

Guideline: advertising energy prices

1. Purpose of this guideline

- 1.1. The purpose of this guideline is to provide information to energy retailers and other interested parties about how the Essential Services Commission (the commission) expects energy retailers and their marketing associates (collectively known as retail marketers) to market energy plans, including those with conditional discounts.
- 1.2. The rules covered by this guideline are in Part 2, Division 10 of the Energy Retail Code (the Code)¹:
 - Subdivisions 1 and 1A apply to any marketing of gas and electricity offers
 - Subdivision 2A applies to any marketing of a gas or electricity offer with a conditional discount
 - Subdivision 2B applies to the mass-marketing of any electricity offer, other than demand tariffs. Once a retailer is having a personalised conversation with a customer about an offer, the rules in Part 2A of the Code (especially the clear advice entitlement) apply instead of the reference price requirements in Subdivision 2B.²
- 1.3. These rules were introduced to ensure small customers can easily compare offers, in line with recommendation 3A of the Independent Review of the Electricity and Gas Retail Markets in Victoria.³
- 1.4. This guideline is made under section 13 of the Essential Services Commission Act 2001 and takes effect from 1 July 2020.
- 1.5. This guideline establishes marketing requirements in Victoria that are consistent with the national requirements set out in the Australian Competition and Consumer Commission's

¹ Energy Retail Code available at: <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/energy-retail-code>.

² Certain requirements in the s 208 Order in Council (VDO Order) published on 30 May 2019 also apply in relation to subdivision 2B, specifically details of how to calculate the estimated annual cost of the VDO and retailer offers, and annual reference consumption figures. The VDO Order is available at: <http://www.gazette.vic.gov.au/gazette/Gazettes2019/GG2019S208.pdf> and included in appendix A of this guideline.

³ Further information about the background to these rules is available on our [website](#).

Guide to the Electricity Retail Code.⁴ The national requirements require retailers to express advertised prices relative to a reference price.

This document does not substitute a licensee's obligations in the Energy Retail Code or any other state or federal law or regulation, such as the Australian Consumer Law, nor does it constitute legal advice. If a licensee is unsure about its regulatory obligations, it should seek independent advice. Energy retailers also have obligations in the Code of Conduct for Marketing Retail Energy in Victoria.⁵

2. Who the rules apply to

- 2.1. Retail marketers must comply with Part 2, Division 10 of the Code.
- 2.2. The obligations in Part 2, Division 10, Subdivisions 1, 1A and 2A of the Code cover all offers and plans for small customers⁶ in Victoria offered by licensed energy retailers. The requirements in Subdivision 2B only apply to electricity offers.
- 2.3. The marketing provisions in the Code and the obligations in this guideline do not apply to exempt persons.⁷
- 2.4. Non-compliance with the Code or this guideline may result in a licensee breaching its licence conditions.

3. Objective of the marketing rules (Part 2, Division 10, Subdivision 1)

These rules apply to all electricity and gas offers.

- 3.1. Subdivision 1 contains overarching rules that apply to Part 2, Division 10 of the Code (the energy marketing division).
- 3.2. Clause 60A of the Code sets out a requirement for retail marketers to perform their obligations under Division 10 of the Code in a way that promotes the objectives of the Division (clause 60B) and each Subdivision (including clauses 64A and 64C).
- 3.3. Clause 60B of the Code sets out the objective of Division 10. This is to ensure that retail marketers disclose information to customers about their electricity and gas plans in a clear

⁴ Australian Competition and Consumer Commission, Guide to the Electricity Retail Code, June 2019. Available at: <https://www.accc.gov.au/publications/guide-to-the-electricity-retail-code>

⁵ Available at: <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/code-conduct-marketing-retail-energy>.

⁶ Small customers are those who use less than 40 MWh of electricity or 1,000 GJ of gas per annum.

⁷ Exempt persons are those who are exempt from the requirement to hold an electricity licence under the General Exemption Order 2017, available at: <https://www.energy.vic.gov.au/legislation/general-exemption-order>.

and easily understood way to assist customers to assess the suitability of plans and select an offer.

- 3.4. Clause 60C of the Code requires retailers to ensure that associates who are retail marketers comply with Division 10 of the Code.

4. Misleading and deceptive conduct (Part 2, Division 10, Subdivision 1A)

These rules apply to all electricity and gas offers.

- 4.1. Clause 60D of the Code prohibits retail marketers from engaging in misleading or deceptive conduct (within the meaning of sections 18(1) and 34 of schedule 2 of the Competition and Consumer Act 2010 (Cth), modified by section 4 of the Competition and Consumer Act 2010) in connection with energy marketing activities.
- 4.2. Clause 60E of the Code prohibits retail marketers from making a false or misleading representation (within the meaning of section 29(1) of schedule 2 of the Competition and Consumer Act 2010) in connection with energy marketing activities.

5. Advertising conditional discounts (Part 2, Division 10, Subdivision 2A)

These rules apply to all electricity and gas offers with conditional discounts.

- 5.1. Clause 64A of the Code sets out the objective of Subdivision 2A. This is to ensure that retail marketers refer to conditional discounts in a clear and easily understood way to assist customers to assess the suitability of plans and select an offer.
- 5.2. Clause 64B(1) of the Code requires retail marketers to express the conditions of any conditional discount clearly and conspicuously in any marketing, advertisement or promotion of prices or tariffs for electricity and gas plans designed for small customers.
- 5.3. Clause 64B(2) of the Code sets out that the conditional discount must not be the price-related matter that is mentioned most prominently in the marketing, advertisement or promotion.
- 5.4. 'Conditional discount' means a reduction to the price or tariff for the supply of energy, including discounts, rebates or credits, if the customer satisfies certain conditions or requirements. It does **not** include a one-off sign up discount, credit or rebate.

6. Advertising electricity prices (Part 2, Division 10, Subdivision 2B)

These rules apply only to electricity offers.

- 6.1. Clause 64C of the Code sets out the objective of Subdivision 2B. This is to ensure that retail marketers refer to discounts in a consistent way to assist customers to compare plans.

- 6.2. Clause 64D of the Code sets out that the rules in Subdivision 2B apply to all retail marketers.
- 6.3. Clause 64E of the Code sets out definitions relating to Subdivision 2B.

Comparing electricity prices with the VDO price

- 6.4. Clause 64F of the Code requires retail marketers to state in any advertisement:
- the difference between the Victorian Default Offer (VDO) price (see sections 6.7 and 6.8 of this guideline) and the unconditional price (see sections 6.9 to 6.12 of this guideline), expressed as a percentage of the VDO price
 - for each proportional conditional discount mentioned, the difference between the unconditional price and the conditional price for the discount, expressed as a percentage of the VDO price (see sections 6.13 to 6.18 of this guideline)
 - the lowest possible price (see sections 6.19 to 6.24 of this guideline)
 - the relevant distribution zone and the type of customer that the offered prices relate to.
- 6.5. These requirements ensure that all electricity offers are referenced in relation to the VDO price. This includes plans and offers that cost both more and less than the VDO price for a particular distribution zone, and offers with or without discounts, credits and/or rebates.
- 6.6. Clause 64F(4) of the Code requires retail marketers to ensure that the information summarised in section 6.4 of this guideline is stated clearly and conspicuously in any advertisement and it is clear that it relates to a representative customer.

The VDO price

- 6.7. The VDO price is the estimated annual cost of the VDO as determined under clause 15(4)(a) of the Order under section 13 of the Electricity Industry Act 2000 issued on 30 May 2019 (VDO Order).⁸ Appendix A of this guideline contains the relevant section of the VDO Order.
- 6.8. Retail marketers must calculate the estimated annual cost of the VDO using the annual reference consumption figures in the commission's VDO price determination.

The unconditional price

- 6.9. The unconditional price of an electricity offer is the total price a representative customer (based on the annual reference consumption specified in the VDO Order) would be charged during a regulatory period at the retailer's offered prices, without any conditional discounts.

⁸ VDO Order available at: <http://www.gazette.vic.gov.au/gazette/Gazettes2019/GG2019S208.pdf>.

- 6.10. Retail marketers must tell customers how the unconditional price of an electricity offer in a particular distribution zone compares with the VDO price for that zone and type of customer. This difference must be expressed as a percentage of the VDO price. To calculate this figure, retail marketers must:
- a) Calculate the unconditional price of the offer based on the annual reference consumption specified in the VDO Order. Retail marketers must include the following items in calculating the unconditional price:
 - (i) any charges
 - (ii) unconditional discounts (this includes discounts, credits or rebates when a customer enters a contract such as a one-off sign up credit)
 - (iii) annual recurring fees such as membership and contribution fees
 - (iv) recurring metering charges.
 - b) Retail marketers must not include green charges (where these charges are for the optional purchase of green energy by a customer. If the offer includes a mandatory green element, the cost of this should be included in the unconditional price) or PV/solar feed-in tariffs in this calculation if these are present.
 - c) Calculate the difference between the unconditional price and the relevant VDO price set by the commission.
 - d) Express this difference as a percentage of the relevant VDO price. This number may be positive or negative, indicating whether the offer is above or below the VDO price.
- 6.11. If the offer is equal to the price cap set by the commission, this should be expressed as equal to the VDO price.

The example below is for illustrative purposes only and does not reflect the commission's actual VDO price determinations.

Example 1 – residential market offer with unconditional discount

Offer	Usage	Rate (including GST)	Total
Supply	365 days	\$1.00/day	\$365
Usage (annual reference consumption)	4,000 kWh	\$0.24/kWh	\$960
Unconditional price			\$1,325
Lowest possible price			\$1,325
VDO price			\$1,500

- 6.12. Example 1 illustrates how to calculate the difference between the unconditional price and the VDO price:
- Given the rates under this residential offer and the annual reference consumption specified in the VDO Order is 4,000 kWh, the unconditional price is \$1,325.
 - The difference between the unconditional price and the example VDO price is -\$175 (\$1,325 subtract \$1,500).
 - This amount expressed as a percentage of the VDO price is -11.66 per cent (-\$175 divided by \$1,500 and multiplied by 100). As this figure is negative it should be stated as 11.66 per cent less than the VDO price for advertising or presentation purposes.

Conditional discounts

- 6.13. Retail marketers must express any proportional conditional discount being advertised as a percentage of the VDO price. If there is more than one conditional discount the retail marketer wishes to refer to, it must do this individually for each discount. Retail marketers must not state conditional discounts as a cumulative discount combined with the unconditional price.
- 6.14. Where we refer to conditional discounts, these include conditional rebates and credits but excludes discounts, rebates and credits that relate to a customer entering into the contract such as a one-off sign up credit.⁹
- 6.15. It is important retail marketers understand what percentage figure must be stated in an advertisement when referring to a conditional discount. As demonstrated in the example below, a conditional discount available under an offer (such as a pay on time discount based on usage) is not the percentage figure that must be stated; rather it is the conditional discount expressed as a percentage of the VDO price. To determine the percentage figure presented, retail marketers must:
- Calculate the unconditional price of the offer as described in paragraph 6.10.
 - Calculate the conditional price of the offer. This is the total amount a customer would pay in a regulatory period based on the annual reference consumption if that customer met the conditions for the conditional discount. This must be calculated using the annual reference consumption specified in the VDO Order and include any annual recurring charges and fees outlined in paragraph 6.10(a).
 - Calculate the difference between the unconditional price and the conditional price.
 - Express this difference as a percentage of the VDO price. The figure should be read as a percentage above or below the VDO price.

The following example is for illustrative purposes only and does not reflect the commission's actual VDO price determinations.

⁹ There is a definition of conditional discounts in the Energy Retail Code and in the definitions section of this guideline.

Example 2 – residential market offer with conditional discount

Offer	Usage	Rate	Total
Supply	365 days	\$1.00/day	\$365
Usage (annual reference consumption)	4,000 kWh	\$0.24/kWh	\$960
Unconditional price			\$1,325
Conditional discount		3%	\$39.75
Conditional price			\$1,285.25
Lowest possible price			\$1,285.25
VDO price			\$1,500

- 6.16. Example 2 has the same supply and usage rates as example one, but includes a conditional discount:
- Given the rates under this residential offer and the annual reference consumption specified in the VDO Order is 4,000 kWh, the unconditional price is \$1,325 (11.66 per cent below the VDO price).
 - The conditional price is \$1,285.25 (\$1,325 minus \$39.75). This is the price a representative customer would pay if they met the conditions of the discount.
 - The difference between the unconditional price and the conditional price is \$39.75 (\$1,325 minus \$1,285.25).
 - This amount expressed as a percentage of the example VDO price is -2.65 per cent (\$39.75 divided by \$1,500 multiplied by 100). This is the additional percentage off the VDO price if a representative customer meets the discount conditions. This figure should be used for advertising purposes, rather than the actual size of the discount (i.e. 3 per cent).
- 6.17. For clarity, the unconditional discount is taken off the VDO price first, followed by any proportional conditional discounts (if applicable).
- 6.18. If there are multiple conditional discounts, then these must each be calculated off the VDO price.

Expressing the lowest possible price

- 6.19. The lowest possible price for an offer is the total amount a representative customer would pay in a year, assuming that all the conditions on all conditional discounts (if any) mentioned in the advertisement were met.
- 6.20. Retail marketers must include the following items in calculating the lowest possible price for an offer:
- a) any charges
 - b) unconditional discounts
 - c) conditional discounts
 - d) annual recurring fees such as membership and contribution fees
 - e) recurring metering charges.
- 6.21. Retail marketers must not include green charges (where these charges are for the optional purchase of green energy by a customer. If the offer includes a mandatory green element, the cost of this should be included in the lowest possible price) or PV/solar feed-in tariffs in this calculation if these are present.
- 6.22. If the advertisement does not mention any conditional discount, the lowest possible price is the unconditional price. If there is only one conditional discount, the lowest possible price is the conditional price. If offers have more than one conditional discount, the lowest possible price would include all the conditional discounts.

Other fees and charges

- 6.23. The definition of 'price' in the code requires retail marketers to include a tariff or charge of any description (including recurring fees such as an annual membership fee) in its price, except for:
- a) a one-off fee (for example, a connection fee or reconnection fee or an account establishment fee);
 - b) a fee for making, or failing to make, a payment in particular circumstances (for example, a credit card transaction fee or a direct debit dishonour fee);
 - c) a fee for a service provided on request on an ad-hoc basis (for example, a fee for a meter read requested by a customer).

Time of use, flexible and controlled load tariffs

- 6.24. This section covers how reference price comparisons should be calculated for time of use, flexible and controlled load tariff offers for small customers.
- 6.25. Time of use tariffs apply different charges to electricity usage at different times of the day or week. Typically, periods are split into peak and off-peak (a two-period time of use). However, there are also three-period and four-period time of use tariff types (also known as flexible pricing). An offer which has one shoulder period rate is considered a three-

period time of use offer. An offer with two shoulder period rates is considered a four-period time of use offer.

- 6.26. The VDO Order provides usage allocations per period for each time of use tariff type and relevant distribution region. This is to enable retail marketers to calculate the unconditional price of a time of use offer for comparison with the VDO price using a consistent set of information.
- 6.27. The commission's VDO price determination includes the VDO price for each distribution zone for non-flat tariffs.
- 6.28. Retail marketers must use the commission's VDO price determination for non-flat tariffs for small customers in a relevant distribution zone, using the annual reference consumption, when displaying prices in an advertisement. Retail marketers must do this using the formulas and specifications as detailed in the VDO price determination.
- 6.29. For time of use offers with a controlled load, retail marketers must reference the relevant VDO price in the commission's VDO price determination that is in effect at the time of the advertisement, using the annual reference consumption. This means that a retail marketer must apportion usage to the different time of use elements, and the controlled load, to equal the annual reference consumption for a particular customer type (i.e. residential or small business).
- 6.30. To calculate the unconditional price of a time of use offer, retail marketers must:
 - a) determine the time of use type for that offer (two period, three period or four period)
 - b) use the usage allocation set by the VDO Order for each period in the tariff type
 - c) use the relevant small customer annual reference consumption (with or without controlled load)
 - d) calculate the unconditional price based on the above information in subclauses (a)-(c) and use the relevant VDO price for comparison in advertising.
- 6.31. If a retailer offers time of use offer with a conditional discount, the advertisement must show the conditional discount expressed as a percentage of the VDO price in the same way as set out in sections 6.13 to 6.18. The lowest possible price must be calculated as set out in sections 6.19 to 6.22.

The example below is for illustrative purposes only and does not reflect the commission's actual VDO price determinations.

Example 3 – residential three-period time of use tariff without controlled load

Offer	Usage allocation per period	Annual reference consumption	Retailer rate (including GST)	Total (including GST)
Supply charge		365 days	\$1.00/day	\$365
Peak usage	25 per cent	1,000 kWh	\$0.33/kWh	\$330
Off-peak usage	30 per cent	1,200 kWh	\$0.15/kWh	\$180
Shoulder usage	45 per cent	1,800 kWh	\$0.28/kWh	\$504
Annual reference consumption		4,000 kWh		
Unconditional price				\$1,379
Lowest possible price				\$1,379
VDO price determination – maximum annual bill				\$1,500

- 6.32. Example 3 illustrates how the difference between the unconditional price and the VDO price must be calculated. As this offer has one shoulder period rate, it is a three-period time of use offer. This offer is for a residential customer with no controlled load so the residential annual reference consumption with no controlled load of 4,000 kWh is used.
- 6.33. The usage amounts of each of the three periods is calculated based on the usage allocation set out in the commission’s VDO price determination and the annual reference consumption of 4,000 kWh for a residential customer. Given the retailer’s rates under this offer, the unconditional price for this time of use offer is \$1,379. The commission’s relevant maximum annual bill price made in a VDO price determination for a regulatory period is \$1,500 for the particular distribution zone.
- 6.34. Retail marketers must display the difference between the unconditional price and the VDO price, expressed as a percentage of the VDO price. In example 3 this is -8.06 per cent (\$1,379 minus \$1,500 equals -\$121 divided by \$1,500 multiplied by 100). This should be stated as 8.06 per cent less than the VDO price for advertising purposes.

Demand tariffs

- 6.35. The requirements in Part 2, Division 10, Subdivision 2B of the Code, as described in section 6 of this guideline, do not apply to demand tariffs.

Bundled offers

- 6.36. The requirements in Part 2, Division 10, Subdivision 2B of the Code, as described in section 6 of this guideline, only apply to electricity offers. However, the other requirements outlined in this guideline apply to gas offers as well. Retail marketers who offer a bundled electricity and gas plan must therefore ensure they comply with Part 2, Division 10, Subdivisions 1, 1A and 2A of the Code, having regard to the separate obligations applicable to electricity and gas.

7. Communications covered

Section 7 of the guideline applies to both electricity and gas.

- 7.1. This guideline only applies to price-based advertising. It does not apply to general advertising.

Communication mediums

- 7.2. The requirements in Part 2, Division 10, Subdivisions 1 and 2A of the Code apply to any energy marketing activities for electricity and/or gas.
- 7.3. These requirements include written and verbal communication of prices or discounts to include any of the following media, but not limited to:
- a) offers over the phone (whether initiated by the customer or retail marketer)
 - b) face-to-face, such as shopping centre sales
 - c) door-to-door sales
 - d) magazines, newspapers or journals
 - e) radio
 - f) web-based or online, including energy price comparator websites
 - g) television
 - h) social media
 - i) billboards or posters
 - j) direct mail, catalogues and leaflets
 - k) public transport advertising such as on trains, trams, buses, taxis or bicycles.
- 7.4. The requirements in Part 2, Division 10, Subdivision 2B of the Code apply to any electricity advertisements. 'Advertisement' is a defined term in the Code for the purposes of this subdivision. It includes written and verbal mass-marketing campaigns or communications that is published or transmitted by or on behalf of a retail marketer to publicise a retailer's offered prices to customers or prospective customers. It does not

include any communication by a retail marketer directly with an individual customer or prospective customer regarding the retailer's offered prices, where this communication is made in accordance with Part 2A of the Code (which includes, among other requirements, the clear advice entitlement).

- 7.5. Clauses 60B and 64A of the Code also require retail marketers to use clear, simple and easily understood communication to assist small customers with understanding plan attributes, including discounts, rebates, credits and prices.

Visual communications

- 7.6. In visual communication to consumers, retail marketers should consider the use of colour, font size or other visual tools to ensure the information required by the Code is clearly and conspicuously displayed and easily distinguishable from other information. The commission does not consider the information to be conspicuous if other information or elements of the advertisement are given more emphasis. For example, on a retail marketer's website, on any page that refers to specific prices and offers, the information required by the Code should be easy to find without navigating through other content.

Oral communications

- 7.7. In oral communication to consumers such as radio advertising or offers over the phone, retail marketers should have regard to speed, volume and other audio tools to ensure information required by the Code is clearly audible and emphasis is placed on this information compared to other statements, dialogue or sounds.

Video communication

- 7.8. In video communication such as television advertisements or online video material, retail marketers should have regard to appropriate visual tools and sound elements when presenting a specific price or discount.

Advertising specific distribution zones

- 7.9. Retail marketers are able to advertise an offer specific to a customer type and distribution zone across a jurisdiction or state, provided it is clear the offer relates only to a specific distribution zone.

Appendix A

This is clause 15 of the VDO Order¹⁰ made on 30 May 2019.

15. Victorian default offer tariffs to be the reference tariffs for discounts

1. This clause applies until such time as the amendments to the Energy Retail Code required by clause 16(2)(a) come into force.

Provided that, if those amendments do not provide for any matter provided for in this clause, then this clause continues to apply in respect of that matter.

2. A retailer that offers a discount to a domestic customer or a small business customer must:
 - (a) if the discount is in respect of the period from 1 July 2019 to 31 December 2019, disclose how the discount is calculated as against the tariffs in Schedule 1 or Schedule 2 (as the case may be), and what (in percentage or dollar terms) the reduction in tariff is in terms of those tariffs; and
 - (b) if the discount is in respect of a regulatory period, disclose how the discount is calculated as against the flat tariffs determined by the Commission pursuant to the VDO price determination that applies in respect of that period, and what (in percentage or dollar terms) the reduction in tariffs is in terms of those tariffs.
3. For the purposes of subclause (2), the reduction in tariffs is to be expressed as the difference between the estimated annual cost of the Victorian default offer for the customer type and distribution zone, and the estimated annual cost of the offer to which the discount relates after the discount is applied, using the annual reference consumption.
4. For the purposes of subclause (3):
 - (a) the estimated annual cost of the Victorian default offer is:
 - i. during the period from 1 July 2019 to 31 December 2019, determined by applying Schedule 3;
 - ii. during a regulatory period, determined by applying Schedule 3 or any other approach or methodology determined by the Commission; and
 - (b) the retailer must determine the estimated annual cost of the retailer's offer to which the discount relates:

¹⁰ VDO Order available at: <http://www.gazette.vic.gov.au/gazette/Gazettes2019/GG2019S208.pdf>.

- i. if the tariff is a flat tariff or a flexible tariff (in either case, with or without a controlled load), by applying Schedule 3;
 - ii. otherwise, based on a reasonable estimate having regard to any relevant information available to the retailer; and
5. The annual reference consumption is:
 - (a) during the period from 1 July 2019 to 31 December 2019:
 - i. for domestic customers without a controlled load – 4,000 kWh general usage per annum;
 - ii. for domestic customers with a controlled load – 4,000 kWh general usage plus 2,000 kWh controlled load usage per annum;
 - iii. for small business customers (with or without a controlled load) – 20,000 kWh general usage per annum.
 - (b) during a regulatory period:
 - i. the consumption amount determined by the Commission (if any); or
 - ii. if no amount is determined by the Commission pursuant to subclause (5)(b)(i), the amount specified in subclause (5)(a).
6. For the purposes of subclause (5), the amount of electricity consumed is assumed to be the same on each day of the year.
7. Any percentage or dollar amount disclosed pursuant to this clause must be expressed as a whole percentage or dollar, rounded to the nearest percentage or dollar.
8. Otherwise, Division 2 of Part 2A (*Customers entitled to clear advice*) of the Energy Retail Code applies to the disclosures required by this clause.