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Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne, Victoria 3000

By email: RetailEnergyReview@esc.vic.gov.au

Ensuring Energy Contracts are Clear and Fair

Alinta Energy Retail Sales Pty Ltd (**Alinta Energy**) welcomes the opportunity to make a submission regarding the Essential Services Commission's (**ESC**) issues paper, Ensuring Energy Contracts are Fair (**issues paper**).

Alinta Energy 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 provide comments on the Draft Advice.

The issues paper currently under consultation has been derived from the recommendations made in the Independent Review of the Electricity and Gas Retail Markets in Victoria (the '**Thwaites Review**'), The Thwaites Review, finalised in August 2017, had no less than twenty-nine individual recommendations to address a core finding that Victorians were paying 'unusually high electricity prices' compared to other jurisdictions. During the past two years, Alinta Energy has worked collaboratively with the ESC and stakeholders to ensure the majority of these recommendations were implemented on 1 July 2019 (**the implemented recommendations**) and were tailored to meet the long-term interests of Victorian consumers.

The recommendations currently under consultation in the issues paper (**the proposed recommendation**s) also draw on the intended outcomes described from the Thwaites Review:

i. to enable customers to easily compare offers and choose one that is suitable for them;
ii. to help customers understand and have greater certainty about what they will pay on a given contract; and
iii. to prevent customers being unfairly overcharged.

In reviewing the above intended outcomes, it is Alinta Energy's view that the implemented recommendations will achieve these objectives organically due to the nature and scale of the implemented recommendations. Although we see the merits in consulting on the remaining proposed recommendations, we feel that the detriment to Victorian consumers will far outweigh the perceived benefit from implementing the proposed recommendations, particularly in the absence of allowing the implemented recommendations to have their impact on the market.

The implemented recommendations have a number of key consumer protections that directly address the shortfalls identified in the Thwaites Review. In particular:

i. *Clear advice* regarding terms that impact the offer and an assessment of the most suitable offer prior to forming a contract;
ii. *Best offer on the bill* that incorporates the VDO as a best offer check;
iii. *Advanced Notification of benefit and price changes* that also includes a Best offer check; and
iv. The *VDO* which ensures Victorian's have access to a reasonable price for their electricity inclusive of the above-mentioned consumer protections.

Looking at the proposed recommendations and the intended outcomes as a policy initiative it is Alinta Energy's concern that the continued roll out of proposed recommendations, in the absence of allowing adequate time for the suite of current recommendations to have effect (and to fully understand their impact), has the potential to not only overcomplicate the energy industry (for all stakeholders) but will lead to a culture of dis-engaged consumers.

This has the potential to occur as a result of the overlapping consumer protections, creating a level of consumer confusion and apathy to the point where consumers no longer value proactive engagement in the energy market.

Furthermore, the Thwaites Review was based on energy market data up until the 2016 financial year. In order to determine whether the proposed recommendations are still required, we would urge the ESC to conduct a similar energy market report before the proposed recommendations escalate to a draft decision paper. Such a review should be timed to ensure it takes account of the impact of the current suite of recommendations that have already been implemented. The value in conducting an energy market report based on contemporary data will not only determine whether or not there is a need for the proposed recommendations, but it will also provide informative data on the level of success of previously implemented recommendations.

Implementing further changes to the energy market in such a short space of time, has the potential of stifling any ability to determine which recommendations are adding true value to consumers and the operation of the market.

Alinta Energy also notes that the Terms of Reference (**TOR**) provided by the Victorian Government on 21 December 2018 only request that the ESC, '*conduct a review… on appropriate amendments*. In our view, in order to conduct a review of the appropriate amendments, a thorough energy market report is required to provide current empirical evidence as to how the energy market is functioning. This will further aid in determining which further recommendations remain warranted, and the priority for which implementation may be required.

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In our view the TOR obligate the ESC to undertake a comprehensive review of the recommendations as a package, importantly identifying the issues it is seeking to resolve noting the preferred post implementation outcomes. Not to do so risks further confusion and market uncertainty.

Following such a review the ESC has the ability to propose revisions to the recommendations. This has occurred successfully in the past with Recommendation 2 from the Thwaites Review. The ESC should only be looking to implement appropriate amendments post the completion of a comprehensive review of the current market, inclusive of the impact of currently implemented recommendations and reforms.

Another issue Alinta Energy would like to highlight is that a number of the proposed recommendations (as drafted in the Thwaites Review) appear to be electricity retail market specific, however the Issues Paper seems to relate to both fuels, (electricity and gas). Similar to the implementation of the VDO, Alinta Energy requests that in any further consultation regarding the proposed recommendations, that electricity-only provisions are explicitly identified. During the ESC's recent workshop, a number of stakeholders assumed the proposed changes only applied to electricity consumers, clarity on this point is required to ensure a consistent approach.

Our further detailed comments on the Issues Paper are set out below. Should you require any additional information or wish to discuss any aspect of our submission please contact Ante Klisanin, Retail Regulation Manager on (03) 8533 7344 or via email: [redacted]

Yours sincerely

Shaun Ruddy
Manager National Retail Regulation

Essential Services Commission Issues Paper- Ensuring Energy Contracts are Clear and Fair

4A Require retailers to commit to fix any prices they are offering for a minimum of 12 months. During this period, the market contract prices cannot change. Retailers may request an exemption from the ESC to address unforeseen changes in network costs.

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4B: Require retailers to disclose the length of time any offered prices will be available without change.

Recommendation 4A was proposed by the Thwaites review as a means to avoid customers experiencing a price increase immediately after signing up to a new retail offer. Thwaites suggested that this practice was damaging confidence in the switching process, however presented no evidence as to why a 12 month ban on price changes was the optimal solution. As a result, the perceived consumer benefit of certainty over the likelihood of higher costs of constraining flexibility for retailers was not considered.

Alinta Energy is committed to providing consumers affordable and low-cost energy products. Requiring retailers to fix all their market offers for 12 months has the potential to influence wholesale hedging strategies.

In order for retailers to manage this new pricing risk there would be a need to adopt a more varied approach to hedging strategies to mitigate the risk of potential price volatility over the fixed 12-month period. Consequently, any impacts would flow through to consumer pricing. Although this approach has less impact to the VDO, it creates a new barrier for retailers to continue to present market offers that are competitive against the VDO.

Furthermore, given the added exposure to energy contracts, retailers will face restrictions in developing and offering innovative products and services, ultimately restricting innovation.

As drafted, recommendation 4A would require retailers to fix the tariffs for a period of 12 months, regardless of when the consumer enters the contract. In practical terms, a consumer may enter a contract with Alinta Energy in October 2020 and the tariffs would be fixed until October 2021.

At the time of the customer entering the contract, retailers will have no indication of what network costs will be in the 2021 calendar year and will undoubtedly, lead to a miss-match in network costs allocated to energy offerings. Conversely, retailers may capture (or estimate) forecasted network increases in their energy contracts for the

2021 calendar year, whereas some networks may actually decrease their network costs. In this circumstance, the retailer would be prohibited from passing on any network cost savings.

Alinta Energy firmly believes that requiring all market offers to be fixed will create complexity and confusion in the energy market. Unlike the VDO which has a fixed price for a calendar year, the market offers will not align to the VDO's fixed price period. Of great concern to Alinta Energy is the expectations of consumers when they enter into a market contract with fixed rates to only then see variations to the VDO pricing that do not align and/or create a greater level of disparage to their market contract pricing, as a result of variations to the VDO.

It is our view that the introduction of the VDO with its price to be fixed for 12 months, makes Recommendation 4A redundant. The VDO provides the price certainty being sought under Recommendation 4A. As stated by the Victorian Government, the VDO is a reasonable price for energy and has the certainty of a fixed price for 12 months.

However, should Recommendation 4A progress, Option 2a, requiring all retailers to have at least one generally available offer where the tariff(s) are fixed for at least 12 months after a customer signs up, would be the only option that we could support.

Where retailers voluntarily choose to develop fixed tariff offers, Alinta Energy would unequivocally support the need to disclose the length of time the market tariffs are fixed. We do believe however, this recommendation is already addressed under *Clear advice* obligations, but we would be happy to work with the ESC on any enhancements on the implemented recommendations.

4C: Require retailers to roll customers onto the nearest matching, generally available offer at the end of a contract or benefit period, unless the customer opts for another offer.

Alinta Energy's concern in reviewing this recommendation is that it ignores the importance of Explicit Informed Consent (**EIC**) when entering into (or rolling consumers on to) a "new" contract. Alinta Energy considers EIC an important consumer protection and is the key component for establishing consumer expectations. Alinta Energy considers what happens at the end of a contract or benefit period a fundamental product construct in selecting the most suitable offer. By developing regulations that require retailers to move customers onto a new contract, it diminishes the trust between retailers and consumers by effectively waiving the EIC requirements.

As drafted the 'nearest matching generally available offer' can be extremely subjective. The *Clear advice* provisions, that were developed as part of the implemented recommendations, confirmed that identifying the most 'suitable' offer for a customer involved several information disclosures prior to making an informed decision on what offer to select.

We appreciate the certainty this recommendation provides where a customer takes no action at the end of a contract or benefit period, but in our view the most appropriate action would be for consumers to move on to the VDO. In addition to providing assurances of a ‘reasonable price’ the contract terms associated with a standing offer are consistent, reliable and pre-determined by the ESC. In our view this would be consistent with existing processes established in the energy market and would lead to less confusion and subjectivity on what was the ‘nearest matching’ offer.

The other approach Alinta Energy would support is the “Retailer discretion” option. Given the development of *Advanced Notification* requirements established under the implemented recommendations, customers would not only receive notification of what dollar impacts occur to the consumer, but they would also be notified of the best offer available to them with their retailers. By taking this approach, it ensures that consumers do not become completely detached from their retailer. Alinta reiterates its concern that by over-prescribing regulations, a complacent and disengaged consumer cohort will emerge that will not pursue a more affordable energy offer.

Retailers currently offer some customers the opportunity to extend their contract or fixed benefit period, under the terms of their existing contract. Such innovation and flexibility that occurs with customer consent should not be diminished as a result of the proposed Recommendation 4C

3A: Require retailers to market offers in dollar terms, rather than as percentages or unanchored discounts.

Alinta Energy supports the approach suggested by the ESC to codify the existing requirements (of electricity customers) under the section 13 Order in Council relating to the VDO. Alinta Energy acknowledges the importance of having the VDO tariffs as the reference tariffs for offers with discounts and appreciates the consideration taken by the ESC in not over-complicating this recommendation.

Alinta Energy also notes that the *Clear advice* and *Best offer on bill* obligations developed under the implemented recommendations provide information disclosures on the dollar impacts of offers for both gas and electricity customers. Alinta Energy would welcome the opportunity to demonstrate how marketing in dollar terms is applied for gas customers and determine if any further regulatory prescription is required for gas customers.

4D: Any conditional discount or other benefit offered for paying on-time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.

Alinta Energy does not support this recommendation and urges to the ESC to consider the implications and unintended consequences of this recommendation. We do not believe any case has been made by Thwaites or the Government that the benefits of this Recommendation will outweigh its cost.

This recommendation will have the effect of banning benefit periods by requiring such periods to be evergreen. Not allowing retailers to structure the provision of benefits to align with the risk profile of providing the benefit, will ultimately lead to a loss of product innovation and benefits for consumers.

The resulting impact will flow through to end customer pricing. While Alinta Energy is committed to providing consumers affordable and low-cost energy products, requiring retailers to create evergreen benefits will lead to a more modest approach to the inclusion of product benefits.

Alinta Energy further notes that the *Advanced Notification* requirements, enacted as part of the implemented recommendations was primarily developed to manage the precise risk of consumers being exposed to changes in their benefits. During the consultation process the ESC were welcoming of the concept to harmonise Victorian regulation with the National Energy Customer Framework (NECF). The benefits to consumers and retailers have both a financial and customer experience benefit that provides consistency and continuity in the energy market. By developing recommendation 4D, Alinta Energy would argue the *Advanced Notification* requirements for this segment of customers is effectively redundant. Alinta Energy acknowledges the intent of the recommendation but is confident that the cost far outweighs the benefit, particularly as the exposure to a change in benefit has already been addressed as part of the implemented recommendations.

The inclusion of the broad term 'other benefit' within this recommendation also adds ambiguity and uncertainty to developing innovative products that provide benefits, financial or otherwise. Similar to the implications of conditional discounts, this will result in retailers developing less innovative products and modest benefits. Creating restrictions on innovation will also lead to a complacent and disengaged consumer who will not be pursuing a more affordable and innovative energy offer.

4E: Costs incurred by customers for failing to meet offer conditions are to be capped and not be higher than the reasonable cost to the retailer.

It is our view that the recommendations already implemented will achieve these outcomes organically, particularly with the introduction of the VDO as a reasonable price that offers are referenced to. Although we see the merits in consulting on the proposed recommendations, we feel that the detriment to Victorian consumers will far outweigh any benefits, particularly as in our view, incentives facing retailers post 1 July 2019 will change, influencing product design and approach to both conditional and non-conditional product discounting.

Alinta Energy would reiterate, the Thwaites Review was largely based on energy market data up until the 2016 financial year. In order to determine whether the proposed recommendations are still required, we would urge the ESC to conduct a similar energy market report before the proposed recommendations escalate to a draft decision paper.

Given this, it is our view that Option 2 would seems a more reasonable approach as it better aligns with the Australian Government's rule change request and offers greater flexibility in an evolving market.