

12 July 2013

Ms Kerri Heron
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, VIC 3000

energy.submission@esc.vic.gov.au

Dear Ms Heron,

Re: Proposed Changes to Regulatory Instruments Relating to Flexible Pricing of Electricity Draft Decision (June 2013)

The Consumer Utilities Advocacy Centre Ltd (CUAC) is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers.

We welcome the opportunity to comment on the Essential Services Commission *Proposed Changes to Regulatory Instruments Relating to Flexible Pricing of Electricity Draft Decision (June 2013)* ("Draft Decision").

Energy Retail Code and Guideline 19

CUAC supports the proposed amendments to the Energy Retail Code (version 10, May 2012) and *Guideline No 19 - Energy Price and Product Disclosure* in principle. However, we wish to raise some specific issues that we believe need to be addressed. We note that the government's policy on flexible pricing allows customers to voluntarily choose flexible pricing by providing their explicit informed consent and to revert if customers find that flexible pricing is inappropriate to their personal circumstances.

The proposed inclusion of section 3.4(ba) of Guideline No 19 requires a Price and Product Information statement (alternatively an Energy Price Fact Sheet) for a flexible AMI retail tariff to have:

- a clear and simple explanation of:
 - whether the right to revert exists
 - the rights of a customer to opt-out of the tariff and revert to the previously applying AMI retail tariff
 - where the customer can obtain further information about its rights under the AMI Tariffs Order in Council 2013
- Include a website address for the relevant part of the Department of State Development, Business and Innovation website

We are concerned that the proposed section 3.4(ba) is not sufficiently specific about retailers' obligations. For example, would a retailer have met this obligation if the retailer informs a customer that the customer "may or may not" be charged a fee for reversion and that the fee if payable is calculated in accordance with 'X' formula? Directing customers to the OIC, which is a technical and legal document, for further information about their rights is not particularly helpful or user-friendly.

We believe that retailers should be helping customers understand their flexible pricing offers and providing customers with clear information about this. Information on the flexible pricing offer, including reversion rights and the penalties customers may be exposed to if they revert need to be:

- Clearly communicated to the customer before they sign up to a flexible pricing offer
- Included in the flexible pricing offer terms and conditions
- Included in the Price and Product Information statement or Energy Price Fact Sheet as the case may be

The limitations of reversion also need to be communicated to customers before they sign up for a flexible pricing offer. This includes, the need for customers to have remained with the same retailer, that reversion must relate to the same premises, and that metering configuration may not allow reversion (section 8(3) and (6) of the OIC). The risk of mis-information or incomplete information will, we believe, result in a larger number of customers querying or complaining to retailers, government, the Commission and EWOV. This could undermine customer confidence in flexible pricing and thus discourage customers from trying flexible pricing.

We refer to section 7 of the OIC. We understand that an exact dollar amount of the penalty customers may be liable for when they revert may not be ascertainable upfront. However, merely informing customers how a penalty is calculated (formulas and the like) is likely to be confusing and may not give customers any idea as to the amount of penalty they may be liable for. Currently, under the proposed amendments to the Energy Retail Code, all that the customer would know is that they do not need to pay the \$20 administration fee if they revert. Other penalties may outweigh the \$20. CUAC believes that customers need to at least have some indication as to what penalty they may be liable for. For example, customers should be informed whether in the event of reversion, their retailer would be recovering a discount from them; goods and services (such as an in-home display, free subscriptions and credit card points etc) which they have to return to the retailer; other fees and charges they are liable for. We suggest that retailers be required to list such items in the Price and Product Information statement and the Energy Price Fact Sheet.

Harmonisation

The OIC refers to explicit informed consent in section 7. We have in our submission to the Commission's Harmonisation project raised concerns with the proposed harmonised Energy Retail Code (version 11) including the following which is relevant to the flexible pricing provision:

- Diminution of the protection afforded by the definition of explicit informed consent (i.e. the omission of plain English and competency requirement)

- Limitation of access to metering data to two years (section 28, version 11)

There is no two year limit for access to data under the current Energy Retail Code (version 10, May 2012) as long as the customer is with the same retailer. We note that section 11 of the OIC requires distributors and retailers to provide interval metering data for at least 12 complete calendar months where available, so that customers have access to data for the price comparator website. Could the Commission explain the basis on which customer access to data for the price comparator is limited to one year?

Thank you for the opportunity to participate in the Commission's consultation. If you have any queries please do not hesitate to contact us on 9639 7600.

Yours sincerely,



Jo Benvenuti
Executive Officer



Deanna Foong
Research & Policy Advocate