Level 33, Rialto South Tower
525 Collins Street
Melbourne, Victoria 3000
Fax +61 3 8807 1199
simplyenergy.com.au

2 July 2019

Mr Aaron Yuen
Senior Regulatory Manager
Essential Services Commission
Level 37, 2 Lonsdale Street
MELBOURNE VIC 3000

Via email: RetailEnergyReview@esc.vic.gov.au

Dear Mr Yuen,

Re: Ensuring Energy Contracts are Clear and Fair Issues Paper

Simply Energy welcomes the opportunity to make a submission to the Essential Services Commission (**ESC**) on the Ensuring Energy Contracts are Clear and Fair Issues Paper (**Issues Paper**).

Simply Energy is a leading second-tier energy retailer with over 700,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. As a leading second-tier retailer focused on continual growth and development, Simply Energy is committed to supporting the long-term interests of its customers and the wider energy sector.

Simply Energy continues to engage with Government to discuss and support potential reforms that may assist customers. In this regard, Simply Energy is monitoring the implementation of the Victorian Default Offer (**VDO**) and will report back on its experiences in time.

While this implementation and monitoring takes places, Simply Energy welcomes further discussion with the ESC to develop practical solutions that not only protect consumer interests, but also allow retail competition and innovation to prosper into the future. As such, Simply Energy sees now as the appropriate time to critically evaluate all recommendations under 3A and 4 of the Independent Review of the Electricity and Gas Retail Markets in Victoria (**Thwaites' Review**) to see which are suited for implementation and which would benefit from delay in light of the market's evolution.

Simply Energy acknowledges that the market has evolved in response to the Government's legitimate concerns around discounting and confusing offers. In recent days the Australian Energy Market Commission confirmed this view by noting that retailers are moving towards simpler and more stable priced deals.

Simply Energy has always been, and will continue to be, committed to continuously striving to best meets its customer's needs. This is why Simply Energy welcomes appropriate reforms that protect consumers and supports competition, and why Simply Energy is also pleased to note that its customer base has continued to increase in recent times.

FIXING CONTRACT PRICES

<u>Recommendation 4A: Fixed prices for a minimum of 12 months</u>

Simply Energy supports customers having a fixed price option for 12 months, but does not support an option that restricts customer choice and may lead to overall higher prices

It would be preferable to avoid having restrictions placed on price changes for market contracts. Fixing prices for 12 months from the date that a customer signs up is likely to increase retailer administrative costs, and restrict a retailer's ability to pass on underlying changes to wholesale and network costs. This is likely, in turn, to increase a retailer's cost to serve and risk exposure. Where retailers are unable to manage this risk, then it will ultimately lead to higher retail prices overall.

It should also be kept in mind that the clear advice entitlement means that retailers are required to inform customers about impending price changes as well as any clauses in their contracts that allow for price variations. Further, the requirement for retailers to provide deemed best offer information means that customers will be prompted to change offers should there be any considerable change in their underlying rates.

Alternative option

As an alternative to fixing prices from the date that a customer signs up to a contract, the ESC could consider allowing retailers to vary their existing prices at the same time as the ESC administers its annual changes to the underlying VDO rates. It is common practice for retailers to adopt wholesale hedging strategies that result in market rates only being varied every 12 months, except for in exceptional circumstances.

In saying that, the notion of an exceptional circumstance should not be restricted to unforeseen changes in network charges. An unscheduled shut down of a large generation plant, a change in Australian Energy Market Operator forecasts, or activation of the Retailer Reliability Obligation may all have a bearing on a retailer's operations. Depending on how retailers purchase, contract and hedge, such events could leave retailers financially exposed. In view of this, retailers would find it very challenging to offer 12-month fixed prices. The caveat being where a portion of customers select fixed pricing, as this is likely to be easier to manage than a mandatory requirement for all offers to be fixed.

Options based on the original recommendations

Should the ESC decide to proceed with fixing prices from the date that a customer takes up an offer, the most desirable option would be to give customers the option of whether they want to enter into a 12-month fixed prices contract. However, in order to reduce the administrative costs associated with managing contracts and price variations, fixed pricing requirements should be limited to single product offering. This would meet the policy intent of Recommendation 4A, while giving retailers the ability to manage their risk exposure.

Simply Energy believes reform to win-backs goes hand in hand with the existing reforms

The issue of win-backs, as mentioned in the ESC's Issues Paper, is a separate matter that needs to be addressed through other forms of regulatory intervention. However, it is important to note that for recent regulatory reforms to have their desired effect, consideration will need to be given to how increased offer transparency can be promoted so that retailers are competing on a level playing field.

From Simply Energy's perspective, this can only be achieved in a market where customers are equipped with the ability to access all available offers and make informed decisions about which energy offer best aligns with their needs.

Recommendation 4B: Disclosure of price changes

Management of price changes needs to consider specific circumstances

The response on this recommendation will vary depending on the requirements imposed under Recommendation 4A.

However, if the ESC accepts that market offers may be varied in line with the VDO or that retailers need to only offer a single fixed-price offer, then it would make sense for retailers to advise customers of when a price change if likely to take effect. This would be consistent with the clear advice entitlement.

Retailers should not, however, be expected to quantify or speculate on cost impacts of a price change. The only requirement should be to let customers know that the rates that they signed up on may be varied at a point in time.

At any rate, the concern that this recommendation is attempting to manage is covered by the requirement to include best offer messages on bills, and on price/benefit change notices. These notices mean that even if a retailer increases its underlying market rates, the customer will still have visibility about whether he or she is on the retailer's best generally available offer following a price change.

Recommendation 4C: Rolling-over customer benefits

Simply Energy supports rolling-over benefits when it is not inconsistent with customer choice

In terms of rolling over customer benefits, a distinction needs to be made between end of a fixed term contract and a customer's benefit period expiring. If a customer chooses not to renew a fixed term contract, then the customer should be placed on the VDO, as this offer has been developed as a fair price for electricity consumers. However, if a customer decides not to respond to a benefit change notification before a contract's expiry, then the customer should be rolled onto the cheapest equivalent offer. Even if this is not the best offer available, the customer will be advised of any potentially better energy plan as part of the best offer notification requirements.

Overall, this recommendation should be implemented in a manner consistent with explicit informed consent. It needs to be ensured that for the duration of a contractual period that a customer will receive the benefits, or equivalent benefits, that were agreed when the customer entered into the contract. If a customer opts for a contract with a retailer for a fixed period of time, then both industry and policymakers need to respect the customer's wishes by ceasing to provide market offer benefits until such time as the customer signs-up on a new energy plan.

DISCOUNTING

Recommendation 3A: Marketing in dollar terms

Simply Energy supports a gas reference price based existing Victorian gas offers

Simply Energy agrees with the ESC's view that the VDO reference price fulfils the intent of recommendation 3A for electricity. However, like the Default Market Offer, Simply Energy considers that if a reference price is used it should apply to all offers to provide a simple point of comparison across the retail energy market.

With this in mind, Simply Energy proposes that gas offers also be marketed based on a common reference point. However, unlike the VDO, the price point for gas should not be a regulated price, rather it should be set as an annually-adjusted reference point based on a top down assessment of Victorian gas offers.

Given the bi-lateral nature of wholesale gas contracting, trying to set a fair and reasonable price for retail gas supply is not feasible. In view of this, retail gas prices should continue to be set by the open market and discounts referenced on an average market-based price point. Providing this type of pricing transparency combined with the requirement on retailers to disclose best offer information should, in turn, incentivise market self-correction as consumers will be drawn to lower priced offers.

In respect of dual-fuel offers, there should be a requirement for retailers to have separate reference prices for gas and electricity offers. This will prevent retailers using dual-fuel offers discretely to cross-subsidise energy costs. Consumers ultimately need transparency about the price they are paying for gas and electricity, regardless of their underlying contract, if recent reforms are going to be effective.

Customers should also be educated about understanding unit rates and daily supply charges. To assist with facilitating customer awareness and ease of comprehension, retailers should be required to refer to unit rates with and without relevant discounts applied.

The ESC should also consider developing a requirement for retailers to provide individualised tools online and via telephone to allow energy consumers to easily calculate estimate annual energy costs by offer based on assumed usage level. If a retailer does not have the capabilities to provide such a service, then it should be required to direct customers to Victorian Energy Compare which can perform this service. Offering such service would also assist in overcoming the shortcomings with the generalised nature of a generic reference price.

Recommendation 4D: Evergreen discounts

As the nature of discounts and customer interests changes so should offers

Simply Energy considers that the benefits offered to a customer should only last for the duration of their contract, with retailers maintaining the ability to roll customers onto an equivalent offer, if a customer's benefit period has expired.

Retailers, however, need to have the ability to change their offerings and should not be required to provide an offer for an indefinite period. Changes in terms of complementary product partnerships, may mean that it is not feasible to continually roll customers over on the same benefits. For example, a movie theatre may not renew its agreement with a retailer or it could even stop operating, meaning that the benefit that the customer initially signed up for can no longer be offered.

Like the points made under recommendations 4C, customers will to be informed of any changes to their benefits or their contract ending as part of current regulatory requirements. Further, customers will also be notified whether they are on the best offer regardless of whether or not they choose to renew their contract. This, in turn, means that customers will be prompted to engage in the market. It should be kept in mind that, ensuring customers continually receive the same benefit, as proposed, is likely to lead to consumer complacency and disengagement, which will dilute the benefits derived from including the deemed best offer message on bills.

In order to promote continual innovation, retailers need to be incentivised to look at how they can modify their energy offers to retain their existing offers, while also attracting new customers. For this reason, providing benefits in perpetuity is not only unworkable, but it could also have adverse implications for consumer choice in the long-term.

Recommendation 4E: Capped discounts

The VDO negates the need to cap discounts

The VDO will impose an effective price ceiling, given that it does not allow for headroom. Further, setting the VDO as reference price for electricity offers that include a discount means that retailers will be restricted from offering substantial discounts as an inducement. Indeed, the VDO makes providing substantial discounts on electricity in Victoria unsustainable.

In view of this, having the ESC set a further restriction on conditional discounts would merely be an unnecessary step, as it would subject Victorian electricity retailers to two separate sets of price regulation.

In respect of gas, given the varying financing and operating costs incurred by gas retailers, individual businesses should be able to set conditional discounts to reflect their individual business circumstances. In such an environment regulating caps would not be feasible as there would need to be retailer by retailer investigations.

That aside, the ESC will need to observe market behaviour following 1 July 2019, as marketing restrictions on electricity offers may also lead to fewer conditional discounts being used to incentivise customers taking up gas plans. That aside, Simply Energy considers that loyalty credits should be expressly excluded from this proposed reform, as retailers need to maintain the ability to reward long-term customers. Allowing retailers to provide loyalty incentives may also reduce cost-inefficiencies that can arise due to high levels of customer switching.

CLOSING

As an overarching principle, it is preferable for the ESC to take a holistic view of how the latest set of recommendations interact with recent regulatory reforms, in particular, best offer, clear advice and the VDO requirements. In many cases, these recent regulatory reforms have addressed the policy concerns underpinning recommendations 3A and 4 of the Thwaites' Review.

Simply Energy welcomes further discussion about the proposed reforms. To arrange a discussion please contact Anthony O'Connell, Senior Regulatory and Compliance Officer, on, telephone, [redacted].

Yours sincerely

James Barton
General Manager, Regulation
Simply Energy