

1 February 2013

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

Dear Victoria

### **HARMONISATION OF ENERGY RETAIL CODES AND GUIDELINES WITH THE NATIONAL ENERGY CUSTOMER FRAMEWORK**

Simply Energy appreciates the opportunity to respond to the Essential Services Commission of Victoria's (ESCV) *Harmonisation of Energy Retail Codes and Guidelines with the National Energy Customer Framework (NECF) 2012*. Simply Energy supports the ESCV in the approach taken in this review and thanks the ESCV for not extending the number of derogations away from the NECF Rules. While Simply Energy would prefer that Victoria was moving formally to the NECF, we appreciate the ESCV's efforts in at least getting us part of the way there.

Simply Energy generally supports what the ESCV has proposed but has the following specific comments:

- Transition of current contracts;
- Definition of designated retailer and its potential consequences;
- Separate clauses that require further clarification; and
- Potential policy approval clash – Hardship Policy.

#### **Transition of current contracts**

Simply Energy has not been able to identify how the ESCV has made provision for the rollover of our existing contracts to the new arrangements. In each jurisdiction, enacted and proposed legislation implementing the NECF have provided for the transitioning of exiting retail contracts to the NECF framework. For example, Division 5 of the Victorian National Energy Retail Law Bill specified that the old standard and market contracts were to be taken as being compliant with the NECF. In any dispute over the old contract, it was to be taken that the terms and conditions of NECF contract, were to apply.

This is the policy that was adopted by all jurisdictions through the Standing Council on Energy and Resources (SCER) Joint Implementation Group.

If such recognition is not provided, Simply Energy's customers would be effectively uncontracted on 1 July 2013. Simply Energy would then need to make contact with each customer and place them onto a new contract. Such an arrangement would cause significant confusion amongst the customers and cause significant inefficiencies for Simply Energy.

We recommend that the ESCV make provision for the rollover of our existing contracts into the new Code.

## Definition of designated retailer

We note that the ESCV has changed the definition of designated retailer. Designated retailer is now defined by referencing a Victoria Order in Council.

It is our understanding that the relevant Order in Council made under section 35 of the Electricity Industry Act and section 42 of the Gas Industry Act provides as follows:

(a) *A licensed retailer is a relevant licensee if the licensed retailer is:*

- (i) in the case of an existing supply point and subject to paragraph (b), responsible for the electricity supplied at that supply point for the purposes of settlement of the wholesale electricity market; or*
- (ii) otherwise, the local retailer for electricity supplied from that supply point.*

The Order in Council made under section 42 of the GI Act provides for existing supply points or ancillary supply points.

'Local retailer' is defined in the Order in Council to mean the following energy companies:

- AGL Sales Pty Limited;
- Origin Energy Electricity Limited; and
- TRU Energy Pty Ltd (now Energy Australia).

Whilst Simply Energy understands and accepts the above change has been made without any significant shift in application of the definition, we encourage the ESCV to treat this change with care and ensure it is legally sound. As the ESCV is aware, there are various obligations that rely on the definition of a designated retailer.

## Separate clauses that require further clarification

**Clause 18** – Simply Energy does not accept the deletion of sub clause 4. Sub clause 3 specifies that the customer must provide acceptable identification, contact details and ensure safe access to the meter. The removal of sub clause 4 means that the customer cannot be disconnected under the contract for not providing the requirements under sub clause 3.

To remove the requirement of the customer to provide identification means that Simply Energy must continue to supply a property that may not even have an appropriately identified party to appropriately bill.

The EWOV (Ombudsman) applies wrongful disconnection findings because Simply Energy has disconnected a customer who will not identify themselves even though there is an obligation under the existing Code for customers to provide a 'reasonable' level of identification. Without identification, Simply Energy cannot effectively bill the person and often large debts are left at properties from previous occupants. Where no identification has been provided, we cannot verify that the occupant has changed and we may unintentionally pursue debt recovery activity on an innocent party.

The deletion of subclause 4 will only manifest this situation, driving up debt levels at these properties as no contact could be made. Simply Energy believes this is an unacceptable arrangement and request that sub-clause 4 be reinstated to ensure that under contract, we can bill legitimate customers.

**Clause 25A(3)(4)(5)** – The sub clauses refer to language stipulating that the “DPI will” and that “SV will”. Unless there is a Memorandum of Understanding between the ESCV and these organisations that reflect these obligations, the ESCV does not have the powers to enforce these clauses upon the parties to which they relate. With this in mind, Simply Energy believes these clauses are redundant.

**Clause 28(1)** – Simply Energy cannot accept the change requiring us to supply a customer billing and / or metering data to a customer within 10 business days. The request for billing and metering data is not solely dependent on our ability to gather the information but also relies heavily on the distributor to provide us this information in a timely manner. Without any obligations or requirements on a distributor to provide us the data within a certain period of time this request can take much longer than 10 business days.

Simply Energy proposes that the ESCV removes the requirement of 10 business days, or include a requirement upon distributors that they must provide retailers with the necessary data within 5 business days of the customers’ initial request.

**Clause 29(5)(c)** – Simply Energy assumes that ‘not’ should be inserted into this clause and read ‘*if the meter or metering data proves to be faulty or incorrect, the customer must **not** pay the cost*’. We would not expect the customer to pay for a faulty meter or faulty metering data.

**Clause 49A(6A)** – Simply Energy believes this should read ‘*Any amount of an early termination charge*’ and not ‘*change*’.

**Clause 72(2A)** – For the purposes of Payment Plans, Simply Energy believes that this clause needs to change to reference ‘*small business customers*’ and not ‘*business customers*’. ‘Small business customers’ are those captured under the consumption thresholds to whom the Code applies. A ‘*business customer*’ is defined as anyone who is not a residential customer. ‘Business customer’ is not an acceptable definition to use in this clause because its broad nature means that Commercial and Industrial (C&I) business customers would also be eligible for a Payment Plan. Payment arrangements for C&I customers are addressed through the contract with that C&I customer.

**Clause 72A(b)(ii)** – This clause should start as ‘*the Electricity Industry Act*’ and not ‘*this Electricity Industry Act*’.

**Clause 108** – The definition of **protected period** needs to be changed from ‘*business customer*’ to ‘*small business customer*’ for the same reasons as the changes proposed under clause 72(2A) above in relation to definition and application to this Code.

**Clause 112(1)(b)** – It is unexplained why the ESCV has changed the time for issuing a disconnection warning notice to a customer from 5 business days to 10 business days. To extend the time of disconnection in this manner only allows any debt on the account to continue to grow and does not impel the customer to contact Simply Energy as early as they should. Simply Energy proposes that the ESCV keep the 5 business days in line with the NECF as it applies in South Australia.

### **Potential policy approval clash – Hardship Policy**

Simply Energy would also like to propose that the approval process as required under the Australian Energy Regulator (AER) 'Guidance on AER approval of customer hardship policies' be adopted by the ESCV and not to impose new clauses 71A and 71B of the Code.

This guidance is the tool that drives Simply Energy's hardship policy requirements under the National Energy Retail Law (NERL). This guidance has strong rigor requiring Simply Energy to regularly review and amend their hardship policy and ensure it receives confirmation of compliance from the AER.

The requirements of a hardship policy under the AER guidance compares favourably for the customer when compared to the ESCV requirements of a hardship policy. That is, the customer is no worse off under the AER hardship policy requirements.

Unless the ESCV can advise of any material differences between the requirements of the AER guidance to those within the Code, we propose that the ESCV adopt the AER Guidance within this Code and advise that under Clause 71, adherence to the AER Guidance is accepted compliance for the Code. Accepting the AER Guidance will also assist Simply Energy in not having to carry two separate Hardship Policies on their website and creating less confusion for our customers until Victoria lawfully moves to NECF.

### **Chapter 4: Additional regulatory instruments**

Simply Energy has not undertaken an extensive review of how the proposed changes to the Retail Code will affect the ESCV's other regulatory instruments. However, we do not think it is necessary to change any of these other instruments as they deal with matters entirely separate from the direct retailer-customer relationship. Their existing form sits comfortably against the revised version of the Retail Code and we cannot see any conflict or confusion that will arise from leaving these instruments as they are.

### **Conclusion**

We look forward to working with the ESCV on the above issues raised and if you have any questions please do not hesitate to contact Alan Love on (03) 8807 5113.

Yours sincerely

Dianne Shields  
Senior Regulatory Manager