1 May 2019

Ms Sarah Sheppard  
Director  
Energy Consumer and Affordability Policy Branch  
Department of Environment, Land, Water and Planning  
Level 5, 222 Lonsdale St  
Melbourne VIC 3000

Submitted via email to: retailmarket.reform@delwp.vic.gov.au

Dear Ms Sheppard,

Re: Victorian Default Offer - Draft Orders Consultation Paper

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide feedback on the Victorian Default Offer - Draft Orders Consultation Paper (consultation paper) and on the two new draft orders in council (draft orders) to the Department of Environment, Land, Water and Planning (the Department).

The Victorian Government has chosen to introduce price regulation in the electricity market, in the form of the Victorian Default Offer (VDO). Alongside amendments contained within the Energy Legislation Amendment (Victorian Default Offer) Bill 2019, the draft orders provide the implementation aspects of the VDO (which will be set by the Minister from 1 July 2019 to 31 December 2019) as well as the governance arrangements that the Essential Services Commission (the Commission) must follow to set future VDOs from 1 January 2020 and beyond.

The electricity market in Victoria is a highly competitive market that delivers a range of electricity products and offers to all types of consumers. The VDO will replace the existing electricity flat rate standing offer in the market. Red and Lumo strongly support competitive markets; we are focused on attracting customers with our competitive market offers and delivering on our award-winning customer service. Introduction of the VDO will see less than 1% of Red and Lumo’s electricity customers (as at 31 March 2019) moved from the unregulated standing offer to the VDO set by the Minister. Despite this small percentage of our affected customers, ensuring the appropriate VDO framework is set out in the draft orders is crucial to maintaining a strong and competitive market in Victoria. As without a robust and comprehensive framework for the Commission to use as guidance, the potential impact on competition and consumer outcomes are severe.

Our response is split into three parts. Firstly we will provide feedback on matters related to the 1 July 2019 VDO on both implementation and specific matters contained within the draft orders. Secondly, we will focus on the arrangements that are being established for the Commission to set the price from 1 January 2020 onwards. Finally, we’ve attached a marked up version of the draft orders as provided, linking the matters contained within the submission with how we consider the Department can achieve a more optimum outcome for customers on a Victorian electricity standing offer.
Implementation and the initial VDO (1 July - 31 December 2019)

Red and Lumo are very concerned with the compressed time frame between the finalisation of the draft orders and implementation of the VDO on 1 July 2019. Specifically, we have concerns in regards to the new requirements imposed on retailers as prescribed in the draft order. This includes the obligation to advise customers on how they can access the VDO, by prescribing government communication of the VDO on the bill and the potential adverse impacts of industry being mandated to use the VDO as a reference price. Red and Lumo also continues to raise concerns as to the ability for customers on a cost reflective network tariff to transition to the VDO.

Information on how to access the VDO

The Independent Review of the Electricity and Gas Markets in Victoria Final Report (the Thwaites Report) recommended (recommendation 3G) that retailers include a variety of information on customer bills including “how the customer can access the basic services offer”. 1 The Victorian Government requested the Commission implement recommendation 3 and consequential amendments made to accommodate the recommendation in the Energy Retail Code (the Code). Specifically, the terms of reference2 required the Commission to focus on the obligations in recommendation 3G and finalise those by 30 October 2018, providing retailers 9 months to design, build, test and deliver by 1 July 2019. The Commission undertook consultation, albeit compressed, and completed behavioural economics research to understand how to best present information on customer bills in order to achieve the objectives of the Thwaites Report.

Adding this obligation into the draft Order disregards the Commission’s research and final decision and also disregards the time required by retailers to design, build, test and implement changes to our bills which are now finalised. At a minimum, the Victorian Government must consider allowing additional time (6-9 months) for retailers to make the requisite changes required under clause 7 of the draft order to enable the additional text to be placed on the bill. However, we note that this obligation is best placed in clause 25 (contents of bills) of the Code alongside the 26 other matters that retailers must include on a customer bill. Not in the draft order.

We observe that the final decision made by the Commission did not include this specific aspect of recommendation 3G, as behavioural insights revealed the most appropriate manner to present items for customers to consider on their bill. An alternate that the Department could consider, would be to have a more general obligation to mandate that retailers advise customers of this information. This could be on the retailer’s bill (should a retailer have time to implement it), on a bill insert, on the cover email with an e-bill, through the customer’s online portal or via any other mechanism between 1 July 2019 and as required under clause 15, when the Commission make consequential amendments to the Code to reflect matters

contained in the draft order. We have made drafting recommendations to effect this change in Attachment 1, clause 7 and 15.

The bill is the formal tax invoice between a retailer and their customers for energy consumed and services delivered, not marketing material. We note that the consultation paper has queried whether or not wording should be prescribed or defined in the final order. We strongly urge the Department not to place obligations on retailers on how this is communicated or where this is communicated to customers. This is especially important at this late stage, as we are 6 months into our implementation schedule and it will be too late to make changes by the time that the final orders are released.

Use of the VDO as a reference price

Red and Lumo strongly support competition and the importance of allowing customers to easily compare available offers in market. Our offers have always had this in mind, as we have always discounted off the total bill.

We note that the Commission received terms of reference from the Victorian Government to implement recommendation 3 which included requiring retailers to change their marketing practices to ensure that prices are more easily comparable. The Commission made the decision that recommendation 3A (Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts) would be worked on in conjunction with recommendation 4. The draft order establishes the initial framework to be in place from 1 July 2019 until the Commission establishes the framework within the Code.

Red and Lumo are specifically concerned with the rushed approach to placing these obligations into the draft Order, as it does not allow for a fulsome consultation. This should be undertaken by the Commission to achieve the most appropriate outcome for Victorian consumers to more easily compare offers, which was the intention of Recommendation 3A. By rushing implementation, it adds further complexity and confusion for Victorian consumers being able to compare offers and will likely cause other unintended consequences as outlined below. This was not the intent of what the Victorian Government envisaged when adopting this recommendation. We urge the Department to reconsider this policy and remove the obligations in the draft Order to use the VDO as a reference price, until such time as the Commission has the opportunity to conduct a thorough consultation and establish a considered framework within the Code.

The draft order places an obligation to reference offers against the VDO where they contain “a discount or other benefit”. It is unclear what the intended inclusion of “other benefit” in this context is. Where a retailer offers a benefit, for example Red’s Qantas Red Saver offer that comes with a 10% pay on time discount off the total bill and 10,000

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3 Ibid. 2-3
Qantas points for signing up, the benefit is in addition to the offer and not comparable to the VDO. The Department must amend the draft order to exclude the concept of ‘benefits’ from the reference to VDO. We have suggested these drafting amendments to effect this in Attachment 1, clause 14.

The current drafting of clause 14 requires retailers to publish offers that take into account a specific usage profile, specific distribution zone, referencing an offer against the VDO in either price or dollar terms and as an estimated difference in dollar amount between the two offers. As there are 15 VDOs that will be set across Victoria, it is difficult to ascertain how a retailer’s marketing material can meet all the requirements of the draft order without further confusing and, at worst, misleading consumers.

Unless advertising on a regional basis, marketing material is unlikely to be accurate for the intended recipient. Additionally, as the consumption levels are consistent, the total amount saved for each type of representative consumer in each type of distribution area is likely to be a different amount and potentially have a different discount that applies when referencing off the VDO.

A generic mockup of the requirements against the VDO are:

One unintended consequence of rushing the implementation of the use of VDO as a reference price, is that it allows retailers who only discount off usage rates to only apply their discount to the VDO usage rates (see above). This can be easily achieved by placing the note in the disclaimer. This creates an unintended consequence that although it appears that the offer is 5% off the VDO, however it may actually only be 3% off once service to property charges are included.

It is also unclear in the drafting whether the Department expects that the inverse will apply should the offer be higher than the VDO.
We strongly suggest that the Department remove the obligations in the draft Order to use the VDO as a reference price, until such time as the Commission has the opportunity to conduct a thorough consultation and establish a considered framework within the Code.

Should the Department decide to keep the VDO as a reference price, we recommend removing clause 14(2)(c) as this requirement duplicates both the clear advice entitlement obligation and explicit informed consent obligations in the Code. Finally, it is unclear whether the Department will make consequential amendments to Victorian Energy Compare (VEC). VEC must be updated to reflect the same usage profiles specified in the draft order in the VEC system, to ensure that consumers are comparing the same offers between marketing material to the offers in VEC.

Cost reflective tariffs and a flat VDO

Red and Lumo remain concerned about retailers' exposure to network costs under the VDO in current and future years. Retailers will be obligated to offer a flat rate VDO to all customers, including those customers where the distribution networks have assigned cost reflective tariffs. More complex network tariffs, including maximum demand charges, are currently offered on an opt-in basis in Victoria but we are aware the Victorian networks are currently considering more complex tariff structures and associated assignment policies for their next regulatory period.

We urge the Victorian Government to extend its existing consumer protection, put in place for flexible pricing, and apply it to the VDO. This consumer protection will only occur where customers have flexibility and choice in their network tariff structure as well as their retail product offering. Not extending the consumer protection will require retailers to cross subsidise between customer types the cost of which has not been included in the VDO. We are particularly concerned as the draft order does not clearly mandate that the Commission must set cost reflective VDOs post 1 January 2020.

VDO from 1 January 2020

The draft order prescribes the Victorian Government's regulated pricing policy that the Commission must follow when setting the VDO in future years (the regulatory period). The draft order appears to have missed a number of matters which has resulted in some unintended consequences. Red and Lumo have concerns around the governance and consultation arrangements of VDOs within the regulatory period,
alongside issues in which matters the Commission can or can not consider when setting the VDO.

**Objective of the VDO**

Clause 3 of the draft order sets out the objective of the VDO as:

> To provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the electricity retail market.⁶

This objective is largely consistent with the terms of reference provided to the Commission and to meet the objectives from the Thwaites Report. The terms of reference specified to the Commission stated that:

> The VDO will provide a simple, trusted and reasonably priced electricity option that safeguards consumers unable or unwilling to engage in the retail electricity market without impeding the consumer benefits experienced by those who are active in the market.⁷

As previously noted, Red and Lumo strongly support competition and competitive market outcomes for consumers. The additional wording also reflects the Commission’s objective as outlined in the *Electricity Industry Act* that requires the Commission to promote the development of full retail competition and promote customer protections⁸. As a result, we recommend that the Victorian Government re-include the additional wording that it has previously provided to the Commission in the establishment of the VDO advice to the Minister. We have amended the draft order in Attachment 1 to this effect.

**Types of VDO**

While clause 6 of the draft order requires the Commission to set a VDO for all prescribed customers, it does not require the Commission to set a cost reflective tariff alongside a flat tariff for each type of the customers. Consistent with the points above, we consider it prudent for the Department to make consequential amendments (see Attachment 1, section B) in order to avoid cross subsidies between customer types of a specific retailer.

**Approach and methodology for the VDO**

The approach described in the draft order is very subjective and provides considerable discretion to the Commission on matters that it is able to consider. This includes granting the Commission discretion in areas such as the level of allowable costs of acquisition and retention and retailer margin; through the inclusion of highly subjective terms such as ‘not excessive’, ‘not unnecessarily or reasonably engaged in’, and ‘reasonable in all circumstances’. To us, this is imprecise drafting that provides

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⁷ Victorian Government, Customer outcomes in the energy market: Terms of Reference to the Essential Services Commission, pg.1

⁸ *Electricity Industry Act 2000*, section 10

little guidance to the Commission, retailers and other stakeholders about how the Commission will reach a position. This is also in stark contrast to the guidance used in the water industry governed by the Water Industry Regulatory Order, another essential service that the Commission regulates pricing for.

This creates both an opportunity and a risk for retailers, as the Commission could determine that certain investments are able, or likewise are unable to be recovered by that retailer.

Red and Lumo understand that the Victorian Government’s intent is to clarify how the Commission should classify a modest amount for costs to acquire and retain, however, we do not consider that this is clearly articulated. This is where the use of subjective terms – identified above – is particularly problematic. For example, there is little incentive for retailers to invest to improve service levels or reduce costs, if the Commission decides that such investments are not ‘reasonable’ and therefore cannot be recovered. Price regulation undermines innovation but this effect is even greater under the draft order given the absence of detail about what the Commission would allow.

We recommend the Department use more precise language and include a requirement for the Commission to consider the impact of its determinations on competition and innovation. Otherwise, retailers will not invest in retail operations and Victorian consumers will suffer a decline in service standards. Unlike the electricity market, the water industry is regulated and does not provide customers with choice of water supplier. However this industry has more certainty in its regulatory instruments than what is being prescribed in the draft order. To that effect, the Water Industry Regulatory Order could be a template in this area as it instructs the Commission to place ‘particular emphasis’ on the following:

- The promotion of efficiency in regulated entities as well as efficiency in, and the financial viability of, the regulated water industry; and
- The provision to regulated entities of incentives to pursue efficiency improvements.

By regulating retail prices, the Victorian Government has chosen to reduce the reliance on competition to drive efficiencies in the retail market. Therefore, it should explicitly seek to promote innovation through regulation by allowing retailers to recover the associated costs.

Data in the making of VDO determinations

It is the intention of the Victorian Government to provide the Commission with the powers to gather information on the actual costs and margins of electricity retailers. The approach and methodology specified in clause 11(3) of the draft order requires:

*The prices determined by the Commission pursuant to the VDO price determination are to be based on the efficient costs of a retailer.*

In making a VDO determination, the Commission may decide to utilise its powers to gather information, and will utilise this data in order to set the VDO. However, this appears to be contrary to the direction to the Commission in clauses 11(7) and 11(8) that state:
(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.

This appears to establish an inconsistent obligation on the Commission. On the one hand, the draft order specifies that the VDO must be based on a retailer’s efficient costs, and on the other hand, the actual costs of a retailer can be disregarded. This adds significant risks to retailers operating in the electricity market, as competitive markets require retailers to be constantly vigilant of its costs which are ultimately borne by its customers and ensure that they are not excessive or else they will no longer be competitive and therefore unable to recover those costs.

While we agree that the Commission should not be required to establish one retailer in the electricity market as “the efficient retailer”, it must take into account the actual data it receives in determining what is an efficient cost, a modest cost to acquire amount and a reasonable margin. This will eliminate the risk that the Commission will set the price too high or too low when making a VDO determination.

Determining prices on the basis of a theoretically efficient retailer without having regard to actual costs creates significant risks. Testing assumptions against actual costs and through comprehensive consultation is an important way of ensuring determinations are reasonable.

There is no single or correct level of efficient costs, only a feasible range given the variability of cost structures and business models in the retail sector and the evolution of cost structures over time. Secondly, the Commission cannot possibly have knowledge of these costs or future cost movements, even with information gathering powers. This means the Commission must rely on imperfect proxies and assumptions to derive a cost stack, which will ultimately penalise some operating models and reward others. As an example, the Commission must make assumptions about wholesale costs, including the variability of a retailer’s load profile. Retailers with more variable loads, such as those with a relatively high proportion of solar customers, may not be adequately compensated.

As a result, we suggest the removal of sub clauses 11(7) and 11(8) as they are counterintuitive to the objective set out by the Department.

Due diligence of the Commission

The Victorian Government has decided to alleviate the Commission of their requirements under the Essential Services Commission Act in the making of a price determination. The draft order specifically precludes the Commission considering the implications of their final VDO determinations, on costs and benefits and the trade-offs between costs and service standards (clause 11(10)(b)). This policy approach is inconsistent with the Commission’s water pricing determinations.

Red and Lumo consider that it is pertinent for an economic regulator to understand the costs and benefits of the price that it is setting in the market. To this end it is imperative that the Commission understands the implications and trade-offs it makes between the costs and service standards. While we understand that the Department does not consider it relevant that the Commission comment in their final VDO determinations on
the policy of government, it is unclear why this is an acceptable and appropriate exclusion for electricity but not for water. Furthermore, it is difficult for the Commission to realise their objectives under the Electricity Industry Act to promote competition and consumer protections without having regard to the costs, benefits and trade-offs of the VDO determinations it is making. Red and Lumo consider it appropriate for the draft orders to remove the clause that precludes the Commission in considering these matters, and have made the requisite amendments to the draft order in Attachment 1, clause 11(10).

Consultation when making or amending the VDO

Red and Lumo are concerned regarding the nature and extent of the consultation requirements placed on the Commission in the draft order. Specifically, the draft order allows the Commission complete discretion in how it might choose to consult and who it will consult with. Given that the VDO sets the regulated price in the electricity market, it is important that the Commission have some mandated requirements placed upon them in the draft order to consult with all retailers and other relevant stakeholders when making or amending a VDO. At a minimum, the draft order should specify that the Commission consult on a proposed approach and draft determination prior to making its final determination, allowing a minimum of 4-6 weeks for consultation with retailers and other relevant stakeholders. Where the Commission is amending the VDO determination in accordance with clause 12 of the draft order, we expect that the Commission be required to publish a draft determination, allowing for consultation of 4 weeks prior to making its final (varied) determination. We have suggested amendments to clauses 10, 12 and 13 of the draft order, as outlined in Attachment 1, to give effect to our recommendation.

Timing of VDO determinations

Clause 9 of the draft order requires the Commission to issue a price determination at least 42 days before the commencement of the regulatory period. Should the VDO apply from 1 January, this requires the VDO to be published by 20 November of any given year. The Commission will now face the same issue that retailers have previously, the uncertainty regarding the publication of final network prices. Victorian distributors must lodge their annual pricing proposals 3 months prior to the end of the year. The Australian Energy Regulator is required to respond within 30 business days. All going well, this equates to a final network price by mid-November. With the VDO published 20 November each year, the time frame is tight and it remains unclear how the Commission will reflect the final network prices into the VDO price.

Furthermore, this creates additional questions regarding how the Commission will take into account other costs that are determined outside the regulatory period timeframes. For example, AEMO fees and the Commission’s own feed-in tariff is set from 1 July each year. More concerning is the setting of environmental schemes such as the large-scale renewable energy target (LRET) and the small-scale renewable energy scheme (SRES) by 30 March each year and apply retrospectively from 1 January of that year. Historically, the Clean Energy Regulator’s indicative forecast is not an accurate reflection of their final determination. At a minimum, the Commission should consider independent advice on the likely outcome of these liabilities. How the Victorian Government expects the Commission to act with this uncertainty must be clarified in the final order.
Approach to standing offers

Red and Lumo note that it is the intention of the Victorian Government that the existing arrangements for standing offers will continue. That is, retailers must offer a standing offer to their own customers, to deemed customers who have moved into a property for which the retailer is financially responsible and where the customer's existing contract period expires and they are placed on a standing offer. We strongly support the retention of the existing standing offer arrangements, and we welcome the opportunity to revisit what occurs to customers at the end of a fixed term contract period when the Commission commences its consultation on recommendation 4 from the Thwaites Report.

Other matters

Multi-site customers

Red and Lumo query whether it is the intention of the Victorian Government for the draft order to cover multi-site customers. These customers are, generally speaking, small business customers where their individual site usage does not exceed 40MWh, however, they have tendered for their electricity supply to seek a better deal. Examples of these customers would be franchisees such as Subway, Just Jeans or other groups of businesses that have sought to combine under a parent entity to get a better deal. We consider that applying the VDO to this group of business customers may in fact result in a worse outcome for them. It is recommended that amendments are made to the draft order to exclude this type of customer, consistent with the approach taken by the Commission on best offer notifications.

Cross border arrangements

Clarification is required on whether customers of a Victorian distributor, with an AMI meter, but are physically located in a state outside Victoria are captured by the draft order. If so, we recommend consideration of the use of the term 'in Victoria' in clause 9 of the draft order.

Drafting amendments in the final section 13 Order

We request that the Department clarify the definition of ‘price’ in the final order. It is unclear whether price refers to the rates published in the gazette for 1 July 2019 and the final determination made by the Commission on 1 January 2020, or whether price is intended to cover the prices that a customer will pay (including service order fees). Finally, we note that the gazettal date in 2019 for the VDO is a Sunday.

Consequential amendments to other instruments

Red and Lumo strongly recommend that the Department, together with the Commission, undertake a thorough review of instruments made under the Electricity Industry Act, to ensure that the policy intent of the VDO is reflected in other instruments.

In Attachment 1 of this submission, we have recommended some consequential amendments to the AMI tariff order to extend the existing consumer protection for a customer on an AMI cost reflective tariff to revert to a flat tariff to the VDO.
Further, we request the Department consider whether there is an ongoing requirement for retailers to gazette standing offer prices in instances where the Commission sets the VDO. Retailers also have a further obligation to advise standing offer customers, via publication in a Victorian newspaper, of the standing offer prices. As this is being set by the Commission, and any variations to the VDO will also be set by the Commission, we query the need for retailers to continue to publish in a newspaper and in the gazette electricity standing offer prices. Particularly, as the Code requires that standing offer customers also receive a personalised notification of their price change, a minimum of 5 business days in advance of it occurring.

**About Red and Lumo**

Red and Lumo are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland and South Australia, and electricity in the Australian Capital Territory to over 1 million customers.

Should the Department wish to discuss this submission or have any follow up questions, please do not hesitate to contact Stefanie Macri, Manager - Regulatory Affairs on [redacted].

Yours sincerely,

[Signature]

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
Lumo Energy (Australia) Pty Ltd
Att.
Attachment 1: Marked up amendments

Section A – section 13 draft order

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 without impeding the consumer benefits experienced by those who are active in the 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;

**Prescribed customer** has the meaning given in clause 5 of 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 (12) and (23) 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 in a prominent manner.

3. Subclause (2) applies until such time as the amendments to the Energy Retail Code required by clause 15(2) come into force.

   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 with retailers in the manner specified in clause 12(4), and 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(3)(c) 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.
   a. publish a draft determination outlining the proposed amendments to a VDO price determination or regulatory period;
   b. allow a minimum of 4 weeks for consultation;
   c. publish a revised VDO price determination.

5. Subclause (4) does not apply if:
   a. the variation is as a result of subclause 13(3) and 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. At a minimum, the Commission must:
   a. publish a proposed approach to a VDO price determination;
   b. allow a minimum of 4 weeks for consultation;
   c. taking into account submissions received and the requirements of this order, publish a draft VDO price determination;
   d. allow a minimum of 6 weeks for consultation;
   e. taking into account submissions received and the requirements of this order, publish a final VDO price determination.

3. For the purposes of subclause (1) and (2), the Commission must also 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.

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:

   a. prices determined by the Commission pursuant to the VDO price determination being the reference prices for discounts and for the methodology of that comparison; and

   b. matters described in clause 7(2) of this Order.

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.
Section B – Consequential amendments to Section 46D (AMI Tariffs Order)

1. In clause 2, add the following definitions in alphabetical order:

   **flat VDO distribution tariff** means a distribution tariff where the component rates of that tariff do not vary by reference to:
   (a) the time of day;
   (b) the amount of electricity supplied or sold during the day;
   (c) temperature, whether actual or forecast; or
   (d) other characteristics that vary during the day.

   Note: a flat VDO distribution tariff must be in a form consistent with the price determination for a small customer.

   **price determination** has the same meaning as it has in the Act.

   **price determination period** means the period for which a price determination is made.

   **VDO retail tariff** means the retail tariff for a small customer that complies with the price determination.

2. In clause 2, remove the definition of price comparator website and replace with:

   **price comparator website** means the Victorian Energy Compare website or other website operated by the Department of Environment, Land, Water and Planning for the purposes of price comparison;

3. Remove the heading to clause 6 and replace with: **Retailer must make a standing offer**

4. Remove clause 6 and replace with:

   Retailers must comply with section 35 of the Act, making the VDO retail tariff available to its small customers.

5. Add the following clause 7B after 7A:

   **7B. Small customers that opt-in to the VDO retail tariff**
   (1) Subject to clause 7A(2), during the VDO opt-in period, a small customer can select the VDO retail tariff.

   (2) A small customer may give explicit informed consent to a tariff that is VDO retail tariff where the date on which that tariff is to have effect is a date prior to the date on which the customer gives that consent but only where the explicit informed consent also extends to the tariff having such an effect.
In this clause:

**VDO opt-in period** means the period commencing 1 July 2019 until the price determination period ceases.

6. Amend clause 9A(1)(c) to remove all words after 2020.

7. Add the following clause after clause 9A(1):

   (1A) Where a price determination is available at the commencement of a distributor’s regulatory control period, the distributor must include one flat AMI distribution tariff in its tariff structure statement for all small customers.

8. Add the following clause after clause 10A:

   **10B. Distributor to assign small customers to flat VDO distribution tariffs in accordance with a retailer’s direction**

   **Price determination period – direction a retailer may give**

   (1) During the price determination period, a retailer may, by notice in writing, direct a distributor to assign to a small customer of that retailer onto a flat VDO distribution tariff from the tariff class applicable to that small customer.

   (2) A direction pursuant to clause 10B(1) may not be given by a retailer unless the small customer has:

   a) a deemed contract with the retailer pursuant to section 39(1) of the Act;
   
   b) a deemed contract with the retailer pursuant to section 40(1) of the Act;
   
   c) a deemed contract with the retailer pursuant to section 37 of the Act but only when that contract is varied; or
   
   d) first entered into with the retailer a new or varied electricity contract for sale of electricity.

   (3) During the price determination period and where a small customer has already been assigned an AMI distribution tariff, a distributor must not assign a different AMI distribution tariff to that small customer except:

   a) in accordance with a direction; or
   
   b) where the assignment is consequent on a change of tariff class and that change is in accordance with the provisions of the distribution determination that applies to, or the tariff structure statement that relates to the electricity network services provided by that distributor. However a distributor must not assign pursuant to this paragraph a cost reflective distribution tariff.

   **Distributor’s obligations when a direction given**

   (4) A distributor must assign a small customer onto a flat VDO distribution tariff in accordance with a direction except where:
a) the retailer neglects or fails to specify, or sufficiently specify in the notice the flat VDO distribution tariff to be assigned;
b) the retailer neglects or fails to provide sufficient details in the notice to enable the distributor to identify:
i. the small customer; or
ii. the metering installation of that customer.

(5) A flat VDO distribution tariff assigned in accordance with a direction must be applied to the electricity distributed and supplied to the small customer under that tariff commencing from not later than 2 business days after receipt by the distributor of the notice containing the direction except where:

a) the retailer giving the direction specifies in the notice that it is a retailer to whom the small customer has transferred from another retailer, in which case the flat VDO distribution tariff must be applied to the electricity distributed and supplied to that customer under that tariff commencing from the later of:
i. the date of transfer of the customer; or
ii. 10 business days prior to receipt by the distributor of the notice containing the direction; or
b) the retailer in the notice specifies another date for the assignment to take effect, being a date later than the 2 business days.

Limitation on charges – distributors

(6) A distributor may not impose on a retailer any fee or charge as a result of that retailer:
   a) giving a direction; or
   b) otherwise exercising the rights conferred on the retailer pursuant to this clause.

(7) Clause 10B(6) does not prevent a distributor from charging the retailer any other fee or charge that would be payable by the retailer independently of that retailer:
   a) giving a direction; or
   b) otherwise exercising the rights conferred on that retailer pursuant to this clause.

Miscellaneous

(8) This clause has effect despite anything to the contrary:
   a) in any agreement or contract between the retailer and a distributor;
   b) in any agreement or contract between the distributor and the small customer; and
   c) in the distribution determination that applies, or the tariff structure statement that relates to the electricity network services provided by a distributor.

(9) This clause does not:
a) derogate from or limit any restriction or requirement imposed on a retailer pursuant to clauses 7B; or
b) limit any right given to a small customer by those clauses.

(10) In this clause and unless the context otherwise requires:

- **assign** includes re-assign;
- **direction** means a direction pursuant to clause 10B(1) or 10B(4).