

8 February 2019

Ms Sarah McDowell
Director, Energy
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Via email: compliance.reporting@esc.vic.gov.au

Dear Ms McDowell,

Re: Revised Draft Energy Compliance and Enforcement Policy

Simply Energy welcomes the opportunity to provide feedback on the Essential Services Commission's (ESC) Revised Draft Energy Compliance and Enforcement Policy.

Simply Energy is a leading second-tier energy retailer with over 670,000 customer accounts across New South Wales, Queensland, South Australia, Victoria and Western Australia. As one of Australia's leading energy retailers, Simply Energy is committed to continuously improving its service delivery and compliance standards.

The following submission evaluates the ESC's revised Compliance and Enforcement Policy with a focus on the application of the policy in a manner that proactively promotes outcomes that align with the long-term interests of Victorian energy consumers.

Views on the revised policy

Scope and application

Simply Energy supports the ESC's principles-based approach to energy compliance and enforcement. Simply Energy considers that this approach will provide the ESC greater flexibility in effectively responding to identified compliance breaches.

In saying that, for the policy to have any practical impact, Simply Energy expects that the ESC will conduct all future compliance and enforcement actions in line with the policy's principles. Simply Energy is strongly of the view that it is only through listening, learning and cooperating with each other that we, as key stakeholders in the Victorian energy industry, can facilitate outcomes that align with the long-term interests of energy consumers.

Fostering a compliance culture

It should also be kept in mind that active monitoring of compliance is not just about reprimanding contraventions, but it is also about promoting awareness and educating industry participants about their obligations. Indeed, in most cases it is not the sanction imposed, but the lessons learnt that make the real difference to industry performance and service standards, with resulting positive impacts for consumers.

In view of this, Simply Energy considers that in promoting and securing compliance, the ESC should look to replicate processes similar to those under the Culture of Compliance section of the Australian Energy Regulator’s Compliance and Enforcement Statement of Approach. While the ESC’s draft policy does address similar matters, Simply Energy considers that the tone and wording in the ESC’s draft policy should be refined to reflect a more proactive and collaborative approach, similar to that of the Australian Energy Regulator.

There ultimately needs to be a greater focus on preventative measures, which can only be achieved if the ESC is willing to openly engage with market participants and the retail sector more broadly. While the ESC’s guidance should not and cannot substitute for independent legal advice, Simply Energy considers that the ESC can play a stronger role in promoting industry awareness of priorities and risks through more proactive engagement with industry stakeholders.

Upholding procedural fairness

In addition to the matters raised above, Simply Energy considers that the procedural fairness section of the draft Energy Compliance and Enforcement Policy requires further detail around the steps the ESC will undertake to ensure procedural fairness. For instance, a fundamental aspect of procedural fairness is the right to be heard.

In achieving such an end, it is imperative that the ESC commits to giving energy retailers the opportunity to discuss any alleged regulatory contravention directly with its staff. This means more than just giving retailers the opportunity to provide a written response, but actually committing to sitting down and listening to the retailer’s perspective on what occurred and the actions taken by the retailer in response, in particular the actions taken to address any customer impacts. A lot more can be gained and understood through direct discussions, than through written responses that may not convey the full picture no matter how carefully worded.

Closing remarks

In closing, Simply Energy would like to emphasise that retailers can only actively monitor compliance with regulatory requirements if they are enforced in a proportionate and consistent manner.

Simply Energy considers that ESC’s revised Compliance and Enforcement Policy can play a pivotal role in achieving this end. However, it is imperative that the policy’s core principles are reflected in practice.

To arrange a discussion about this submission or if you have any questions please contact [REDACTED]

Yours sincerely



James Barton
General Manager, Regulation
Simply Energy