

Victorian Default Offer - Draft Orders

Consultation paper



Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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1. Introduction

The Department of Environment, Land, Water and Planning (DELWP) is seeking stakeholder views on draft Orders in Council to implement the Victorian Default Offer (VDO).

These Orders are:

- a draft Order in Council, regulating tariffs for the sale of electricity to prescribed customers, to be made under section 13 of the *Electricity Industry Act 2000* (EIA) (the section 13 Order) at **Appendix A**; and
- a draft Ministerial Order, varying the period for retailers to vary their standing offer tariffs, to be made under section 35(3B) of the EIA (the s 35(3B) Order) at **Appendix B**.

This consultation paper includes several questions to guide stakeholder feedback.

1.1 What is the Victorian Default Offer (VDO)?

The VDO is a fair price for electricity that all Victorian electricity retailers will be required to offer to households and small businesses from 1 July 2019. The VDO will replace costly standing offers.

The introduction of the VDO was a key commitment made in the Government's final response to the *Independent Review of the Electricity and Gas Retail Markets in Victoria* (the Review), released on 26 October 2018.

1.2 Background to the Review

In November 2016 the Victorian Government announced the Review to examine the operation of Victoria's electricity and gas retail markets and provide options to improve outcomes for consumers. The Review panel comprised Professor John Thwaites, Ms Patricia Faulkner AO and Mr Terry Mulder.

On 13 August 2017, the Review panel handed down its final report to the Minister. The Review panel concluded that strong intervention is required to ensure better outcomes for consumers. In total, the panel made 11 recommendations designed to make Victoria's retail energy markets fair.¹

Recommendations 1A and 2A of the Review (extracted below) proposed the introduction of a Basic Service Offer – a basic, 'no frills' unconditional offer, available if requested by a customer. The Government's response to these recommendations was to require electricity retailers to offer a fair price for electricity – to be called the VDO – to replace costly standing offers. Unlike the Basic Service Offer recommended by the Review, the VDO will include a modest allowance for customer acquisition and retention costs (CARC).

The Essential Services Commission (ESC) was issued terms of reference in December 2018 asking it to provide advice on a methodology and price for the VDO. The ESC published draft advice on 8 March 2019² and is required to provide its final advice to Government by 3 May 2019.

1. Review panel 2017, *Independent Review of the Electricity & Gas Retail Markets in Victoria*, August, pp. xi - xiii

2. The Government issued Terms of Reference to the ESC in December 2018 requesting it to provide advice under section 10(g) of the *Essential Services Commission Act 2001* (ESC Act) to support the making of tariffs for this period. The ESC published draft advice on 8 March 2019 and is required to provide its final advice to Government by 3 May 2019.

Review Recommendation 1A

Require all retailers to provide a Basic Service Offer that is not greater than a regulated price, based on annual usage, to be determined by the Essential Services Commission.

(i) In implementing the regulated price, the review panel recommends:

- The regulated price to be based on the efficient cost to run a retail business
- The regulated price includes an allowance for a maximum retail profit margin
- The regulated price must not include customer acquisition and retention costs or headroom.

(ii) In implementing the Basic Service Offer, the review panel recommends:

- The retailer to determine the tariff type used in the Basic Service Offer, provided it stays below the regulated price for all usage levels
- The Basic Service Offer is unconditional
- The Basic Service Offer includes an obligation to supply
- Retailers may make any other offers available to consumers, including offers priced above their Basic Service Offer
- The Basic Service Offer to be made available to customers within embedded networks and where there is a single gas retailer.

Review – Recommendation 2A

Abolish the requirement for retailers to offer standing offer contracts

1.3 The draft Orders

To implement the VDO, an Order in Council and a Ministerial Order are proposed to be made.

The first Order would regulate tariffs for the sale of electricity to prescribed customers. This Order would:

- set the prices for the VDO for the initial period (from 1 July 2019 to 31 December 2019);
- give the ESC the power to directly determine prices for the VDO in future periods (from 1 January 2020 onwards); and
- require the VDO to be used as a reference price for advertised discounts.

The proposed Order would be made under section 13 of the EIA, which was recently amended by the *Energy Legislation (Victorian Default Offer) Act 2019*, assented to on 26 March 2019.

Prior to recommending the making of the Order, the Minister for Energy, Environment and Climate Change (the Minister) is required, under section 13(1C) of the EIA, to consult with the Premier and Treasurer.

To give effect to the VDO, retailers will be required to vary their standing offer prices to comply with the VDO. A second Ministerial Order, under section 35(3B) of the Act, is proposed to be made giving retailers until 16 June 2019 to ensure retailers have adequate time to do this. Retailers will be required to ensure their standing offer prices comply with the VDO from 1 July 2019.

1.4 Timeline for implementation

The following table sets out the likely dates for the remaining key milestones associated with Government’s implementation of the VDO.

Date	Milestone
1 May 2019	Closing date for submissions to this consultation paper
3 May 2019	ESC final advice on VDO due to Government
Mid - late May 2019	Recommendation to Governor in Council to make the final Order
By 16 June 2019	Retailers publish new standing offer tariffs in Government Gazette
1 July	VDO available to customers

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1.5 Providing your feedback

We invite stakeholders to provide us with written submissions to this consultation paper by 5pm, 1 May 2019.

Submissions are preferred in electronic format. Written responses can be sent to DELWP via email: retailmarket.reform@delwp.vic.gov.au.

We will treat submissions received in response to this consultation paper as public documents and submissions will be placed on the DELWP website. If you believe that there are aspects of your submission that are confidential or commercially sensitive, you should mark those sections 'IN CONFIDENCE'. In such instances, formal requests for confidentiality will be honoured; however, submissions may be made available publicly under the *Freedom of Information Act 1982 (Vic)*. Any requests for public access to a submission will be determined in accordance with the Act.

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2. Issues for consultation

The following sections outline DELWP's proposals for the key aspects of the section 13 Order and provide some questions to guide feedback. We are keen to hear stakeholders' views on whether our proposals are the best approach to achieve the Government's objectives. We welcome feedback on other matters not covered by our questions.

2.1 Objective of the VDO

Clause 3 of the draft section 13 Order specifies the objective of the VDO. This is a matter that the ESC is proposed to be required to consider in setting a regulated price under clause 11, and which is to be considered in the proposed review of the Order in clause 16.

The proposed objective of the VDO is to: "...provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the electricity retail market." This reflects previous statements by Government of the objective of the VDO.³

Questions

1. Is the objective in clause 3 of the draft section 13 Order clear and appropriate?

2.2 Approach to the initial VDO (1 July 2019 to 31 December 2019)

The first VDO will apply for 6 months from 1 July 2019.

For this period, it is proposed that the prices for the VDO will be specified in the section 13 Order based on the final advice provided by the ESC pursuant to its terms of reference. This advice is due on 3 May 2019. Schedules 1 and 2 of the draft Order set out the VDO prices for domestic and small business customers respectively, based on the ESC's draft advice dated 8 March 2019.

Clause 6 specifies that, during the period of 1 July 2019 to 31 December 2019, the tariffs subject to regulation are standing offer flat tariffs and (for domestic customers only) flat tariffs with a controlled load tariff. This is because these are the tariffs types for which the ESC recommended a VDO price in its draft advice.

Therefore, only consumers on standing offers comprising a flat tariff (and flat tariff with controlled load) will automatically transition to the VDO for the period from 1 July 2019 to 31 December 2019. The draft Order provides that standing offers comprising other types of tariffs will not be subject to price regulation for this period. However, other consumers will be able to 'opt-in' to the VDO.

Questions

2. Does Clause 6 of the draft section 13 Order adequately give effect to the VDO for the initial period from 1 July 2019 to 31 December 2019?

2.3 Approach to the VDO for future periods (1 January 2020 onwards)

Clause 9 of the draft section 13 Order proposes to require the ESC to make a price determination to set VDO prices for each regulatory period from 1 January 2020.

Clause 9 provides that, at least 42 days before the commencement of a regulatory period, the ESC must make a price determination that determines, for each distribution zone in Victoria:

- (a) the maximum prices a retailer may charge under a standing offer during the regulatory period; or
- (b) the manner in which the maximum prices a retailer may charge under a standing offer during the regulatory period are to be determined or calculated.

The proposed approach to future VDO prices reflects the Government's intention that all standing offers will be subject to price regulation from 1 January 2020. Clause 9 provides the ESC with discretion as to how VDO prices are determined in future periods.

3. See e.g. the second reading speech for the Energy Legislation Amendment (Victorian Default Offer) Bill 2019.

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One option available to the ESC would be to set a VDO total annual bill for each distribution zone. Retailers would then be required to set their standing offer tariffs so as not to exceed this regulated price for a given model annual usage profile. This is similar to the approach recommended by the Review Panel (Recommendation 1A), for a “*regulated price, based on an annual usage, to be determined by the ESC*” whereby the retailer was to, “*determine the tariff type used...provided it stays below the regulated price for all usage levels.*”

Another option available to the ESC under proposed clause 9 would be to continue to set the price of a flat tariff (and flat tariff with controlled load) and use its discretion to determine the appropriate manner in which the price of other (non-flat) standing offers are set.

Questions

3. Does clause 9 of the draft section 13 Order appropriately reflect the objective of the VDO?
4. What would be the implications of the alternative option – the VDO continuing to be a flat tariff (or flat tariff with controlled load tariff) only?

2.4 Approach and methodology to making a price determination

Clause 11 of the draft Order sets out the proposed approach and methodology for the ESC in making a VDO price determination. The approach and methodology required by this clause is similar to that specified in the terms of reference provided to the ESC in December 2018.

Clause 11 requires the ESC to adopt an approach and methodology that the ESC considers will best meet its objectives under EIA and the *Essential Services Commission Act 2001*, as well as the objective of the VDO specified in clause 3 of the Order.

Clause 11 also requires that the prices determined by the ESC pursuant to the VDO price determination are to be based on the efficient costs of a retailer, having regard to:

- (a) wholesale electricity costs;
- (b) network costs;
- (c) environmental costs;
- (d) retail operating costs, including modest costs of customer acquisition and retention;
- (e) retail operating margin; and
- (f) subject to subclause (9), any other costs, matters or things the ESC, in the exercise of its discretion, considers appropriate or relevant.

Clause 11 also gives guidance as to the interpretation of the meaning of ‘modest costs of customer acquisition and retention’ and ‘a maximum retail operating margin.’

Questions

5. Does the approach and methodology specified in clause 11 of the draft 13 Order appropriately reflect the objective of the VDO?
6. Are there any other matters the ESC should be required to consider in setting prices for the VDO?

2.5 Information on customer bills

Clause 7(2) of the draft section 13 Order proposes to require that a retailer's electricity bill must include clear and simple information about how to access the VDO. This is consistent with the intent of the Review to include on customers' bills 'how to access the retailer's VDO'. The proposed approach gives retailers some discretion as to how best to implement this, similarly to the requirement in the Energy Retail Code for bills to reference the Victorian Energy Compare website.

Questions

7. Will this approach assist customers to access the VDO? Or would it be preferable to prescribe the wording on bills and if so, what should this wording be?
8. Are there any implementation issues that should be considered?

2.6 VDO to be the reference price for discounts

Clause 14 of the draft section 13 Order proposes to require retailers to use the VDO as the reference price for discounted offers. Clause 15 also directs the ESC to amend the Energy Retail Code to ensure future VDO price determinations made by the ESC will act as the reference price for discounts. After the amendments to the Energy Retail Code pursuant to clause 15 come into effect, clause 14 will cease to have effect.

It is intended that, from 1 July 2019, all discounts offered in the retail electricity market will be referenced to the VDO. It is proposed that discounted offers will be required to compare the estimated annual cost of the discounted offer with the estimated annual cost of the VDO. This includes discounted offers relating to any tariff type (not just flat tariff and flat tariff with controlled load tariffs).

This reflects the Government's intention that, from 1 July 2019, comparing discounts will no longer be like 'comparing apples with oranges.' The intention is that, having all discounts referenced to the VDO, will increase consumer trust in the retail electricity market and a willingness to engage with market offers.

DELWP considers that, in order to facilitate consistency in the calculation of an estimated annual cost for the purposes of comparison to the VDO, it is necessary to include specified usage allocations for flexible tariffs. These are set out in Schedule 3 to the draft Order and have been derived from *Victorian Energy Usage Profiles*.⁴ Schedule 3 sets out how the estimated annual cost is to be calculated.

DELWP has utilised the profile of a residential household with 2 to 3 people in climate zone 6 to derive the usage allocations for the specified flexible tariffs. A separate profile for small business is not being proposed as the Government's intention is to create a simple and consistent anchor point for the comparison of market offers. Instead the same residential household profile is to be applied to small business customers. These tariffs, along with flat tariffs, account for the vast majority of offers domestic and small business customers in Victoria.

Appendix C shows a worked example to calculate the discount of a flexible tariff (three parts) market offer relative to the VDO annual bill for the Powercor distribution zone.

Questions

9. Will the approach proposed in clauses 14 and 15 adequately meet the Government's intention to enable discounted offers to be easily compared?
10. Is the proposed method for determining the estimated annual cost of offers in Schedule 3 simple and easy to use?

4. <https://www.esc.vic.gov.au/sites/default/files/documents/victorian-energy-usage-profiles-report.pdf>

2.7 Review of the Order

Clause 16 requires the Minister to ensure the operation and effectiveness of the Order is reviewed within five years, including to assess the extent to which the Order is achieving the objective of the VDO.

Questions

11. Is the proposed review period and approach appropriate?

Appendix A. Draft section 13 Order

Electricity Industry Act 2000

ORDER UNDER SECTION 13

Order in Council

The Governor in Council, on the recommendation of the Minister pursuant to section 13(1B) of the **Electricity Industry Act 2000** (the Minister having first consulted with the Premier and Treasurer pursuant to section 13(1C) of that Act), acting under section 13 of the **Electricity Industry Act 2000** makes the following Order:

1. Purpose

The main purpose of this Order is to regulate the standing offer tariffs that retailers may charge prescribed customers, through the introduction of the Victorian default offer.

2. Commencement

This Order comes into operation on the date on which it is published in the Government Gazette and remains in force until it is revoked.

3. Objective of the Victorian default offer

The objective of the Victorian default offer is to provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the electricity retail market.

4. Definitions

In this Order:

Act means the **Electricity Industry Act 2000**;

annual reference consumption has the meaning given in clause 14(5) of this Order;

controlled load tariff means a tariff for the supply or sale of electricity only for use in specific appliances that are permanently wired to the relevant electricity meter;

Example: A storage water heater is such an appliance.

distribution system means a system of electric lines and associated equipment (generally at nominal voltage levels of 66 KV or below) which a distribution company is licensed to use to distribute electricity for supply under its licence;

distribution zone means the area in which a distribution company is licensed to distribute and supply electricity under the Act;

domestic customer means a customer who purchases electricity principally for personal, household or domestic use at a supply point;

Energy Retail Code means the document of that name (version 12 dated 1 January 2019) published by the Commission as amended and in force from time to time;

ESC Act means the **Essential Services Commission Act 2001**;

flat tariff means a tariff for the supply or sale of electricity where the tariff components do not vary by reference to:

- (a) the time of day;
- (b) the amount of electricity distributed or supplied during the day;

- (c) temperature, whether actual or forecast; or
- (d) other characteristics that vary during the day.

Notes: 1. Paragraph (b) does not exclude block tariffs from being flat tariffs;
2. The definition does not exclude tariffs that vary seasonally, from being flat tariffs.

flexible tariff means a tariff for the supply or sale of electricity where the tariff components vary (wholly or partly) according to the time of day when the electricity is supplied;

former franchise customer means a person described in section 37 of the Act who is either a domestic customer or a small business customer;

general usage means any electricity usage that is not controlled load usage;

headroom means an allowance that does not reflect an efficient cost borne by firms operating in the market;

Example: An allowance that is added, so that retail prices do not act as a barrier to new entrants, is headroom.

kWh means kilowatt hour;

Minister means the Minister administering the Act;

MWh means megawatt hour;

objective of the Victorian default offer means the objective specified in clause 3;

Order means this Order;

quarter means a period of 3 consecutive months;

regulatory period means a period over which a VDO price determination is to apply;

Note: the first regulatory period commences on 1 January 2020.

relevant customer has the same meaning as in section 39 of the Act;

small business customer means a customer who is not a domestic customer and whose aggregate consumption of electricity taken from a supply point is not, or in the case of a new supply point is not likely to be, more than 40MWh per annum;

standing offer tariffs means the tariffs determined by a licensee under section 35(1) of the Act and published in the Government Gazette in accordance with that section, as varied from time to time by the licensee as provided for under section 35(3) of the Act;

supply charge means a fixed charge for supplying electricity to a customer (whether charged on a daily basis or over any other period);

Note: A supply charge is also sometimes called a service charge.

supply point means, in relation to a supply of electricity to a person, the point at which that supply of electricity last leaves the distribution system owned or operated by a distribution company before being supplied to the person, whether or not the electricity passes through facilities owned or operated by any other person after leaving that point before being so supplied;

tariff component, in respect of a price for the supply or sale of electricity, includes the supply charge, the usage charge and any other charge that is part of the price for the supply or sale of electricity;

usage charge means a charge for the amount of electricity supplied or sold to a customer;

Note: A usage charge is sometimes called a consumption charge.

VDO price determination means a price determination pursuant to clause 9;

Victorian default offer or **VDO** means any offer to supply or sell electricity that is subject to a regulated price under clause 6.

Notes:

1. the following terms are defined in section 3 of the Act:
 - Commission;
 - distribution company;
 - domestic or small business customer;
 - electricity bill;
 - regulated tariff standing offer;
 - retailer;
 - standing offer.
2. “price determination” is defined in section 13(6) of the Act.

5. Declaration of Prescribed customers

The following customers are declared, pursuant to section 13(5) of the Act, to be prescribed customers:

- (a) a domestic or small business customer;
- (b) a former franchise customer who is a party to a deemed contract under section 37 of the Act; and
- (c) a relevant customer who is a party to a deemed contract under section 39 of the Act.

6. Victorian default offer prices

1. A retailer’s standing offer tariffs for sale of electricity to prescribed customers must comply with this clause.
2. During the period from 1 July 2019 to 31 December 2019, the standing offer tariffs a retailer may charge to a domestic customer, in respect of the distribution zone specified in column 1 of the table in Schedule 1, are fixed at the amounts specified in columns 2, 3 and 4 of the table for the tariff components specified in those columns.
3. During the period from 1 July 2019 to 31 December 2019, the standing offer tariffs a retailer may charge to a small business customer, in respect of the distribution zone specified in column 1 of the table in Schedule 2, are fixed at the amounts specified in columns 2 and 3 of the table for the tariff components specified in those columns.
4. Subclauses (1) and (2) do not apply to standing offer tariffs other than:
 - (a) a flat tariff; or
 - (b) a flat tariff with a controlled load tariff.
5. During any regulatory period commencing on or after 1 January 2020, a retailer’s standing offer tariffs for sale of electricity to prescribed customers must comply with any VDO price determination made by the Commission that is in force.

7. Obligation to make standing offer available with regulated tariff

1. A retailer's regulated tariff standing offer for sale of electricity to prescribed customers must include:
 - (a) one flat tariff that is available to each domestic customer;
 - (b) one flat tariff with a controlled load tariff that is available to each domestic customer with a controlled load; and
 - (c) one flat tariff that is available to each small business customer.
2. A retailer's electricity bill issued to a prescribed customer must include information about how the customer may access the Victorian default offer from the retailer.
3. The information required by subclause (2) must be in plain and clear English and prominent on the electricity bill.

8. Conferral of functions and powers on the Commission

For the purposes of Part 3 of the ESC Act and section 12(1)(b) of the Act, the supply or sale of electricity under section 35 of the Act is specified as prescribed goods and services in respect of which the Commission has the power to regulate prices.

Note: See section 32 in Part 3 of the ESC Act. This Order is an empowering instrument for the purposes of Part 3 of the ESC Act: see paragraph (d) of the definition of "empowering instrument" in section 3 of the ESC Act.

9. Commission to determine prices for the Victorian default offer (VDO price determination)

At least 42 days before the commencement of a regulatory period, the Commission must make a price determination in respect of the regulatory period that determines, for each distribution zone in Victoria:

- (a) the prices, or the maximum prices, a retailer may charge under a standing offer during the regulatory period; or
- (b) the manner in which the prices, or the maximum prices, a retailer may charge under a standing offer during the regulatory period are to be determined or calculated.

10. Regulatory periods for VDO price determinations

1. The first regulatory period commences on 1 January 2020.
2. Subject to subclause (3), the duration of each regulatory period is 12 months.
3. Before the commencement of a regulatory period, if the Commission considers that special circumstances exist, the Commission may, after consulting the Minister:
 - (a) extend the duration of the regulatory period by up to 6 months; or
 - (b) reduce the duration of the regulatory period, provided the duration of the regulatory period as so reduced is not less than 6 months.

11. Approach and methodology for making a VDO price determination

1. In making a VDO price determination, the Commission must adopt an approach and methodology that is in accordance with section 33(2) of the ESC Act and this Order.

Note: section 33(2) of the ESC Act requires the Commission to adopt an approach and methodology that best meets the objectives of the ESC Act and of the **Electricity Industry Act 2000**.
2. In addition, the Commission must adopt an approach and methodology which the Commission considers will best meet the objective of the Victorian default offer.
3. The prices determined by the Commission pursuant to the VDO price determination are to be based on the efficient costs of a retailer.
4. For the purposes of subclause (3), the Commission must have regard to:
 - (a) wholesale electricity costs;
 - (b) network costs;
 - (c) environmental costs;
 - (d) retail operating costs, including modest costs of customer acquisition and retention;
 - (e) retail operating margin; and
 - (f) subject to subclause (9), any other costs, matters or things the Commission, in the exercise of its discretion, considers appropriate or relevant.
5. For the purposes of clause 11(4)(d), modest costs of customer acquisition and retention means those costs of customer acquisition and retention that the Commission, in the exercise of its discretion, determines having regard to the following:
 - (a) the activities that give rise to the costs;
 - (b) the principle that those activities should be directly relevant to customer acquisition and retention;
 - (c) the principle that those activities should be:
 - i. not excessive and not unnecessarily or unreasonably engaged in; and
 - ii. reasonable in all the circumstances; and
 - (d) the principle that the costs of, or associated with those activities, should be:
 - i. not excessive and not unnecessarily or unreasonably incurred; and
 - ii. reasonable in all the circumstances.
6. For the purposes of clause 11(4)(e), the Commission must determine a maximum retail operating margin and in doing so, in the exercise of its discretion, must have regard to the following principles:
 - (a) the margin must not compensate retailers for risks that are compensated elsewhere in the costs;
 - (b) the margin must not be excessive; and
 - (c) the margin must be reasonable in all the circumstances.

7. Subclauses (3), (4) and (5) do not require the Commission to determine prices based on the actual costs of a retailer.
8. Subclause (6) does not require the Commission to determine prices based on the actual retail operating margin of a retailer.
9. In making a VDO price determination the Commission must not include headroom.
10. The following provisions of section 33 of the ESC Act do not apply to the making of a VDO price determination:
 - (a) section 33(3)(c); and
 - (b) section 33(4).
11. Section 33(3)(d) of the ESC Act applies to the making of a VDO price determination as if the words “and return on assets” were omitted.
12. Otherwise, section 33 of the ESC Act applies to the making of a VDO price determination only to the extent that the section is not contrary to this Order.

Notes:

1. This Order, as an “empowering instrument” in terms of the ESC Act, can modify the application of section 33 of the ESC Act: see section 33(1) of the ESC Act.
2. Pursuant to clause 33(3)(d) of the ESC Act (as modified by the Order), the Commission must have regard to relevant interstate and international benchmarks for prices and costs in comparable industries.

12. Variation of VDO price determinations

1. Before or during a regulatory period, the Commission may, on its own initiative, vary a VDO price determination in respect of the regulatory period.
2. The Commission must specify, in a VDO price determination, the circumstances under which the Commission will consider, and the basis on which the Commission will decide on, a proposed variation and (subject to subclauses (4) and (5)) the processes to be followed to enable the Commission to make such a variation.
3. Without limiting subclause (1), the Commission may vary a VDO price determination:
 - (a) if an event has occurred or will occur that was uncertain or unforeseen by the Commission at the time of making the VDO price determination; or
 - (b) to correct a clerical error, miscalculation, misdescription or other deficiency.
4. Before making a variation, the Commission must consult in accordance with clause 13.
5. Subclause (4) does not apply if:
 - (a) the variation is not sufficiently material to warrant consultation in accordance with clause 13; or
 - (b) the need for the variation is sufficiently urgent to warrant consultation in accordance with clause 13 not being undertaken.
6. If, as a result of a variation of a VDO price determination, a retailer is or will be required to vary the retailer’s standing offer tariffs, the Commission must ensure the retailer is given adequate notice before the variation to the VDO price determination takes effect.

13. Consultation

1. The Commission may decide the nature and extent of stakeholder consultation it will undertake when making a VDO price determination or a decision to vary a VDO price determination.
2. For the purposes of subclause (1), the Commission must have regard to its Charter of Consultation and Regulatory Practice (as amended from time to time) developed and published under section 14 of the ESC Act.

14. Victorian default offer prices to be the reference price for discounts

1. This clause applies until such time as the amendments to the Energy Retail Code required by clause 15(2) come into force.
2. A retailer that offers or gives a discount or other benefit to a prescribed customer must:
 - (a) if the discount or benefit is in respect of the period from 1 July 2019 to 31 December 2019, disclose how the discount is calculated as against the prices in Schedule 1 or Schedule 2 (as the case may be), and what (in percentage or dollar terms) the reduction in price is in terms of those prices; and
 - (b) if the discount or benefit is in respect of a regulatory period, disclose how the discount is calculated as against the prices 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 price is in terms of those prices; and
 - (c) disclose, prior to an offer being accepted or the commencement of the discount being given, any and all terms and conditions that apply in respect of the discount or benefit including (but not limited to) the prices the customer will revert to if those terms and conditions are not satisfied.
3. For the purposes of subclause (2), the reduction in price is to be expressed as the difference between the estimated annual cost of the Victorian default offer for the relevant customer type and distribution zone, and the estimated annual cost of the offer to which the discount or other benefit relates after the discount or benefit is applied, using the annual reference consumption.
4. For the purposes of subclause (3), the estimated annual cost of the Victorian default offer is:
 - (a) during the period from 1 July 2019 to 31 December 2019, determined by applying Schedule 3;
 - (b) during a regulatory period, determined by applying Schedule 3 or any other methodology determined by the Commission.
5. For the purposes of subclause (3), the retailer must determine the estimated annual cost of the retailer's offer to which the discount or other benefit relates:
 - (a) if the prices for the supply or sale of electricity under the offer comprise a flat tariff or a flexible tariff (with or without a controlled load), by applying Schedule 3;
 - (b) otherwise, based on a reasonable estimate having regard to any relevant information available to the retailer.

6. 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 clause 14(6)(b)(i), the amount specified in clause 14(6)(a).
7. For the purposes of subclause (6), the amount of electricity consumed is assumed to be the same on each day of the year.
8. The disclosures required by this clause must be in plain and clear English and prominent in the offer and in any advertising in respect of the offer.
9. 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.

15. Direction to the Commission pursuant to section 13(3)(b) of the Act

1. The Commission must, as soon as practicable after the commencement of this Order, amend the Energy Retail Code and any other instrument of the Commission to give effect to the Victorian default offer and this Order.
2. Without limiting subclause (1), the Commission must amend the Energy Retail Code (and any other instrument of the Commission) so that the Code provides for prices determined by the Commission pursuant to the VDO price determination being the reference prices for discounts and for the methodology of that comparison.
3. For the purposes of subclause (2), the Commission must have regard to the following principles:
 - (a) There must be a consistent methodology for comparison of prices that applies to:
 - i. all offers of discounts or the giving of discounts by retailers; and
 - ii. the advertising in respect of those discounts.
 - (b) The methodology must apply in respect of flat tariffs and tariffs that are not flat tariffs;
 - (c) The methodology must (without limitation) readily allow, in respect of a regulatory period, a comparison between:
 - i. the discounted prices offered or given by a retailer; and
 - ii. the prices determined by the Commission pursuant to the VDO price determination in respect of that period; and

- (d) Any actual comparison in accordance with the methodology must be readily understandable by a prescribed customer.
4. Subclause (3) does not limit:
- (a) the matters the Commission may have regard to; or
 - (b) the matters the Commission may provide for by way of the amendment required by subclause (2).

16. Review of this Order

1. The Minister must cause a review of the operation of this Order to be undertaken before the fifth anniversary of the Order coming into operation.
2. The review conducted under this clause is to assess the operation and effectiveness of this Order, including the extent to which it is achieving the objective of the Victorian default offer.

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SCHEDULE 1

Victorian default offer tariffs for period from 1 July 2019 to 31 December 2019 – domestic customers

[TARIFFS ARE BASED ON ESC DRAFT ADVICE AND ARE SUBJECT TO CHANGE]

Prices are inclusive of GST.

Distribution zone	Flat tariff – supply charge (\$ per day)	Flat tariff – usage charge (\$ per kWh)	Controlled load tariff – usage charge (\$ per kWh)
AusNet Services	\$1.0951	\$0.2629 (per kWh up to 1,020 kWh during a quarter) \$0.2979 (per kWh in excess of 1,020 kWh during a quarter)	\$0.1890
CitiPower	\$1.0638	\$0.2166	\$0.1650
Jemena	\$0.9620	\$0.2404	\$0.1774
Powercor	\$1.1916	\$0.2289	\$0.1717
United Energy	\$0.8078	\$0.2579 (from 1 November to 31 March) \$0.2400 (from 1 April to 31 October)	\$0.1719

SCHEDULE 2

Victorian default offer tariffs for period from 1 July 2019 to 31 December 2019 – small business customers

[TARIFFS ARE BASED ON ESC DRAFT ADVICE AND ARE SUBJECT TO CHANGE]

Prices are inclusive of GST.

Distribution zone	Flat tariff – supply charge (\$ per day)	Flat tariff – usage charge (\$ per kWh)
AusNet Services	\$1.0951	\$0.3091 (per kWh up to 1,020 kWh during a quarter) \$0.3542 (per kWh in excess of 1,020 kWh during a quarter)
CitiPower	\$1.2556	\$0.2331
Jemena	\$1.1034	\$0.2630
Powercor	\$1.3195	\$0.2368
United Energy	\$0.8654	\$0.2807 (from 1 November to 31 March) \$0.2543 (from 1 April to 31 October)

SCHEDULE 3

1. Estimated annual cost for flat tariff offers

The estimated annual cost for an offer for the supply or sale of electricity under a flat tariff is to be calculated as follows:

$$EAC = SC \times 365 + UC \times ARC$$

where:

EAC is the estimated annual cost of the offer;

SC is the supply charge;

UC is the general usage charge; and

ARC is the annual reference consumption for general usage.

2. Estimated annual cost for flexible tariff offers

The estimated annual cost for an offer for the supply or sale of electricity under a flexible tariff is to be calculated as follows:

$$EAC = SC \times 365 + ARC \times UC_P \times UA_P + ARC \times UC_S \times UA_S + ARC \times UC_{OP} \times UA_{OP}$$

where:

EAC is the estimated annual cost of the offer;

SC is the supply charge; and

ARC is the annual reference consumption for general usage;

and where, in respect of the relevant tariff type specified in column 1 of Table 1:

UC_P is the retailer's peak usage charge;

UA_P is the peak usage allocation specified in column 2 of Table 1;

UC_S is the retailer's shoulder usage charge;

UA_S is the shoulder usage allocation specified in column 3 of Table 1;

UC_{OP} is the retailer's off-peak usage charge; and

UA_{OP} is the off-peak usage allocation specified in column 4 of Table 1.

3. Estimated annual cost for offers that include a controlled load tariff

The estimated annual cost for an offer for the supply or sale of electricity that includes a controlled load tariff is to be calculated as follows:

$$EAC = EAC_{GU} + UC_{CL} \times ARC_{CL}$$

where:

EAC is the estimated annual cost of the offer;

EAC_{GU} is the estimated annual cost of the offer for general usage only, calculated in accordance with clause 1 or 2 of this Schedule 3 (as the case may be);

UC_{CL} is the usage charge for controlled load usage; and

ARC_{CL} is the annual reference consumption for controlled load usage.

Table 1 – Usage allocation for flexible tariffs

Tariff type	Peak	Shoulder	Off-peak
Flexible price (3 part time of use)	0.25	0.45	0.30
5-day time of use	0.52	0.00	0.48
7-day time of use (small business customers only)	0.74	0.00	0.26
5-day time of day 9pm off peak (United Energy distribution zone only)	0.25	0.20	0.55
5-day time of day (United Energy distribution zone only)	0.32	0.20	0.48

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Appendix B. Draft section 35(3B) Order

Electricity Industry Act 2000

MINISTERIAL ORDER UNDER SECTION 35(3B)

I, Lily D'Ambrosio, Minister for Energy, Environment and Climate Change and Minister responsible for administering the **Electricity Industry Act 2000** (the Act), specify, pursuant to sections 35(3B)(a) and 35(3B)(b) of the Act, the following period within which a licensee may publish a notice under section 35(3) of the Act, and the date on which tariffs varied in accordance with section 35(3) of the Act must take effect.

1. Commencement

This Order commences on the date that it is published in the Government Gazette.

2. Period within which a notice varying licensee standing offers must be published

If, during the period from the date of commencement of this Order until the expiry date of this Order, a licensee proposes to publish a notice under section 35(3) of the Act, varying the tariffs determined by the licensee and published in the Government Gazette under section 35(1) of the Act, the notice may be published during the period commencing on the date this Order commences and ending on 16 June 2019.

3. Date on which a variation to a licensee standing offer under paragraph 2 must take effect

Pursuant to section 35(3B)(b) of the Act, any variation to licensee standing offer tariffs under clause 2 of this Order must take effect on 1 July 2019.

Appendix C. VDO reference price worked example

Outlined below is a worked example for a domestic customer on a flexible tariff (three parts) market offer in the Powercor distribution zone. Using the annual reference consumption for general usage of 4,000 kWh and the relevant supply charge, the estimated annual cost for the VDO for a domestic customer in the Powercor distribution zone is \$1,350.53. The retailer's estimated annual cost for this customer on a flexible tariff (three parts) market offer is \$1,296.39. Where the retailer is offering or giving a discount for domestic customer in the Powercor distribution zone, then this discount would need to be expressed as either 4% or \$54 off the VDO estimated annual cost.

1. CALCULATING ESTIMATED ANNUAL COST

EAC for VDO

$$EAC_{VDO} = SC \times 365 + UC \times ARC = \$1,350.53$$

- EAC_{VDO} = estimated annual cost for the VDO
- SC = supply charge = \$1.1916
- UC = general usage charge = \$0.2289/kWh
- ARC = annual reference consumption for general usage = 4,000 kWh

EAC for flexible tariff (three parts) offer

$$EAC_{FT} = SC \times 365 + ARC \times UC_P \times UA_P + ARC \times UC_S \times UA_S + ARC \times UC_{OP} \times UA_{OP} = \$1,296.39$$

- EAC_{FT} = estimated annual cost for a flexible tariff offer
- SC = supply charge = \$1.22/day
- ARC = annual reference consumption for general usage = 4,000 kWh
- UC_P = retailer's peak usage charge = \$0.28006/kWh
- UA_P = peak usage allocation = 0.25
- UC_S = retailer's shoulder usage charge = \$0.22726/kWh
- UA_S = shoulder usage allocation = 0.45
- UC_{OP} = off-peak usage charge = \$0.13497/kWh
- UA_{OP} = off-peak usage allocation = 0.30

2. COMPARING ESTIMATED ANNUAL COSTS

$$\text{Reduction in percentage} = 1 - \frac{EAC_{FT}}{EAC_{VDO}} = 4\% \text{ (rounded down from 4.01\%)}$$

$$\text{Reduction in dollar terms} = EAC_{VDO} - EAC_{FT} = \$54 \text{ (rounded down from \$54.14)}$$