

20 March 2009

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Dear Paul

REVIEW OF THE CODE OF CONDUCT FOR THE SUPPLY OF ELECTRICITY TO SMALL USE CUSTOMERS 2008

I refer to the notice issued by the Electricity Code Consultative Committee (the ECCC) on Friday 6 February 2009 inviting comments on its Draft Review Report with respect to the Code of Conduct for the Supply of Electricity to Small Use Customers 2008 (the Code of Conduct). This letter and the attachment sets out the views of Alinta Sales Pty Ltd (Alinta).

Background

Under section 79 of the *Electricity Industry Act 2004*, the Economic Regulation Authority (the Authority) may, in consultation with the ECCC, approve a code of conduct to regulate and control the conduct of those holding electricity retail, distribution or integrated regional licences and electricity marketing agents.

The Authority has established the ECCC to review the Code of Conduct and to provide advice to the Authority. The review of the Code of Conduct by the ECCC is currently underway, and on 6 February 2009 it issued a notice inviting comments on its Draft Review Report.

Alinta's views

Comments in relation to Draft Review Report

Alinta supports Recommendation 7 but suggests, for the avoidance of doubt, an amendment should also be made to clause 2.4(4). Alinta also notes there is an inconsistency in the numbering of Recommendations 6 and 7 in the Executive Summary and Part 2 of the Draft Review Report. Alinta's comments apply to the recommendation numbered Recommendation 7 in Part 2 of the Draft Review Report.

Alinta notes that in a number of cases, compliance with the obligations imposed by the Code of Conduct by a retailer may be dependent on the conduct of other parties, including distributors. In some cases, it may not be possible (or efficient) for the retailer to manage the risk of non-compliance with the Code of Conduct that results from the actions of these parties. Given the purpose of the Code of Conduct is to protect potentially vulnerable customers, Alinta is sympathetic to the desire to avoid simply shifting risk from retailers to customers. For this reason, it supports, as an initial step and as recommended by Recommendation 8, a review of the extent to which there exist regulatory gaps between the Metering Code (including the Model Service Level Agreement) and other instruments, including the Code, to determine whether any amendments are desirable.

With respect to Recommendation 9, Alinta considers that:

- clause 4.5(1)(h) should apply only to residential customers;
- the definition of 'concession' should be amended to refer only to concessions available to residential customers;
- an appropriate government agency should be responsible for maintaining a list of all concessions available to (residential) customers;
- the obligation to show the amount of any concession on customer bills under clause 4.5(1)(i), should apply only where a (residential) customer receives a concession in respect of electricity supplied under the contract; and
- the obligation that arises under clause 10.3 to provide information on available concessions and the name and contact details of the organisation responsible for administering the concessions should apply only for residential customers.

Alinta supports Recommendation 16 but suggests, for the avoidance of doubt, a further amendment to clause 10.7(2)(a).

Finally, Alinta also notes that the ECCC has proposed that the inclusion of an additional clause, clause 10.3A, in the Code of Conduct. This clause would oblige retailers to notify customers at least once a year of the eligibility for, and amount of, payments that may be made for breach of certain prescribed service standards under Part 14 of the Code of Conduct.

Alinta notes that clause 14.1 relates to payments that may be required to be made if the retailer is unable to reconnect customers within prescribed timeframes. As achieving these timeframes depends in some cases on actions by the distributor, rather than the retailer, Alinta suggests it may be appropriate to defer the inclusion of the proposed new clause 10.3A in the Code of Conduct pending the outcomes of the review identified in Recommendation 8.

Additional comments

Alinta considers the ECC should consider whether clause 4.5(1)(z) should be amended to apply only to residential customers. This clause requires a retailer to include on a customer's bill advice about the availability of multi-lingual services in languages reflecting the retailer's customer base.



Alinta considers that it is not unreasonable to expect that comprehension of electricity bills is likely to be one of the less complex issues facing business (i.e. non-residential customers). Further, Alinta notes that under the amendment to clause 10.11(2) recommended by the ECCC, non-residential customer bills would still be required to include a telephone number for independent multi-lingual services.

If you require further information, or wish to discuss these comments in more detail, I can be contacted on 9486 3749.

Yours sincerely



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Alinta Sales Pty Ltd

REVIEW OF THE CODE OF CONDUCT FOR THE SUPPLY OF ELECTRICITY TO SMALL USE CUSTOMERS 2008

Introduction

Under section 79 of the *Electricity Industry Act 2004*, the Economic Regulation Authority (the Authority) may, in consultation with the Electricity Code Consultative Committee (the ECCC), approve a code of conduct to regulate and control the conduct of those holding electricity retail, distribution or integrated regional licences and electricity marketing agents.

The Authority has established the ECCC to review the Code of Conduct for the Supply of Electricity to Small Use Customers 2008 (the Code of Conduct) and to provide advice to the Authority. The ECCC has commenced the review of the Code of Conduct and on 6 February 2009 issued a notice inviting comments on its Draft Review Report.

Alinta Sales Pty Ltd (Alinta) holds an electricity retail licence and is thereby required to comply with the Code of Conduct. This attachment sets out Alinta's comments on the ECCC's Draft Review report.

ECCC Recommendations

Recommendation 1

Amend clause 1.3 to read:

- (1) The Code came into operation on the day it was published in the Government Gazette.
- (2) The *revisions* to the Code come into operation on 1 July 2010.

Add a new definition of "revisions" in clause 1.5 to read:

"revisions" means revisions to the Code approved by the Authority pursuant to the Act and gazetted on [date].

Alinta position

No comment.

Recommendation 2

Amend definition of “contestable customer” in clause 1.5 to read:

“contestable customer” means a **customer** at an exit point where the amount of electricity transferred at the exit point is at least the amount prescribed under the *Electricity Corporations (Prescribed Customers) Order 2007* (Order) made under the *Electricity Corporations Act 2005* or under another enactment dealing with the progressive introduction of customer contestability.

Alinta position

No comment.

Recommendation 3

Amend definition of “customer” in clause 1.5 to read:

“customer” means a **customer** who consumes not more than 160 MWh of electricity per annum in aggregate across all of the **customer's supply addresses**.

Alinta position

Alinta supports the recommendation.

Recommendation 4

Amend clauses 2.2(2) to include “electronic means” to reflect technological changes and move the definition of “electronic means” in clause 2.6 to the definition section.

In addition, provide a definition of “telephone”, in clause 1.5, as follows:

“telephone” means a device which is used to transmit and receive voice frequency signals.

Alinta position

Alinta supports the recommendation.

Recommendation 5

Add new sub-clause to clause 2.4(3) to read:

- (b) if requested by the **customer** and, if the **customer** has not previously been provided a written copy of the **contract**, a copy of the **contract** at no charge to the customer.

Alinta position

No comment.

Recommendation 6

Amend clause 2.8 to read:

A **retailer** and a **marketer** must comply with the National Privacy Principles as set out in the Privacy Act 1998 in relation to information collected under this Part.

Alinta position

No comment.

Recommendation 7

Add a new clause 2.4(5).

2.4(5) Despite subclauses (3) and (4), the retailer is not obliged to provide the information in subclause (2) to a customer where:

- (a) the retailer has provided the information to that customer within the preceding 12 months; and
- (b) when the retailer is obliged to provide the information to the customer pursuant to subclause (3) or (4), the retailer informs the customer how the customer may obtain the information in subclause (2) and, if requested, gives the information to the customer.

Alinta position

Alinta notes that clause 2.4(4) relates to information that must be provided to customers entering into standard form contracts as a result of door to door marketing and to customers entering non-standard contracts. Although it appears the clause applies to both retailers and marketing representatives, the clause does not explicitly refer to retailers.

In contrast, the proposed new clause 2.4(5) provides, in specified circumstances, an exemption for retailers from the obligations imposed by clause 2.4(4). Alinta considers it appropriate that the exemption in clause 2.4(5) applies only to retailers, as marketing representatives may not be able to determine whether the information in clause 2.4(2) has been provided to a customer in the preceding 12 months.

Nevertheless, Alinta suggests that, for the avoidance of doubt about the obligations imposed by clause 2.4(4) [and the exemption provided by clause 2.4(5)], it may be appropriate to amend clause 2.4(4) as follows.

- (4) For a **standard form contract** that is entered into as a result of **door to door marketing** or a **non-standard contract** –
- (a) the information in subclause (2) and a copy of the contract must be given to the **customer** by the **retailer** or the **marketing representative** before the **customer** has entered into the **contract**;
 - (b) the **retailer** or the **marketing representative** must obtain the **customer's** written acknowledgement that the information in subclause (2) has been given.

Recommendation 8

The ECCC recommends that the appropriate agency undertake a review of the extent to which there are any regulatory gaps between the Metering Code (including the Model Service Level Agreement) and other instruments, including the Code, to determine whether any amendments are required.

Alinta position

Alinta supports the recommendation.

Alinta notes that in a number of cases, compliance with the obligations imposed by the Code of Conduct by a retailer may be dependent on the conduct of other parties, including distributors. In some cases, it may be possible for the retailer to manage this risk exposure, and ensure it can comply with the requirements imposed by the Code of Conduct. For example, by mirroring (or taking account of) the relevant obligations in commercially negotiated contracts or service level agreements with counterparties. However, in other cases, including for example where the (minimum) obligations of a counterparty is set out in other regulatory instruments, it may not be possible (or efficient) for the retailer to manage this risk exposure and ensure it can comply with the requirements imposed by the Code of Conduct.

As the purpose of the Code of Conduct is to protect potentially vulnerable customers, Alinta is sympathetic to the desire to avoid simply shifting this risk exposure from retailers to customers. However, it agrees that a review should be conducted of the extent to which there are regulatory gaps between the Metering Code (including the Model Service Level Agreement) and other instruments, including the Code, to determine whether any amendments are desirable.

Recommendation 9

Amend clause 4.5(1)(h) to read:

a reference that the **customer** may be eligible to receive **concessions** and how the **customer** may find out its eligibility for those **concessions**.

Alinta position

Alinta is concerned that the recommended amendment to clause 4.5(1)(h) is likely to create confusion for non-residential customers, and will impose additional compliance costs on retailers.

Firstly, while the term 'customer' in clause 4.5(1)(h) covers all of a retailer's customers (subject to those customers consuming less than 160 MWh of electricity per annum), concessions that relate to the supply of electricity are currently available only to residential customers. The effect of the amended clause would be to require all retailers to include a statement that a customer may be eligible to receive concessions, even though this is patently not the case for non-residential customers.

Secondly, Alinta is concerned that the recommended amendment would require bills to include advice for customers on how to find out whether or not they were eligible for concessions. As noted above, non-residential customers are not currently eligible for concessions. Of greater concern is the broad definition of 'concessions' in the Code of Conduct, and the apparent absence of a central register of concessions that are available to (residential) customers.

'Concessions' are defined in the Code of Conduct as meaning '*...a concession, rebate, subsidy or grant related to the supply of electricity.*' The two main concessions available to residential customers in Western Australia are the supply charge rebate¹ and the dependent child rebate². However, there are a range of other minor concessions that may be available to certain residential customers, including:

- rebates on account establishment fees;
- a seniors' air conditioning subsidy;
- a thermoregulatory dysfunction subsidy; and
- a life support equipment electricity subsidy.

¹ The supply Charge Rebate is available to residential customers that hold a Pensioner Concession Card (PCC), a Health Care Card (HCC) or a State Seniors Card (SSC).

² The Dependent Child Rebate is available to residential customers with dependent children listed on their PCC or HCC.

In addition, under the Hardship Efficiency Program (HEP), residential customers of Synergy and Horizon Power that meet specific financial hardship criteria may be able to access, free of charge, a range of services, including free energy audits of their homes, insulation and power and water-saving devices. The State Government recently expanded the HEP to include the replacement of fridges that are at least seven years old.

Given the broad definition of ‘concessions’ in the Code of Conduct, the recommended amendment to clause 4.5(1)(h) could also require bills to identify subsidies and grants available through a range of other government programs that ‘*relate to the supply of electricity*’, including for example the Remote Area Power Supply Program, the Regional Energy Efficiency Program and the Rural Renewable Energy Program.

The difficulty faced by retailers in meeting the obligation that would be imposed by the amended clause 4.5(1)(h) is that there does not exist a single centralised register of concessions that are available to (residential) customers. In addition to the practical challenges that are likely to be encountered in adequately covering on bills the range of concessions that may be available to (residential) customers, the absence of a single source information on the range of concessions that might be available to (residential) customers means that the amended clause 4.5(1)(h) would impose significant administrative costs and duplication of effort across retailers.

As a result, Alinta considers that:

- clause 4.5(1)(h) should apply only to residential customers;
- the definition of ‘concession’ should be amended to refer only to concessions available to residential customers;
- an appropriate government agency should be responsible for maintaining a list of all concessions available to (residential) customers;
- the obligation to show the amount of any concession on customer bills under clause 4.5(1)(i), should apply only where a (residential) customer receives a concession in respect of electricity supplied under the contract; and
- the obligation that arises under clause 10.3 to provide information on available concessions and the name and contact details of the organisation responsible for administering the concessions should apply only for residential customers.

On this basis, Alinta suggests that it may be appropriate to further amend the relevant clauses of the Code of Conduct as follows.

Amend the definition of “**concession**” to read:

“**concession**” means a concession, rebate subsidy or grant related to the supply of electricity to residential customers.

Amend clause 4.5(1)(h) to read:

(h) if the **customer** is a **residential customer**, a reference that the **customer** may be eligible to receive **concessions** and how the **customer** may find out ~~its eligibility~~ whether the **customer** is eligible for these **concessions**.

Amend clause 4.5(1)(i) to read:

(i) if the **customer** is a **residential customer** and receives a **concession** in respect of electricity supplied under the **contract**, the amount of any **concessions** provided to the **customer** (other than a rebate relating to air conditioning);

Amend clause 10.3 to read:

A **retailer** must give a **residential** customer on request at no charge –

- (a) Information on the types of **concessions** available to the **residential customer**; and
- (b) the name and contact details of the organisation responsible for administering those **concessions** (if the **retailer** is not responsible).

Recommendation 10

Amend clause 4.8 Estimations, to read:

- (1) If a **retailer** is unable to reasonably base a bill on a reading of the **meter** at a **customer's supply address**, the **retailer** must give the **customer** an estimated bill.
- (2) If a **retailer** bases a bill upon an estimation, the **retailer** must specify in a visible and legible manner on the **customer's** bill that: –
 - (a) the **retailer** has based the bill upon an estimation; and
 - (b) the **retailer** will tell the customer on request: –
 - (i) the basis of the estimation; and
 - (ii) the reason for the estimation; and
 - (c) the customer may request a **meter** reading.
- (3) A **retailer** must tell a **customer** on request the –
 - (a) basis for the estimation; and
 - (b) reason for the estimation.

Alinta position

No comment.

Recommendation 11

Amend clause 4.19 as follows:

4.19 Overcharging

- (1) This clause 4.19 applies whether the overcharging became apparent through a review under clause 4.16 or otherwise.
- (2) If a **customer** (including a **customer** who has vacated the **supply address**) has been overcharged as a result of an act or omission of a **retailer** or **distributor** (including where a **meter** has been found to be defective), the **retailer** must use its best endeavours to inform the **customer** accordingly within 10 **business days** of the **retailer** becoming aware of the error, and, subject to subclause (6), ask the **customer** for instructions as to whether the amount should be –
 - (a) credited to the **customer's** account; or
 - (b) repaid to the **customer**.
- (3) If a **retailer** receives instructions under subclause (2), the **retailer** must pay the amount in accordance with the **customer's** instructions within 12 **business days** of receiving the instructions.
- (4) If a **retailer** does not receive instructions under subclause (2) within 20 **business days** of making the request, the **retailer** must use reasonable endeavours to credit the amount overcharged to the **customer's** account.
- (5) No interest shall accrue to a credit or refund referred to in subclause (2).
- (6) Where the amount referred to in subclause (2) is less than \$45 the **retailer** may:
 - (a) ask the **customer** for instructions pursuant to subclause (2) (in which case subclauses (3) and (4) apply as if the **retailer** sought instructions under subclause (2)); or
 - (b) credit the amount to the **customer's** account (in which case subclause (3) applies as if the **customer** instructed the retailer to credit the **customer's** account).

Alinta position

No comment.

Recommendation 12

Amend clause 5.6(3) to cap the amount of late fees payable by a customer to no more than 2 late payment fees in relation to the same bill and 12 late payment fees in a year.

Alinta position

No comment.

Recommendation 13

Amend clause 6.2(3) to read:

- (3) If a relevant **consumer representative organisation** is unable to assess a **residential customer's** capacity to pay within the period referred to in subclause (2) and the **residential customer** or relevant **consumer representative organisation** requests additional time, a **retailer** must give reasonable consideration to the **residential customer's** or relevant **consumer representative organisation's** request.

Alinta position

No comment.

Recommendation 14

Amend clause 7.6 as follows:

7.6 General limitations on disconnection

Except if disconnection –

- (a) was requested by the **customer**; or
- (b) occurred for emergency reasons, a **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customer's supply address** –

A **retailer** or a **distributor** must not arrange for disconnection or disconnect a **customers supply address** -

- (c) where the **customer** has made a **complaint**, directly related to the reason for the proposed disconnection, to the **retailer, distributor, electricity ombudsman** or another external dispute resolution body and the complaint remains unresolved;
- (d) after 3.00 pm Monday to Thursday;
- (e) after 12.00 noon on a Friday; and
- (f) on a Saturday, Sunday, public holiday or on the **business day** before a public holiday, except in the case of a planned **interruption**, unless:
- (g) the customer is a business **customer**; and
- (h) the business customer's normal trading hours:
- (i) fall within the time frames set out in subclauses (d), (e) or (f); and

(ii) do not fall within any other time period; and
(i) it is not practicable for the **retailer** or **distributor** to arrange for disconnection at any other time.

Alinta position

Alinta supports the recommendation.

Recommendation 15

Amend clause 9.9(1) to place the word "customer" between the words "meter" and "vacates".

Alinta position

No comment.

Recommendation 16

In clause 10.7(2)(a) insert the word "a" between the words "twice" and "year".

Alinta position

The clause limits the ability of customers to request consumption data to "no more than twice a year". However, under the current wording there is potential for the reference to "year" to be interpreted to refer to either a calendar year or financial year.

If, as appears, the clause is intended to prevent the customer from requesting consumption data more than twice within any 12 month period preceding the request, it may be preferable to amend the clause as follows.

(a) for a period less than the previous two years and ~~no more than twice a year~~
provided the customer has not been given consumption data following a request
under subclause (1) more than twice within the 12 months immediately preceding the
request; or

Alinta Sales Pty Ltd
20 March 2008

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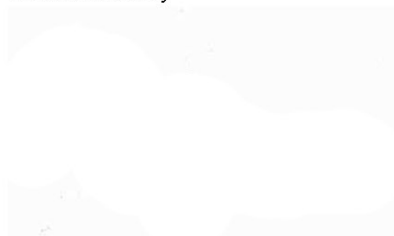
Alinta requests that the ECCC also consider whether clause 5.2(1)(c) of the Code of Conduct should be amended to apply only to residential customers. Under a Standard Form Contract, a retailer is currently required to offer both residential and non-residential customers Centrepay as a payment option.

Centrepay allows individuals to pay bills by having funds deducted from their Centrelink payments. However, Alinta understands businesses are not eligible for Centrelink payments. As a result, Alinta submits that clause 5.2(1)(c) should be amended to read:

(c) **if the customer is a residential customer**, by Centrepay;

If you require further information, or wish to discuss these comments in more detail, I can be contacted on 9486 3749.

Yours sincerely



Corey Dykstra
Manager Regulatory Affairs
Alinta Sales Pty Ltd