



Level 2, 35 Spring St
Melbourne 3000, Australia
Telephone +61 3 9651 0222
 +61 1300 664 969
Facsimile +61 3 9651 3688

ENERGY PRICE AND PRODUCT DISCLOSURE

FINAL DECISION

MAY 2009

An appropriate citation for this paper is:

Essential Services Commission 2009, *Energy price and product disclosure final decision*, May

CONTENTS

Contents	3
1 Introduction	4
1.1 Background	4
1.2 Legislative amendments	4
1.3 Review of Guideline No 19 – Energy Product Disclosure	5
2 Final decision	6
2.1 Structure and purpose of Guideline No 19	6
2.2 Overview of submissions	6
2.3 Standing offer publication	7
2.4 Relevant published offers (market offer publication)	9
2.5 Offer summary	12

1.1 Background

In late 2004, the *Electricity Industry Act 2000 (Vic)* (EIA) and the *Gas Industry Act 2001 (Vic)* (GIA) placed an obligation on retailers to publish details of market offer tariffs and terms and conditions to small retail customers on the internet. The Acts also required the Essential Services Commission (the Commission) to develop a guideline setting out:

- The manner of publication;
- The nature of the details to be published; and
- Any other matters that the Commission considered relevant.¹

The published terms and conditions were indicative only as no retailer was required to offer these published terms and conditions to any customer. Notwithstanding, the statutory objective was to enable all customers to identify at least one indicative tariff applicable to their circumstances and to facilitate comparison of competitive market offers between retailers.

After consultation, the Commission published *Guideline No. 19: Energy Product Disclosure* in August 2005.² Guideline 19 specifies the minimum requirements in relation to the process to be established by retailers to enable customers to access relevant published information and the details and format for publication of energy Product Information Statements on the internet.

The Commission recognised that not all customers had access to the internet. Therefore, the guideline was extended to require retailers to provide certain information in writing to customers on request and when providing contractual information.

1.2 Legislative amendments

On 1 January 2009, the *Energy Legislation Amendment (Retail Competition and Other Matters) Act 2008* came into effect. In introducing the Bill into Parliament on 11 September 2008, the Minister of Energy and Resources stated:

The principal focus of the bill is to make amendments to the retail competition provisions in the Electricity Industry Act 2000 and the

¹ Section 36A(2) of the *Electricity Industry Act 2000 (Vic)* and section 43A(2) of the *Gas Industry Act 2001 (Vic)*.

² This guideline is available on the Commission's website at www.esc.vic.gov.au, under Energy, Regulation & Compliance and Codes & Guideline

*Gas Industry Act 2001 as a direct consequence of the review by the Australian Energy Market Commission that found that competition in the Victorian electricity and gas retail markets is effective.*³

To enable customers to more confidently make choices in Victoria's competitive retail energy market, the amended legislation was also designed to enhance the current arrangements for the disclosure of retail tariffs, terms and conditions applying to standing offers and market offers to small retail customers. Retailers are required to publish standing and certain market offers on their internet sites in accordance with guidelines issued by the Commission, and the Commission will publish these offers on its internet site.⁴

1.3 Review of Guideline No 19 – Energy Product Disclosure

The Victorian Parliament passed the *Energy Legislation Amendment (Retail Competition and Other Matters) Bill* in mid October 2008, and the new statutory obligations took effect from 1 January 2009.

Retailers were required to publish standing offer tariffs in the Victorian Government Gazette and provide these tariffs to the Commission one month prior to the date of effect. The Commission published the tariffs on its website on the date of effect, that is, 1 January 2009. Tariffs and terms and conditions for market offers were published on the retailers' and the Commission's websites during January.

The existing Guideline No 19, with some minor revisions, provided guidance to the retailer on how these offers were to be published on their websites and in the information provided to the Commission. The Commission's YourChoice website was established for the publication of the retailers' standing offer tariffs and certain market offers.⁵

Stakeholder views on the revised Guideline No 19 were sought and a draft decision and draft guideline was published in March 2009. The Commission received six submissions in response to the draft decision and draft guideline, which have been taken into account in this final decision.

The final *Guideline No 19 – Energy Product Disclosure* is attached and will take effect from 1 June 2009.

³ Minister for Energy, Second Reading Speech, Energy Legislation Amendment (Retail Competition and Other Matters) Bill, 11 September 2008, p3635

⁴ Ibid

⁵ <http://www.yourchoice.websynergy.com.au/>

This section explains the structure and purpose of Guideline No 19 and sets out the final decision on the form and content of the published tariffs, terms and conditions for standing offers and certain market offers.

2.1 Structure and purpose of Guideline No 19

The amended EIA and GIA state that the Commission must prepare and issue guidelines providing for:

- a) the manner of publication of details of licensee standing offers that are in effect, including the accessibility of those licensee standing offers on a licensee's internet site;
- b) the manner of publication of the relevant published offers (market offers) tariffs and terms and conditions, including the accessibility of the details of those tariffs and terms and conditions on a specified retailer's internet site;
- c) the nature of the details to be published; and
- d) any other matters that the Commission considers relevant.

In accordance with these statutory requirements, Guideline No 19 now is to achieve the following objectives:

1. to require retailers to publish standing offer tariffs on their websites and to provide to the Commission in a certain format
2. to require retailers to publish tariffs, terms and conditions of certain market offers on their websites and provide to the Commission in a certain format.

Further, a regulatory obligation will continue to be placed on retailers to provide written information (offer summaries) to customers on request, and when providing contractual information. This regulatory obligation is placed on retailers as it is recognised that not all customers have access to, or would use, the internet in making energy contractual decisions.⁶

2.2 Overview of submissions

The Commission received six submissions on the draft decision and draft Guideline No 19, from AGL, Origin Energy, Simply Energy, Victorian Council of

⁶ Wallis Consulting, *Victorian Consumers' Understanding of the Energy Market*, September 2008. Independent research undertaken for the Commission found that, on average, 50% of Victorian consumers would use the internet when "shopping around". This decreases to 11% for those aged >70 years and 23% for those earning <\$25,000.

Social Services (VCOSS), the Consumer Action Law Centre (CALC) and TRUenergy.

Consumer groups were supportive of the draft decision and the proposed energy price and product disclosure requirements in the draft guideline.

Retailers continued to express their concerns at the more prescriptive approach to publication contained in the draft guideline, primarily with respect to tariff descriptions. These submissions are addressed in this final decision.

2.3 Standing offer publication

Sections 35A of the EIA and 42A of the GIA require all retailers to provide the Commission with their standing offer tariffs on the day that they publish those tariffs, in accordance with guidelines issued.

The draft decision was that all standing offer and market tariffs must be provided to the Commission in the form set out in Schedule A of the draft guideline, which proposed a consistent format in the description of the standing offer and market tariffs.

CALC and VCOSS strongly supported the draft decision. Some retailers wanted more flexibility in providing the tariff information, that is:

- AGL submitted that the retailers should be allowed to publish standing offer tariffs in a form different from Schedule A with prior approval
- Origin Energy and TRUenergy considered that retailers should be able to publish tariffs on their website in a format and style of their choice while providing the information to the Commission in the form of Schedule A.

The tariff structure set out in Schedule A applies to how both standing offer and market tariffs are provided to the Commission for publication on its website.

The Commission received standing offer tariffs from retailers in December and January in accordance with the legislative requirements. The tariffs received were significantly different in format and descriptions between retailers, although they were essentially the same tariffs. This was particularly the case with the gas tariffs. Therefore the draft decision proposed that these tariffs be published in a consistent format, to enable simple publication on the YourChoice website and understanding by customers.

The primary objective for publishing standing offer tariffs on the YourChoice website is to facilitate customers comparing their existing standing offer tariff against market offers available to them. Consequently, the Commission retains the view that these tariffs must be published on the YourChoice website in a comparable and accessible form for customers. Therefore, retailers will be required to provide their tariffs to the Commission in the form set out in Schedule A of the guideline.

However, the Commission notes that Origin Energy and TRUenergy wish to continue to be able to publish their standing offer tariffs on their websites in a format and style consistent with their “business model”. The Commission does not

consider that this will cause confusion for customers or conflict with the legislative objectives for standing offer tariffs to be published by the Commission. Therefore, the Commission will amend the guideline to differentiate between the manner in which standing offer tariff information is provided to the Commission and published on the retailers' websites.

Stakeholders were also concerned that the Commission was not allowing sufficient flexibility with regard to the tariff structures, for example, allowing new tariffs to be introduced or existing tariff structures to be expanded. Examples were new distribution tariffs, multi-part tariffs and 'stepped' tariffs. There was also concern that the defined gas network zones were not sufficiently comprehensive to cater for all gas standing offer tariffs.

Guideline 19 is not intended to prevent retailers from introducing new tariffs or restructuring existing tariffs. A balance needs to be found between confusing customers and inhibiting choice because the tariff structures are too complicated and enabling retailers to be innovative in their tariff design. At this time, however, it is understood that the tariffs described in Schedule A of the guideline reflect the current tariff structures available to customers. The objective of stakeholders is to ensure that future tariff redesign can be accommodated in the guideline.

Therefore, the Commission will insert a footnote in Schedule A clarifying that retailers can request amendments to Schedule A as new tariff structures are introduced, for example, new distribution tariffs. However, if a retailer includes a further step in its existing tariff structure, the Commission's approval is not required. This amendment will flow through to market offer tariffs, as these must be presented to the Commission in the form of Schedule A.

The gas distribution zones will be amended to reflect those areas where retailers do publish standing offer tariffs, specifically the gas extension areas.

Final decision

The final decision is:

- that all standing offer and market tariffs must be provided to the Commission in the form set out in Schedule A of Guideline No 19
- clause 2.1 will be amended as follows:

*A **retailer** must:*

- (a) publish on its internet site details of its **standing offers** and*
- (b) provide to the Commission details of its standing offer tariffs in the manner set out in Schedule A*

- a footnote will be inserted in Schedule A stating that:

*A **retailer** may request an amendment to the structure of the templates in this Schedule as new tariffs are introduced. For avoidance of doubt, a **retailer** does not need to seek the Commission's approval when adding a new step tariff to the templates in Schedule A.*

2.4 Relevant published offers (market offer publication)

Sections 36A of the EIA and 43A of the GIA require retailers to publish on their internet site details of the tariffs and terms and conditions on which they sell electricity or gas to small customers. These tariffs and terms and conditions are to be provided to the Commission on that same day and published by the Commission as soon as practicable.

The requirements for publication are outlined in the Orders in Council published in late November 2008.⁷ Specifically, specified retailers who have an existing offer to sell electricity or gas that is generally available for acceptance by persons designated as small customers must publish at least one existing offer for those customers. These offers are to be published on both the retailers' and the YourChoice websites.

The Commission considered the publication should meet the following criteria:

1. the form in which the tariffs and terms and conditions are published should be easy for customers to understand and should enable comparison between retailers' offers
2. the Commission's YourChoice website should facilitate comparison of tariffs and terms and be useful for customers in making decisions
3. if a customer was attracted to a retailer's offer published on the YourChoice website, they should be able to locate easily at least that offer on the retailer's website.

⁷ Victorian Government Gazette, S315, 25 November 2008

The Commission received no stakeholder submissions. Therefore, the Commission confirms the draft decision as the final decision.

Final decision

The publication of market offers must meet the following criteria:

- the form in which the tariffs and terms and conditions are published should be easy for customers to understand and should enable comparison between retailers' offers
- the Commission's YourChoice website should facilitate comparison of tariffs and terms and be useful for customers in making decisions
- if a customer was attracted to a retailer's offer published on the YourChoice website, they should be able to locate easily at least that offer on the retailer's website.

2.4.1 Name of product information statement

The existing Guideline No 19 requires retailers to publish information under the name 'Product Information Statement'. Consumer groups strongly advocated that the name be changed to 'Price and Product Information Statement', as this better describes the new publication requirements and provides more focussed information to customers.

The Commission agrees that customers will seek price savings in the competitive energy market and will look for simple mechanisms to receive this information. Consumers are likely to review a document entitled 'Price and Product Information Statement' in searching for this information on the relevant websites.

Therefore, the draft decision was that the name of the document to be published on the retailers' websites and provided to the Commission for certain published offers (market offers) will be 'Price and Product Information Statement'.

No submissions were received on this matter.

Final decision

The name of the document to be published on the retailers' websites and provided to the Commission for certain published offers (market offers) will be 'Price and Product Information Statement'.

2.4.2 Links to the YourChoice Website

If a customer is attracted to a retailer's offer published on the YourChoice website, it is considered that they easily should be able to locate at least that offer on the retailer's website and if they wish to, accept that offer.

The draft decision proposed that the guideline require:

A specified retailer must also co-operate with the Commission in implementing a system to create and sustain reliable links from the Commission's internet site so that the customer can:

- *easily view the same or more offer information in the retailer's website and*
- *potentially accept that offer or another offer.*

The proposed regulation does not require a retailer to set up an offer acceptance functionality on-line. A number of retailers require the customers to ring a call centre number if they wish to pursue an offer. This option, whilst more cumbersome for customers, is acceptable under the guideline.

No submissions were received on this draft obligation.

Final decision

The obligation set out in clause 3.2 of the draft guideline is retained in the Final Guideline.

2.4.3 Format Requirements

The draft decision set out the information that is to be included in the Price and Product Information Statement (PPIS). The proposed PPIS template was attached as a Schedule B. If retailers wish to deviate from the template, approval will need to be obtained from the Commission.

This approach to requiring adherence to a specific template was based on the Commission's experience in implementing the previous statutory requirements. The Commission was not prescriptive in stipulating the format to be adopted, but gave general guidance as to what information should be included in the Product Information Statements.

However, it was found that, while the statements were useful, "comparison between offers is not easy due to differing terms used".⁸ Given the increased statutory emphasis on enabling consumers to compare published tariffs and terms and conditions on the website, the Commission considered that consistency between the published offers justifies a more prescriptive approach. There are no prescriptions on any other offers that retailers may make available to customers in the competitive market.

The proposed guideline drafting was:

⁸ Consumer Utility Advocacy Centre 2006, "Untangling the web: finding product information on energy websites", *The CUAC Quarterly*, March

An example price and product information statement is set out in Schedule B. The specified retailer may present its price and product information statements in an alternative format to that set out in Clause 3.4 and Clause 3.5 above with the Commission's prior approval.

Submissions were only received on the detail of how the supply or fixed charge was to be published. The Commission stated that these charges "must be expressed as either dollars per day or in a manner which shows how these fees or charges are billed and calculated".

AGL and TRUenergy wanted the flexibility to express these charges either as cents per day or in the manner in which they currently show these charges on their customers' bills.

CALC, conversely, argued that there should be no flexibility allowed for retailers in publishing how these charges are expressed and that they must be published in a standard format, that is, as dollars per day.

The Commission understands that customers must be able to compare the supply or fixed charge in those market offers which are required to be published in accordance with the legislation. Therefore, it will continue to ensure that publication of the information on the YourChoice website will convert all retailers' supply charge to dollars per day, even if this information is received in the Commission as cents per day.

However, the Commission does wish to ensure that customers can compare the information published in the PPIS with that contained in their bills. Therefore, the option to enable retailers to submit alternative approaches to the Commission will be retained, with the Commission's approval being guided by the criteria set out in section 2.4 above.

Final decision

Clause 3.5 will be drafted as follows:

An example price and product information statement is set out in Schedule B. The specified retailer may present its price and product information statements in an alternative format to that set out in Clause 3.4 and Clause 3.5 above with the Commission's prior approval.

2.5 Offer summary

In the draft decision, the Commission decided that:

A retailer must provide an offer summary in writing to a small retail customer:

(a) On request by the customer

*(b) When providing the customer the terms or information about the terms of any new retail contract, **including when engaging in door-to-door marketing activity.***

There were two submissions:

- CALC submitted that the clause could be further strengthened by requiring the offer summary to be provided when engaging in **any** marketing activity
- VCOSS believed that these offer summaries should be provided at “at any time when a retailer, or its agent, is making a door-to-door marketing approach”.

The obligation is intended to apply to all marketing situations where customers have entered into contractual arrangements. The minor amendment proposed by CALC will be made.

The Commission understands that VCOSS is concerned that customers are not provided with easily accessible information prior to considering their options and all retailers should be required to provide the PPIS as part of their marketing ‘collateral’.

It is emphasised that the purpose of the written offer summaries was to provide an alternative to customers who could not, or did not want to, access the internet in comparing offers between retailers. It must be made available to all customers on request.

The PPIS is not intended to substitute for the information disclosure required by retailers under other regulation. In particular, clause 3.3 of the *Code of Conduct for Marketing Retail Energy in Victoria* already provides for retailers to provide specified information to customers before they decide to enter into the contract, including prices, charges and benefits. Some retailers may choose to use the PPIS or provide that information in other forms.

Therefore, the Commission will confirm its draft decision as the final decision.

Final decision

Clause 4.1 will be drafted as follows:

A retailer must provide an offer summary in writing to a small retail customer:

(a) On request by the customer

(b) When providing the customer the terms or information about the terms of any new retail contract, including when engaging in any marketing activity.

The final *Guideline No 19 – Energy Price and Product Disclosure*, which reflects this final decision, will apply from 1 June 2009.