

1 June 2017

Mr Paul Reid
The Economic Regulation Authority
Level 4, Albert Facey House,
469 Wellington Street,
PERTH WA 6000

Dear Mr Reid

Consultation on proposed changes to Alinta Sales Pty Ltd's standard form contract (electricity)

Thank you for the opportunity to comment on Alinta Sales Pty Ltd's (**Alinta**) proposed changes to its standard form contract (**SFC**) for the supply of electricity to small use customers. I make the following comments in relation to Alinta's proposed changes to the SFC:

1. Disconnection notices for unpaid bills and denial of access to meter (SFC clauses 21.1 and 21.2):

Alinta's proposed changes to cl 21.1(a) (deletion of "in writing") and cl 21.2(f) (deletion of "written") of the SFC appear to seek to remove the need for reminder notices and disconnection warnings to be given in writing. However, failure to give these notices/warnings in writing would potentially breach the requirement of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2016* (the **Small Use Code**) that "reminder notices" and "disconnection warnings" given in these circumstances must be given **in writing**. This is so because of the definitions of "reminder notice" and "disconnection warning" in cl 1.5 of the Small Use Code, which are as follows (*emphasis added*):

“**disconnection warning**” means a notice *in writing* issued in accordance with clause 7.1(1)(c) or clause 7.4(1).

“**reminder notice**” means a notice *in writing* issued in accordance with clause 7.1(1)(a).

It is therefore possible Alinta's proposed changes to cl 21.1(a) (deletion of "in writing") and cl 21.2(f) (deletion of "written") could introduce unnecessary doubt/uncertainty about whether these reminder notices and disconnection warnings will be given in writing. That doubt/uncertainty may be exacerbated by the statement in cl 34.5 of the SFC that "Unless these terms and conditions say otherwise, a notice does not have to be in writing."

To avoid any such doubt/uncertainty, it should be expressly clarified in the SFC that a “reminder notice” and a “disconnection warning” must be **in writing** (as required by the Small Use Code).

2. Contracts entered into "as a result of face to face marketing" (SFC clause 25.1):

Alinta's proposed change to cl 25.1 of the SFC (replacing "door to door marketing" with "face to face marketing"), does not clarify what is meant by "face to face marketing" and raises concerns about compliance of the SFC document with the "unsolicited consumer agreement" provisions of the *Australian Consumer Law*.

Uncertainty as to meaning of "face to face marketing"

Arguably, "face to face marketing" is wide enough to include not only (as would typically be expected) contracts that are "unsolicited consumer agreements" under the *Australian Consumer Law* and/or "door to door contracts" under reg 22(1) of the *Electricity Industry (Customer Contracts) Regulations 2005*, but also (as would *not* typically be expected) some contracts that are neither "unsolicited consumer agreements" under the *Australian Consumer Law* nor "door to door contracts" under the *Electricity Industry (Customer Contracts) Regulations 2005* (e.g. where a customer of its own initiative approaches Alinta in person at Alinta's premises and negotiates the contract "face to face"). In the latter case cl 25.1 of the SFC would seem to confer a cooling-off period where it is not clear that any is required by law.

Uncertainty as to compliance with requirements for "unsolicited consumer agreements"

In any case, to the extent the SFC is used to enter into contracts that *are* "unsolicited consumer agreements" under the *Australian Consumer Law* (as cl 25.1 suggests it may be), the SFC document currently does not include the additional provisions necessary to satisfy the requirements of the *Australian Consumer Law* in relation to unsolicited consumer agreements.

As the *entire* document comprising the "standard form contract" is required to be submitted to the Authority for approval under the *Electricity Industry Act 2004*, if the SFC is used for "unsolicited consumer agreements" (whether as a result of "face to face marketing", "door to door trading" or otherwise), Alinta would need to submit to the Authority a SFC document that included the necessary compliance provisions for "unsolicited consumer agreements" under the *Australian Consumer Law*.

If Alinta does *not* propose using the SFC for conduct that could result in "unsolicited consumer agreements" under the *Australian Consumer Law* or "door to door contracts" under the *Electricity Industry (Customer Contracts) Regulations 2005*, then it may wish to consider removing the "face to face marketing" and "cooling-off" provisions from the SFC.

3. Maximum consumption limit (SFC clauses 2.1 and 25.2(e)):

Alinta's proposed change to cl 25.2(e) of the SFC (addition of right for Alinta to end the contract if the customer consumes more than 160 MWh in any 12 month period), while in itself not objectionable, seems inconsistent with the statement in cl 2.1 of the SFC that "Subject to availability and the capabilities of your equipment and the network equipment, you can use as much electricity as you want."

To avoid any doubt/uncertainty, Alinta may wish to consider expressly clarifying in the SFC that the statement in cl 2.1 of the SFC that "you can use as much electricity as you want" is also *subject to clause 25.2* (including new cl 25.2(e)).

Please do not hesitate to contact me if you have any questions in relation to this submission. I confirm this submission may be published on the Authority's website (excluding signature and personal contact details).

Yours sincerely

Stephen Stockwell