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Retail Market Reform Team
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Submitted via Email: retailmarket.reform@delwp.vic.gov.au

Victorian Default Offer – Draft Orders

Thank you for the opportunity to provide a submission in response to the Victorian Default Offer – Draft Orders consultation paper.

Momentum Energy is a 100% Australian-owned and operated energy retailer. We pride ourselves on competitive pricing, innovation and outstanding customer service. We retail electricity in Victoria, New South Wales, South Australia, Queensland, the ACT, and on the Bass Strait Islands. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services. We also retail natural gas to Victorian customers.

Momentum Energy is owned by Hydro Tasmania, Australia's largest producer of renewable energy.

We provide the following responses to the questions Raised in the Draft Orders Consultation document.

Responses to Specific Questions Raised in the Consultation Paper

Questions

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

The objective of clause 3 reflects the previous statements by government regarding the delivery of a simple trusted and reasonably priced electricity offer that safeguards consumers that are unable or unwilling to engage in the electricity retail market. However, it fails to also consider the impact on the competitive market and

reflect the objective of the Essential Services Commission stated in the ESC Act¹. Under this objective the Commission must consider the long term interests of customers and a viable competitive market is also a key requirement that the VDO OIC should cover.

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?

Under clause 6.2 it is unclear why the reference is made to “*fixed*” at the amounts specified in columns 2, 3 and 4. Momentum is unsure why the term “fixed” is used rather than using the term “set” or “priced”. Fixed price offers in the energy market are usually associated with a market offer that has prices fixed for a term of either 12 months or two years. It is our understanding that VDO prices may be reset from 1 January 2020 and therefore the term of these initial VDO prices is uncertain.

Clause 6.4 references sub clauses (1) and (2) which we believe should be sub clauses (2) and (3).

This clause makes it clear that the VDO applies to Standing Offer tariffs that are flat or flat with a controlled load tariff. However, based on recent discussions with DELWP, it is the government’s objective that customers on non-flat Standing Offer tariffs should be offered the flat VDO if customers request it. This causes issues with requesting and gaining approval for network tariff reassignment, from the various networks. Nevertheless it would be easier to gain network support and acceptance of tariff reassignment if clause 6 or some other section of the VDO could specifically state that customers on non-flat tariffs can request a flat tariff VDO.

Clause 7 covers the obligation for retailers to make a standing offer available with regulated tariffs. It is our view that this clause is somewhat ambiguous and could be interpreted to impose an obligation to supply on all retailers under all situations for domestic and small business customers which is not the intent. We believe that this clause needs to be amended to ensure that the current obligation to supply provisions will be maintained and simply create an obligation to provide non flat standing offer customers with a flat VDO if a customer requests it.

Clause 8 – Momentum is of the view that retailers could more readily facilitate non-flat tariff customer requests for flat tariff VDOs if network tariff changes were not subject to network approval. We believe that this could be facilitated by amending the AMI OIC which has been amended previously to facilitate government policy on network tariffs and AMI meters.

¹ Essential Services Commission Act 2001 objective clauses 8 & 8A

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?

We are concerned that the 42 day timing before the commencement of a regulatory period, prescribed under clause 9, for the Commission to determine VDO prices will not allow retailers sufficient time to gain internal tariff approval and to organise the gazettal of these prices. We realise that the Commission cannot accurately determine the VDO prices until the release of approved network tariff prices and therefore they are unable to complete their task any sooner. Therefore we suggest that DELWP (via the OIC) consider reducing the mandatory 4 weeks gazettal notice timing to 2 weeks to allow retailers more time once the VDO prices are released. We believe that a 4 week gazettal period is no longer necessary now that the prices are regulated. The 4 week gazettal notice period was originally intended to give customers, on Standing Offers, enough time to engage in the market to find a more competitive market price before the new Standing Offer prices came into effect.

There are several risks associated with the alternative option of the VDO continuing as a flat tariff (or flat tariff with controlled load) only as follows:

- If networks refuse to change a network tariff when requested by retailers these customers would often require manual billing and/or retailers would bear the load profile financial risk of a mismatched retail/network tariff;
- Over the past 10 years energy market stakeholders and government have been encouraging energy users to amend their usage profile in order to reduce peak demands on the market and networks. This message would be contradicted if non flat customers were switched to flat VDOs on request.
- Customers on non-flat tariffs (with discounts) will be comparing their prices to flat VDO reference prices which could misrepresent the price differences and be misleading. Customers will lose confidence in the reference prices and disengage from the market.

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?

The approach and methodology specified in clause 11 of the draft is partly reflective of the objective of the VDO. Momentum is concerned that under clause 11(4) there is no allowance for innovation given the reduced definition of “headroom” under the Order.

As mentioned above, in our response to Question 1, the value of a competitive market cannot be underestimated in ensuring a market delivers outcomes that are in the long term interests of customers. A market with no headroom will create a barrier to entry for new retailers and it will also stifle innovation.

Moreover we note that under clause 11(10) of the Order that Section 33(4) of the ESC Act no longer applies. Section 33(4) ensures the Commission, when making a determination, must ensure that the expected costs of regulation do not exceed the benefits of any determination and that the Commission takes into account any tradeoffs between costs and service standards. We believe that this provision is very important and that it should remain otherwise a consequence of the VDO will be diminished service standards delivered by retailers as they will have no option to ensure they survive.

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?

Clause 7 (2) of the Draft Order requires retailers to include information on the bill about how a customer may access the VDO. Momentum believes that the addition of this new obligation is rather late considering the proposed implementation date of 1 July 2019. We would prefer this obligation to give retailers the option to include this information with the bill or by some other means especially for the initial six months post the implementation date.

The electricity bill is subject to other (Best offer on bill) regulatory changes also due 1 July 2019 and most of this bill design work is now complete. The electricity bill is becoming rather cluttered with multiple mandatory messages and we believe that the VDO message may also be more successfully received by customers by alternative means. A message relating to the VDO may be especially confusing in instances where the VDO is not the best offer available to the customer, and its inclusion on the bill may lead the customer to take up the VDO to their detriment.

We do not believe that the specific wording to relay this message needs to be regulated as it provides us with some flexibility with the design layout of the bill and other notifications (if allowed) should the Order be amended.

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?

The government now requires the VDO to be used as a Reference Price for retailers with discounted offers or offers with benefits to be implemented by 1 July 2019. Although Momentum does not offer discounted products we raise the following concerns with clause 14 as it is currently drafted:

- Clause 14(2)(a) places new obligations on retailers that offer a discount or other benefit. What is the definition of other "benefit"?
- Clause 14(2)(b) requires retailers to disclose how a discount or a benefit is compared to the VDO price expressed in a percentage or dollar term. It is unclear how these comparisons are undertaken for benefits when benefits are not defined. Also the discounts or benefits may relate to a non-flat tariff that may not be suitably reflected when comparing it to a flat VDO tariff. The differences may be misleading to customers; and
- Clause 14(2)(c) requires retailers to make disclosures prior to an offer being accepted on details of the discount or benefit. Are these duplicative obligations for Explicit Informed Consent? If not what is the purpose of this provision which appears to duplicate existing regulatory provisions.

Based on these concerns we believe that the intention and application of Clause 14 of the Order requires proper industry and stakeholder consultation so that the impacts of these provisions are more definitively drafted and understood.

The ESC would be better placed to conduct this consultation together with the other scheduled amendments to the Energy Retail Code. Therefore the implementation of this new obligation should be delayed until 1 January 2020 so the provisions are introduced in a cohesive manner and allow retailers time to assess the implications of the requirements and to make any necessary system changes.

An assessment of the ease of use of Schedule 3, to determine the estimated annual cost of offers, can be better undertaken when a more fulsome understanding of the terms of clause 14 are better known.

Questions

11. Is the proposed review period and approach appropriate?

Clause 16 of the draft Order suggests that a review of the operation of the Order should be undertaken before the fifth anniversary of the commencement of the Order. This Order is imposing a significant change to the existing price deregulated electricity market of Victoria. It is also being implemented at a time when various other regulatory changes have only been implemented for a short period (Payment Difficulties Framework) or are being implemented at the same time (Best Offer on Bills).

This Order could have serious impacts on the competitive market in Victoria that affect both wholesale and retail markets. For instance some renewable generators have established retail businesses to underwrite new and existing generation projects. The ongoing viability of these retail businesses is fundamental to the growth of these stapled businesses. The government is encouraging renewable generation to fill the capacity gap caused by the closure of the brown coal fueled generator Hazelwood.

The electricity market is experiencing significant price volatility which is imposing increased risk on many retailers. The consequential impact of the VDO onto market offers will become evident in the short to mid-term, for this reason, Momentum suggests that a review period of two years would be a more prudent review period for such an important regulatory change.

Should you require any further information with regard to these responses, please don't hesitate to contact me on [REDACTED] or email [REDACTED]

Yours sincerely

[Signed]

Randall Brown
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