

12 July 2013

By email: [energy.submissions@esc.vic.gov.au](mailto:energy.submissions@esc.vic.gov.au)

Ms Kerri Herron  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

Dear Ms Herron

### **Proposed Changes to Regulatory Instruments Relating to Flexible Pricing of Electricity**

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide comment on the Essential Services Commission's (the **Commission**) Draft Decision in relation to Proposed Changes to Regulatory Instruments Relating to Flexible Pricing of Electricity (**Draft Decision**).

#### **Energy Retail Code**

##### Proposed amendment to section 24.1 (b)

We support the proposed amendments to section 24.1(b) to avoid inconsistency between the Energy Retail Code and the Order in Council. The propose changes we believe will sufficiently do this.

##### Proposed amendment to section 31

We support the proposed amendments to section 31, which seek to enforce Section 8 (9) of the Order in Council which "prohibits retailers imposing a charge on customers for reversion".

We are of the belief, however, that further clarification in section 31 is necessary to prevent retailers from interpreting the Energy Retail Code beyond its actual intent. In particular we refer to "(i) pro-rata costs of procuring the customer to entering to the contract". We are concerned that some retailers are using this clause to recover the commercial costs of a contract (in relation to discounts applied to that contract), to charge early termination fees beyond those which are reasonable. This is particularly of concern due to the likely prospect of those consumers needing to revert being those who do not benefit from flexible prices and who are subsequently facing high bills as a result. Particularly punitive early termination fees will further disadvantage those consumers.

We argue that discounts are not a cost for procurement but instead form the value and basis of the contract, the cost of which is considered in the retailer's hedging program.

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To avoid further confusion between the Energy Retail Code and the Order in Council it is necessary for the Commission to clearly define what is included in "pro-rata costs of procuring...", in a manner that explicitly states that discounts are not to be included.

### **Guideline 19 Energy Price and Product Disclosure**

#### Proposed amendment to section 3.3

We do not support the proposed amendments to section 3.3. Instead, to ensure that consumers have access to the minimum information they may need to make an informed decision and to accommodate those case cases where a flexible AMI retail tariff may be better for them than a flat AMI retail tariff, we believe it necessary for Section 3.3 to be amended to reflect that retailers must make available a flat or flexible AMI retail tariff, only.

#### Proposed amendment to section 3.4

We support the proposed amendments to section 3.4 to ensure that a consumer is aware of their right to revert.

To ensure that consumers are fully aware of all their rights under flexible tariffs, we believe it is also necessary that full disclosure of reversion rights is provided in an explicit manner—prior to a consumer being able to provide their explicit informed consent. In addition to ensuring this information is clearly available on the price and product disclosure, we suggest that this be required to be sent to all customers who sign up to a contract as part of the offer summary (section 4), with key information highlighted in a manner that ensures that for no consumer is there any doubt about their rights in relation to flexible tariffs. Consumers who do not benefit from flexible tariffs may experience some level of bill shock. To ensure consumers do not face any further difficulty and potential financial disadvantage, their reversion rights must be clear and explicit.

### **Proposed new section 4A**

We support the Commission's proposal to include a new section 4A that allows electricity retailers to provide an energy price fact sheet as an alternative to a price and product information statement. We are satisfied with the process the Australian Energy Regulator undertook to arrive at the final requirements for the Energy Price Fact Sheet.

### **Proposed amendment to schedule A**

We support the Commission's proposal to include the new template to apply to residential customers enabling retailers to provide information on flexible AMI retail tariffs.

### **Retail Licence Amendments**

We support the insertion of those conditions as recommended by the Commission into Electricity Retail Licences.

Should you have any questions, please contact Janine Rayner on 03 9670 5088.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

A handwritten signature in black ink that reads "Janine Rayner". The signature is written in a cursive style and is placed on a light-colored rectangular background.

Janine Rayner  
Senior Policy Officer