

17 April 2018

Mr Thomas Redmond
Adviser
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Redmond,

Preventing discounts on inflated energy rates

Simply Energy welcomes the opportunity to make a submission on the National Energy Retail Amendment (Preventing Discounts on Inflated Energy Rates) Rule 2018.

Simply Energy is a leading second-tier energy retailer with over 660,000 customer accounts across Victoria, New South Wales, South Australia and Queensland. As a growing retailer, Simply Energy supports competition and is committed to improving customer engagement across the National Energy Market.

With this commitment in mind, Simply Energy supports the Australian Energy Market Commission's (AEMC) draft amendments to the National Energy Retail Rules (NERR). In line with its support for the draft amendments, Simply Energy is of the view that offering percentage discounts based on rates that are in all respects higher than an equivalent standing offer is confusing for consumers.

Simply Energy notes, however, that the practice of discounts on inflated energy rates is extremely rare across the industry.

Simply Energy is also concerned about the AEMC's proposal to recommend that non-compliance with the Australian Energy Regulator's (AER) Retail Pricing Information Guidelines (RPIG) be subject to civil penalties. Simply Energy does not consider the RPIG, in its current form, to be appropriate and adapted for the purposes of applying civil penalties.

In view of this, Simply Energy's submission focuses on:

- the role of the legislative framework (Australian Consumer Law (ACL), the National Energy Customer Framework (NECF) and the RPIG) in governing marketing and advertising of energy offers to consumers;
- the appropriateness of making non-compliance with the RPIG subject to civil penalties under the National Energy Retail Law (NERL); and
- the proposed drafting of the amendments to the NERR to prohibit discounting on inflated base rates.

Simply Energy's views on these matters are intended to broadly address the main questions posed in the AEMC's consultation paper.

Role of the legislative framework

Simply Energy views the ACL, the NECF and the RPIG as a complementary suite of regulatory mechanisms that are designed to uphold the interests of energy consumers.

The ACL provides broad consumer protections, as well as safeguards against unfair trade practices and misleading and deceptive conduct. The NECF, specifically the NERL and the NERR, complements the ACL by providing an additional level of protection based on consumer matters that are specific to the energy market. More detailed guidance around the presentation of energy offers to consumers is then set out in the RPIG.

The RPIG, in turn, plays an important role in guiding how retailers advertise and market to customers. That said, Simply Energy considers that the RPIG would need to be substantially refined before contraventions could be subject to a civil penalty under sections 24 and 37 of the NERL. In particular, careful consideration would need to be given to the application of the regime to ensure civil penalties only apply to matters that are likely to cause substantial customer detriment or harm.

Making non-compliance with the RPIG subject to civil penalties

It is important to note that the underlying purpose of the RPIG, as it is currently drafted, is to provide guidance on the presentation of energy pricing information. The RPIG was not written as a formal legal instrument.

Furthermore, there is little benefit in imposing a civil penalty for minor contraventions of the RPIG as these fines could lead to higher compliance costs across the industry that will ultimately be borne by consumers, for minimal benefit to them. It should also be kept in mind that many more serious contraventions of related pricing matters are already regulated under the ACL, NERL and NERR, as well as at common law.

In view of this, any recommended changes to the enforceability of the RPIG should be considered separately, as they involve matters that cannot be adequately assessed through the present expedited Rule Change process.

In this context, Simply Energy's general view is that pricing presentation and practices that lead to outcomes that are not in the long-term interests of consumers, which are not already dealt with under the NERL or ACL, should be subject to regulation under the NERR. This is because all rule changes under the NERR are independently assessed by the AEMC and go through a public consultation process to establish balanced regulatory requirements.

To this end, Simply Energy agrees that providing discounts off market contracts where all rates are above the rates of an equivalent standing offer falls into this category. Like the AEMC, Simply Energy is of the view that no customer would be better off on this type of contract, as compared to the prevailing standing offer, if the conditions giving rise to associated discounts are not achieved.

Proposed drafting of the amendments

Simply Energy supports the AEMC's draft approach to dealing with discounting off an inflated base rate through establishing a notion of equivalency. The AEMC's approach is well balanced and provides retailers with the flexibility to offer pricing models to suit individual consumption profiles, meaning future innovation and product offerings will not be inhibited. Further, in situations where a standing offer is structured differently to the relevant market offer, it cannot reasonably be considered as being a base rate.

Simply Energy agrees that fees are not a relevant consideration in determining equivalency between market and standing offers. However, Simply Energy recommends the AEMC reconsiders its position on around materiality. While supporting the policy intent of including a materiality threshold, Simply Energy encourages the AEMC to provide guidance as part of its rule change around what constitutes a material difference. This will, in turn, give both retailers and the AER greater certainty in respectively complying with and enforcing the requirements of the proposed amendments to the NERR.

Simply Energy also considers that the rule change should apply to both electricity and gas, as the policy intent of the amendments applies equally to both consumer segments. Further, Simply Energy is of the view that fixed period contracts should reasonably be excluded from the requirements of the proposed rule. Owing to wholesale market volatility, there is a risk in offering fixed pricing over several years. In light of this, energy retailers should be able to pass on this risk exposure to consumers if they see it as being reasonable to do so (in the same way that banks charge higher amounts for fixed interest rate loans than for variable interest rate loans).

Concluding remarks

Overall, Simply Energy is comfortable with the proposed drafting of the rule change, even though it considers that discounting on inflated base rates is extremely rare across the industry. Simply Energy would support a prompt implementation of the rule change, but considers at least one month should be given after the final rule is published to allow retailers time to make any pricing adjustments that may be required.

Simply Energy trusts this submission provides the AEMC with some useful feedback and looks forward to engaging on the development of future rule changes. If you have any questions in relation to Simply Energy’s submission, please contact Anthony O’Connell, Senior Regulatory and Compliance Officer on (03) 8807 5134 or by email at Anthony.OConnell@simplyenergy.com.au.

Yours sincerely



James Barton
General Manager, Regulation
Simply Energy