19 June 2017

Dr Ron Ben-David
Chairperson
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

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

Dear Dr Ben-David

Response to Draft Decision: Essential Services Commission 2017, *Payment Difficulty Framework: Revised draft decision,* May 2017

Alinta Energy (Alinta) welcomes the opportunity to make a submission to the Essential Services Commission's (the Commission's) 2017, Payment Difficulty Framework: Revised draft decision, May 2017 (PDF). This submission should be read in conjunction with Alinta's previous submission dated 18 November 2016 (previous submission).

Alinta has a number of concerns associated with the ESC's overall process used in the development of the revised PDF. When the Commission addressed retailers on 9 May 2016 prior to the release of the PDF, the PDF was referred to as a 'back to the drawing board' revision. Alinta acknowledges that some material changes have been made to the PDF but notes that other issues and risks have been created or magnified as a result of focusing primarily on the Commission's singular objective (the Commission's objective);

> *to set out the minimum standards of assistance to which residential customers anticipating or facing payment difficulties are entitled, so that disconnection of a residential customer is a measure of last resort.*

As articulated by the Commission, the driver for this objective related to the Hardship Inquiry finding. Whereby customers who were experiencing payment difficulties were not (according to the inquiry) gaining equitable access to predictable, consistent and effective assistance. Similarly to Alinta's previous submission, the PDF requires a great deal of further clarification on the expected operational outcomes of the PDF. Our submission will focus on identifying any policy gaps for the purposes of establishing the need for additional guidance required or changes to the PDF to meet not only the Commission's objective but any unintended consequences created as result of a the Commission's singular focused objective.

Alinta Energy Retail Sales Pty Ltd • ABN 22 149 658 300
A Level 11, 20 Bridge Street, Sydney, NSW 2000 Australia
T +61 2 9372 2600 • F +61 2 9372 2610 • W alintaenergy.com.au

Having worked through the consultation process with the Commission, it has become increasingly apparent that the minimum standard of entitlement (despite having a number of unintended consequences) is prescribed in detail within the PDF. What isn't as well described or considered is the equitable access to these minimum standards of entitlement and the eligibility or segmentation of customers who should be attaining these various entitlements. Alinta urges the Commission to consider any subsequent changes in response the Hardship Inquiry more considerably, and should ensure to align the objective to focus more directly on equitable access to the existing entitlements, rather than prescribing new minimum standards of entitlement.

Alinta would be happy to discuss any aspect of this submission, or earlier submissions, Should you have any questions or wish to further discuss any aspect of our submission please contact Ante Klisanin, Retail Regulation Manager on (03) 8533 7344 or via email: ante.klisanin@alintaenergy.com.au

Yours sincerely

Shaun Ruddy
Manager – National Retail Regulation

The Consultation process associated with the PDF

Since the release of the PDF on 9 May 2017, Alinta has been working collaboratively with key stakeholders, including but not limited to, internal stakeholders, retailers, consumer groups, the Commission and affected stakeholders to understand both the principles and the operational implementation requirements to support the PDF. During this six week consultation period (the six week period), Alinta has been engaged in a number of forums and workshops held by the Commission, so as to gain a detailed understanding of the said requirements. During these forums and workshops it became evident that the operationalisation and processes required to support the PDF had not been thought out by the Commission in their entirety.

Alinta acknowledges that policy reform can be extremely challenging and no change to policy can be implemented with full consideration for all anticipated risks and circumstances. However it appears that the PDF, in its current form, has a number of critical policy gaps that have the potential to contribute to;

- customer confusion in relation to their debt payment obligations,
- an increased lack of engagement between the customer and retailer,
- unstructured and un-collaborative solutions to lowering the customers energy costs,
- increased complexity in servicing the customer,
- inconsistency with regard to accessing the minimum standard entitlements due to broad classification on what the retailer should have known about the customers circumstances and the likelihood of the customer going into arrears,
- a systemic endorsement for the customer to continue to accrue larger debt and effectively manage their debt, and
- the regulation of limitless and unconditional credit terms.

Upon reviewing the PDF, it is clear that the Commission has drafted the PDF based on its desired outcome of;

> *Customers anticipating or in payment difficulty can obtain gain equitable access to predictable, consistent and effective assistance.*

and;

> *that disconnection of a residential customer is a measure of last resort.*

Alinta acknowledges that, to some degree, the PDF does meet the desired outcomes as expressed but notes that in meeting these objectives the above policy gaps listed are newly created risks embedded within the Regulatory framework. For the remainder of this submission Alinta will refer to these policy gaps as 'unintended consequences'.

To put things into practical terms, the Commission held a technical workshop with retailers and stakeholders to map out the required processes in relation to what was described as the 'simplest scenario' to meet the minimum standards. During the course of mapping out the simplest scenario, all stakeholders (including Commission staff) had differing views on what, when and how these processes were to be implemented to meet the minimum standards under the PDF. Alinta acknowledges that by the end of the workshop most stakeholders were in agreement with the expectations, however during the process a number of unintended consequences were identified. Alinta also notes that the allocated time for the technical workshop had expired having only completed the simplest scenario. Although more technical workshops are scheduled in coming months, Alinta is concerned that any unintended consequences may not be identified until after all submission are made to the Commission and no practical recourse is available to stakeholders to address these unintended consequences.

The PDF and consequential amendments to the Energy Retail Code (ERC)

Definition and application of arrears throughout the PDF

In its current form, the PDF has created a concept of arrears that relates to both;

a) a trigger for customers who are experiencing payment difficulties, and
b) an amount of debt that has prescribed implications for entitlements to minimum standards throughout the entire PDF. As defined under the new ERC;

arrears, in relation to a residential customer facing payment difficulties who is receiving assistance under Part 3, means the sum of any amounts payable by the customer under one or more bills that are unpaid as at the bill issue date for a subsequent bill

In line with the Commission's intent of; gaining equitable access to predictable, consistent and effective assistance, Alinta acknowledges that this component of the definition ensures a definitive and equitable standard of triggering the entitlements under the PDF. That said, the majority of unintended consequences relating to point a) above relate to;

I. *customers being incorrectly labelled as experiencing payment difficulties where they receive a subsequent bill*. As noted in the PDF itself, a number of customers pay their outstanding invoice at any point after the reminder notice. Due to the establishment of arrears customers may become labelled as experiencing payment difficulties, simply by maximising the credit terms currently available to them under the existing terms and conditions of their contracts. This unintended consequence is also magnified when customers are either monthly billed or have a very small initial bill. For customers on monthly billing the trigger for arrears will happen within a month as opposed to a quarterly paying customer. Again leading to incorrect labelling of customers experiencing payment difficulties and providing entitlements when they are not required or requested.

II. *The arrears has no minimum amount threshold or cap.* A very small initial bill is very common for gas customers particularly in summer periods. It is not uncommon for gas customers to not pay gas bills until receipt of a second bill, particularly as these types of customers are not issued disconnection warning notices when the amount owed is below the disconnection threshold. Retailers will be required to proactively engage customers for small or minimal amounts that are in arrears and required to offer the minimum standard of entitlements.

The unintended consequences of the arrears debt amount (discussed as point b) above) will be discussed in context with downstream PDF processes below.

<u>The retailer should reasonably have known the customer would be likely to be in arrears</u>

Despite establishing a clear definition of arrears in the PDF, once a customer finds themselves in the Tailored Assistance stage, the obligations associated with Tailored Assistance expands to include a broader definition of arrears under clause 78(2);

> *It also applies to any residential customer whose circumstances the retailer knows, or should reasonably have known, would be likely to lead to the customer being in arrears.*

The PDF creates a broad category of what a retailer should reasonably have known and would be likely to lead to the customer being in arrears. Similar to existing arrangements within the ERC a retailer is prohibited from disconnecting a residential customer under clause 111;

> *(2) Where a customer is a hardship customer, is a residential customer who has informed the retailer in writing or by telephone that the customer is experiencing payment difficulties or the retailer otherwise believes the customer is experiencing repeated difficulties in paying the customer's bill or requires payment assistance, a retailer must not arrange for de-energisation of the customer's premises*

As is the case with existing arrangements under the ERC, retailers have no prescribed requirements regarding the belief (or knowledge for that matter) of the customers' circumstances regarding their payment difficulties. Matters of this nature are generally resolved on a case by case basis and at times with the assistance of the Energy and Water Ombudsman of Victoria.

By leaving a broad category in relation to reasonable knowledge by the retailer, there is an unintended consequence of establishing inconsistency regards equitable access to the minimum standards of entitlement to the PDF.

<u>Tailored Assistance – Where a customer informs Alinta they can pay their on-going energy use</u>

As noted earlier, Tailored Assistance will be applicable to customers in arrears and customers likely to be in arrears. As such Alinta will be required to use best endeavours to contact the customer to offer Tailored Assistance. Pursuant to the provisions of the PDF, under clause 79 (1);

> *Tailored assistance consists of the following measures:*
> *(a) repayment of arrears over a period of up to 2 years by payments at regular intervals of up to one month;*
> *(b) advice from the retailer about payment options that would enable a customer to repay their arrears within 2 years;*

In circumstances where Alinta is able to engage with the customer, the provisions under 79(1)(a) to (b) will be the prescribed limitation on minimum standards of assistance. The concern Alinta has with prescribing these broad limitations is that it enables (unintentionally or otherwise) the customer to create a bespoke and unstructured payment plan within the confines of a 2 year period. In practical terms, a customer will be able to create a payment plan of a one-off payment for the arrears amount in 2 years to which Alinta must agree to. Alternatively, customer will be enabled to create random and unstructured payment amounts over the course of 2 years. In Alinta's view these types of bespoke, unstructured payment plans lead to a number of unintended consequences, namely;

- an increased lack of engagement between the customer and retailer as the first payment may be a number of months or even years away,
- the retailer can provide no meaningful assistance or benefit in relation to establishing the structure of the payment plan,
- access to an entitlement that may not necessarily be required or sought by the customer or beneficial, (in circumstances where amount is minor or customer is not in payment difficulties but accepts offer), and
- operational implications on retailers to create manual bespoke generation of payment plan correspondence based on unstructured agreements.

Furthermore, taken as drafted, the provisions under clause 79(1)(a) to (e) indicate that credit collection and associated terms in regard to ongoing usage will continue to occur concurrently along with any payment plans entered into under these provisions. In Alinta's view these types of arrangements with two separate concurrent credit terms (one for ongoing usage and another for the payment plan) have a number of unintended consequences, namely;

- Customer confusion and complexity associated with having two con-current debts and applicable pay-by dates,
- A significant increase to the complexity in Alinta's systems and processes to service these types of customers in relation to maintaining concurrent debt levels and credit terms,
- A significant increase to the complexity associated with maintaining records, running balances, within our IT platforms to manage appropriately,

Tailored Assistance – Where a customer informs Alinta they cannot pay their ongoing energy use

In circumstances where Alinta is able to engage with the customer and it has been established that the customer cannot pay ongoing energy usage the provisions under 79(1)(f) disclose;

> *an initial period of at least 6 months during which:*
> *(i) repayment of the customer's arrears is put on hold; and*
> *(ii) the customer pays less than the full cost of their on-going energy use while working to lower that cost;*

Similar to the concerns raised with customers who are able to pay ongoing usage, Alinta will need to establish another debt segmentation and management processes surrounding placing the arrears balances that are put on hold. For the sake of clarity, this arrears balance can be more than the debt on one individual bill and can indeed be spread across multiple bills or part thereof. In Alinta's view these types of arrangement may lead to a number of unintended consequences, namely;

- Customer confusion and complexity associated with having two con-current debts and applicable pay-by dates,
- A significant increase to the complexity associated by Alinta to service these types of customers in relation to maintaining concurrent debt levels and credit terms,
- A significant increase to the complexity associated with maintaining records, running balances, within our IT platforms to manage appropriately,

<u>Default Assistance – Only captures arrears amounts</u>

As referred to in the PDF, Default Assistance is described under clause 85 (1) as;

> *(1) A retailer must make an offer in writing to a residential customer for payment of their arrears by equal monthly payments over a period that is 3 times the length of their current billing period.*
>
> *Example:*
> *The number of monthly payments would be:*
> *(a) 3 if the customer is on monthly billing; or*
> *(b) 6 if the customer is on bi-monthly billing; or*
> *(c) 9 if the customer is on quarterly billing.*

Alinta has taken the term 'Default' to imply there is no flexibility associated with the payment plan terms or arrangements and must be provided in its form described within the PDF. For the sake of clarity, it is Alinta's view that the Default payment plan will not include any ongoing usage cost and be limited to the arrears balance. The PDF further discusses that Default Assistance will apply to;

- either in the event that a retailer has used their best endeavours to contact a customer in arrears to offer tailored assistance but the customer has not responded, or
- if a customer receiving tailored assistance does not make a payment and does not respond to the retailers' best endeavours to assist the customer to make a revised payment proposal.

This form of Default payment plan assistance provides this classification of customer a final opportunity to adhere to what is essentially a revised payment plan (without formal engagement with the retailer) in order to avoid disconnection. In Alinta's view these types of arrangements have a number of unintended consequences, namely;

- the customer is deemed to have accepted the default assistance if the initial payment is made without a bona-fide agreement between retailer and customer,
- The Default payment plan arrangement will run con-currently with any ongoing usage the customer consumes and accrues. There is no clarity on how the credit terms associated with ongoing usage costs will be managed,
- Customer confusion and complexity associated with having two con-current debts and applicable pay-by dates,
- A significant increase to the complexity associated by Alinta to service these types of customers in relation to maintaining concurrent debt levels and credit terms,

- A significant increase to the complexity associated with maintaining records, running balances, within our IT platforms to manage appropriately
- When sporadic payments are made by a customer in Default Assistance (more than the payment plan amount, partial payment plan amount, or ongoing usage payments) it would be extremely difficult and confusing for both retailer and customer to validate what debt the payment was made in relation to. For example;

Customer A has a Default payment plan for amount of $100 due on the 1st of the month. At the same time Customer A has an ongoing usage bill of $300 due on the same day. Customer A makes a payment of $100, or $200, or $350. What is the customer making a payment for; their ongoing usage costs or Default Assistance payment plan, or partially both? Whatever the answer may be, can retailers assume the customer has agreed to the Default payment plan arrangement and what do they do next? It is Alinta's view that a conclusive position could not be made in regard to these unintended consequences.

The regulation of limitless and unconditional credit terms

Alinta recognises the importance of providing an essential service and having in place appropriate consumer protection rights for residential customers, and that this is at the heart of the Commissions PDF and is directly aligned with Alinta's corporate culture and values. It is Alinta's view that key stakeholders, including but limited to, the Commission, retailers, government, the Ombudsman, financial counsellors and consumer groups have all contributed to established a culture of assisting customer with payment difficulties through the promotion of retailers Hardship Policies. It is Alinta's view that Victorian constituents (and indeed constituents regulated under the National Energy Retail Rules) have been well educated on their rights and are accustomed to key consumer protection rights such as establishing payment plans on the customers capacity to pay. Although it appears the existing regulatory regime has similar limitless and unconditional credit terms this is not entirely the case. Indeed where a customer fails to adhere to two payment plans within 12 months they run the risk of being disconnected as they may not be offered a subsequent payment plan to avoid disconnection.

Under the current PDF, it appears that residential customers failing payment plans at any stage under parts 2, 3 or 4 of the PDF can return to Tailored Assistance regardless of;

- the arrears amount, or
- the age of the arrears, or
- the number of times a payment plan has been broken or not adhered to by the customer, or
- the number of time a Default Assistance payment plan has been triggered.

Under the existing regulatory framework, having this limitation of two failed payment plans allows the retailer to work with the customer to achieve a measured and considered payment plan with the customer in full knowledge that this may be their last chance to avoid disconnection. This is not unlike most lending institutions' credit policies where 'broken promises' are monitored and relayed to customers to inform the customer as to their performance with previous payment plans and guide the conversation by informing the customer they may not be offered extended terms should a subsequent payment plan be broken.

The current PDF enables the customer to effectively propose their own credit terms without any accountability as to meeting these terms, as long as they remain engaged and continue to revise the payment plan. The unintended consequences with these provisions will allow customer to have both limitless and unconditional credit terms with their retailer while effectively prioritising all other debts the customer may owe to other creditors. With this form of accessibility to credit terms with their retailer this may lead to a culture of 'payment to your energy retailer as a last resort'. Alinta is significantly concerned about our customers' potential to accrue significant debt levels (as a result of the PDF), particularly when other creditors may have recourse for non-payment such as disconnection of non-essential services, interest charges, or late payment fees. Leaving the customer with exacerbated debts with their retailer and no real structured plan, onus or incentive to resolve these ballooning debts.

Additional processes implemented to support Minimum standards

During the consultation process regarding the PDF the Commission has re-iterated these are the minimum standards and retailers can implement additional processes to support the minimum standards. Looking at the unintended consequences identified in this submission alone, it is Alinta's view that a significant number of processes would need to be implemented to support the minimum standards. A perfect example of this being a Tailored Assistance payment plan established by a customer on their terms that has unstructured or significantly delayed or balloon payments. In addition to providing the customer confirmation in writing at the time of making the arrangement (detailing a schedule of payments), it is Alinta's view that it would be unconscionable for customers to retain this schedule and effectively adhere to it, given some payment may be up to 2 years away. Alinta is also exploring establishing reminders to prompt the customer to unstructured payment plan arrangements.

Provision of general information to customers

As drafted under the revised PDF, the provisions relating clause 88 state;

(1) A retailer must ensure that general information is readily available to residential customers about:
(a) the assistance available under Division 2, 3 or 4 and how to access that assistance; and

In meeting this obligation and similar provisions in the existing ERC, Alinta pride themselves on using plain language that is easily understandable and presents clearly the nature of entitlements available to its customers. Were the PDF to be translated into a summary of entitlements to a minimum standard, it would be extremely difficult for a customer to fully understand the nature and application of these entitlements. Having been engaged in several forums and workshop's, held by Commission staff, there has been continual disagreement and or confusion between stakeholders as to the application of these entitlements. During the process of explaining the entitlements within the revised PDF to senior management within Alinta, the Regulatory team created approximately twelve process maps on A1 sized print-outs. Consistent feedback from senior management has been, 'if we as an industry are struggling to understand how it works, how can we expect customers to comprehend it.

Alinta empathises with the Commission's objective in relation to disconnection as a last resort, however the critical unintended consequences associated with the revised PDF has led to the creation of a highly complex and transactional regulatory framework that will be difficult to explain to customers in plain language.

<u>Timings associated with implementation</u>

Alinta is anticipating significant changes to the proposed PDF. The nature and scale of these changes would significantly influence the feasibility of an implementation date for any PDF. To that end, Alinta is not in a position to adequately discuss implementation dates until a final report is released.

That said, were the PDF to remain in its current form an implementation date of 12 to 18 months would be required to develop the people, processes and systems required to effectively meet the minimum standards of entitlement. As a second tier retailer Alinta has already heavily committed resources to the AEMC's Power of Choice changes that are scheduled for deployment on 1 December 2017. Any material reforms to existing, people, processes and systems would inhibit both Alinta and its service providers who are currently shared across a number of retailers.