Energy retail code of practice – issues paper

Flow Power submission

July 2024

About Flow Power

Flow Power is an electricity retailer that works with energy customers throughout the National Electricity Market (NEM). Together with our customers, Flow Power is committed to our vision of creating Australia's renewable future.

We empower customers to take meaningful action. By providing energy knowledge and innovative technology, we are delivering smarter ways to connect customers to clean energy to make our renewable future a reality. We provide our customers with:

+ Engineering support, access to live data and transparent retail tariffs that reward demand flexibility and encourage electricity usage at times of plentiful renewable output.
+ Hardware solutions that equip customers with greater information, visibility and control over energy use.
+ Access to renewable energy, either through distributed solar and storage installed on site, or through a power purchase agreement with utility-scale wind and solar farms.

We believe that by equipping customers with these tools, we can lower costs for all energy users and support the transition to a renewable future.

Flow Power has traditionally supplied commercial and industrial customers but is currently entering the residential market and looking to help households benefit from the same innovative retail offers.

Best offer obligations are not compatible with innovative retail offers

Our submission to the ESC's issues paper is focussed on the best offer obligations. We consider the current best offer obligations have the potential to adversely limit retail innovation.

The best offer requirements oblige retailers to tell customers if there is a lower cost plan available and how much they could save by switching to that plan. The "best offer" is based on the electricity usage over the past year and current retail plan charges and discounts (as at the date a bill is issued).

These best offer obligations work with traditional retailer pricing models. When retailers offer customers fixed pricing for the duration of the retail agreement, it makes the calculation of best offer relatively straightforward and informative. However, this approach is neither fit-for-purpose or informative for a customer when applied to more dynamically priced retail products. Having to comply with these obligations for more dynamic products risks creating a barrier to retail innovation.

Retail innovation is becoming more important as we move through the energy transition. In particular, innovation in the retail space has been crucial for creating the incentives necessary to allow consumer energy resources (CER) to create value for customers and for the system. CER include batteries, electric vehicles and other controllable loads. Historically, retailers have shielded customers from variations in the wholesale price. While this accommodated preferences for price certainty, it also removed the incentive to respond to spot price volatility. We believe the best method for CER is a competitive marketplace where retailers are incentivised to integrate demand flexibility and electrification effectively. The alternative is that these flexible resources are underutilised by blunted price signals, potentially exacerbating concerns around peak demand instead of relieving them.

Challenges complying with current best offer obligations

The 'better offer' requirement asks the retailer to determine the "annual total cost of current plan" based on "annual usage history and the tariff, charges and discount rates current at the date a bill will be issued. However, for retail products that vary with the wholesale price, the variable nature of the pricing structure means the product pricing isn't locked in until the end of each billing period. As such, retailers offering these products are unable to determine a current rate at the bill issue date.

Flow Power's residential product offers a fixed base price that is varied each billing period (monthly) based on customer usage patterns against both wholesale pricing and the network tariff (where this is varies) to determine a final energy rate. Bills are issues approximately 4-6 days after the end of a billing period, at which point pricing is in flux until the end of the next billing period. Accordingly, Flow Power currently provides the following message on bill:

> Are you on the best offer? You're receiving a fair energy deal with a base price which is adjusted depending on how efficiently you use energy against market pricing. Please contact us if you think this plan isn't right for you. You can view and compare generally available offers online at Victorian Energy Compare compare.energy.vic.gov.au.
>
> The Victorian Default Offer is a reasonably priced electricity offer set by Victoria's Independent Regulator. Contact us on 1800 359 797 to discuss the suitability of this plan for you.

Alternative approaches for complying with the current best-offer obligations do not offer consumers clear, actionable information. For example, using customer pricing from the end of the previous billing period – could lead to customers getting a different message each billing period based on usage patterns and wholesale market prices, both of which can be highly variable. Doing this could create confusion for customers, rather than provide certainty of which plan is cheapest, which appears inconsistent with the intent of best offer regulation. This may also be inconsistent with ESC provisions around providing customers with clear advice.

Further, from the perspective of Australian Consumer Law, the best offer message on a bill is likely to be seen as a call to action (i.e., a representation as to a future matter). Such representations can only be made where there are 'reasonable grounds'. When a customer is on a dynamic retail price, as the retailer it is unclear whether we have sufficient grounds to make a representation either way regarding a best offer. A customer that has a high bill one month due to particular usage patterns and wholesale prices may be significantly better off on the same plan the next month (and vice versa, worse off on a default offer or another plan). Significant penalties can apply where a company is found have engaged in misleading or deceptive conduct, including for lack of reasonable grounds when making representations as to future matters.

While the best offer obligations are well intentioned, it is not clear how they should be applied when pricing is variable. Further, to the extent that these provisions may be applied to such products, they are likely to create confusion for customers who have opted for a more variable retail offer. This risks discouraging customers for taking up newer, innovative offers that are an important enabler for CER, demand response and other important activities.

Carve out is best solution

Considering the above, we believe the ESC should consider implementing a carve-out from the best offer obligations in limited circumstances where a retailer can demonstrate the dynamic nature of the pricing in a retail offer. This would maintain "best offer" information appearing on bills for customers who are on simple tariffs who may not be engaged in the energy market. It would also allow innovative retailers and retail offers to be more easily made, helping to facilitate the energy transition.

We would welcome the opportunity to discuss this submission with the ESC. If you have any queries about this submission, please contact me on [redacted] or at [redacted]

Yours sincerely,

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Flow Power