



5 October 2018

Dr Ron Ben-David  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

**By email:** [retailenergyreview@esc.vic.gov.au](mailto:retailenergyreview@esc.vic.gov.au)

Dear Dr Ben-David

**Building trust through new customer entitlements in the retail energy market: Draft Decision**

Alinta Energy Retail Sales Pty Ltd (**Alinta Energy**) welcomes the opportunity to provide feedback on the Essential Services Commission's (**the Commission's**) draft decision regarding the implementation of recommendations 3F to 3H of the Thwaites review (**the draft decision**).

Alinta Energy is an active investor in the energy retail, wholesale and generation markets across Australia. Alinta Energy has around 2500 megawatts of generation capacity in Australia (and New Zealand) and a growing customer base of over around 1,000,000 customers in Western Australia and across the National Energy Market and is well placed to provide comment on the Issues Paper.

Alinta Energy is committed to supporting the need to make energy offerings more easily comparable for customers. To that end, Alinta Energy is supportive of the objectives described in the draft decision. Although Alinta Energy supports the intent and objective of the changes, it urges the Commission to consider the manner and method of when, how and where these entitlements should occur.

Alinta Energy commends the Commission on their approach to regulatory reform through codifying the objectives and purpose of newly introduced entitlements for Victorian consumers in the Energy Retail Code. As demonstrated in the recent review conducted by the Commission relating to the Payment Difficulties Framework (PDF), finding the right balance between principle-based regulation (based on objectives) and prescriptive regulations was extremely challenging. It is Alinta Energy's view that industry expertise and knowledge of our customers was a key pillar with determining that balance. The final decision of the PDF led to measured and considered outcomes that, in our view, will benefit the long long-term interest of Victorian customers.

These sentiments are further supported by the Commission's Chairperson when he stated in the draft decision that;

*It would be reasonably straightforward for us to implement the recommendations from the Independent Review in similar fashion, however, it is likely that a few years from now, no-one will remember our reasons for doing so. We might not even remember. And if we can't remember, then how will we judge whether these interventions were successful? How will we know, now or later, whether our actions have led to the outcomes the community expects from the retail energy market?*

To that end, there are some provisions within the draft decision that appear overly prescriptive, complicated and go beyond the intent of the objectives described in the draft decision. Our submission hopes to utilise our industry experience to support the objectives of the draft decision by ensuring certain requirements are not over-codified. Alinta Energy appreciates that this type of regulatory approach can lead to inconsistent approaches however we note that the Commission's new monitoring powers can assist the energy industry with ensuring the outcomes are consistent.

Our responses and comments to the Commission's draft decision are contained in the attached response. Alinta Energy would be happy to discuss any aspect of this submission, or earlier submissions, where required.

Should you require any additional information or wish to discuss any aspect of our submission please contact Ante Klisanin, Retail Regulation Manager on (03) 8533 7344 or via email: [ante.klisanin@alintaenergy.com.au](mailto:ante.klisanin@alintaenergy.com.au).

Yours sincerely



**Shaun Ruddy**  
Manager – National Retail Regulation

## 70H Minimum standards – clear advice

Contractual term that may influence the total monetary value of a bill – when selecting the most suitable offering

Having reviewed the provisions relating to clear advice, Alinta Energy has concerns with the prescriptiveness of advice relating to the retailer's *other energy offers*. Under 70H(1)(b);

(b) the *retailer's other energy offers* that the *retailer* reasonably believes would be suitable for the *customer*.

and its dependency on 70H (2)(b);

(b) communicate the information with reference to the *retailer's* estimate of the total monetary value of a bill for the *customer* under the *customer retail contract*, unless it is unreasonable to do so

In practical terms the existing draft decision would lead to a prospective sales conversation that would be conducted in this manner;

*"Offer A has a conditional pay on time discount of 25%, when met, this offer has an estimated cost of \$300 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.*

*"Offer B has all the conditions of Offer A, but has an additional 1% discount if you sign-up to Direct debit agreement, **this offer has an estimated cost of \$296 inclusive of GST and is \$400 inclusive of GST if you do not pay on time,***

*"Offer C has all the conditions of Offer A, but has an additional discount of 2% if you select e-billing, **this offer has an estimated cost of \$292 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.***

*"Offer D has all the conditions of Offer A, B and C, **this offer has an estimated cost of \$288 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.***

Seen in the example above, this is a significant amount of information for the customer during what may be a verbal negotiation.

In our view 70H(2)(b) should be removed as 70H(2)(c) (emphasising any information may be relevant to selecting an offer) could effectively meet the objectives of this division by assisting the small customer to assess the suitability of and select a customer retail contract.

By removing 70H (2)(b), the prospective sales conversation would become;

*Offer A has a conditional pay on time discount of 25%, when met, this offer has an estimated cost of \$300 inclusive of GST and is \$400 inclusive of GST if you do not pay on time.*

*If you sign-up to a direct debit agreement you will receive a further 1% discount, if you sign-up to e-billing you will receive a further 2% discount of your bill.*

As seen in the revised example, the conversation becomes concise and comprehensible. Effectively removing the bold scripting that relates to monetary impacts and emphasising the information that is relevant to the offerings. We acknowledge the importance of disclosing offerings in monetary terms to allow for comparability and transparency, however we feel

that advising on the monetary variances between multiple offerings could over-complicate and confuse customers.

Alinta Energy would agree that provisions under 70H(2)(b) may be achievable in an Online sign-up environment (where all the information is laid out), but this approach would not allow for appropriate consideration during any verbal sales negotiations.

#### Contractual term that may influence the total monetary value of a bill

Alinta Energy views the provisions under 70H(1)(a) in relation to advising of terms or conditions that influence the monetary value of a bill as a key initiative that meets the draft decisions objectives relating to customers being able to assess the suitability of a customer retail contract. Although not expressly prescribed in the Energy Retail Code, the commentary in the Commissions draft decision states;

*If the retailer was aware of a scheduled price change during the contract period, such as one that was occurring within a few weeks of signing up a customer. In this instance, the retailer would be able to advise the customer that a price change was scheduled, what the price change will be, and the likely dollar impact of the price change.*

Similar to our previous points on monetary dollar impacts relating to variances, in our view informing the customer that a percentage variance would occur on a certain date, would be more appropriate as opposed to the retailer calculating and disclosing a bespoke dollar or monetary estimate on what already is an estimated assumption. The percentage variance would be consistent with existing regulations and communications to the market. Which would ensure new customers are not confused or dis-satisfied in circumstances where the price variance impact is not what was disclosed to them.

#### Explicit informed consent prescribed requirement

Given the complexity (in the draft decision) with advising on multiple offers and their variances in monetary terms, Alinta Energy has concerns with linking clear advice provisions to defective Explicit Informed Consent (EIC). If at any point, during what may now become a long and convoluted sales negotiation, the customer has misunderstood any of part of the information put to them – this will lead to a void contract and defective EIC.

Alinta Energy acknowledges the importance of informed decision-making by our customers during the prospective sales-process, but urges the Commission to consider the outcomes related to prescribing complex, lengthy disclosure requirements (described under 70H(2)(b)) which may lead to confused, disengaged customers that have unintended consequences.

### **Division 4 – Customers to receive deemed best offer information on bills**

#### Deemed best offer – consideration for tariff structure

Alinta Energy acknowledges the challenges with developing a definition for best offer. As proposed in the draft decision, the best offer will effectively be marketing the *potential* savings accessible from the retailers generally available offers. The risk with this approach, as acknowledged by the Commission, is that the best offer disclosed on their bill may not necessarily be the best offer applicable to the customer due to their circumstances.

Taking into account this accepted risk, Alinta Energy would consider that, applying any further processes with determining the best offer would further compound the potential risk of marketing an inappropriate best offer to our customers. Alinta Energy would consider the process of conducting a tariff structure assessment as one that further compounds the risk of marketing an inappropriate best offer.

Alinta Energy notes that tariff structure assessments (when determining the best offer) can be conducted in a number of ways, and can be influenced as a result of customer behaviours, and as such may not be appropriate when determining the best offer. Given the existing risks with the best offer definition and the reliance on estimated meter data for new customers, we would consider this a risk to further de-sensitizing and disengaging customers where the representation of "Best Offer" may not be accurate. .

#### Deemed best offer - \$22 threshold

The draft decision proposes a deemed best offer threshold saving of \$22 per annum. Having reviewed the research conducted by *The Behavioural Insights Team* their findings suggest that 90 percent of customers would require a saving of \$50 or more to consider switching. In Alinta Energy's view this finding is based on an inherently flawed statement and scenario, which stated;

*Imagine that your energy provider was able to email you a notification when you could be on a better plan with them. This email would also include a button that you could click, which would instantly switch you on to that plan – you wouldn't have to do anything else.*

Having this statement or scenario as a pre-position to the question of;

*'how much would you need to save (in dollars) before you would consider switching'*

would, arguably, distort the results and findings. Under no circumstances would retailers be able to email all its customers to achieve this false economy. The main reasons being;

- not all customers have regular access to emails,
- retailers do not have the email account details of all its customers, and
- customers can opt-out of email communications,
- Current regulatory framework would restrict a retailers ability to provide a switching solution as described above.

Our view gathers further merit when the same question was asked, while considered under the "Status Quo Scenario" – a saving of approximately \$100 or more was required to consider switching.

As part of their annual review into retail energy competition in 2017, the Australian Energy Market Commission (AEMC) found that Victorian consumers needed a saving of approximately \$336 for electricity and \$260 for gas annually to consider switching<sup>1</sup>. Figure 1 below details the savings needed from a quarterly bill for a residential customer to consider switching retailers.

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<sup>1</sup> Australian Energy Market Commission, *2017 AEMC Retail Energy Competition Review*, June 2017



Alinta Energy is not suggesting that the deemed best offer threshold be raised to align with the AEMC's findings, but rather, suggests that further research should be conducted to determine an effective threshold that is engaging for Victorian consumers. Alinta Energy are concerned that having a threshold that is too low, may de-sensitise or dis-engage customers from reviewing the best offer disclosures on their bill.

#### Implementation Timeframe and national regulation framework consistency

The draft decision, in its current form, requires a significant amount of development within Alinta Energy's systems and platforms to allow for accurate and timely information disclosures. Having an absolute focus on dollar or monetary impacts across the entire life-cycle of an energy customers retail contract, requires the development and integration of multiple IT platforms and tools to allow for instantaneous, accurate and complete information relating to the dollar impact of offer types. These integrated systems and processes will need to rely on multiple data inputs such as, actual and estimated metering data and offering specifications that would need to output bespoke qualifications.

To that end, we consider that a staged implementation would be the most appropriate method to ensure the full breadth of changes are implemented in a measured and responsible manner. By allowing for the consideration of a staged implementation process, retailers can ensure that any issues (structurally or technologically related) are resolved prior to expanding to external channels, platforms or counter-parties.