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REGULATORY ASSESSMENT OF
TARIFF REASSIGNMENT DUE TO
INSTALLATION OF INTERVAL
METERING

FINAL COMPLIANCE REPORT

APRIL 2010

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Essential Services Commission 2010, *Regulatory Assessment of Tariff Reassignment due to Installation of Interval Metering: Final Compliance Report*, April

GLOSSARY

| | |
|------|--|
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| DPI | Department of Primary Industries |
| EDPR | Electricity Distribution Price Determination |
| EWOV | Energy and Water Ombudsman (Victoria) |
| IMRO | Interval meter roll out |
| IT | Information technology |
| PV | Solar photovoltaic cells |
| TOU | Time of use |

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1 INTRODUCTION

1.1 Background

Victorian electricity customers currently are charged for their electricity consumption under three tariff structures – general purpose or “flat” tariff, peak and off peak tariffs or time-of-use tariffs. A small, but significant, number of customers have lost their off peak electricity tariffs in recent years when an interval meter was installed at their premises either to replace their accumulation (or basic) meter or in conjunction with the installation of solar photovoltaic cells (PVs).¹

The Energy and Water Ombudsman (Victoria) (EWOV) recorded approximately 150 complaints in both 2008 and 2009 regarding this issue. The Essential Services Commission (the Commission) and the Department of Primary Industries (DPI) also received complaints from customers and Members of Parliament, and the complaints continued into 2010.

The large majority of these complaints were against two distributors, Jemena and United Energy, and one retailer, AGL. However, complaints to EWOV show that customers have similar issues with all distributors and many retailers.

1.2 Purpose of this report

The purpose of this report is to present the Commission’s views on the regulatory arrangements that apply to tariff assignment and reassignment when a customer has received an interval meter. It explains the circumstances under which some customers have lost their off peak tariff and addresses whether a peak and off peak tariff should continue under these regulatory arrangements when there is a change from an accumulation meter to an interval meter. The report also considers the implications of customers installing PVs.

The report covers the period from 2004 to 2009, although the majority of customer complaints have arisen in 2008 and 2009. A number of interrelated events have occurred over this time period to impact this issue, including:

- regulatory decisions made by the Commission under the interval meter rollout (IMRO)
- the Victorian Government’s mandated Advanced Metering Infrastructure (smart meter) rollout, and
- customers installing PVs that required a metering change.

¹ The various tariffs discussed in this report are described in section 2.1.

This report is largely concerned with deciding whether the distributors and the retailers have complied with the regulatory arrangements which applied prior to the commencement of the smart meter rollout in late 2009.

1.3 Consultation on this issue

In preparing this report, the Commission engaged David Cornelius Consulting, who reviewed the complaints and information provided by EWOV, and consulted with Jemena, United Energy, SP AusNet, CitiPower, Powercor and AGL.² The technical information in this report has been provided by David Cornelius Consulting.

The Commission held a forum in late 2009, attended by the AER, DPI, distributors, retailers, EWOV and consumer advocacy groups, to explore issues and canvass options for the resolution of the matter. The DPI's concerns about the reassignment of tariffs for customers with PVs were taken into account in the Commission's findings.

A draft report was issued in March 2010 so that the Commission could provide an opportunity to the distributors and retailers to comment on the preliminary findings. Nine submissions were received. The submissions, and the Commission's response, are detailed in section 4 of this final report.

1.4 Commission findings and next steps

In its draft report, the Commission concluded that, where a customer with storage water heating (or electric space heating)³ had a distribution tariff reassignment away from an off peak tariff when a new or replacement interval meter has been installed, this reassignment had not been in accordance with the distribution tariff assignment regulation.

Further, the Commission concluded for customers on a market contract or standing offer that there has been retailer non-compliance with the Energy Retail Code when the retailers had:

- changed a tariff with an off peak component to a general purpose tariff without the customer's agreement, or from 1 January, 2009, with the customer's explicit informed consent⁴;
- for both standing offer and market offer tariffs, failed to give notice to the customer of a variation of the retailer tariffs that affects the customer.

² David Cornelius had discussions with AGL's General Manager, Energy Regulation in mid 2009 to obtain more detailed information on the tariff reassignment issues impacting AGL's customers.

³ For simplicity, most discussion in the paper refers to storage water heating, although the same rules apply to those customers with electric space heating

⁴ This requirement could apply for customers on standing offer contracts as, if they gave their consent, they would enter a market contract

The Commission concluded that customers will have been financially disadvantaged by these actions. Consistent with this view, distributors and retailers will be required to undertake best endeavours to compensate these customers with a goodwill payment. The proposed compensation arrangements required of retailers or retailers and distributors jointly are set out in section 5.

In their submissions to the draft report, all parties appear to agree that customers should not have had a distribution tariff reassignment just because they received a new or replacement interval meter. Most submissions were concerned about the circumstances where the distribution tariff reassignment occurred because of the installation of solar photovoltaic cells (PVs).

The distributors argued that, in these circumstances, the regulation allows them to reassign the distribution tariff if they believed there was a change in the connection or load characteristics at the customers' premises, and they complied with the notification requirements.

The Commission does not agree with these submissions for the reasons set out in section 4.3.

The retailers submitted that, if they did not comply with their regulations because of actions taken by the distributors, they should not be required to compensate customers. Further, the retailers argued that the actions they took were consistent with the regulations and the contracts with their customers.

(David: compensation changes)

Notwithstanding, both distributors and retailers assert that, if customers were disadvantaged, the numbers were very low or they have been already compensated. No further enforcement actions are required.

These submissions have not led the Commission to different findings than set out above. Therefore, the Commission will take the steps set out in section 5.

The Commission does not have the responsibility for enforcing distributors' compliance with the Victorian regulations.⁵ However, this final compliance report has been prepared in consultation with staff of the Australian Energy Regulator (AER). The AER has advised that they will progress the appropriate enforcement action on the Victorian distributors in accordance with the transitional arrangements applying under the National Electricity (Victoria) Act.

⁵ Refer in particular to S23 – S26 of the *National Electricity (Victoria) Act 2005*

The final compliance report will be sent formally by the Chairperson of the Commission to the Chairperson, AER to facilitate a co-ordinated enforcement action by the two regulators.

1.5 Structure of this report

This final compliance report is structured as follows:

- Section 2 – provides background on meters and tariffs and sets out the regulatory framework governing tariff reassignment.
- Section 3 – discusses the issues arising from tariff reassignment for customers with a meter change and whether the tariff reassignments by the distributors and the retailers were compliant with the regulatory rules.
- Section 4 – summarises the submissions from the distributors and the retailers and sets out the Commission’s responses to the submissions.
- Section 5 – sets out the Commission’s findings and the remedies to be implemented by the distributors and retailers in relation to customers, including compensation to be paid.
 - Appendix A provides the methodology for the calculation of the financial compensation amounts that form part of the conclusion and next steps in section 4
 - Appendix B.

2 | METERING AND TARIFF ASSIGNMENT

This section briefly sets out information on how tariffs are set, the relationship between meters and tariffs and explains how customers could lose their off peak tariff. It also sets out the rules for assigning customers to distribution and retail tariffs and how these rules apply to the current issue.

2.1 How distribution and retail tariffs are set

The final price that customers pay for their electricity consumption is based on a retail tariff. The retail tariff includes the aggregate cost incurred by the retailer for:

- the cost of energy from the wholesale market, and
- the cost to transport the energy by the distributor⁶,

as well as the retailer's own costs and margin.

The distribution transport costs are regulated and charged to the retailer by the distributor.

The distributor initially assigns a tariff to each customer for the supply of electricity to the customer's premises. This tariff is regulated by the AER and subject to rules regarding how it is assigned.⁷ The distributor does not directly bill customers against these tariffs. The distributor advises the retailer of each customer's tariff assignment and then the retailer takes this into account in structuring and setting its retail tariff.

The retail tariffs most familiar to customers which have applied under accumulation meters, are the general purpose tariff, the off peak tariff that applies to dedicated storage hot water and the winner tariff. The winner tariff is a time of use (TOU) tariff that requires more complex accumulation metering.

The general purpose tariff applies to all general household load at all times (including weekends). The off peak tariff applies to the overnight heating of the hot water load. The off-peak tariff is lower than the general purpose tariff because of the lower costs of producing and delivering power at these times.

TOU tariffs will become generally available with interval metering and are designed to be more reflective of the cost of supplying the power at different times during the day and night.

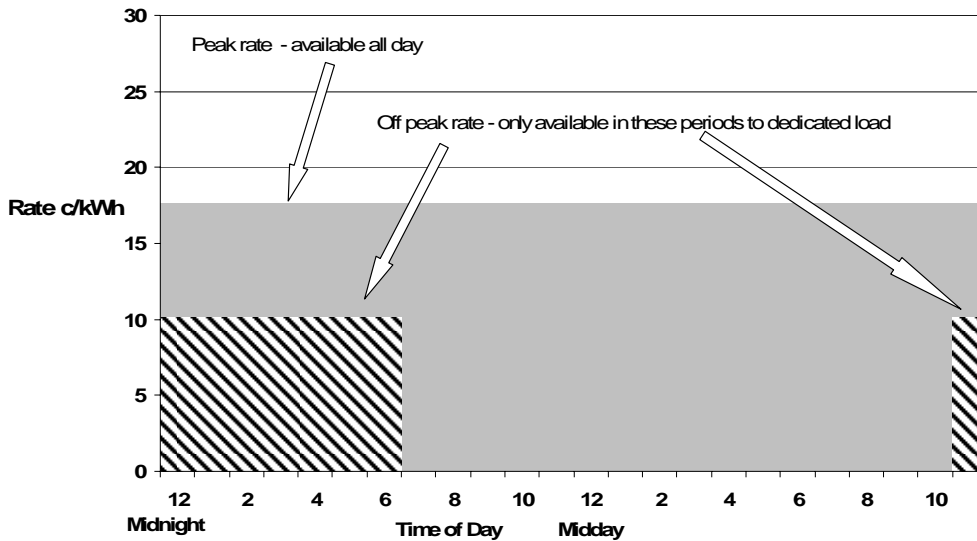
⁶ These costs include the transmission costs as well as the distribution costs.

⁷ The Commission was previously responsible for this regulation, the responsibility passed to the AER on 1 January 2009. Network tariffs are approved annually and can be found at the AER's website as follows; <http://www.aer.gov.au/content/index.phtml/itemId/732643>.

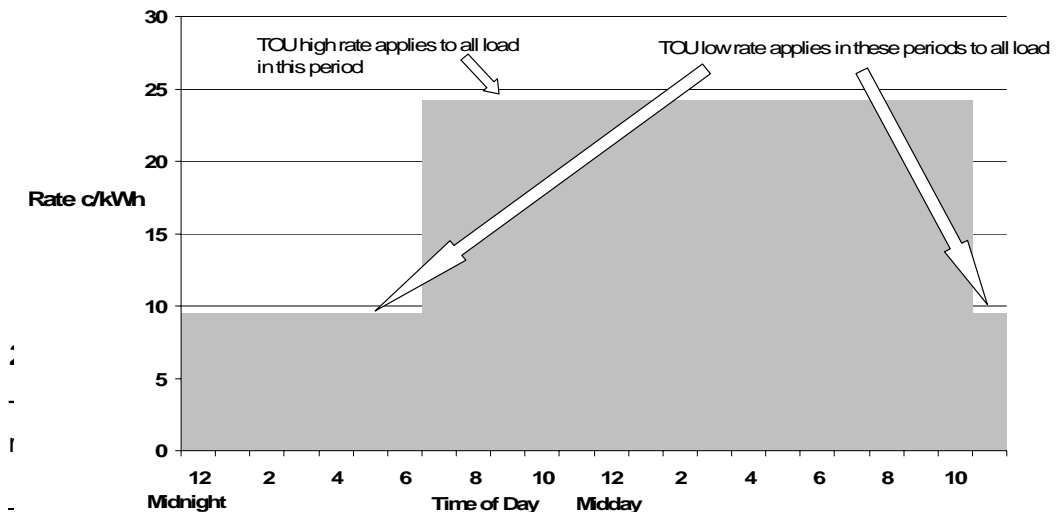
Under a TOU tariff a lower (or off peak) tariff is applied to the customer's entire load, that is, the general load as well as for the storage hot water. The lower tariff usually applies overnight as well as all weekend. The higher (or peak) tariff is applied at peak usage times, reflecting the higher costs of supplying power during these times.

The following diagrams show the periods when different rates or prices would apply under these tariffs.⁸

General Purpose and Off Peak Tariff
Two accumulation meters required for these tariffs



Time of Use Tariff
An interval meter required for this tariff



⁸ These tariffs are based on AGL South's 2010 published Standing Offer prices and are used for illustration purposes only. These tariffs obviously were not available in 2004-2009.

The Electricity Distribution Price Determination 2006-10 (price determination) specifies that, when assigning a customer's distribution tariff, a distributor must:

- take into account the customer's load and connection characteristics
- take into account whether the customer has an interval meter installed and
- assign customers with similar load and connection characteristics, and with a similar meter, to the same distribution tariff.⁹

A distributor can reassign a customer's tariff only when a customer's load and/or connection characteristics have changed such that the customer's current tariff is no longer appropriate for that customer.¹⁰

The distributor will take the following load and connection characteristics of the customer into account when assigning the customer to a distribution tariff:

- supply voltage level,
- anticipated energy consumption level and maximum demand,
- whether the customer has a dedicated circuit for electric storage water heating and/or space heating¹¹, and
- whether the customer has on-site generation, which would result in electricity being supplied back into the grid rather than just supplied from the grid.

Residential electricity customers will be differentiated by whether or not they have a dedicated circuit for storage water heating, and the customer's overall energy consumption level.

2.3 How do meters affect tariffs?

Once the tariff is assigned, the distributor selects the meter or meters that can record consumption consistent with the tariff. The type of meter installed at a customer's premise is important as the meter must be able to record the customer's off peak usage separately from the peak usage.

If a premise has an accumulation meter, the customer must generally have two meters to record the usage separately for the peak and off peak tariffs.

An interval meter records the usage separately for each half hour allowing the peak and off peak usage to be obtained.

⁹ Essential Services Commission 2005, *Electricity Distribution Price Review 2006-10 Final Decision Volume 2 Price Determination*, October, p 6 (Clause 2.1.19(i) and 2.1.20)

¹⁰ For smart meters, the price determination allows the distributor to reassign the customer to a TOU tariff if an interval or smart meter has been installed (see Appendix B for more details). That is, there does not have to be a change to a customer's load or connection characteristics.

¹¹ These rules apply to customers with a dedicated circuit also for electric space heating. For simplicity, however, this paper will only refer to storage hot water circumstances.

2.4 Assigning customers to a retail tariff

There is no regulatory requirement that ensures a customer is offered a peak and off peak tariff package when the customer has storage hot water. It is intended, however, that retailers are aware of these customer characteristics, so that they can make an appropriate price offer, from:

- the customer's indication of their current tariff when requesting an offer from a retailer, and/or
- the National Metering Identifier (NMI) and standing data held by AEMO, which is accessible by retailers and indicates the relevant distribution tariff code.

Retail regulation for tariff information and tariff variations is different for standing offers and market offers. Standing offer tariffs can be varied by the retailer each six months and any change does not require the customer's consent. As discussed in section 3.2, however, the Commission did not consider that standing offer tariff structures would be varied without customers' consent.¹²

For market offers, if a tariff change is proposed by a retailer, there is a regulatory requirement for customers to agree to a tariff change. Clause 20(a) of the Energy Retail Code (the Code) provides that:

Prior to 1 January 2009 - The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.

For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.

From 1 January 2009 - The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer

If the amount of the tariff changes in accordance with a term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required between the retailer and the customer to effect such tariff change, provided that, where the contract is a market contract, the customer had given its explicit informed consent to the inclusion of the relevant term or condition in the energy contract.

For customers on a market contract, a retailer could not change a tariff with an off peak component to a general purpose tariff without the customer's written

¹² This has been a requirement of the Energy Retail Code prior to the implementation of AMI, and consequently does not take into account the changes in tariff structures expected under the operations of the smart meters.

agreement. From 1 January 2009, the Code was clarified to ensure that a customer's explicit informed consent was provided for this tariff variation.

For both standing offer and market offer tariffs, the Code requires that the retailer must give notice to the customer of any variation of the retailer tariffs that affects the customer as soon as practicable or no later than the customer's next bill.¹³

2.5 How can customers lose their off-peak tariffs?

The change from accumulation meters to interval meters affects the distribution tariffs that are assigned to customers.

The ways in which customers can lose their off peak tariff with the installation of an interval meter include:

- The distributor reassigning the customer from a peak and off peak tariff to a general purpose tariff and the retailer's billing being based on this information without metered peak and off peak usage.
- The retailer requesting, and the distributor carrying out, a reassignment of the customer's tariff to a general purpose tariff, without the customer's consent or knowledge.
- The distributor installing an interval meter and assigning a TOU distribution tariff (including an off-peak component for certain periods) with the expectation of the interval data being used by the retailer. However, the retailer does not use the interval data for billing purposes. The bill is based on a single price for all consumption.
- The distributor installing an interval meter and assigning a TOU distribution tariff and subsequently not collecting and/or supplying the interval data to the retailer.
- The distributor reassigning the customer to a TOU distribution tariff, but the retailer being reluctant to apply this tariff due to the complexity of particular components within the tariff, for example United Energy's Summer Demand Incentive Charge (see section 3.2).
- For customers who have installed PVs, the distributor connecting the dedicated load to the general load to meet the connection and metering requirements of the feed-in tariff and not assigning the customer to a TOU tariff.

The complaints by customers suggest that most, if not all, of the above reasons have resulted in them losing their off peak tariff assignment. These cases may have resulted from a breakdown in communication between the retailer, the distributor and the customer's electrician, or the capability of the retailers' or distributors' systems. However, the outcome is a high level of confusion and dissatisfaction experienced by customers.

The next section considers in more detail the compliance of the distributors and the retailers with the tariff assignment regulation.

¹³ See clause 26.4(b) of the Energy Retail Code

This section outlines the tariff changes that have taken place and discusses whether these changes have been compliant with the regulation that was set out in section 2. The relevant tariff changes are those that arose when a new or replacement interval meter was installed, including an interval meter for PVs.

3.1 Customer Impacts – Distribution Tariffs

3.1.1 New and replacement meters

When a customer received a new interval meter, either to replace a faulty meter or as part of the rollout of interval meters, the distributor should not reassign the customer to a different distribution tariff. This is because the customer's load or connection characteristics did not change.¹⁴

Therefore, if a customer had a combination of a general purpose tariff and an off peak tariff based on two accumulation meters, an interval meter capable of recording off peak consumption should have replaced this arrangement. These customers should not have lost their off-peak tariff. All distributors agree that such reassignments are inconsistent with their metering policy, which is set out in Table 3.1 below.¹⁵

Table 3.1 Distributors' tariff reassignment policy

| <i>Distributor</i> | <i>Distributor Policy</i> |
|-----------------------------|--|
| CitiPower and Powercor | "Like for like" replacement takes place which means that existing customers would not lose their off peak tariff in circumstances where a faulty meter is replaced or an interval meter is installed |
| Jemena Electricity Networks | No reassignment – two element interval meter installed |
| United Energy Distribution | No reassignment – two element interval meter installed to mimic the previous tariff |
| SP AusNet | Customers installing PVs are reassigned to a specific TOU PV tariff |

¹⁴ The only exception is the Government's mandated roll out of smart meters, under which distributors are allowed to reassign the customer to a TOU tariff subject to compliance with the customer notification requirements.

¹⁵ This information was provided by distributors in late 2009 in connection with their policy for installing interval meters, including for PVs' implementation. It does not apply to the rollout of smart meters.

3.1.2 Customers with solar photovoltaic cells (PVs)

When a customer installs PVs, the customer's connection characteristics change and the customer's meter will need to be changed so that it can measure the flow of power into the grid as well as from the grid.

However, the customer's load characteristics, represented by the customer's appliance and electrical equipment stock, do not change just because PVs are installed. Importantly, the customer's storage hot water requirement remain the single most distinctive characteristic of their load regardless of whether PVs were installed or not.

Where PVs are installed, the distribution tariff assignment must continue to reflect the customer's load characteristics. A distributor can reassign a customer's tariff only when a customer's load and/or connection characteristics have changed such that the customer's current tariff is no longer appropriate for that customer. Under the relevant regulation the off peak tariff should be retained where customers have installed PVs.

This compliance review has found that some customers, mainly in Jemena's and United Energy's distribution area, who have installed PVs and who have storage water heating, have lost their off peak tariff. This may have occurred in some cases because the distributor has connected the customers' dedicated hot water load to the general load and general purpose tariff has been assigned.

This is likely to have occurred so that the connection arrangements are in accordance with the feed-in tariff requirements for PVs, but mistakenly the customer has not been assigned to a TOU tariff to allow the off peak tariff to be retained.¹⁶

The Commission has concluded that distributors have not complied with the price determination where they have removed a customer's access to the off peak rate or a TOU tariff when PVs have been installed.

3.1.3 Notification to customers

The price determination (clause 2.1.20) requires the distributor to notify the customer who has had their distribution tariff reassigned of the reassignment prior to the reassignment occurring.

The information provided in preparing this report indicates that the distributors do not appear to have been compliant with this requirement. The complaints to EWOV suggest that customers were not aware of the tariff change until they received their retail bills.

¹⁶ This issue may now be resolved in Jemena's area as it is now reassigning customers on the general purpose tariff with storage hot water and PVs on to its TOU tariff. This ensures that these customers will receive an off peak rate for their storage hot water. Jemena has advised the Commission that they have produced an information pack for customers and have contacted all retailers regarding the issue

3.2 Customer Impacts - Retail tariffs

A customer's retail tariff is affected by the assigned distribution tariff. This is because the structure of the distribution tariff, whether it has peak and off peak components, may influence the structure of the retail tariff.

Most of the customers who have lost their off peak tariff were customers of AGL. Therefore, this compliance review has primarily considered the issues arising from AGL customers' complaints in detail. Customers of other retailers, however, have complained about the loss of their off peak tariff when they switched to an interval meter or installed PVs.

AGL has advised the Commission that customers who have storage hot water and lost their off peak retail tariff did so because of "network issues". By this AGL means that a change to the distribution tariff that resulted in the loss of the off peak tariff (the distributor not assigning the customer to an off peak or TOU tariff) was reflected in AGL's retail tariff structure.

The distributors are not always responsible for the loss of the off peak tariff. For example, United Energy's TOU distribution tariff has a Summer Demand Incentive Charge (SDIC) component.¹⁷ It appears that a number of electricity retailers have been reluctant to offer a retail tariff corresponding to this TOU tariff because of the complexity of administering the tariff, explaining it to customers and displaying it on customers' bills.

However, some other retailers apparently have been able to successfully bill residential customers based on this same tariff. They have been able to unbundle the charges and provide relevant information to the customers on their bills.

AGL advised the Commission in late 2009 that these issues would be resolved in 2010. This is because it has introduced new tariffs for customers with PVs based on the respective distributors' PV tariffs for customers with interval metering.¹⁸

United Energy has also introduced a new, less complex TOU tariff in addition to its SDIC tariff. This tariff, which includes a peak and off peak component, is available for all customers with PVs and should be offered by all retailers to relevant customers.

(delete – David?) The regulatory requirements relating to varying retail tariffs were set out in section 2.4 of this compliance report. Retailers have been non-compliant with these requirements if they have not informed customers of tariff changes or not sought their consent to the change. This is a clear requirement for customers on market contracts.

¹⁷ The SDIC applies to the summer period from 1 November to 31 March on working days between 3pm and 6pm where the temperature is forecast in the Age newspaper to reach 30° or over. On these days, regardless of whether the temperature forecast is reached or not, the customer will be charged the SDIC which then applies to all days within that billing period.

¹⁸ For example, see United Energy's approved tariffs for 2010 on the tariff's page of its website; http://www.ue.com.au/industry/network_tariffs/networkTariff.asp

The legislative and regulatory requirements for standing offer tariffs allow for variations without consent (subject to these variations occurring no earlier than every six months). However, the Commission does not accept that the price regulation framework can be interpreted as allowing a tariff structural change in the retail standing offer (rather than just a price variation to the existing tariff).

3.3 Draft report and consultation

These preliminary findings were provided to all Victorian energy distributors and retailers with an invitation to comment prior to the Commission finalising its compliance report. The submissions received are considered in detail in section 4 and informed the final decision set out in section 5..

4 SUBMISSIONS TO DRAFT REPORT

The Commission received nine submissions from:

- **Distributors** – CitiPower and Powercor, Jemena and United Energy Distribution (UED)
- **Retailers** – AGL, Australian Power & Gas, Origin, Simply Energy, TRUenergy and Victoria Electricity.

The substantive issues in the submissions, and the Commission's responses, are set out below.

4.2 Powers of the Commission

The distributors observed that the Commission no longer has enforcement powers in relation to the price determination. CitiPower and Powercor suggested that the distributors should not be liaising at all with the Commission on this matter, while UED and Jemena supported a co-ordinated approach with both the AER and the ESC.

The Commission had acknowledged the limitations of its enforcement powers in the draft report, and outlined in section 1.4 the regulatory arrangements between the AER and the Commission in finalising this matter.

The Commission also acknowledges that, if this matter concerned only the distributors' regulatory obligations, it would not have any role in investigating potential breaches of those obligations. The transitional arrangements to the national regulatory framework, where we retain responsibility for all energy retail functions and some distribution functions, blur these regulatory boundaries.

Therefore, it is preferable in the public interest that the AER and the ESC work together on matters that impact the customers of distributors and retailers. It is important that responsibility for enforcement actions are clearly set out and this is discussed in section 5.

4.3 Distributors' submissions

4.3.1 New and replacement meters

CitiPower and Powercor believe the Commission incorrectly asserts that the distributor could only reassign a customer who received an interval meter in the circumstances described earlier to a different distribution tariff if their load or connection characteristics changed. According to them, the statement is incorrect because under clause 2.1.21 of the price determination, the distributor may

reassign an existing customer to a time of use tariff subject to meeting the requirements of clause 2.1.22. CitiPower and Powercor do not agree that this price determination decision only applies to the roll out of the smart meters, as stated by in the draft report (see footnote 14).¹⁹

The relevant provisions of the price determination are set out in Appendix xxx.

The Commission does not accept this submission. The price determination provision (clause 2.1.21) took effect from 1 January 2006, but could not be applied until another rule under the price determination was enacted. That is, clause 2.1.22 (iii) which states:

A distribution business is not permitted to reassign a distribution customer who has an annual consumption of less than 20 MWh to a time of use distribution tariff under clause 2.1.21, unless the interval meter reassignment requirements have been published by the Commission.

The implementation of the price determination transferred to the AER on 1 January 2009. The AER decided the reassignment rules in May 2009 and the decision became effective in August 2009 through publication of the requirements in the Electricity Distribution Code.

Therefore for the period under review - 2004 to at least August 2009 - the provisions of clauses 2.1.19 and 2.1.20 applied. These clauses do not provide for a reassignment of network tariff unless there is a change in the load or connection characteristics.

4.3.2 Customers with solar photovoltaic cells (PVs)

Both CitiPower and Powercor and UED submit that the price determination does not allow the regulator to decide that a distributor is not permitted to reassign a customer's tariff following the installation of PVs or to determine whether the resultant change in the customer's connection characteristics renders the existing tariff not appropriate. The relevant question is whether the distributor *believes* that the change in load or connection characteristics means that the existing tariff is not appropriate.

UED further asserts that its tariff report, which was reviewed by the AER, indicated that the installation of embedded generation (PVs) by an existing customer is considered a load characteristic change. Therefore, retaining the customer on a dedicated off-peak tariff was not feasible

The Commission acknowledges that the EDPR states CitiPower asserts that it has met its regulatory obligation in reassigning a customer's network tariff

¹⁹ Footnote 13 states that the only exception to the distributors' being able to reassign a network tariff without a change to the load or connection characteristics is the Government's mandated roll out of smart meters. This policy allows distributors to reassign the customer to a TOU tariff subject to compliance with the customer notification requirements.

if it believes that a load or connection characteristic has changes irrespective of whether a customer has lost there off peak tariff or not.

The rules for the assignment of tariffs however require the DNSP to meet some additional requirements, these are;

- That customers with the same or materially similar load and connection characteristics should be assigned to the same tariff, and
- That DNSPs must notify distribution customers in writing of the reassignment prior to the reassignment occurring.

The Commission reaffirms its view that for customers with dedicated off peak load this load remains the single most important characteristic its load that this should be recognised in any reassigned tariff. Further that customers with similar load and connection characteristics will have an off peak tariff when they have dedicated off peak load and the Commission notes in connection with PVs the Rules²⁰ set out for tariff assignment that;

In formulating provisions of a distribution determination governing the assignment of customers to tariff classes or the re-assignment of customers from one tariff class to another, the AER must have regard to the following principles:

(2) customers with a similar connection and usage profile should be treated on an equal basis;

(3) however, customers with micro-generation facilities should be treated no less favourably than customers without such facilities but with a similar load profile;

“Under the relevant regulation the off peak tariff should be retained where customers have installed PVs.”

Commission Comment

UED make the argument, similar to CitiPower, that provided they believe that there is a change in the connection or load characteristic that they have met their obligation and reassignment can follow. See comments under CitiPower.

UED rely strongly on their published tariff strategy, “that has been reviewed by the AER” that states that embedded generation is considered a change of load characteristic and that dedicated off peak tariffs are not supported. This does not prevent a TOU tariff being offered with their preferred single element meter. Furthermore UED fail to explain how this approach has taken into account the load characteristics and the other matters that need to be considered in the reassignment (see the discussion under CitiPower for this explanation).

²⁰ Rules clause 6.18.4, Principles governing assignment or re-assignment of customers to tariff classes and assessment and review of basis of charging

UED concurs with the ESC's conclusion that an impacted customer should have their distribution tariff revert to a TOU tariff, such as those available in 2010, TOU or TOD.

4.3.3 Distributors' compliance and compensation

CitiPower and Powercor's submission is that compensation is not payable unless it was found by the AER or conceded by the distributor that a breach of the price determination had occurred, that is, the tariff reassignment was wrong because it did not comply with clause 2.1.20 or there was not proper notification under clause 2.1.22. This distributor does not consider it has breached any of these requirements.

- CitiPower and Powercor not aware of any reassignment problems
- JEN says there are no customers to compensate this has been done and there were less than 10 customers

Jemena provides mostly a description of what happened and how a few customers slipped through the net as a result of the retailers not requesting a change to a TOU tariff. JEN says they have implemented steps in its B2B operational procedure to ensure that JEN does not proceed with the installation of a bi-directional meter until JEN receives a B2B request for TOU tariff reassignment from the retailer on behalf of the customer.

As discussed in section 3.2, UED has offered a time-of-use network tariff with an off-peak component for many years, but believes that retailers did not apply this tariff to their customers because they considered it too complex. UED asserts that the interval data was available to retailers to enable them to offer an off-peak tariff to their customers.

Notwithstanding, UED acknowledges that customers have been confused by these arrangements and proposes that any customers who feel disadvantaged should have the option to request a time-of-use tariff directly to the distributor. **(David: have I got this correct and do we support this?).**

The Commission does not agree with CitiPower and Powercor's interpretation of the regulatory requirements, that is, that the tariff reassignment may take place for an interval meter even though the reassignment did not comply with clause 2.1.22(iii).

Further, it does not accept Jemena's submission that it merely acted on the retailers' request for a tariff change. Irrespective of any request from a retailer requesting a tariff change, it is the distributor's responsibility to reassign a customer or not in accordance with the price determination requirements.

UED?

4.4 Retailers' submissions

4.4.1 Retail pricing arrangements

Three retailers – Origin, Simply Energy and Australia Power & Gas – commented on the statements in the draft report which seemed to imply that the retailers must automatically follow the distribution tariff structure in setting their retail tariffs. They assumed therefore that the Commission's findings as to the retailers' compliance with their regulatory obligations were linked to whether or not the retailers directly passed through the distribution tariff structure to customers.

The Commission clarifies that, while in practice distribution tariff structures may influence retail tariff structures²¹ this was not a factor which influenced the compliance review. The key issue for retailers is whether they acted in accordance with the regulation in changing customers' tariff structures. This is discussed in section 4.4.2 below.

4.4.2 Regulatory requirements

The retailers submitted that the Commission appeared to be contradictory in the draft report. That is, stating on the one hand that *'there is no regulatory requirement that ensures a customer is offered a peak and off peak tariff package when the customer has storage hot water'*.²², but on the other hand requiring that customers should revert to a peak and off peak tariff or a TOU tariff in certain circumstances.

Again, it is necessary to clarify the objectives of the compliance review. This review is not concerned with what tariff structures the retailers offer in a competitive energy retail market, but whether they complied with the regulation in the circumstances under review.²³

Most retailers submitted that, for market contract customers, they are able to change the tariff structures and arrangements if the contract provides for such a change. The Commission agrees with this view and confirms that the retailers need to demonstrate compliance with the regulations.

Some retailers considered that there was lack of clarity in the draft report on the regulatory requirements which allow tariff structure variations under market and standing offer contracts. The Commission confirms its view that the regulatory requirements allow:

²¹ This was agreed by the retailers in their submissions and the drafting of the issue in section 3.2 has been amended to reflect this approach.

²² See first paragraph, section 2.4

²³ Simply Energy's submitted that the regulatory requirements are unclear for the implementation of smart meters. The Commission has addressed this in its Issues Paper – Regulatory Review: Smart Meters, and reiterates that this compliance review deals with those matters prior to the implementation of smart meters.

- For market contracts, variations to the retail tariffs and/or the retail tariff structures, subject to customers' agreement or explicit informed consent;²⁴
- For standing contracts, variations to the standing offer retail tariffs without consent, but not the retail tariff structures.

4.4.3 Compensation arrangements

The retailers do not agree that they should bear proportionate responsibility for the compensation even if they changed retail tariff structures without customers' consent, in circumstances where they say the distributor gave them no choice.²⁵ They considered the scenarios allocating proportionate responsibility to be not fair and reasonable.

The Commission accepts that the information provided in the submissions suggests that the retailers were sometimes placed in difficult situations by the distributors. However, the retailers also have regulatory and contractual obligations to their customers, with which they must comply.

The retailers provided specific views in their submissions on how their customers were treated and whether they should be required to compensate customers. As discussed in section xxx, these views will be addressed with the individual retailers concerned.

²⁴ As set out in section 2.4, the contractual requirements depend on when the customer entered the contract.

²⁵ All retailers gave examples where this occurred, particularly with PV installation.

5 CONCLUSIONS AND NEXT STEPS

The report's conclusions address the question of the compliance of the distributors and retailers in relation to tariff reassignment.

The distributors will have breached the price determination if they reassigned the off-peak tariff in the circumstances described in section 5.1 and the retailers consequently changed the customer's contractual arrangements without consent. In some cases, the retailers may have changed the customer's contractual arrangements without consent, even though the distributor complied with its obligations.

Further, both the distributors and the retailers will have breached the relevant regulations if they did not notify customers appropriately.

The Commission concludes that customers will have been financially disadvantaged by these actions. Consistent with this view, distributors and retailers will be required to undertake best endeavours to compensate customers with a goodwill payment as set out below.

The AER is now responsible for compliance of the distributors with the regulatory framework. The Commission and the AER will cooperate to achieve the outcomes that are set out below.

5.1 Distributors' compliance

The Commission concludes that, where a customer with storage water heating (or electric space heating) has had a distribution tariff reassignment away from an off peak tariff when a new or replacement interval meter has been installed, this reassignment has not been in accordance with the distribution tariff assignment regulation.

The Commission is concerned that many customers may have been disadvantaged following the loss of their off peak tariff when a new meter was installed and the tariff was reassigned.

The Commission will recommend to the AER that no further action is taken with respect to the non-compliance of the distributors with the price determination subject to the distributors making best endeavours to:

- ensure that customers, who have storage water heating (or electric space heating) and who have lost their off peak distribution tariff due to the installation of PVs or new or replacement metering, have their distribution tariff revert to a peak and off peak tariff or a TOU tariff.
- compensate each customer who has been disadvantaged by such a distribution tariff reassignment with a goodwill payment that is set out in table 5.1 below.

5.2 Retailers' compliance

The Commission concludes for customers on a market contract or standing offer that there has been retailer non-compliance with the Energy Retail Code when:

- changing a tariff with an off peak component to a general purpose tariff without the customer's agreement or from 1 January, 2009, the customer's explicit informed consent²⁶
- for both standing offer and market offer tariffs, failing to give notice to the customer of a variation of the retailer tariffs that affects the customer.

For customers with storage water heating (or electric space heating) who have lost their off peak tariff, the Commission requires retailers to undertake best endeavours to:

- Revert the tariff to a peak and off peak tariff or a TOU tariff either following the reversion of the distribution tariff as set out above, or directly if the distribution tariff already has peak and off peak components.
- compensate each customer who has been disadvantaged by their retailer with a goodwill payment that is set out in table 5.1 below.

5.3 Compensation to customers

The Commission's view is that compensation should be paid by distributors and retailers where they have removed the customer's access to off peak electricity for their storage water heating.

The matter of compensation of customers by retailers is complex and it is probably the case that some customers lost their off peak tariff because their retailer could not or would not base its tariff on the distributor's tariff with appropriate peak and off peak components. The Commission's broad compensation proposal allows for this and is set out in table 5.1 below. Appendix A sets out how the Commission determined the compensation amount.

²⁶ This requirement should apply for customers on standing offer contracts as, if they gave their consent, they would enter a market contract

Table 5.1 Customer Compensation Amount for loss of off peak tariff on installation of interval metering

| <i>Customer's Tariff reassignment case</i> | <i>Compensation to be paid by distribution business</i> | <i>Compensation to be paid by retail business</i> | <i>Total compensation paid to relevant customers</i> |
|---|---|---|--|
| Distributor reassigned a distribution tariff causing loss of off peak tariff | \$ 240.00 | \$ 110.00 | \$ 350.00 |
| Retailer failed to apply off peak tariff, despite the distribution tariff including the off peak tariff | n.a. | \$ 350.00 | \$ 350.00 |

Section 2.5 set out the reasons for why customers may have lost their off-peak tariffs. In applying the methodology to these cases, the following compensation would occur:

- The distributor reassigning the customer from a peak and off peak tariff to a general purpose tariff and the retailer's billing being based on this information without metered peak and off peak usage.
 - Shared proportionately between the distributor and the retailer, that is, the distributor would pay \$240 and the retailer would pay \$110.
- The retailer requesting, and the distributor carrying out, a reassignment of the customer's tariff to a general purpose tariff, without the customer's consent or knowledge.
 - Shared proportionately between the distributor and the retailer, as shown above. It is the distributor's responsibility to reassign the tariff, not at the retailer's request.
- The distributor installing an interval meter and assigning a TOU distribution tariff (including an off-peak component for certain periods) with the expectation of the interval data being used by the retailer. However, the retailer does not use the interval data for billing purposes. The bill is based on a single price for all consumption.
 - The retailer would be solely responsible for the compensation payment of \$350.
- The distributor installing an interval meter and assigning a TOU distribution tariff and subsequently not collecting and/or supplying the interval data to the retailer.
 - Shared proportionately between the distributor and the retailer, that is, the distributor would pay \$240 and the retailer would pay \$110.

- The distributor reassigning the customer to a TOU distribution tariff, but the retailer being reluctant to apply this tariff due to the complexity of particular components within the tariff, for example United Energy's Summer Demand Incentive Charge (see section 3.2).
 - The retailer would be solely responsible for the compensation payment of \$350.
- For customers who have installed PVs, the distributor connecting the dedicated load to the general load to meet the connection and metering requirements of the feed-in tariff and not assigning the customer to a TOU tariff.
 - Shared proportionately between the distributor and the retailer, that is, the distributor would pay \$240 and the retailer would pay \$110.

5.3.1 Implementation of compensation arrangements

The Commission acknowledges that the compensation arrangements for customers could be complex in circumstances where the distributor and the retailer are jointly accountable for the compensation.

The Commission considered whether to place the obligation on the retailer to compensate the customer in all circumstances, and require the retailer to recover from the distributor where the distributor was in non-compliance. This approach was rejected on the basis that the distributor has a direct relationship with customers for making other compensation payments, that is, the guaranteed service level payments required under the price determination. Requiring the distributor to directly compensate customers also places responsibility on the party responsible for the non-compliance with the regulatory requirements.

Therefore, the Commission considers that both the distributors and the retailers should undertake their best endeavours to compensate customers eligible for these payments.

The Commission will write separately to the retailers setting out its requirements. The information provided by the five retailers who submitted to the draft report will be reflected in the letter to those retailers.

The AER will take enforcement action directly with the distributors.

In broad terms, the Commission expects the following steps to be undertaken:

- The distributors and the retailers will co-ordinate arrangements where joint compensation arrangements apply. That is:
 - the distributors will identify those customers where they have reassigned a distribution tariff which has incorrectly removed the customers' off-peak tariff, confirm with the retailer that the customers at those addresses are the original customers, and compensate those customers directly
 - the retailers will separately compensate those customers identified by the distributors.

- The retailers will directly compensate those customers where they have sole responsibility for the compensation.

The Commission understands that there will be some customers who are eligible for compensation, but are either no longer at the original address or have changed retailers. The Commission considered placing a public advertisement to identify those customers and therefore determine the best arrangements for compensation, but has taken account of submissions which caution that this public approach could create more confusion for customers.

The Commission will:

- provide the report to the Minister for Energy and Resources and publish it on its website
- require the retailers to report on the identification of breaches and implementation of the compensation arrangements by 30 June 2010
- include compliance with the relevant regulatory requirements in its forthcoming audit program
- provide it to the Energy Ombudsman and propose that all customers who have made complaints in the past are contacted.

Customers with storage water heating (or slab heating) who have lost their retail off peak tariff may face additional hardship. This compliance report should be taken into account in any relevant cases determined by EWOV, as necessary, by customers against their retailer.

5.4 Compliance with smart meter regulation

The Commission is concerned to ensure that as smart meters become operational, tariff reassignments that remove the off peak tariff do not occur.

The Commission therefore expects that distributors will demonstrate to the AER that processes are in place to ensure that incorrect tariff assignment will not occur in future and that distributors can comply with the price determination, including;

- In the case of PVs, that customers, retailers and installers be made aware of the tariffs available and any tariff impact of a meter change associated with the installation of PVs.
- In the case of smart meters, consistent with the AER's decision for tariff reassignment when a smart meter is installed, that customers with storage water heating will not have a tariff reassignment to a tariff without an off peak component when a smart meter is installed and read as an accumulation meter, that is, during the AMI implementation transition phase.
- That the industry's B2B procedures deal with meter requests and associated tariff assignment in a manner that is consistent with the distributor's responsibilities for distribution tariff assignment.

The Commission also requires that retailers demonstrate to the Commission that processes are in place to ensure that retailers can comply with the tariff variation requirements of the Energy Retail Code. The Commission will write separately to the retailers on this matter.

APPENDIX A Determining the compensation amount

This Appendix provides the detail of how the compensation amounts were determined.

Prima facie disadvantage has resulted where the off peak rate for storage water heating (and/or slab heating) was replaced by the relevant peak or general (flat) tariff.

The Commission has decided that a broad compensation approach for all customers disadvantaged by relevant tariff reassignment should apply rather than compensation based on each individual case. The latter approach would be complex and each distributor and retailer would need to develop a case by case compensation amount based on the relevant time period and the tariff that the customer should have been assigned to.

In the case of retailers, they would need to determine the tariff that the customer might have chosen. In the case of some tariffs there may not be the usage information available from the metering data to allow for this calculation on a case by case basis.

The Commission accepts that there may be customers who have suffered particular hardship and such cases should be referred to EWOV for further examination.

The liability for compensation is split between the retailer and the distributor. Some customers may have lost their off peak tariff because the retailer was unable or unwilling to provide billing based on off peak usage even though the distributor has applied an off peak tariff component.

In this case the retailer is to provide all the compensation which includes the distribution component that it received from the distributor, but did not pass on to the customers. That is, the retail compensation takes account of the retailer receiving the benefit of the distributor's off peak tariff and not passing this on to relevant customers as well as the customers paying higher retailer energy costs.

Where the distributor was directly responsible of a tariff reassignment which resulted in the loss of the off peak tariff, the compensation payment is split between the retailer and distributor. This is because both parties were non-compliant with their regulatory obligations.

The compensation amounts set out in Table 4.1 were determined as follows;

- The average usage for electric off peak hot water for Victoria based on Sustainability Victoria's estimate of 4,646 kWh p.a.²⁷

²⁷ Sustainability Victoria, *Estimated Hot Water System Running Costs in Victoria*, Version 2 April 2009.

- A distribution tariff price differential of 5.1403 c/kWh based on Jemena's "General Purpose" (6.7463 c/kWh) and "Off Peak Heating Only" (1.606 c/kWh) prices for 2009.
- A retail tariff differential of 7.546 c/kWh based on AGL South's tariff for "GD" (17.644 c/kWh) and "Y6" (10.098 c/kWh) for 2009.
- The total amount of compensation is based on the retailers' tariff differential. It is split between the retailer and the distributor based on whether the distributor had assigned an off peak or TOU tariff. That is:
 - If the distributor has not assigned a tariff with an off-peak component, then the compensation is split between the distributor and the retailer, as both parties have not complied with their regulatory obligations
 - If the distributor had assigned a tariff with an off peak tariff and the retailer did not bill off peak usage, then the retailer is responsible for all the compensation.
- The disadvantage is taken to be for a period of one year.
- Prior to rounding the compensation amount calculations are;

Distribution;

$$\frac{\text{Network Tariff Differential} \times \text{Average Usage of Electric Hot Water}}{100}$$

$$= \frac{5.1403 \text{ c/kWh} \times 4,646 \text{ kWh p.a.}}{100}$$

$$= \$ 239$$

Overall (retail and distribution);

$$\frac{\text{Retail Tariff Differential} \times \text{Average Usage of Electric Hot Water}}{100}$$

$$= \frac{7.546 \text{ c/kWh} \times 4,646 \text{ kWh p.a.}}{100}$$

$$= \$ 351.$$

The amounts have been rounded for simplicity.

The compensation amounts that are set out in Table 4.1 were determined on a distribution tariff price differential of 5.1406 c/kWh and based on Jemena's General Purpose (6.7463 c/kWh) and off peak heating only (1.606 c/kWh) prices for 2009. A calculation of the differential occurred against the AGL South standing offer tariff of "GD" and "Y6". The AGL South retail standing offer tariff is gazetted for the United Energy Distribution area and not the Jemena area.

Within section 3.2 the Commission has recommended that the customer is reassigned to a TOU tariff. AGL request that the methodology for calculation of

compensation occurs on a price differential against a TOU tariff and not peak and off-peak tariff. On this basis AGL contest the basis of the calculation of the compensation and request that the Commission assess the methodology.

Commission comment:

If the customer had been reassigned to a TOU tariff from a GD + Y6 or similar tariff then this outcome would have met the EDPR's requirement, in principle, for the retention of an off peak rate. To compare the cost of customer's load on GD with a TOU tariff requires an assessment of their general usage and the split between their weekday and weekend usage. Such a calculation would involve too many assumptions.

Instead the compensation is determined by how much extra the customer paid for their storage hot water by having this charged at the GD rate rather than an off peak rate, the Commission's view is that this is a realistic measure of any additional cost relative to the tariff change not having occurred.

The compensation is recalculating based on AGL's comment that the UED network tariff should apply.

The total (retail) compensation amount is unchanged at \$350 but the distribution amount becomes;

Use UED (NUOS inc. GST 2009) LV1SR and LVDed as comparative rates.

Assume equal usage across summer months (8.068 for 5 months) and non summer months (5.479 for 7 months) so that the applicable annual rate is:

$$\frac{8.068 \times 5 + 5.479 \times 7}{12} = 6.56 \text{ c/kWh}$$

Distribution compensation then is;

Network Tariff Differential x Average Usage of Electric Hot Water

100

= 6.56 c/kWh x 4,646 kWh p.a.

100

= \$ 304 (round to \$ 300).

Provisions relating to the assignment of *distribution customers* to *distribution tariffs*

2.1.17 Where a *distribution business* is charging for *distributing* electricity to a *distribution customer* under a particular *distribution tariff*, then that *distribution customer* is to be regarded as being “assigned” to that *distribution tariff*.

2.1.18 If, after 1 January 2006, a *distribution business* becomes aware that a person will become a *distribution customer* of the *distribution business*, then the *distribution business* must determine the *distribution tariff* to which the new *distribution customer* will be assigned.

2.1.19 (i) In determining which *distribution tariff* a *distribution customer* or potential *distribution customer* will be assigned to, or reassigned to, under clauses 2.1.18, 2.1.20 or 2.1.21 the *distribution business* must:

(a) take into account the *distribution customer’s* load and connection characteristics;

(b) take into account whether the *distribution customer* has an *interval meter* installed; and

(c) assign *distribution customers* with the same or materially similar load and connection characteristics, and with the same or materially similar meter, to the same *distribution tariff*.

2.1.20 If a *distribution business* believes that a *distribution customer’s* load characteristics or connection characteristics (or both) have changed such that it is no longer appropriate for that *distribution customer* to be assigned to the *distribution tariff* to which the *distribution customer* is currently assigned or a *distribution customer* no longer has the same or materially similar load or connection characteristics as other *distribution customers* on the *distribution customer’s* existing tariff, then the *distribution business* may reassign that *distribution customer* to another *distribution tariff*. The *distribution business* must notify the *distribution customer* concerned in writing of the *distribution tariff* to which the *distribution customer* has been reassigned, prior to the reassignment occurring.

2.1.21 If a *distribution business* installs an *interval meter* for an existing *distribution customer* the *distribution business* may reassign that *distribution customer* to a *time of use distribution tariff* subject to clause 2.1.22.

2.1.22 (i) A *distribution business* may reassign a *distribution customer* to a *time of use distribution tariff* under clause 2.1.21 where a *distribution customer* has an annual consumption of greater than or equal to 20 MWh and has a single phase off-peak meter or three phase meter installed, subject to clause 2.1.22(ii).

(ii) A *distribution business* must provide a *distribution customer* a notification in writing at least 30 *business days* prior to reassignment to a *time of use*

distribution tariff under clause 2.1.22(i). This notification should include, but not be limited to:

- (a) a description of the requirement the *distribution business* is under to roll out *interval meters* to all Victorian *distribution customers* and why;
 - (b) the schedule for the rollout of *interval meters*, that is that *interval meters* are being rolled out to *distribution customers* with a single phase off-peak meter or a three phase meter installed, from 1 January 2006 for those with annual consumption greater than or equal to 20 MWh per annum and from 1 January 2008 for those with annual consumption less than 20 MWh;
 - (c) the likely impact on *distribution customers* of *interval meters* including the installation process and how *distribution customers* will be charged for prescribed *distribution network services* following the installation of an *interval meter*;
 - (d) the date at which *distribution tariff* reassignment will occur.
- (iii) A *distribution business* is not permitted to reassign a *distribution customer* who has an annual consumption of less than 20 MWh to a *time of use distribution tariff* under clause 2.1.21, unless the *interval meter reassignment requirements* have been published by the Commission.
- (iv) A *distribution business* must provide a *distribution customer* a notification in writing consistent with the *interval meter reassignment requirements* prior to reassigning a *distribution customer* who has an annual consumption of less than 20 MWh to a *time of use distribution tariff* under clause 2.1.22(iii).
- (v) The Commission will consult with relevant stakeholders prior to publishing the *interval meter reassignment requirements*.