



1 May 2019

Ms Sarah Sheppard
Director, Energy and Consumer Affordability
Department of Environment, Land, Water and Planning

By email: retailmarketreform@delwp.vic.gov.au

Dear Sarah

Victorian Default Offer – Draft Orders – Consultation Paper

Alinta Energy Retail Sales Pty Ltd (Alinta) welcomes the opportunity to comment on the Department of Environment, Land, Water and Planning's (the Department's) consultation paper on the draft orders (Draft Orders) for the Victorian Default Offer (VDO).

Alinta is an active investor in energy markets across Australia with an owned and contracted generation portfolio of nearly 3,000MW, including 1,700MW of gas-fired generation facilities and 1,070MW of thermal generation facilities, and in excess of 1.2 million electricity and gas customers including more than 600,000 in east coast markets, and is therefore well placed to comment on the Draft Order (under section 13 of the *Electricity Industry Act*) and the questions raised by the Department in its consultation paper.

General comments

Alinta recognises that the gap between consumers on attractive market offers and those remaining on high-priced standing offers (paying a "loyalty tax" – primarily with the large incumbent retailers) is too wide and needs to be narrowed. We agree with Minister D'Ambrosio, when announcing the VDO, that Victorians have "put up for too long with big corporations ripping consumers off." We estimate that those residential customers who have switched to Alinta have decreased their electricity costs by up to \$200 a year, a total saving for Victorians of up to \$30 million per annum.

We support the Victorian Government's terms of reference to the Essential Services Commission (ESC) for the VDO to provide a safeguard "without impeding the consumer benefits experienced by those who are active in the market." This is consistent with the ACCC's recommendations (in its Retail Electricity Pricing Review Final Report) for an adequate safeguard within a competitive market in which new entrant and second-tier retailers can invest, differentiate and maintain competitive pressure on the large incumbent retailers.

However, we are concerned that the objective quoted above, whilst included in the Terms of Reference, has been removed in section 3 of the Draft Order and believe it should be restored. Similarly, section 33(4)(a) of the ESC Act, which includes reference to the financial viability of the industry, was also explicitly referenced in the Terms of Reference as an objective, and should also be included in the VDO objective.

We would also like to highlight the difficulties retailers like Alinta are facing from a change management perspective given the rapid pace of implementation contemplated here. A major billing system update driven by a regulatory change such as this would typically involve a sustained and coordinated effort involving operational, regulatory and IT staff from across our business managed under a project framework so we can check, test and carefully implement changes to maintain ongoing compliance and to limit any potential customer disruption. At a minimum, we would typically require months of effort and investment to effect such a change successfully and be comfortable with the various risks that are presented.

While the principles of the VDO are relatively simple, retailers will need to implement the changes required under the Draft Order across marketing, product, billing and contact centre functions of their businesses by 1 July 2019. In particular, new requirements around the use of the VDO as a reference price for discounts, including the application of schedule 3 to determine annual costs for customers on non-flat tariff structures, will add to implementation costs and reduce the capacity of retailers to adequately plan, prepare, test and execute the intent of the Government's policy.

Given the limited amount of public information that will accompany the commencement of the VDO, Alinta believes it is in the interests of consumers, Government and industry to keep the cost and complexity of its implementation as low and as simple as possible. We therefore request that implementation of section 14 of the Draft Order be delayed, allowing it to be further considered in conjunction with the next tranche of Thwaites Review recommendations which specifically deal with discounting.

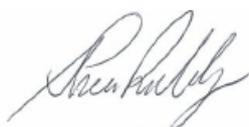
Finally, Alinta reiterates that, in our view, the ESC has set the Draft VDO so low that it would have a severe negative impact on retail competition, establishing it as a viable alternative to market offers, and limiting the ability of second-tier retailers like Alinta to compete given the dominant market position of the large incumbent retailers. As the ACCC has warned, if regulated prices become a viable alternative for engaged consumers it would not be in the long-term interests of consumers as "engaged consumers drive efficiency and innovation in the electricity sector by responding to new offerings from retailers."

The Government has significantly boosted engagement through the Victorian Energy Compare website via its \$20 million-plus Home Energy Assist package. We believe the VDO should be set at a level that complements this investment by ensuring challenger brands can continue to incentivise customers to switch.

At its current level the VDO risks breeding mass disengagement among Victorian energy users, marginalising second tier retailers who have been driving market activity and therefore entrenching the market power of the large incumbent retailers.

Our detailed comments in response to the Department's questions are set out below. Should you have any questions or require any additional information I may be contacted on [REDACTED] or email: [REDACTED]

Yours sincerely,



Shaun Ruddy
Manager National Retail Regulation

Consultation questions

Section 2.1 - Objective of the VDO

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

Under the Terms of Reference, the “ESC is required to have regard to its objectives under the *Essential Services Commission Act 2001*”¹ (the ESC Act) among other things. In Alinta's view, the ESC has not had sufficient regard to the objectives and matters it is required to consider under the ESC Act and in making its advice to the Minister, has not fully considered the potential impact of the VDO on competition in the retail electricity market.

Specifically, clauses 8 (the ESC's objective), 8A and 33(4)(a) require the ESC (among other things) to consider:

- The efficiency in the industry and incentives for long term investment;
- The industry's financial viability;
- The degree and scope of and for competition within the industry'
- The costs and benefits of regulation and regulatory change for consumers and regulated businesses; and
- Consistency in regulation between the States and on a national basis.

These important considerations relating to the maintenance of a viable competitive market should be included in clauses 3 and 11 (approach and methodology to making a VDO price determination) to maintain consistency with the terms of reference and the ESC's own legislation.

We also note that the original Terms of Reference to the ESC, following the reference to a “simple, trusted and reasonably priced electricity option” included the words “without impeding the consumer benefits experienced by those who are active in the market.” These words should be restored.

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

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?

It is Alinta's understanding that customers on cost-reflective (non-flat) tariffs can access the flat tariff VDO from 1 July 2019. To the extent this is the case, retailers require the right to seek a matching network tariff reassignment from the distributor. Currently, distribution network service providers can refuse a reassignment of the network tariff on several grounds. Without legislative support, for example through the amendment of the Advanced Metering Infrastructure Cost Recovery order-in-council, retailers run the risk of being exposed to network price and customer load shape risk. Alinta recommends the Department clarify a retailer's right to request a network tariff reassignment in these circumstances for the initial and future VDO determination periods.

Alinta understands that, as the new section 70L of the Energy Retail Code commences on 1 July 2019, the bill change alert obligation under that section will not apply to the standing

¹ The Hon Robin Scott MP, Assistant Treasurer, *Retail Market Review: Terms of reference for the Essential Services Commission*, 14 December 2018.

offer tariffs which commence on 1 July 2019.

There also appears to be a minor drafting error in clause 6 - the references to subclauses (1) and (2) contained in clause 6(4) should refer to subclauses (2) and (3) of clause 6.

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

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?

The requirement that the ESC make its determination 42 days prior to the commencement of a regulatory period may not align with the AER's final determination on network tariffs. Not having the final determination on network tariffs when attempting to set the VDO creates the potential for an unacceptable level of pricing risk. The VDO should not be made until after network tariffs are finalised, with retailers provided sufficient time to meet their obligations to introduce the new tariffs.

With respect to the option of the VDO being set as a total annual bill, as per the Default Market Offer, Alinta would support such an option if the VDO was set at a reasonable level. This would create an opportunity for product differentiation and market diversification. However, with the VDO set at such a low level, there is little if any such opportunity, whereby it would be simpler for the community and industry for the ESC to set the actual tariff.

Alinta's concern with the VDO continuing to be a flat tariff only, and the risk it imposes upon retailers if there is no ability to reassign the customer to the corresponding network tariff, is explained in our response to Question 2 above.

Section 2.4 - Approach and methodology to making a price determination

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 objective of the VDO from the terms of reference includes the requirement for the ESC to have regard to the Act, as discussed above in response to question 1. Clause 33(4)(a) and (b) of the Act, which requires the ESC to consider the costs and benefits of proposed regulation and trade-offs between costs and service standards, is not reflected in Clause 11 of the draft order. The costs incurred by an efficient retailer do not reflect those borne by all retailers, particular, smaller retailers or retailers intending to enter the Victorian retail electricity market. Ignoring the actual costs incurred by the diverse range of participants in the retail energy sector is not consistent with the requirements of 33(4)(a) and (b).

Section 2.5 - Information on customer bills

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?

Retailers should not be required to provide information on how to access the VDO on customer bills, given the Thwaites Review obligation to include a Best Offer message. Including both will be confusing for customers and undermine the rationale for including the Best Offer message. Furthermore, this is a new obligation which had not been communicated across the industry previously, resulting in an unreasonable timeframe for consideration and implementation. We note that other reforms impacting the bill from 1 July were finalised several months ago.

If the obligation is retained, Alinta does not support prescribing the form of information relating to how customers can access the VDO on customer bills. The 'prominent' positioning of this information leaves it to retailers to individually determine the best location for the message and Alinta supports the flexibility provided by clause 7(2) of the draft order, noting that the customer's bill and their presentation is a key point of differentiation between retailers.

Section 2.6 - VDO to be the reference price for discounts

9. Will the approach 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?

Given the extraordinarily tight timeframe for implementation, which is in stark contrast to the consultation and notice provided for the Thwaites reforms, and the volume of reform work retailers are implementing for 1 July, any consideration of the VDO as a reference price for discounts should be delayed.

This will also allow the issue to be considered as part of the broader discount related reforms that the ESC will consider for implementation in mid-2020.

We further note that the Thwaites Review provided eleven broad recommendations - none of which related to using the VDO (or BSO as drafted) as a reference price for discounted market offers. On 15 April 2019 (when the Draft Orders were released) was the first time retailers were informed of these obligations, and the requirement that they be delivered by 1 July 2019. Alinta has established a project team to plan for and manage all eleven recommendations. Adding new compliance obligations at this point, will cause significant strain on the project capability and may impact the delivery of all recommendations.

Compounding the complexity of establishing the VDO as a reference price for flat and controlled load tariffs, is the additional requirement to use the VDO as a reference price for flexible tariffs. As the VDO had been set by the ESC as having a tariff structure of flat and controlled load, Alinta had not planned for any impacts associated with flexible tariffs on 1 July 2019.

Alinta also has concerns with the application of a residential household profile for small business customers. It was well documented in Alinta's previous submissions that residential and small business customers have distinctly different load profiles. Applying a residential household profile to a small business customer for marketing purposes will result in inaccurate annual costs being communicated. In Alinta's view, taking this approach will undermine the accuracy of the VDO to small business customers.

If section 14 is to be retained, we strongly recommend that the word 'benefit' be removed from the draft order. This term was not included in the terms of reference provided to the

ESC, it is not defined and has the potential to limit innovation and competition among retailers.

The inclusion of benefit as a broad catch-all, in addition to discounts, will create uncertainty and confusion for customers. Given the intent of the VDO was focused on addressing discounting against (retailer) standing offers and in the interests of implementation, the terms 'benefit' or 'other benefit' should be deleted from clause 14.

Section 2.7 - Review of the Order

11. Is the proposed review period and approach appropriate?

The proposed review period does not provide any certainty regarding the period of review. The Order states that the Minister must cause a review of the operation of the Order to be undertaken before the fifth anniversary of the Order coming into operation. This essentially provides the Minister with the ability to review the operation of the Order at her discretion, provided it occurs prior to the five-year anniversary of the Order coming into effect.

This discretionary ability creates a level of uncertainty around the review process. The impact the Order has on the operation of the competitive retail market should be reviewed within a timeframe to ensure the Order is not having an adverse impact on the competitive retail market and on the benefits of which flow through to end use customers.