarding the best offer that assists them ‘to engage confidently with the energy market’ (as per clause 105(1) of the code of practice).

Instructions

Clause 111(4)(d) of the code of practice specifies that a negative deemed best offer message ‘must contain clear and simple instructions on how to switch to the deemed best offer’. This means it should be clear to a customer what immediate steps they can take to change to the better offer. It is insufficient for a retailer to tell a customer to simply contact the retailer or to provide contact details without specifying that the contact details are relevant to accessing the deemed best offer.

Case study 2: A retailer provides a negative deemed best offer message stating, 'To find out more, call 1800 000 000'. The customer may not be aware that they need to call the phone number provided to accept the deemed best offer as they have been given instructions simply stating, 'To find out more'.

In this case, the retailer has failed to give instructions to the customer about how to access the deemed best offer and therefore does not comply with clause 111(4)(d) of the code of practice.

Retailers should also make the information provided to a customer clear about how the customer can access the deemed best offer. In order for the instructions to be 'clear and simple' in accordance with clause 111(4)(d) of the code of practice, the customer should not have to guess or deduce how to accept or enquire about the deemed best offer.

Case study 3: A retailer provides a negative deemed best offer message stating, 'To switch to this offer go to www.retailerwebsite.com.au', where the hyperlink leads to the retailer's website home page.

The home page contains a lot of information, but it is not immediately clear where an existing customer can switch plans. The customer may be confused about how to access the deemed best offer.

In this case, the retailer has failed to give clear and simple instructions on how to access the deemed best offer and has therefore not complied with clause 111(4)(d) of the code of practice.

Better practice

It is better practice that retailers are specific about how a customer can accept the deemed best offer. This ensures that there are no unintentional barriers to a customer accessing the deemed best offer.

It is better practice to inform customers of the multiple methods by which they may switch to the best offer, where applicable. We consider this will help a broader range of customers who might have differing abilities to access their retailer's deemed best offer.

Better practice example 2: Negative deemed best offer message

A retailer provides their customer with the following deemed best offer message:

'Could you save money on another plan?

Based on your past usage, our Saver Plan may cost you up to \$326 less per year than your current plan. To switch to this plan, call us on 1800 000 000 or visit retailer.com.au/plan-switch.'

This deemed best offer message contains the prescribed wording and gives clear instructions on how to access the retailer's deemed best offer by multiple methods, including a specific page on its website where a customer can switch plans.

Part C: Form requirements of deemed best offer messages

This part of the guideline outlines the minimum standards for the appearance and location of deemed best offer messages in bills, bill summaries and bill change alerts.

Bills and bill summaries (clause 111)

Clause 111(2) of the code of practice specifies the form that deemed best offer messages must take when being provided on a bill or bill summary.

111 Form and content requirements of deemed best offer message (SRC and MRC)

- (2) A deemed best offer message must:
- (a) if included on a bill, be on the front page of the bill;
 - (b) be contained in a border; and
 - (c) be located adjacent to and no less prominently than the amount due.

Retailers should consider the use of borders, location, colour, scale and other content when providing a deemed best offer message and in the context of the objective of the Division (clause 105).

Guidance

Borders

Retailers must ensure a deemed best offer message is 'contained in a border' as specified by clause 111(2)(b) of the code of practice. This means that a border, which relates specifically to the deemed best offer message, must capture all sides of the deemed best offer message. Refer Figure 1 on page 13 of this guideline for an example.

Location

Retailers must also ensure that a deemed best offer message is located adjacent to the amount due in accordance with clause 111(2)(c) of the code of practice. Where a bill or bill summary states the amount due in multiple locations, we expect the deemed best offer message to be located adjacent to the most prominently displayed amount due.

Retailers should place best offer messages sufficiently adjacent to the amount due to satisfy this obligation. This means that if a box containing a deemed best offer message contains other

information and that information is located in between the best offer message and the amount due, the best offer message itself may not be sufficiently adjacent. Refer Figure 1 on page 13 of this guideline for an example.

Prominence

Retailers should ensure that the deemed best offer message is given sufficient prominence. The objective of the Division outlines that customers are entitled to 'prominently displayed, helpful information that enables them to easily identify whether they are on their retailer's deemed best offer' (clause 105(1)(b)(i) of the code of practice).

For best offer messages on bills and bill summaries, clause 111(2)(c) of the code of practice provides that a deemed best offer message must be 'located adjacent to and **no less prominently than the amount due**' [emphasis added].

The amount due is often one of the most prominent items on a customer's bill as it is an essential piece of information and customers are accustomed to finding it easily.³ The commission expects the deemed best offer message to be given the same level of prominence as the amount due so that it is easily noticeable by customers.

Where the 'amount due' appears in multiple locations, we expect that the deemed best offer message to be located adjacent to the most prominently displayed amount due **and to be no less prominent**.

Some factors that may affect prominence, include:

- **Colour** – Retailers should consider the use of colour to ensure that the deemed best offer message is given the same prominence as the amount due. An example of this is provided in Figure 1, where the deemed best offer message stands out sufficiently in part due to it being a distinct bright colour that is different from the rest of the bill.⁴
- **Font size** – The font of the title of the deemed best offer message (at a minimum) should be the same size font as the amount due to ensure that the deemed best offer message is as prominent as the amount due. In line with the example in Figure 1, the font size of the deemed best offer message heading is the same size as the heading for the amount due.
- **Crowding** – Where a deemed best offer message is surrounded by information, it can appear crowded. This can make the deemed best offer message become lost among other content and

³ Research performed for the AER Better bills guideline identified that consumers 'consistently stated that the payment amount and the due date were the most important pieces of information they would look for when reading a bill'. AER Better Bills research – Final report from the Behavioral Insights Team – page 19.

⁴ The AER's research identified that 'consumers consistently pointed to the colour of each information box as an important element in grabbing their attention' – AER Better Bills research – Final report from the Behavioral Insights Team – page 19.

it may not meet the requirement to be as prominent as the amount due. Retailers should consider the use of white space around deemed best offer messages to ensure they are easy to locate and read.⁵ As shown in the example in Figure 1, there is clear distinction between the deemed best offer message and the other adjacent content and sufficient white space to ensure the bill remains readable.

- **Disclaimers** – While retailers may include disclaimers that assist with their compliance with Australian Consumer Law or conditions associated with the deemed best offer (as allowed by clause 111(4)(c) of the code of practice), it is important that retailers consider the effect of providing too much text along with the deemed best offer message. Large quantities of text can lead to reduced comprehension of energy bills and therefore can dilute the intended effect of the deemed best offer message.⁶
- **Other content** – If a deemed best offer message is contained within a border with other information, the additional information must not detract from the objective of the Division (given clause 105 of the code of practice). As shown in the example in Figure 1, the deemed best offer message does not contain any other content in the same box which ensures that deemed best offer message is sufficiently prominent in accordance with clause 111(2)(c) of the code of practice. Case study four explores this further.

Better practice

Borders

Retailers may include other information in connection with the deemed best offer message in a manner and form that promotes the objective of the Division (clause 111(6) of the code practice) within the same border. However, including too much additional information along with the deemed best offer message can affect its prominence and may risk non-compliance with clauses 111(2)(c) or 111(6) of the code of practice.

Case study 4: A retailer provides a negative deemed best offer message on an electricity bill along with information about the Victorian Default Offer (**VDO**) as required by clause 63(1)(bb) of the code of practice. Both are contained by a single border (that is, they are in the same box).

⁵ As identified in the BETA report 'Improving energy bills: final report' October 2021 page 25: '... utilising white space helps consumers better attend to and understand information presented'.

⁶ As outlined in the BETA report 'Energy bill contents and bill requirements: Literature review – October 2021': 'Cognitive overload and confusion when reading energy bills ... can also be caused by ... large amounts of information, and confusing layouts'.

‘Could you save money on another plan?’ Based on your annual usage, our Smart Saver Plan may cost you up to \$122 less per year than your current plan. To switch plans, call 123 123.

The Victorian Default Offer is a reasonably priced electricity offer set the Victoria’s independent regulator. Contact us on 123 123 to discuss the suitability of this plan for you’.

In this example, the customer is informed within the same box that they can access the deemed best offer from their retailer as well as the VDO, which may lead to confusion about the most suitable offer. Therefore, it does not clearly and simply convey the meaning of deemed best offer (clause 111(5) of the code of practice) and does not promote the objective of the Division (clause 111(6) of the code of practice).

Better practice would be to separate the best offer message and the information about the VDO into separate boxes.

Figure 1: An example of a compliant deemed best offer message on a bill

Location – The deemed best offer message is located adjacent to the amount due.*

Prominence – The deemed best offer message is as prominent as the amount due.* This is achieved by:

- ✓ highlighting the deemed best offer message with a different colour.
- ✓ having the font size and weight of the deemed best offer message’s heading the same font size and weight of the ‘amount due’ heading.
- ✓ highlighting key information using a bold font.
- ✓ ensuring that the best offer message box is not crowded with information.

Form – The deemed best offer message is contained on all sides by a clearly defined border.

Clear information – The customer is given clear instructions about how to access the deemed best offer by using the phrase ‘To switch plans’ followed by easily understood instructions.

Other information – The box containing the deemed best offer message does not contain any unrelated information or disclaimers. This ensures that the key message is clearly visible and is given sufficient prominence.

*The amount due appears in two places. Therefore, the deemed best offer message is located adjacent to, and is as prominent as, the most prominently displayed amount due.

Example Energy

0042
JANE CITIZEN
1 STATION ST, MELBOURNE VIC 3000

Your electricity bill 4 March 2023 – 4 April 2023

COULD YOU SAVE MONEY ON ANOTHER PLAN?	DUE DATE	YOUR ACCOUNT DETAILS
Based on your past usage, our Anytime Saver may cost you up to \$485 less per year than your current plan. To switch plans, call 13 XX XX, or go to exampleenergy.com.au/switch-plans	28 April 2023	Account number 300 033 XXX XXX Tax invoice 180 000 XXX XXX Issue date 6 April 2023 Total amount due See the Account Summary on pg. 2
VICTORIAN DEFAULT OFFER	AMOUNT DUE	YOUR USAGE SUMMARY
The Victorian Default Offer is a reasonably priced electricity offer set the Victoria's independent regulator. Contact us on 123 123 to discuss the suitability of this plan for you.	\$365.01	Average cost per day \$3.57 Average daily usage 9.06 kWh Same time last year 9.01 kWh
YOUR ENERGY PLAN	 COST PER DAY DAILY USAGE	
Easy Saver plan ending 24 October 2023 Your estimated bill over the next 12 months is \$1730.		

Need to get in touch

Enquiries & moving address: 13 XX XX
7 am – 9 pm local time Mon – Fri
9 am – 5 pm local time Sat

Faults & emergencies: 13 XX XX
Call Example Power 24 hrs

DIRECT DEBIT
Register online at exampleenergy.com.au/myaccount or call 13 XX XX to arrange automatic payment of future accounts*

MAIL
Send this slip with your cheque made payable to: Example Energy Holdings Limited, Private Bag XXXXX Melbourne Vic 3001

TELEPHONE & INTERNET BANKING – BPAY®
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card* or transaction account. More info: www.tppay.com.au

VISA OR MASTERCARD®*
Call 1300 XXX XXX or visit exampleenergy.com.au/paynow

IN PERSON+
Pay by cash, etpos or card* at any Post Office

Visa or MasterCard payments may incur a processing fee of 0.37% (incl GST) of the total payment amount. This will be shown on your next bill. Some exemptions and payment limits may apply. *Payment processing fee of \$2.00 (incl GST) may apply. Example Energy Ltd ABN 33 XXX XXX XXX



Bill change alerts (clause 106)

Clause 106(4)(e) of the code of practice specifies how a deemed best offer must appear when it is presented on bill change alerts.

106 Minimum standards – Notice of price or benefit change to be given (SRC and MRC)

- (4) For the purposes of subclause (3)(i):
 - (e) a deemed best offer message must:
 - (i) be on the front page of the bill change alert; and
 - (ii) be contained in a border

Guidance

When retailers provide deemed best offer messages on bill change alerts, they must meet the requirements regarding the content of deemed best offer messages given in clauses 111(3) and (4) of the code of practice (as applicable and as previously discussed in Part B of this guideline).

Form

Deemed best offer messages on bill change alerts must be contained by a visible border on all sides. It is not appropriate for a deemed best offer message on a bill change alert to have no border at all or a border on only one or two sides of the text.

Location

Clause 106(4)(e)(i) of the code of practice specifies that the deemed best offer message must be on the front page of the bill change alert. Where a bill change alert is unpaginated (for example, because it is an email), we expect retailers to ensure that the deemed best offer message is given due prominence so that the bill change alert complies with the objective of the Division (to give 'prominently displayed, helpful information' as per [section A of this guideline](#)). The commission's expectation is that all of the required information given in clause 106 of the code of practice is reasonably prominent. This means it is not sufficient if the deemed best offer message, or any of the other required content given in clause 106 of the code of practice, appears only at the end of a long unpaginated email or in a footnote.

UNOFFICIAL

This guideline has been approved for publication by the commission pursuant to section 13 of the Essential Services Commission Act 2001. This guideline is non-binding and does not provide or create legal obligations. Its purpose is to assist voluntary compliance by regulated entities. Where relevant, identified areas of better practice or case studies are detailed in breakout boxes.

This guideline does not constitute legal advice. Regulated entities should seek their own professional advice and it is their responsibility to determine compliance with their obligations in relevant codes of practice.