

1 June 2016

Essential Services Commission Victoria  
Level 37, 2 Lonsdale Street  
Melbourne Victoria 3000

Lodged via [energy.submissions@esc.vic.gov.au](mailto:energy.submissions@esc.vic.gov.au)

Dear Sir / Madam,

### **Interim Compliance and Performance Reporting Guideline for Energy Retail Licence Holders**

Simply Energy welcomes the opportunity to respond to the Essential Services Commission Victoria's (ESC) Interim Compliance and Performance Reporting Guideline for Energy Retail Licence Holders (Interim Guideline). Simply Energy is a leading tier 2 energy retailer servicing Victorian Residential customers, Small Business customers and Commercial and Industrial customers. Simply Energy strongly maintains a position of ensuring that it complies with the requirements of all applicable codes and guidelines in the Victorian energy retail sector.

Simply Energy supports the establishment of this Interim Guideline, in order to provide energy retailers with a clear set of requirements to report on issues and potential breaches as well as a set of Key Performance Indicators (KPIs) to report to the ESC. However Simply Energy also wishes to provide the following feedback, and requests consideration of the items below in relation to the Interim Guideline.

#### **Table 1.1 – Type 2, Type 3 and Performance Indicators reporting requirements**

The ESC has proposed to increase the reporting frequency for Type 2 and Type 3 breaches from half yearly and annually respectively, to both types going to a quarterly basis. Simply Energy does not support these changes. Asking a retailer to squeeze this breadth of compliance reporting into such an abbreviated timeframe such as quarterly impacts the time and resources retailers can put to remediation of issues, as well as make appropriate assessments of issues that from a proactive perspective can be reviewed and acted upon.

Simply Energy believes that if both Type 2 and Type 3 breaches are to be reported on an equal time basis then there is no further need for these category types. The ESC should explain why an obligation is to be labelled a Type 2 against another obligation that is labelled a Type 3 if both types are to be reported on simultaneously.

Simply Energy would encourage a move to Type 3 requirements being reported every 6 months. A shorter timeframe for the reasons provided above becomes too onerous.

The key performance indicators have also been altered from reporting on a basis of at least every 6 months to a quarterly basis. The ESC should be aware that extensive changes to a retailer's standard database and system will be required, including the testing that will be required prior to this reporting forming part of 'business as usual'. Any costs derived from needing to make such changes will ultimately be borne by customers.

On that basis the ESC should provide the industry with more detail about why it requires this more frequent reporting and how this more frequent reporting will deliver net benefits to customers.

## **Item 2.1 – Type 1 Breaches**

### **Priority of breaches to be aligned with the Australian Energy Regulator**

Simply Energy believes that the priority of breaches that are Type 1 must be assessed to ensure that the more regular reporting can be achieved with a high quality standard. The Australian Energy Regulator (AER) in accordance with its Compliance and Procedures Guidelines Version 3, 2014 prioritises Type 1 retailer breaches specifically to life support requirements and disconnection requirements.

All other obligations that incur a breach are classified as a Type 2 breaches. Simply Energy endorses this approach for the purposes of ensuring that retailers prioritise those obligations that impact a customer in the most significant or material manner. This prioritisation supports retailers to ensure that service is maintained to critical customers.

The ERC by harmonising with the National Energy Customer Framework endorsed that framework. It would make sense to align the compliance reporting requirements to reflect the AER reporting requirements because the Victorian interests and customer priorities have not been demonstrated to differ from those in other NEM states. Alignment would create greater reporting efficiencies.

### **ESC jurisdiction – conflict with national regulators**

The ESC operates within a specific jurisdiction and should not expect retailers to report to two regulators with regard to the same issue. A retailer should only report to the ESC those matters and laws that are directly related to the ESC jurisdiction.

For example The Privacy Act and all matters pertaining to privacy are regulated by the Office of the Australian Information Commission (OAIC), not the ESC.

The Australian Competition and Consumer Commission (ACCC) also regulates all activities under Australian Consumer Law (ACL). A retailer is subject to the regulatory authority and actions that the ACCC decides on.

As a result, Simply Energy does not consider that the ESC should be imposing requirements in relation to matters regulated by other regulators.

### **Marketing Code of Conduct**

The reintroduction of the Marketing Code of Conduct (MCOC) is not required for the purposes of compliance and performance reporting. The Marketing Code of Conduct had the intention of

being repealed under the ESC's final decision when the Energy Retail Code moved to harmonisation with AER requirements on 13 October 2014. The harmonisation essentially captured most of the MCOC requirements. Introducing the MCOC only causes unnecessary duplication as discussed below.

If the ESC wishes to reintroduce the MCOC it should do so without conflict and duplication to requirements already in place under the ERC and the requirements under the ACL.

The MCOC creates the following duplications in reporting that should be removed from the draft guideline:

- New Type 1 reporting types RB0100, RB0110 and RB0120 for the MCOC conflict with the ERC reporting requirements of existing RB0100, the new reporting types relevant to clauses 61 to 64 of the ERC, clause 47 of the ERC.
- New Type 2 reporting type RB0300 under the MCOC conflicts with Clause 65 and Clause 66 of the ERC of which an existing RB0300 exists.
- New Type 2 reporting type RB0310 under the MCOC conflicts with existing RB0300 Clause 59A of the Energy Retail Code.
- New Type 3 reporting type RB0740 under the MCOC conflicts with existing RB0740 Clause 68 of the Energy Retail Code.
- New Type 3 reporting type RB0750 under the MCOC conflicts with existing RB0750 Clause 63 of the Energy Retail Code.

The ESC has not explained why the MCOC is now required again. In its most basic form the MCOC is out of date and needs to be updated as soon as possible. For example the National Privacy Principles are no longer a regulatory instrument.

### **Energy Retail Code (Version 11)**

#### *RB0130 Clause 33 and 72A – payment difficulties and debt recovery*

The ESC has expanded this reporting requirement to include "and recovery of debts from these customers". Simply Energy does not support the extension of this reporting obligation. Clauses 33 and 72A themselves have not changed as part of this review of the Interim Guideline and therefore a retailer's obligation to these two clauses has also not changed.

The additional request is also subjective. From retailer to retailer the recovery of debts from customers will differ but will maintain compliance to these obligations. We would like to know how the ESC will consistently assess this additional reporting requirement across retailers.

#### *RB0620 Electricity Retail Licence Clause 3: Obligation to purchase gas*

This is an irrelevant clause to report upon and should be removed from the Guideline. It is in the best interests of a retailer to utilise best endeavours to purchase or obtain a supply of gas on reasonable terms and conditions. To not perform this task is not a compliance consideration because a retailer not performing this task will not obtain customers under competition and effectively cease to operate.

#### *RB0540 Electricity Retail Licence: Payment Methods*

This clause should be repealed from the Guideline. Commercial events occur on a regular basis that has no impact upon a consumer's interest. Asking a retailer to notify the ESC of termination arrangements with "any agency" where a customer may pay bills does not in itself lead to a

customer impact. It is in a retailer's best interest to ensure customers are provided avenues for bill payment. Those avenues however are commercial decisions that should not be subject to regulatory reporting.

*RB0750 Clause 63(1) – form of disclosure*

This clause in the ERC refers to "Required information provided to a small customer before the formation of the market retail contract may be provided electronically, verbally or in writing." Simply Energy does not support the draft amendment to the Guideline. The strikeout needs to be reinstated.

*Code of Conduct for Marketing Retail Energy in Victoria*

*RB0120 Clause 6 – Marketing consumer information*

As advised above The ESC does not have jurisdiction to assess compliance with the Privacy Act. Retailers respond to any privacy related matter to the OAIC. Any reporting under this Clause needs to refer only to representation when in contact with the consumer.

*Retail Licence*

*RB01060 Licence conditions*

The ESC should advise if this reporting refers to the licence conditions approved by the ESC at the point of time a retailer's licence was granted.

### **Section 3 – Performance Indicator Schedule**

Simply Energy notes that the new definition for debt now ignores the age of debt. The new definition needs to ensure it reflects and recognises different payment cycles.

#### *3.1 Background indicators*

*B021 Residential Electricity Customers with Feed-in*

As advised above the changes for this KPI will require Simply Energy to make internal changes including new system flags, algorithm scripting as well as current templates and master documentation to be changed. Any costs relative to these changes will be absorbed into Simply Energy's prices that customers pay.

*B061 Business Electricity Customers with Feed-in*

There is a grammatical error in this paragraph. The paragraph needs to reflect the threshold of 40 to 160 MWh.

*B160 Reminder Notices issued*

*B170 Disconnection Notices issued*

Both of these new KPIs have been introduced to assist the ESC in assessing how successful the new hardship framework due to commence from 1 July 2017. However the ESC will need to heed that retailers will issue notices at differing levels of their business. Simply Energy issues reminder and disconnection notices based at an invoice level. Other retailers within Victoria would issue notices at an account level of their business. The distinct difference here is that issuing notices on an invoice level will naturally increase the number of notices provided to customers. Importantly both processes still achieve compliance. The concern is that these KPIs will be interpreted as a percentage base of customers (making it inappropriate for the ESC to benchmark retailers against each other for these 2 KPIs).

### *B180 Residential customers falling behind on payment*

The ESC will need to clarify under what circumstance(s) a customer may fall into such a category for reporting. We presume debt is determined as at the issue date of the subsequent bill (ie. a balance carried forward to the next bill). The metric needs to account for customers who fall behind on their bill, have a disconnection warning notice issued and then pay arrears to avoid disconnection (before the next bill is issued). This particular process could also become a repetitive instance on customers of which then potentially skews the intent of reporting this KPI.

Simply Energy also encourages the use of a materiality threshold such as the current threshold required before disconnection in Victoria of \$120. Such a threshold would remove any erroneous reporting that would otherwise be captured.

### *3.2 Disconnection and Reconnection Indicators*

#### *D021 Instalment payment plans not covering use*

#### *D022 Instalment plans covering use*

As advised above the changes for these KPIs will require Simply Energy to make significant internal changes including databases, systems and scripting. Simply Energy also believes that these two KPIs should be recorded at the creation of the plan, at a point in time.

There is also a key definition point to requiring clarification. The concept of “ongoing use” is dynamic and ever-changing based on a number of factors including time of the year and customer behaviour (amongst other things). When comparing the payment plan amount against the ongoing usage, is the “ongoing usage” based on the forecast or the actual consumption? We believe it should be based on the forecast consumption as the actual consumption will lead to inaccurate results at different times of the year based on seasonality.

#### *D023 Duration of instalment payment plans*

#### *D024 Debt on entry to instalment payment plans*

These two KPIs must be confirmed by the ESC as residential only in application and that the application of the KPIs refers to the time span of plan that is offered to a customer (as opposed to the amount of time on a plan).

Simply Energy would also endorse the use of the AER’s debt levels for reporting under D024.

Simply Energy also believes there is a conflict with the new definition of debt for this Interim Guideline. The new definition ignores the age of debt however a retailer is then required under KPI D024 to factor in “debt (amount outstanding for over ninety days)”. Simply Energy believes this stipulation should be removed for consistency with the new definition of debt.

### *3.5 Complaints*

Simply Energy would endorse a move to align all complaints categories to align with the AER's categorisation of complaints under their KPI reporting requirements.

If you have any questions concerning this submission, please contact Alan Love

Yours sincerely

James Barton  
General Manager Regulation