



16 August 2013

Essential Services Commission Victoria
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Melbourne VIC 3000

By email: energy.submissions@esc.vic.gov.au

HARMONISATION OF THE ENERGY RETAIL CODE AND GUIDELINES WITH THE NATIONAL ENERGY CONSUMER FRAMEWORK – DRAFT DECISION (CONSULTATION PAPER)

Alinta Energy appreciates the opportunity to provide a submission to the Essential Services Commission (**Commission**) on the Draft Decision on the Harmonisation of the Energy Retail Code and Guidelines with the National Energy Consumer Framework (**Draft Decision**).

Alinta Energy is both a generator and retailer of electricity and gas in Western Australia and the Eastern States energy markets. It has over 2500MW of generation facilities and in excess of 700,000 retail customers, including around 90,000 customers in Victoria and South Australia. As an incumbent retailer in WA and a new entrant retailer in the National Energy Market, Alinta Energy is well placed to comment on this review.

Alinta Energy commends the decision of the Victorian Government to instruct the Commission to align the Energy Retail Code (**ERC**) with National Energy Consumer Framework (**NECF**) as it will assist with the transition to NECF in Victoria and provide the industry with greater certainty around the regulatory framework under which energy retailers operate. Whilst we are supportive of the initiative to harmonise the ERC with the NECF we would still look to the Government to provide greater certainty around both the date for the adoption of NECF in Victoria and the implementation of the harmonised ERC.

Draft Energy Retail Code (Version 11)

Jurisdictional derogations in regulatory requirements introduce additional costs to retailers that are ultimately borne by customers. They also introduce a higher level of risk of non-compliance by retailers who are forced to operate divergent systems and processes to account for the derogations. Consistent with this view it is our position that the harmonisation of the obligations within the ERC and Guidelines should be aligned with those contained in the *National Energy Retail (Victoria) Bill 2012 (NERLVA)*.

With this in mind, Alinta Energy makes the following comments on the Draft Energy Retail Code (version 11):

- Definition of *best endeavours* (clause 3); further consultation between the Commission and retailers should be undertaken to ensure the obligations to which best endeavours

relate are both understood, practicable and appropriately enforceable. A clear mutual understanding of the expected compliance from the term “best endeavours” is required, noting previous interpretations, with particular note of the legal interpretation of the definition.

- Explicit Informed Consent (EIC) requirements (clause 3C); the requirements to obtain EIC verbally (provision of information and record keeping requirements) are sufficient to allow verbal EIC to be given in all circumstance, there is no evidence of any additional risk in relation to shortened billing cycles (clause 20) which justifies exclusion of the ability to accept verbal EIC.
- Definition of *small customer* (clause 3); refers to *domestic or small business customer* which is not a defined term as provided in the draft ERC, this needs to reviewed. The definition should reflect the definition of a small customer as contemplated by the NERVLA.
- Offer Summary, Price and Product Information Statement and Disclosure Statement; we recommend the Commission review the requirements and provision of an Offer Summary, PPIS and Disclosure Statement as it appears there is a degree of overlap and additional customer collateral requirements that are repetitious in terms of the information given to customers.

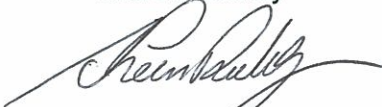
Adoption of the Draft ERC and Transition to NECF

The revised Draft ERC (version 11) requires a significant number of changes to the existing framework under which retailers in Victoria currently operate. As a result there is a need to ensure retailers are provided with significant lead time in order to ensure compliance with NECF consistent obligations. While the Commission has stated its intention to release a Final Decision in late September/early October 2013 if this does not happen for any reason, the expiry of the three month transitional grace period will need to be extended out from January 2014 to accommodate the delay in the release of the Final Decision.

Alinta Energy encourages the Commission to consult with the Department of State Development, Business and Innovation to ensure the derogations incorporated in the Draft ERC (version 11) are imperative and a failure to include them would result in a market failure. Whilst also ensuring that any perceived consumer benefit is not outweighed by the cost to retailers to meet additional and modified obligations in Victoria.

If you have any queries in regards to issues raised in this submission, please contact me on (02) 9372 2653, or via email: shaun.ruddy@alintaenergy.com.au.

Yours sincerely



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