

# Maximum prices for embedded networks and other exempt sellers

Final Decision

22 July 2020

**An appropriate citation for this paper is:**

Essential Services Commission 2020, Maximum prices for embedded networks and other exempt sellers: Final Decision, 22 July

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# Summary

## **We have made a final decision on the maximum prices exempt sellers may charge customers in embedded electricity networks**

Exempt sellers supply electricity in an embedded network. Embedded networks may include caravan parks, retirement villages, shopping centres, apartment buildings, and rooming houses for example.

Currently, the maximum price exempt sellers can charge their customers is the local area retailer's standing offer prices in place on or immediately prior to 27 May 2019. This maximum price is significantly higher than the maximum price licensed sellers must comply with under the Victorian Default Offer.

We have determined that embedded network customers should have access to price protections that are as consistent as possible with those applying to customers able to access market offers.

Under our final decision, from 1 September 2020 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.<sup>1</sup> This covers most embedded network customers.

For a relatively small group of customers, including large businesses, we have not made a decision on prices. For these customers, the maximum prices remain at current levels as set out in the exemption order. The detail and reasons are set out in chapter 3.

## **Future prices for embedded networks will be linked to the Victorian Default Offer**

Maximum prices for exempt sellers will automatically update to align with pricing resets for the Victorian Default Offer. The current Victorian Default Offer expires at the end of 2020, with the commission recently commencing engagement on a new price that will apply from 1 January 2021. We consider this will give stakeholders certainty and be consistent with protections for on-market customers. The Victorian Default Offer is based on the costs of selling electricity and considers whether there has been changes to these costs. This ensures our decision continues to meet commercial market data requirements under the exemption order.

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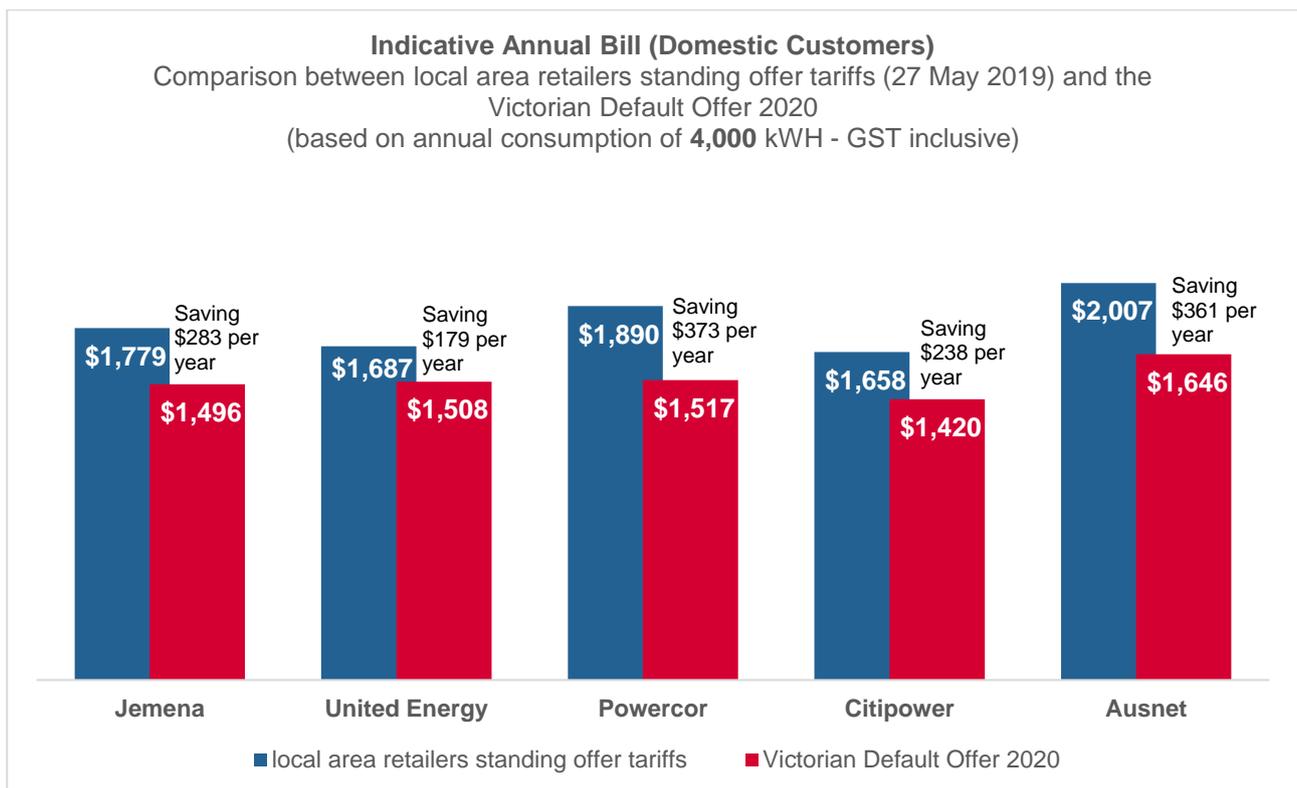
<sup>1</sup> That is, the Victorian Default Offer applying from 1 January 2020 to 31 December 2020.

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

Under our final decision many customers in embedded networks could save hundreds of dollars a year. Residential and small business customers would not pay more than the Victorian Default Offer price relevant to their distribution zone. Based on estimates of the impact of the current Victorian Default Offer 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 (outlined in the charts below). Any customer who is currently being charged above the Victorian Default Offer will benefit from a reduction in their bills. However, the exact impact will vary depending on the distribution zone and how much customers are currently being charged. We note that some exempt sellers already charge less than the Victorian Default Offer.

Exempt sellers do not have to charge the maximum amount. Nothing in this decision prevents a landlord or body corporate negotiating prices below this maximum for the embedded network customers they support.

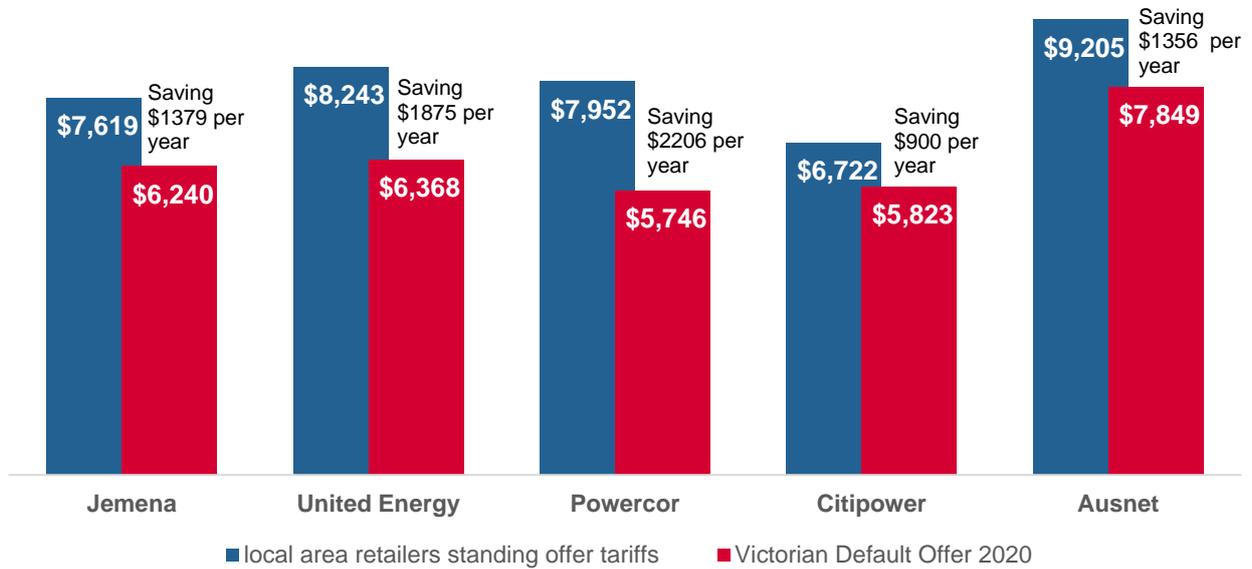
Appendix B and C list the final decision tariffs for residential and small business customers respectively.



## Summary

### Indicative Annual Bill (Small Business)

Comparison between local area retailers standing offer tariffs (27 May 2019) and the Victorian Default Offer 2020 (based on annual consumption of 20,000 kWh - GST inclusive)



#### Summary

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# 1. Introduction

This paper sets out our final 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 gives us power to set maximum prices for those holding exemptions.<sup>2</sup> For the purposes of our final decision we call any provider or person holding an exemption an ‘exempt seller’, noting there are several exemption categories in the exemption order.<sup>3</sup>

Our decision specifies at what level that maximum price should be set and to which categories of exemption having regard to the requirements under the exemption order and our statutory obligations. We do not have the power to review the enforcement and compliance framework as part of this decision. Where there are concerns regarding exempt seller complying with maximum prices customer can contact the Energy and Water Ombudsman Victoria. Under the current framework exempt sellers that charge above the maximum price may have their exemption revoked by the commission.

## What is a maximum price?

A maximum price sets a ‘limit’ or ‘cap’ on the price. This means exempt sellers can charge at or under the maximum price, but they cannot charge above this price. Maximum prices already apply to exempt sellers under the exemption order.<sup>4</sup> Our final decision sets new maximum prices for each of Victoria’s five electricity distribution zones (figure 1).

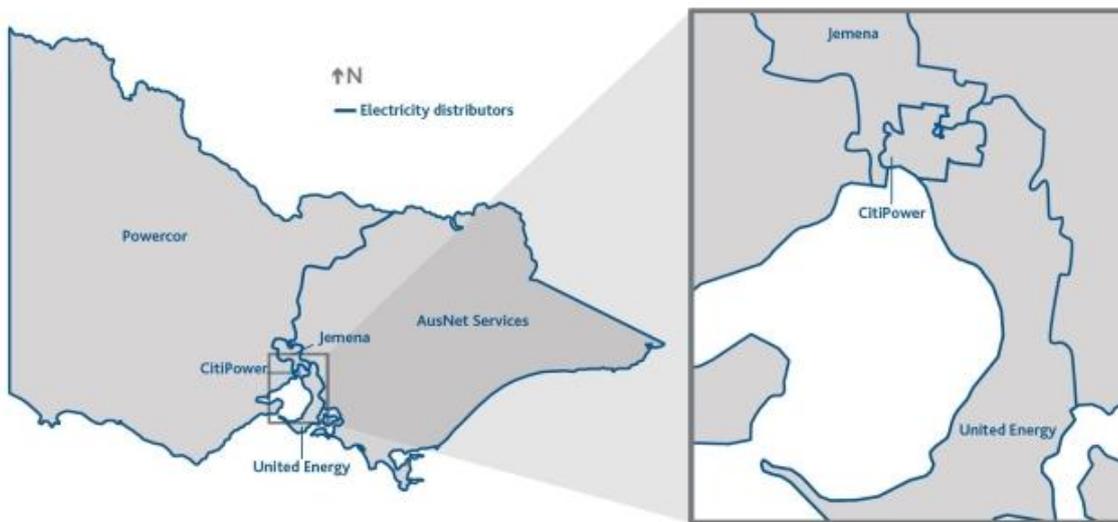
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<sup>2</sup> Order in Council made under section 17 of the Electricity Industry Act 2000 (EI Act), published in the Victorian Government Gazette No. S 390 on 15 November 2017, amended by subsequent orders dated 30 May 2019 and 9 July 2019.

<sup>3</sup> Exempt sellers include persons selling electricity under deemed and registerable exemptions and multiple activity exemptions. See appendix A for list of exemption categories.

<sup>4</sup> Information about how to find your local area retailer's standing offer and the maximum tariffs that can be charged in embedded networks is available on [our website](#).

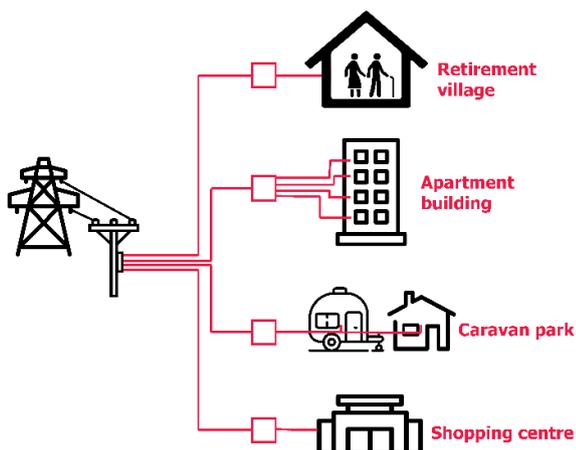
Figure 1 Map of Victorian electricity distribution zones



## 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 2).

Figure 2 Types of embedded networks



There are just over 1,100 exempt sellers that are registered with the commission in Victoria who sell electricity to:<sup>5</sup>

- 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.<sup>6</sup>

## **Policy and regulatory context**

Embedded network customers face barriers accessing retail market competition and protection.<sup>7</sup> 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.<sup>8</sup>

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 us formulating a maximum price for exempt sellers.<sup>9</sup> The intent of the policy is that customers of exempt sellers should be given comparable protection to customers of licensed retailers, having regard to the nature of the exempt selling activity.<sup>10</sup>

A condition of retail licence exemptions (clause 10 of the exemption order) is 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.<sup>11</sup> Similarly, clause 18 provides for a maximum price

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<sup>5</sup> Essential Services Commission, 'Embedded electricity network data and customer numbers', accessed 6 July 2020, <https://www.esc.vic.gov.au/electricity-and-gas/licences-and-exemptions/electricity-licensing-exemptions/embedded-electricity-network-data-and-customer-numbers>.

<sup>6</sup> The General Exemption Order defines two broad categories of exempt sellers, deemed and registrable.

<sup>7</sup> Department of Environment, Land, Water and Planning 2017, Review of the Victorian electricity licence exemption framework – Final position paper, p. 25.

<sup>8</sup> The Australian Energy Market Commission 2019, Final report: Updating the regulatory frameworks for embedded networks, 20 June, p. iv.

<sup>9</sup> Order in Council made under the Electricity Industry Act 2000, op. cit.

<sup>10</sup> Department of Environment, Land, Water and Planning, op. cit., p.11.

<sup>11</sup> Made in accordance with section 17(2)(j) of the Electricity Industry Act.

### 1. Introduction

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 could 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).

## **Our consultation**

We released a consultation paper in February to commence our formal consultation with stakeholders. We received 34 submissions, which informed the proposal set out in our draft decision.

### **Engage Victoria**

We released our draft decision in May. We asked stakeholders to engage with us and provide views on our draft decision via Engage Victoria (the Victorian Government's online consultation platform). Interested parties could post a question via the 'virtual public forum', with the project team responding publicly. Stakeholders also had the option to provide a general comment or make a formal submission on our draft decision. We have considered the views set out in submissions in developing our final decision.

### **Public forum**

On 28 May 2020 more than 50 stakeholders attended an online public forum, providing feedback on the draft decision.

The forum also provided the chance for us to answer stakeholder questions about the draft decision. Presentation slides and a recording of the forum are available on our website.

## **Overview of final decision**

From here, our final 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 and future direction.

### 1. Introduction

## 2. Addressing our statutory requirements

The General Exemption Order<sup>12</sup> (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.<sup>13</sup>

This power exists in the context of a scheme of regulation of exempt sellers set out by the exemption order.<sup>14</sup> 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.<sup>15</sup> 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 our 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.<sup>16</sup> The maximum price or prices 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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<sup>12</sup> Order in Council made under the Electricity Industry Act 2000, op. cit.

<sup>13</sup> 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.

<sup>14</sup> 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 final decision is concerned. The commission is also obliged to maintain the Register of Exempt Persons by the EI Act.

<sup>15</sup> Order in Council made under the Electricity Industry Act 2000, op. cit., clause 27.

<sup>16</sup> 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.

## 2. Addressing our statutory requirements

achieving this objective, we must have regard to specific matters to the extent that they are relevant to the particular decision being made.<sup>17</sup> 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.<sup>18</sup> 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 has determined that there is 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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<sup>17</sup> ESC Act 2001, s8A.

<sup>18</sup> AEMC, 'Updating the regulatory frameworks for embedded networks', accessed 17 April 2020, <https://www.aemc.gov.au/market-reviews-advice/updated-regulatory-frameworks-embedded-networks>.

## 2. Addressing our statutory requirements

## 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 draft decision

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

We noted that there were several categories where we did not consider the VDO to be an appropriate maximum price, for these categories of customers the current maximum price (that is the local area retailers' standing offer prices in place on or immediately prior to 27 May 2019) would continue to apply to:

- 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)<sup>19</sup>
- customers of exempt sellers who are supplied through an exempt multiple activity provider
- customers of exempt sellers with annual electricity consumption above 40 megawatt hours.

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

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<sup>19</sup> The exemption order sets out the categories of retail exemptions. Customers in embedded networks usually get their electricity from exempt sellers who are exempt from holding a retail licence under the Electricity Industry Act.

## Stakeholder feedback to our draft decision

Origin Energy agreed with the commission that the VDO is not an appropriate maximum price for some customer categories as identified by the commission and the local area retailers' standing offer prices should apply for these customers.<sup>20</sup>

WINconnect submitted the commission should exclude large customers from this price regulation and reiterate the requirements for network tariff shadow pricing as presented in the AER's network exemption guideline.<sup>21</sup> We note we have not applied new obligations on exempt sellers selling to large customers in this decision. The obligations under Australian Energy Regulator's network exemption guideline will continue to apply absent any change from government or a decision to the contrary.

### Multiple activity exemptions

We received a number of comments from stakeholders on the approach to multiple activity exemptions.<sup>22</sup> The exemption order allows us to formulate a maximum price that sellers with multiple activity exemptions may charge for electricity. Our draft decision did not propose to set a new price 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.

Consumer Action Law Centre (CALC) submitted multiple activity exemption should also be subject to the VDO price caps as a safeguard.<sup>23</sup> This submission was also supported by Housing for the Aged Action Group.<sup>24</sup> CALC noted its support for the uptake of renewable energy through such arrangements but considers a household can be left at risk of paying unfair prices. In support of its submission CALC outlines situations including:<sup>25</sup>

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<sup>20</sup> Origin 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>21</sup> WINconnect 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>22</sup> 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

<sup>23</sup> Consumer Action Law Centre 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 4.

<sup>24</sup> Housing for the Aged Action Group 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>25</sup> Consumer Action Law Centre 2020, op. cit., p. 4.

### 3. Application to categories of exempt sellers

- When different people move into a dwelling already being supplied essential energy services through a multiple activity exemption then there is potentially no choice or competition in relation to the arrangement. The arrangement could lock in unfair pricing for many years.
- Where a supplier of solar power purchase agreements or community energy project fails and households are left at greater risk of higher costs and unfair outcomes.

We note CALC concerns relate to potential unfair contract provisions. Some customers within embedded network arrangements also submitted on issues of customer choice in relation to contractual arrangements and solar agreements.<sup>26</sup>

The commission notes the concerns raised by stakeholders which propose further customer protections specific to exempt sellers and customers of exempt sellers are required in this area. However, we are not convinced the maximum price is the appropriate intervention to address those concerns.<sup>27</sup> Our observation is that there are issues around disclosure and information provision to customers. These are covered by other law, and would not be resolved by changes to the maximum price.<sup>28</sup> While we consider the maximum price is not the appropriate intervention for these issues, we will work with stakeholders to further understand those concerns, the role of the commission in this area and whether there needs to be changes to the framework to further support this role.

CALC's submission also noted scenarios could arise where households do desire to pay above the VDO in order to pursue benefits like greater environmental outcomes rather than lower energy costs. In such scenarios CALC considered a VDO equivalent cap could still protect other households with essential energy supply through multiple exemption arrangements while enabling a proper exemption from the VDO cap on application (rather than registering activity) with the commission.<sup>29</sup>

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<sup>26</sup> Anonymous 2 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>27</sup> These protections were also discussed in CALC's 'Sunnyside up' report which considered the protections available to customers in solar power purchase agreements and suggested a number of improvements to customer protections that could be made – we note these suggested improvements did not include capping prices. See: Consumer Action Law Centre 2019, Sunny side up: Strengthening the consumer protection regime for solar panels in Victoria, April. Available online at <https://consumeraction.org.au/20190404-sunny-side-up-report/>

<sup>28</sup> The main regulation to protect consumers of solar purchases are: the Competition and Consumer Act 2010 (Cth) (CCA) and the Australian Consumer Law (ACL); The Australian Securities and Investments Commission Act 2001 (Cth); The National Consumer Credit Protection Act 2009 (Cth) (NCCPA); and the National Credit Code (NCC). Other regulation includes Contract law, voluntary warranties and Corporations Law; and voluntary self-regulation through The Clean Energy Council (CEC), the Smart Energy Council (SEC) and their Codes of Conduct.

<sup>29</sup> Consumer Action Law Centre 2020, op. cit., p. 5.

### 3. Application to categories of exempt sellers

We are not convinced the benefits of an exemption process would outweigh the regulatory costs of such an intervention, particularly given the issues raised relate primarily to disclosure obligations. As discussed in our draft decision 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.<sup>30</sup> These customers engaging with exempt multiple activity providers are likely to be seeking to satisfy bespoke preferences for electricity.<sup>31</sup> As a condition of their exemption these customers should have access to supply from a retailer (to meet needs when electricity generation is not enough) and therefore should also be able to access the VDO.

Further, multiple activity exemptions are many and varied, so for us to set one price is unlikely to be appropriate for all arrangements. To set a range of maximums would require definition of different types of services in this exemption category, which is outside the scope of our review.

## **Our final decision**

Our final decision applies 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 small number of exemption categories, where we do not believe the VDO is the appropriate maximum price. Appendix A provides detail on our final decision and how it impacts the price protection framework applying to different categories of exemption in the exemption order.

In formulating our final 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.<sup>32</sup> This is consistent with the coverage of the Energy Retail Code<sup>33</sup> 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

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<sup>30</sup> 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.

<sup>31</sup> For example, they may consider factors other than cost, such as a desire to source local renewable generation.

<sup>32</sup> Small customers are defined in this document, as residential and small commercial customers consuming up to 40 megawatt hours of electricity per year.

<sup>33</sup> Section 3B(1) of the Energy Retail Code, states that 'this Code applies to small customers only'.

### 3. Application to categories of exempt sellers

of protection for embedded network customers, which by extension acknowledges the difference in bargaining power in comparison to on-market customers.

We also 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. We considered the relevant costs of serving customers, the protections available to similar customers in the competitive market and the relative bargaining power of larger customers. This reasoning is discussed further in our draft decision.

The 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.<sup>34</sup>

### Arrangements for other customers

There are categories where we do not consider the VDO is the appropriate maximum price based on the information we have available to us at this time. Our final decision means the VDO will not apply as the maximum price for the following categories:

- Certain categories under the exemption order, including customers of exempt sellers on construction sites taking temporary supply (VD4); customers of exempt sellers who are related parties (VD5); and customers of exempt sellers in conjunction with telecommunications services (VD6).
- Customers of exempt sellers who are supplied through an exempt multiple activity provider.
- Customers of exempt sellers with annual electricity consumption above 40 megawatt hours.

Our reasons for this position are discussed in our draft decision. For these categories, the maximum price exempt sellers may currently charge will be the local area retailers' standing offer prices in place on or immediately prior to 27 May 2019, as provided by the exemption order. Where we have not applied the VDO as a maximum price we intend to monitor for any unintended consequences, and if needed we may make a new decision that applies the VDO prices or another relevant maximum price to these customers.

Appendix A provides detail on our final decision and how it applies to each category of exemption in the exemption order and the customers they serve. We have provided a table that compares the current maximum price arrangements with our proposal in this final decision.

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<sup>34</sup> Based on internal analysis and customer numbers in the retail electricity market more broadly, we estimate that over 80 per cent of businesses customers within an embedded network consume less than 40 megawatt hours per year.

### 3. Application to categories of exempt sellers

### **Our final decision on application**

Our final 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 categories, where we do not believe the VDO is the appropriate maximum price. Our final 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 of exempt sellers with annual electricity consumption above 40 megawatt hours.

Appendix A provides detail on our final 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 final 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 draft decision

In applying 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) our draft decision considered that:

- the VDO reflects the efficient costs of the sale of electricity in Victoria
- the methodology and calculation of the VDO is consistent with the requirements of the exemption order, including the requirement we have regard to commercial market data.

Our draft decision considered claims that the cost levels were higher than that of a licensed retailer and did not find that position was justified by the information provided. Further our draft decision noted, 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.<sup>35</sup>

Our draft decision also considered the maximum price is an important protection for customers of exempt sellers. We noted that many customers serviced by an exempt seller are unable to access

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<sup>35</sup> Essential Services Commission 2020, Maximum prices for embedded networks and other exempt sellers: Draft Decision, April, p. 17.

the default offer protection afforded to customers of licensed retailers (through the VDO), or access competitive retail offers.

## **Stakeholder feedback to our draft decision**

In response to our draft decision, most stakeholders supported the application of VDO prices to embedded networks. EnergyAustralia supported the approach we set out in the draft decision, noting the high administrative cost in imposing different maximum prices for exempt sellers.<sup>36</sup> Origin considered the VDO represents an appropriate benchmark for the price of electricity within an embedded network – regardless of whether a customer is served by a licenced retailer or an exempt seller. Origin also noted our approach will ensure customers in embedded networks will receive consistent price protections when compared to mass market customers.<sup>37</sup>

On the other hand, Active Utilities claimed their costs differ to the allowance provided for under the VDO cost stack and that exempt sellers should receive a premium in addition to what is provided for under the VDO.<sup>38</sup> Under Active Utilities proposal this would mean all customers in embedded networks should pay more than the VDO price because Active Utilities has higher costs.

We note under the exemption order we are required to have regard to commercial market data. We are not seeking to, nor are we required to provide a cost pass through of individual exempt seller costs. Further, we have balanced consideration of this with our objective to promote consumer protections and align prices with the minimum protections available to on-market customers.<sup>39</sup> If Active Utilities costs are higher than other exempt sellers, we question whether customers who have no other choice of supplier should bear these higher costs.

While EnergyAustralia supported our draft decision to set the maximum price to the VDO level, it noted underlying ‘policy’ concerns with adoption of the VDO.<sup>40</sup> Our view is these matters are more appropriately addressed through other processes. Active Utilities also expressed concern with the adoption of the VDO and submitted that setting a maximum price cap for embedded networks at

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<sup>36</sup> EnergyAustralia 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>37</sup> Origin 2020, op. cit., p. 1.

<sup>38</sup> Active Utilities 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision (to be read in conjunction with Active Utilities previous submission to our consultation paper) see Active Utilities 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March.

<sup>39</sup> Section 10 of the Electricity Industry Act (2000) sets out the objectives of the commission, which include the promotion of full retail competition; and the promotion of protections for customers, including in relation to assisting customers who are facing payment difficulties

<sup>40</sup> EnergyAustralia 2020, op. cit., p. 1.

### 4. Approach to establishing a maximum price

the same level as the VDO (which does not function as a maximum price for licensed retailers) creates inequity for exempt sellers. On this, we note that we consider the VDO reflects an efficient price for an electricity retail service.

We have also considered the point raised by Active Utilities that aligning prices to be more consistent with those available to on market customers is inconsistent with the promotion of retail competition. On this we note customers within embedded networks often do not have access to retail competition.<sup>41</sup> Further we consider setting a maximum price based on an efficient price is not inconsistent with promoting full retail competition.

Submissions from consumers continued to express a general discontent with exempt selling arrangements – largely attributable to the current lack of competition in embedded networks. Several submissions were concerned that exempt sellers currently charging below our proposed maximum would use it as an opportunity to increase prices to the maximum.<sup>42</sup> While others expressed a frustration they were unable to access discounting, a feature of many offers that are available to consumers in the retail electricity market.<sup>43</sup>

The exemption order already applies a maximum price to exempt sellers. The exempt selling framework provides the freedom for sellers to charge at or below the maximum price, they are also able to offer discounts to customers should they choose. We note other reviews that are currently ongoing which may result in greater consumer choice including the Australian Energy Market Commission's aim to deliver more competitive outcomes for embedded network customers, and the state government's commitment to ban embedded networks.

An anonymous submission suggested that our draft decision did not adequately address the cost savings exempt sellers may realise from the scale of their embedded supply network.<sup>44</sup> Noting that network costs of supply would be significantly lower than supplying an equivalent number of

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<sup>41</sup> Customers residing in a network serviced by an exempt seller are unable access market offers (due largely to the cost of metering infrastructure required to exit the network), meaning that in this setting full retail contestability is not practical or efficient.

<sup>42</sup> Anonymous 1 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1. Anonymous 3 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 3. Anonymous 4 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 3. Hugh Mathews 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>43</sup> Anonymous 5 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 2. Anonymous 6 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1. Michael 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>44</sup> Anonymous 5 2020, op. cit., p. 1.

#### 4. Approach to establishing a maximum price

free-standing dwellings. This sentiment was echoed in another anonymous submission which suggested that there was no real reason to charge a customer in an embedded network the same as if it were a residential property (with access to a licensed retailer), on the basis that exempt sellers have reduced supply and usage costs.<sup>45</sup> The submission suggests that in order to share the savings in costs that are realised by an exempt seller, a customer's supply charge should be the amount charged to the exempt seller at the gate (or parent) meter, divided by the number of dwellings (child meters) within the embedded network.

In response, we note that some embedded networks may currently be charging below the maximum, and that consumers in these settings may benefit from the cost savings these sellers can achieve. For most exempt sellers, on-selling electricity is a secondary activity to a primary business (such as operating a caravan park). Some of these exempt sellers may have difficulty accessing or negotiating cheaper electricity rates. This is a consideration in why we have aligned the maximum price with VDO prices as exempt sellers should be able to access the VDO at a minimum.

Consumer Action Law Centre (CALC) recommended that we undertake future work to ensure that the maximum price does not reflect the inclusion of non-existent costs for embedded networks, noting:

*The application of the VDO as the cap for exempt sellers' pricing is a good step forward but the ESC should consider whether even lower prices are warranted, due to the further efficiencies available to exempt sellers.<sup>46</sup>*

We consider the benefits in alternative approaches such as assessing a cost-stack specifically for exempt sellers are unlikely to outweigh the cost of such an exercise (particularly given the diversity of exempt seller business models and contract arrangements with end customers). We acknowledge, however, there may be future work to do with respect to embedded network costs, which may form part of future reviews.

## **Our final decision**

Our final decision applies 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),

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<sup>45</sup> Anonymous 7 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>46</sup> Consumer Action Law Centre 2020, op. cit., p. 3.

### 4. Approach to establishing a maximum price

subject to the exclusions noted in chapter 3. This will be automatically updated in line with the VDO decision each year.

Appendix B and appendix C set out the maximum prices that will apply to exempt sellers with respect to charging residential and small business customers, respectively. These prices will apply from 1 September 2020 until the next VDO decision comes into effect.

We consider the VDO reflects the benchmark efficient costs for 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.<sup>47</sup> We have not been presented with any commercial market data that would suggest the efficient costs of supplying a retail electricity service to embedded networks are materially higher than that of the wider retail electricity market. We note that the internal network costs faced by an exempt seller should not be recovered through electricity charges to embedded network customers.<sup>48</sup>

Many embedded networks should in fact be able to benefit from, and pass on, reductions in costs resulting from the scale of typical embedded network operations. For example, savings from splitting network costs amongst total end users, or considering total site electricity consumption to access bulk purchasing deals. Many exempt sellers should be able to access these savings. However, as this is a maximum price that applies broadly to many different sellers, we want to avoid unintended consequences of impacting the financial viability of some small exempt sellers who cannot gain these economies of scale (e.g. small caravan parks or apartments). We note that this is a maximum price, we would expect that exempt sellers who can offer their customers lower prices where they are more efficient, would do so.

Furthermore, we view costs higher than the VDO are not justified as a matter of principle – both the principle of efficient customer prices for the sale of metered electricity, and the principle of adequate customer protections for customers of embedded networks who cannot easily access contestable retail market offers.

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<sup>47</sup> Unlike the VDO (where we are required to look at efficient costs) the exemption order requires us to look at commercial market data. It does not require that we look at an individual firm's circumstances. An individual firm may have higher or lower costs compared to a reasonable market price.

<sup>48</sup> 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. 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')'

#### 4. Approach to establishing a maximum price

### **Our final decision on price level**

Our final 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.<sup>49</sup>

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.<sup>50</sup>

### Our draft decision

Our draft decision proposed applying 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), including for each of Victoria's five distribution zones:

- 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.

Our draft decision also allowed exempt sellers to continue to charge tariffs that are not flat (or comprise a combination of flat and non-flat components) through the VDO compliant maximum annual bill. Our draft decision noted exempt sellers will be required to provide information to their customers on how their prices compare with the maximum annual bill on at least an annual basis (and when requested by the customer).

### Stakeholder feedback to our draft decision

Origin believed setting the VDO as the maximum price will still allow service providers with the flexibility to accommodate a range of tariff options and to tailor tariffs to suit customer needs as appropriate.<sup>51</sup>

Consumer Action Law Centre's submission stated that many households struggle to understand or are simply disengaged with energy regulations, or have little trust that efforts made to dispute

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<sup>49</sup> 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.

<sup>50</sup> Order in Council made under the Electricity Industry Act 2000, op. cit.

<sup>51</sup> Origin 2020, op. cit., p. 1.

unfair behaviour will lead to fair outcomes. CALC also outlines the difficulties for households in self-identifying breaches for pricing protections to be applied.<sup>52</sup> Submissions to our draft decision from customers in embedded networks also made clear the difficulties in understanding and accessing protections.<sup>53</sup>

WINconnect raised concerns that local retailer standing tariffs in respect to customer types not covered by the VDO price (such as those consuming over 40 megawatt hours per annum) may not be an appropriate reference point for other potential tariffs.<sup>54</sup> We have not decided on prices for the medium to large customers outlined by WINconnect. Our final decision does not introduce any new requirements as suggested by WINconnect, such as requiring exempt sellers to compare their prices to local area retailer prices.

Network Energy Services considered the ‘compliant maximum annual bill mechanism’ should be extended to flat rate tariffs and flat rate tariffs with controlled load. Network Energy Services is concerned higher electricity users in its on-selling communities will receive higher bills (given its current charging arrangements that have higher fixed rate tariffs). While Network Energy Services notes that some energy users will have lower bills, they submit many of these higher electricity users are vulnerable and will be disproportionately impacted because they are less able to adjust their electricity usage.<sup>55</sup>

We requested further information on this issue from Network Energy Services in understanding the tariff types and usage rates applicable in its on-selling communities.<sup>56</sup> Our analysis showed that on average most of their customers are not impacted. However, there may be some impacts for a small number of high use customers.

Importantly, under the tariff structures outlined in this decision there is no requirement on Network Energy Services’ on-selling communities to charge the maximum price to their customers. On-selling communities also have other options available for structuring tariffs, such as declining block tariffs which could reduce bill impacts for higher users, or it could move to flexible tariffs where customers agree to this (and had the required metering infrastructure).

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<sup>52</sup> Consumer Action Law Centre, op. cit., p. 3.

<sup>53</sup> Dominic Hutching 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 1.

<sup>54</sup> WINconnect, op. cit., p. 1.

<sup>55</sup> Network Energy Services 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Draft decision, p. 2.

<sup>56</sup> We have not published this information as it was provided on a commercial in confidence basis.

## 5. Tariffs types covered by our maximum prices

Our review of the information provided by Network Energy Services found there was a wide range of offerings in these on-selling communities. Some of these on-selling communities may have made decisions that subsidise their high use customers through electricity charges. We note if on-selling communities wish to continue this subsidisation there are a range of other charges that are levied to customers where they could also address this issue, particularly in relation to vulnerable customers.

On balance we consider extending the compliant maximum annual bill to flat tariffs will make it more difficult for customers to identify whether they are being charged more than the relevant VDO price, and it would not be in the customers long term interests. A key benefit of setting a flat rate tariff is that customers can more easily compare their tariffs and can understand whether their charges comply with maximum prices.

## **Our final decision**

Consistent with the proposal set out in our draft decision, our final decision adopts 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) – this includes flat rate tariffs and the VDO compliant maximum annual bill mechanism.

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

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.<sup>57</sup>

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.

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

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<sup>57</sup> A controlled load tariff is applied to a large appliance in your home like a hot water service, slab or pool heater, which receives electricity on its own circuit and might or might not be separately metered.

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).

### 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.

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 amount levied to a customer is under the compliant maximum annual bill for their distribution zone at the representative level of usage. In practice, actual bills must be based on an individual customer's usage – this means actual bills may be higher or lower depending on their electricity use.

We have adopted the same consumption reference point that we have for the VDO for simplicity and consistency.<sup>58</sup> We then multiply this with VDO flat prices to calculate maximum annual bills. Our final decision uses 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.

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.<sup>59</sup> Equivalent to the flexibility afforded to licensed retailers under the VDO,<sup>60</sup> our final 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

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<sup>58</sup> The annual reference consumption amount used to calculate the VDO compliant maximum annual bill amounts are for a residential customer 4,000kWh per year; and for a small business customer 20,000kWh per year.

<sup>59</sup> The Retail Code (Obligations for exempt sellers) sets out the information disclosure requirements for exempt sellers. We consider this information should be provided to customers on an annual basis at the time at which tariffs have been implemented or as soon as practical thereafter. Exempt sellers should refer to the Retail Code (obligations for exempt sellers) to understand their information disclosure obligations.

<sup>60</sup> 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.

## 5. Tariffs types covered by our maximum prices

reasonably representative of the profile of usage by customers on that tariff type over a 365-day period.<sup>61</sup>

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 by the commission or customer.

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.<sup>62</sup> Appendix D also provides compliant maximum annual bill amounts for both residential and small business customers for each of Victoria's five distribution zones.

### **Final decision on tariff structures**

Our final decision applies to tariff structures offered by exempt sellers to which the VDO applies. 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.

The commission has set the VDO compliant maximum annual bill<sup>63</sup> based on the flat rate VDO, and a representative usage profile for the customer group:

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<sup>61</sup> 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.

<sup>62</sup> Also see: South Street Energy 2020, submission to the Essential Services Commission, Maximum prices for embedded networks and other exempt sellers: Consultation paper, March, p.1. The submission describes how South Street Energy ensures the annual cost of electricity for a tenant is not more than if the relevant VDO were applied to the same metered consumption values.

<sup>63</sup> Bill amounts are specified in appendix D.

## 5. Tariffs types covered by our maximum prices

- 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 customer's 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.

## 5. Tariffs types covered by our maximum prices

## 6. Implementing the maximum price framework for exempt sellers and future direction

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.<sup>64</sup> 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<sup>65</sup>, apartment buildings (including those served by third party agents), retirement and lifestyle villages<sup>66</sup> and shopping centres.

We have considered that selling electricity is a secondary role for exempt sellers compared to their core business when deciding on the timeframe for implementing our decision. This timeframe has also been informed by the fact a price cap already applies to all exempt sellers, and the current community focus on responding to the coronavirus pandemic.

### Our draft decision

Our draft decision proposed an implementation date of 1 September 2020, suggesting it is likely many exempt sellers would be able to implement maximum prices that comply with the VDO before this date. Our draft decision also noted under the exemption order, there is nothing to prevent exempt sellers ensuring their electricity charges are compliant with the VDO price prior to our final decision.

Our preferred position was for customers in embedded networks to have access to pricing protections as soon as possible. However, we acknowledged the need to balance this with consideration of the current community focus on responding to the coronavirus pandemic, and the impact this may have on some exempt sellers (such as owners and operators of caravan parks and other small businesses).

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<sup>64</sup> 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.

<sup>65</sup> Considered to be an area of land on which movable dwellings are situated for occupation on payment, whether immovable dwellings are also situated there.

<sup>66</sup> 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.

## Stakeholder feedback to our draft decision

Stakeholders expressed a range of different views on implementation timeframes.

- Origin and EnergyAustralia supported the commission's decision to delay the implementation of the maximum price to 1 September 2020. Origin considers that the delayed implementation allows for appropriate consultation and provides participants with additional time to transition to the new arrangements.<sup>67</sup> EnergyAustralia expected the final decision and associated price determination will provide sellers enough lead-time in the event they are required to adjust their prices to comply.<sup>68</sup>
- Active Utilities considered a maximum price cap implementation on 1 January 2021, in line with network cost changes, would be the most efficient option and not cause undue confusion to customers. Active submit the implementation of two price changes in the space of three months would place additional costs and resources on embedded networks and exempt sellers in a time where resources are currently overextended due to the unanticipated impacts of the coronavirus pandemic and enhanced customer service protections expected on the industry, to support customers.<sup>69</sup>
- Consumer Action Law Centre (CALC) and Housing for the Aged Action Group considered that it is unfair for customers in embedded networks to continue to be charged above VDO prices beyond 1 July 2020. Particularly in the context of coronavirus, CALC considers it is unreasonable that relevant households should not benefit from price reductions sooner.<sup>70</sup> Customers also submitted on the need for price relief.<sup>71</sup>

In addition, CALC submitted if possible, exempt sellers who charge greater than the VDO between 1 July and 1 September 2020 should be required to refund all charges above the VDO on the next bill.<sup>72</sup>

## Our final decision

The commission's final decision is that our formulated maximum prices will apply from 1 September 2020. In making this decision we have balanced customer access to pricing

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<sup>67</sup> Origin 2020, op. cit., p. 1.

<sup>68</sup> EnergyAustralia 2020, op. cit., p. 1.

<sup>69</sup> Active Utilities 2020, op. cit., p. 2.

<sup>70</sup> Consumer Action Law Centre 2020, op. cit., p. 1.

<sup>71</sup> Anonymous 3 2020, op. cit., p. 3.

<sup>72</sup> Consumer Action Law Centre 2020, op. cit., p. 4.

protections as soon as possible and giving stakeholders sufficient opportunity to engage with our decision particularly given the community impacts of the coronavirus. We have considered the submissions, and consider 1 September 2020 strikes a balance between earlier implementation for the benefit of customers, and transition time for exempt sellers, particularly small businesses.

We note stakeholder concerns around customer price relief and consider in circumstances where an exempt seller is currently charging more than the VDO prices they should move to lower their prices by 1 September 2020, if not before. We do not consider it is feasible, however, to require exempt sellers to refund all additional charges between 1 July 2020 and 1 September 2020 as requested by CALC.

We do not consider Active Utilities proposal to further delay customer access to price relief is reasonable. We consider we have given reasonable notice in extending our timeframes for exempt sellers and that any change to timeframes should also consider the hardship the community may experience given the impacts of the coronavirus.

#### **Final decision on implementation date**

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

## Future direction

The exemption order provides that the commission may vary this price decision, by way of amendment or revocation by a further decision. The exemption order does not set out a regulatory period for which this decision will apply.

Our maximum price for exempt sellers will be updated automatically in line with the VDO. We consider this will give stakeholders certainty and ensure prices continue to be reflective of commercial market data.

In response to our draft decision Network Energy Services noted our draft decision was silent on our approach to maximum prices in future years.<sup>73</sup> WINconnect was concerned that changes to the VDO (over time) may result in the VDO eventually being higher than the current frozen standing offer.<sup>74</sup> In the interests of clarity, we have given some examples of the circumstances under which we will consider amending or revoking our decision below. This is not intended to be an exhaustive list.

- We decide to adopt another methodology for formulating maximum prices.
- We consider that the application to certain exemption categories is no longer appropriate.
- We discover that there was a clerical error, miscalculation, misdescription or other deficiency in this decision, or in the preparation of it.

We would also consider the objectives and requirements of the exemption order, the Essential Services Commission Act 2001 (ESC Act) and the Electricity Industry Act (EI Act); and any other matter that we consider is relevant and appropriate at the time.

If proposing to make a new decision, we would consult exempt sellers and other relevant stakeholders, having regard to our Charter of Consultation and Regulatory Practice unless we consider the proposed amendment is not sufficiently material or consultation on the matter is likely to be impracticable. We would give adequate notice of any changes to the affected exempt sellers if the variation would require the exempt sellers to vary their prices.

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<sup>73</sup> Network Energy Services 2020, op. cit., p. 2

<sup>74</sup> WINconnect, op. cit., p. 1.

# 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
Exempt seller	The exemption order sets out different classes and categories of exemption with reference to the types of activities (e.g. selling, supplying) and types of customers and sites in which those activities are undertaken (e.g. caravan parks, retirement villages, construction sites).
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.
Kilowatt	A measure of electricity. One kilowatt is equal to 1000 watts.
Licensed 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. Licensed 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 which distribution network supplies you.
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.
VDO	Victorian Default Offer

## Glossary

## Appendix A – Applicable exemption categories

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

- The VDO flat-rate tariff or maximum annual bill outlined in this final 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 <b>10 or more small commercial/retail customers</b> within the limits of a site that they own, occupy, or operate.	Small business	Applies	Applies for >40MWh pa
VD1		Small business	Applies	Applies for >40MWh pa

Exemption category	Description	Customer class	Flat-rate/ Compliant maximum annual bill	Existing cap
VR2	Persons selling metered electricity to <b>10 or more residential customers</b> 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 w. controlled load)	NA
VD2	Persons selling metered electricity to <b>fewer than 10 residential customers</b> 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 w. controlled load)	NA
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 w. controlled load)	NA
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 w. controlled load)	NA

Appendix A – Applicable exemption categories

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 w. controlled load)	Applies for >40MWh pa
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.	Small business	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.	Does not apply	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.	Does not apply	NA	Applies

Appendix A – Applicable exemption categories

Exemption category	Description	Customer class	Flat-rate/ Compliant maximum annual bill	Existing cap
<b>VD7</b>	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.	Small business	Applies	Applies
<b>Multiple activity exemptions</b>	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 or occupier of the premises on which generation occurs (the customer); or ii) to a licenced retailer.	Does not apply	NA	Applies

## Appendix B – Final 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	<b>Block 1</b> (up to 1020kWh used in a quarterly period) <b>Block 2</b> (balance of usage in a quarterly period) <sup>75</sup>	\$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

<sup>75</sup> Blocks refer to electricity used in a quarterly period or pro-rated for any other period.

## Appendix C – Final 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	<b>Block 1</b> (up to 1020kWh used in a quarterly period) <b>Block 2</b> (balance of usage in a quarterly period) <sup>76</sup>	\$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

<sup>76</sup> Blocks refer to electricity used in a quarterly period or pro-rated for any other period.

# Appendix D – Final 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 \$1300.00 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

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

## 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. 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, 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

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

## Compliant maximum annual bill amounts

VDO compliant maximum annual bill amounts by distribution zones of relevant distribution company.

Distribution zone	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	\$1,646	\$7,849
CitiPower	\$1,420	\$5,823
Jemena	\$1,496	\$6,240
Powercor	\$1,517	\$5,746
United Energy	\$1,508	\$6,368

### Notes to Appendix D:

#### 1. Non-flat tariff types covered in appendix D

Any non-flat tariffs offered by an exempt seller must comply with the relevant maximum annual bill amount based on the distribution zone. Appendix E specifies the way in which five particular non-flat tariffs are to comply. This includes:

- 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)

For any other non-flat tariffs offered, an exempt seller must show why the assumed profile of customer usage is reasonable using data based on their customers.

#### 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

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

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 in this Schedule 3 is:

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

### **4. Disclaimer**

The examples and the calculation of the examples in this appendix are illustrative only and cannot be simply adopted and used by an exempt seller on the assumption that they produce a compliant outcome. Exempt sellers must carefully consider their own circumstances, tariff structures and calculations.

## Appendix E – Representative usage profiles

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

Specified non-flat standing offer tariff type listed in Schedule 3	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
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 this Schedule 4 represents a profile of use of electricity by prescribed customers (both residential and small business) on each non-flat standing offer tariff type listed 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 draft decision

Name of submission	Date received
Anonymous 1	7 May 2020
Anonymous 2	7 May 2020
Anonymous 3	8 May 2020
Anonymous 4	20 May 2020
Anonymous 5	22 May 2020
Hugh Mathews	23 May 2020
Anonymous 6	1 June 2020
Anonymous 7	2 June 2020
Michael	5 June 2020
Dominic Hutching	11 June 2020
Origin Energy	15 June 2020
Consumer Action Law Centre	15 June 2020
Network Energy Services	15 June 2020
Active Utilities	15 June 2020
Housing for the Aged Action Group	15 June 2020
EnergyAustralia	15 June 2020
WINconnect	15 June 2020