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Kate Symons
Acting Chair
Essential Services Commission of Victoria
Level 37, 2 Lonsdale Street, Melbourne VIC 3000

Ensuring Energy Contracts are Clear and Fair – Issues Paper

Thank you for the opportunity to provide a submission in response to the issues paper Ensuring Energy Contracts are Clear and Fair.

Momentum Energy is a 100% Australian-owned and operated energy retailer. We pride ourselves on competitive pricing, innovation and outstanding customer service. We retail electricity in Victoria, New South Wales, South Australia, Queensland, the ACT, and on the Bass Strait Islands. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services. We also retail natural gas to Victorian customers.

Momentum Energy is owned by Hydro Tasmania, Australia's largest producer of renewable energy.

Momentum has strongly supported moves to improve outcomes for energy consumers in Victoria and across the NEM more broadly. Our commitment to consumers has been displayed by our practices, namely:

- Offering Simple uncomplicated products that focus on the actual energy rates rather than illusory discounts;
- No loyalty tax – customers are automatically renewed onto a like for like product at our market acquisition rates when their benefit term expires;
- We have provided customers with notification of any change to rates prior to them coming into effect; and
- Customers are only placed on a standing offer where they have explicitly requested it or where we are required to under the Electricity Industry Act (deemed contracts).

We believe that our practices are consistent with the outcomes sought by Government and have welcomed moves to require similar conduct from all retailers. We are concerned however that the pace of regulatory change has increased to the point where further reform is likely to damage consumer outcomes.

Momentum, and other retailers, have warned of a number of adverse outcomes likely to arise from the regulatory reforms which have been implemented to date. We stand by the claims we have made and are concerned that this next tranche of changes is being progressed before the impacts of previous changes have been assessed.

The situation is analogous to that of Australian Rules Football where rules are constantly changed to counter the adverse impacts arising from previous reforms. This situation has led to frustration and confusion among fans of the game. If constant tinkering of this nature can cause such confusion among devotees of a beloved institution like the AFL, similar changes to energy retail, where customers are considerably less enthusiastic is likely to drive considerable disengagement.

Retailers are often reminded that as providers of an essential service we have a unique responsibility to consumers as most customers do not have viable alternatives to purchasing electricity and gas through a retailer. We would argue that this responsibility applies equally to the regulators and policy makers and that soon there will come a point where customers are not merely disenfranchised by the conduct of retailers (which has undoutably been the case), but by the perverse effects that the regulatory framework has created.

With this said, we consider that elements of the industry practice may require further reform, but, as argued at the time that the Thwaites report was released, some of recommendations 3-11 of the report are either unnecessary or fundamentally at odds with the concept of a VDO (or basic default offer as it was known at the time). We urge the ESC to recommend to Government that an additional 12- 24 months be allowed to see how the recent reforms impact retailer practices and consumer outcomes.

With this context in mind, our views on the specific recommendations are outlined below.

Recommendation 3A - Require retailers to market their offers in dollar terms, rather than as percentages or unanchored discounts.

Momentum has been outspoken against the practice of offering illusory discounts for some time. We have previously supported this recommendation in the absence of a regulated price cap however we do not believe that it will benefit customers in the current market environment. One of the main concerns surrounding discounts stemmed from the fact that there was no common reference point, or as Depty Commission of the ACCC Delia Rickard expressed it, “discount off what?”. In this scenario it makes sense that there should be an attempt on the part of retailers to help quantify the dollar value that a customer will save. The issue with this approach is that it will only ever be an approximation of the customer’s savings because it relies on assumptions of customer consumption and the premise that a customer’s past behavior will predict their future consumption.

In a world where an anchor exists (namely the VDO), it makes more sense that discounts be expressed in percentage terms as it provides a true like for like comparison of offer. A 10% discount from the VDO will always be better than a 5% discount from the VDO regardless of retailer assumptions or in fact if that customer’s actual consumption turns out to be markedly different to forecasts.

As stated in our initial support for the Thwaites report, many of the recommendations 3-11 are fundamentally incompatible with the concept of a VDO. While our position on discounting has not changed, this recommendation is a prime example of a retrograde step which will not improve customer outcomes.

Recommendation 4A – Require retailers to offer prices that are fixed for a minimium of 12 months

In October 2014, the Australian Energy Market Commission rejected a rule change proposal which sought to fix contract prices for a minimum period on the basis that "if retailers are unable to pass on unmanageable changes in costs, prices for consumers are likely to increase". Once again, we feel that there may have been merit in such a recommendation if there was no VDO price in place however these two recommendations combined will increase the complexity of the market and further disengage consumers.

Under the current regulatory framework, customers have the option of a VDO which cannot be changed by the retailer independent of the ESC making a new determination. It is our view that this provides ample certainty for customers to whom this is important as, except in exceptional circumstances, prices will only change once each year.

If a retailer was required to hold each customer's prices for 12 months, this would lead to a situation which is incompatible with the VDO. Take for instance a customer who signs up to a contract on 1 December 2020. Assuming that the cost of networks and wholesale continues to rise, it is likely that most retailers (and for that matter the ESC) would update their rates on 1 January 2021. The customer who signs up immediately prior to the rate change would be paying less than the fair cost of energy, presumably resulting in negative net margin for the retailer. While this would seem like a positive outcome for the customer, at a macro level retailers would counter this by increasing the price of December 2020 offers in anticipation of price increases. They would likely build in a premium to mitigate the risk that changes in network price and other inputs are higher than anticipated meaning that all customers are in fact paying more than is necessary.

We understand that customers do not like price increases, but we believe that a single price increase each year which approximates retailer costs is a better option for consumers than a static price which incorporates an additional cost for future uncertainty. We also firmly believe that many customers value choice and are likely to be disenfranchised by regulatory reforms which rob them of this choice while forcing them to pay higher prices. This would be the ultimate outcome of a requirement to hold prices for 12 months. The VDO caters for customers who are seeking price certainty, while the protections provided under recommendation 4B should be sufficient to protect the interests of customers who are more comfortable to accept a small amount of risk at a lower price.

Recommendation - 4B Require retailers to clearly disclose to customers the length of time any offered prices will be available without change.

We consider that this recommendation will effectively deliver the outcome sought from recommendation 4A without the distortionary effects. Momentum understands that the Thwaites report was concerned about customers being signed on to cheap deals and then having these rates changed almost immediately. We consider this behavior unconscionable.

By making it explicit how long a customer's prices will remain unchanged we feel that there is an adequate assurance that retailers will not 'bait and switch'. Recommendation 4B in conjuction with a VDO and the current Clear Advice Entitlement should provide consumers with ample certainty while ensuring that there is room in the market to make offers to customers who value more cost reflective yet potentially dynamic prices.

Recommendation - 4C Require retailers to roll customers onto the nearest matching, generally available offer at the end of a contract or benefit period, unless the customer opts for another offer.

Momentum supports this recommendation in principle however we are concerned that it fails to consider the contractual considerations and in fact the range of contractual constructs which exist in the market.

The concept of a benefit term was initially developed as a mechanism to protect customers from being moved on to a less desirable standing offer as a new explicit informed consent (EIC) was required to move the customer onto a new market offer. The benefit term arose so that once the initial period expired, new EIC was not required and the relationship between customer and retailer could continue more or less unchanged. We acknowledge that over time this concept has been perverted and expiry of a benefit term is synonymous in some circles with 'Loyalty Tax' however this is not necessarily the case.

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We are conscious of the view customers may be paying a 'loyalty tax' as a result of their inactivity at the end of their contract however, we feel that the complexities involved with this matter warrant a wait and see approach in light of the other reforms which have recently commenced. For our part, Momentum will continue to treat customers fairly upon expiry of their benefit term and we believe that the introduction of the VDO and associated reforms will largely address this issue.

Recommendation 4D - Any conditional discount or other benefit offered for paying on time or on-line billing should be evergreen. Customers should not lose the discount or other benefit when the contract ends.

Momentum agree with recommendation 4D in principle. It seems unreasonable that a retailer may choose to stop passing on any benefit they receive as a result of a customer's actions. We believe however that this issue requires careful consideration as the recommendation itself appears to conflate the issues of benefit term and contract expiry, and the very need for this recommendation will depending strongly on the approach taken with regard to recommendation 4C.

Recommendation 4E - Costs incurred by customers for failing to meet offer conditions are to be capped and not higher than the reasonable cost to the retailer.

Momentum shares the view that some conditional discounts have reached a point where they are not based on any reality of the benefit which they provide the retailer. While these products can represent excellent value when a customer is able to meet the requisite conditions, failure to do so attracts a manifestly unfair penalty. We believe that it is reasonable that the potential penalties are limited but do not consider that the ESC should have a role in setting these and that it is up to the retailer to justify the amounts they charge.

While conditional discounts can be applied for any number of reasons, the main issue seems to surround pay on time discounts and the extent to which they can amount to an unreasonable late payment fee if the customer misses the due date. With the exception of some legacy products (where the customer was eligible for a 3% discount if they paid by the due date), Momentum does not currently offer conditional discounts. We do believe however, that the initial motivation for offering pay on time discounts was sound.

Retailers invest heavily in credit management as money not received from customers imposes a cost which is borne by the rest of the customer base. Incentivising customers to pay on time makes sense as it reduces costs and allows a retailer to price more aggressively to attract new customers. While we do not believe that there is a case to justify discounts in the realm of 40%, we believe that retail businesses who continue to offer pay on time discounts are best placed to set the quantum.

Customers who pay on time reduce business costs in a number of ways. The first way is through the elimination of the direct transactional costs associated with late payment. When a customer misses a payment, retailers are required to contact them to offer assistance. The costs associated with this depend largely on the customer's willingness to engage. Obviously, the more attempts we require to engage a customer, the more the cost increases. We do not believe that the ESC could appropriately cost this due to the fact that these transactional costs vary from one customer to the next, but also because the implementation of the Payment Difficulties Framework(PDF) has led to a number of different approaches from retailers.

The ESC opted to introduce the PDF as a minimum standard rather than a set of compliance obligations. Because of this, retailers approached its implementation based on their willingness to meet or exceed the standard. If the ESC were to set the maximum penalty, those retailers who exceed the standard would be penalised relative to those who do the bare minimum as they face greater costs which cannot be recovered. The end result would be a reversion by retailers to the bare minimum requirement to avoid being effectively penalised.

The second way in which customers paying on time reduces costs for retailers is the cumulative impact on debt levels. Across the energy industry, and presumably many others which offer a service on a credit bases (ie, post hoc billing), the longer a debt remains delinquent, the more likely it is to be written off. Retailers encourage customers to pay on time in order to reduce aged debt which is ultimately not collected and represents an additional cost to the retailer. The value derived from this will once again vary from one retailer to the next as the cumulative effect of customer payment patterns filters through. There is no effective means by which the ESC could calculate a figure which is representative across the industry. However we believe that the ESC should be given the right to request information from a retailer, as to how their conditional discount was determined, should the ESC believe the respective discount offered was excessive.

We are also concerned that the concepts of conditional discounts and product attributes must be differentiated.

As previously outlined, Momentum does not offer conditional discounts. We do however offer products with different attributes which may be priced differently. While it seems like a semantic distinction to suggest that these are not in effect conditional discounts, the customer only receives the lower price if they adopt all the attributes of the product and we believe that there is sound justification for treating such products differently.

Under the product attribute approach, a customer may receive a lower price on the basis that they accept ebilling, online self-service and direct debit. There is no pro-rata benefit if the customer chooses not to agree with all the requirements. Once such a contract commences, the customer will receive the benefit by default unless they take active steps to opt out of one of the conditions, and if this happens, a new contract will be required because the customer would no longer be eligible for the product.

If product attributes are regulated in the same manner as conditional discounts it could limit the overall benefit that the customer can achieve. This is because the total benefit to the retailer of the customer accepting these attributes is likely to be more than the sum of its parts. We further consider that these types of products should be excluded from consideration as the customer cannot be penalised through inadvertently missing out on a benefit because of inaction but instead must actively opt out. If this is the case, the customer will opt in to a product with a different set of attributes at a different price.

Next steps

Given its role in regulating the reforms which are to commence on 1 July 2019, we are concerned that the ESC is not waiting to see how the reforms will impact the industry and

Victorian customers before proceeding with the next tranche of changes. While making contracts fairer is a noble goal, there is no articulation of what will be deemed to be success. Consequently there is no way of knowing whether these desired outcomes may be delivered through the previous set of sweeping changes.

We believe that in order to meet the Government's policy objectives, it is encumbent on the ESC to make available what indicators will be used to measure if the existing framework is delivering or not. Failure to do so will at best lead to additional cost being incurred by retailers and ultimately consumers. The Thwaites report decrys "the cost of competition" that retailers are paying. Failure to properly consider what the desired state of the market is will simply see these costs being replaced with the cost of regulation while the attendant benefits of competition, namely choice, innovation, improved customer service and employment opportunities are lost.

We urge the ESC to continue to examine the issues carefully by reserving judgement on the implementation of any further reforms until the impacts of the recent changes have played out. We recommend that if in 12- 24 months there is no measurable increase in customer outcomes, the ESC should proceed with further reforms to commence on 1 July 2021.

If you require any further information with regard to these issues, please contact me on
[redacted]

Yours sincerely

Joe Kremzer
Head of Regulatory Affairs
Momentum Energy