

Monday, 1 August 2022

By email: kate.symons@esc.vic.gov.au

Kate Symons
Commissioner and Chairperson
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

Dear Ms Symons,

Potential variation to Victorian Default Offer

Consumer Action Law Centre (**Consumer Action**) understands that electricity retailers may apply to vary the Victorian Default Offer (**VDO**) made by the Essential Services Commission (the **Commission**) for 2022-23, due to the challenging wholesale market conditions they have been facing in recent months. We urge caution before accepting electricity retailer arguments to re-open the VDO and outline our reasons below.

We acknowledge that significant electricity price rises in the wholesale market are putting pressure on retailers. We are however concerned about the cost-of-living pressures facing the community and the vulnerable consumers we represent.

The rising costs across many consumer goods & services is causing significant stress to households, particularly among households on low or fixed-incomes, or otherwise in vulnerable circumstances. Large numbers of Victorians are contacting our advice lines with concerns about how they will pay for these rising costs, including any increases in the price of energy.

The Commission has previously described the purpose of the VDO as being to 'provide customers with universal access to a "fair" price'.¹ We particularly question the fairness of consumers being expected to unilaterally bear the cost of issues in the energy market, especially for consumers unable or unwilling to engage in the market. If there are to be additional costs incurred by households, then we also urge consideration of fairness as to how they are applied across the community.

In considering this issue, we point the Commission to the following:

- In making a VDO price determination, the Commission is required to have regard to the efficient costs of providing retail electricity services, including wholesale electricity purchase costs.² Given the wholesale spot prices can be volatile, the Commission assumes that retailers are taking long-term hedge positions.

¹ Essential Services Commission, Victorian Default Offer Advice to Victorian Government, 3 May 2021, available at: [link](#), page 14.

² Clauses 12(3) and 12 (4), Victoria Default Order-in-Council.

It appears that some retailers have not necessarily managed the risk of the volatile wholesale market and are affected by spot market prices. When spot prices were low, this may have enabled some competitive prices; however, when wholesale prices rise, retailers are concerned about viability and seeking a rise in default prices. This appears to be poor management risk, and 'having your cake and eating it too'.

- Customer communications from some retailers in recent months warning of much higher prices and urging customers to switch to other retailers have been especially concerning. We have been concerned about a failure by retailers to inform customer about the VDO, and to clearly inform customers about the limitations on price increases.³ Electricity retailers are delivering an essential service, and it is not appropriate should they abandon customers during times of energy market upheaval—competitive retailers should be instead effectively managing market risk and supporting their customers.
- Offers promoting discounts from the VDO appear to be far fewer in recent months, and some retailers are merely offering prices at the VDO. This means that varying the VDO will have a wider impact than just those on standing offers, as retailers may further increase their available market offers.
- We question whether there should be a direct pass through of costs associated with the Reliability and Emergency Reserve Trader (**RERT**) and generator compensation payments. While the events of recent months were extraordinary, retailers should have had risk management procedures in place to buffer the impact of some of these costs. Given that the impact of these events is still unclear, we suggest that it is preferable to wait until the next regulatory period so that costs can be factored in when the true extent is clearer.
- The Commission should also consider fairness with respect to how costs are distributed between customers. For example, simply adding to the fixed cost portion of the bill would disproportionately impact households with lower consumption (who are often lower income). Conversely, if costs were just added to the consumption-related portion of bills, this would unduly benefit those that are lower consumption because they have rooftop solar. The Commission should consider closely how the costs are shared among the community, with a view to ensure equity of outcome as to how costs are apportioned. This is particularly important as all households benefit from a reliable electricity market.
- Furthermore, we consider that the Commission should consider the price determination holistically, recognising aspects of past VDO decisions may have favoured retailers. For instance, the setting of retailer margins has been generous, commonly set at a level that is high within a reasonable range.⁴ This may allow retailers to absorb costs associated with recent events, rather than them being passed onto consumers.
- Finally, pursuant to section 8 of the *Essential Services Commission Act 2001*, the objective of the Commission is to promote the long-term interests of consumers. This includes people on low-incomes or experiencing vulnerability. Despite the current challenges in the energy market, the interests of consumers must take precedence over the ongoing viability of energy businesses.

³ See: <https://www.esc.vic.gov.au/electricity-and-gas/information-consumers/energy-contract-rules-ensure-fair-deal>

⁴ See our submission to the 2022-23 VDO draft decision, available at: <https://consumeraction.org.au/victorian-default-offer-electricity-tariffs-2022-23/>.

We would welcome the opportunity to discuss the points raised in this letter further with you. Please contact me on 03 9670 5088 or at gerard@consumeraction.org.au if you would like to arrange a meeting.

Yours faithfully,

CONSUMER ACTION LAW CENTRE



Gerard Brody
CEO

cc. The Hon. Lily D'Ambrosio MP, Minister for Energy and Solar Homes,
Lynne Gallagher, CEO, Energy Consumers' Australia

