

25 May 2016

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

Lodged via energy.submissions@esc.vic.gov.au

Dear Sir / Madam,

Draft Energy Compliance and Enforcement Policy

Simply Energy welcomes the opportunity to respond to the Essential Services Commission Victoria's (ESC) Draft Energy Compliance and Enforcement Policy (the Policy). Simply Energy agrees with the establishment of the Policy to provide energy retailers with clear principles and guidance on the ESC's approach to its regulatory activities.

Simply Energy supports the inclusion of Figure 1 of the Policy, which provides industry with a clear view on the structure and workflows the ESC intends to undertake with the industry. Simply Energy also wishes to provide the following feedback and requests consideration of the items below in relation to the Interim Policy.

Item 2.4 Role of the Ombudsman

This item should be removed completely from the Policy as the Policy's intent is compliance and enforcement. As acknowledged in the Policy, the Ombudsman (EWOV) is not a body that can perform such duties. EWOV is a complaints mechanism body holding no powers to enforce any regulation or obligations upon a retailer. There is also no guarantee that EWOV remains the dispute resolution service for the energy industry.

The Policy advises that the ESC sees EWOV as "the primary mechanism for external resolution of energy disputes between a customer and a regulated energy business". This is not reflective of the role the ESC does perform with other stakeholders in the industry such as retailers and distributors. All stakeholders are primary mechanisms for the ESC regarding external resolution.

The ESC also states that EWOV refers wrongful disconnections and systemic issues to the ESC for consideration. These actions however are no different to an energy retailer who also advises of potential wrongful disconnections and also systemic issues as they arise through established compliance reporting requirements.

The Policy also states the ESC "work closely with EWOV". Again the ESC should work closely with all relevant stakeholders in the energy industry. To only stipulate the ESC works closely with EWOV infers a position of advocacy rather than a position of independence as a regulatory body.

For clarity and objectivity, the Policy needs to stipulate all stakeholders the ESC work with or remove the section completely.

Item 3.1 Our Guiding principles

For the principle labelled (d), Simply Energy believes that “accountability” should be changed to “transparency”, which better expresses the principle’s focus on the ESC’s disclosure requirements. “

Item 3.2 Promoting and Securing Compliance

Simply Energy supports the inclusion of Figure 2, which provides a concise view of the Compliance – Enforcement pathway. However, it would aid clarity if this figure makes it clear that an “Administrative Undertaking” is a voluntary arrangement, which does not require a retailer to perform on a compulsory basis.

Simply Energy also encourages the ESC to clearly articulate the difference between incurring a breach through an interpretation of an obligation and/or Law that is considered to be incorrect, and a deliberate act of non-compliance such as non-reporting or intent to deceive. This difference should be set out as part of the Compliance Actions to make clear how the ESC distinguishes between the two types of act when deciding on further actions pertaining to a breach or issue.

3.2.1 How we identify potential breaches

Simply Energy requests that point (d) be altered to state “information from other external stakeholders...public and the media)”. In the context of this section outlining the identification of potential breaches, this would mean that there would be no “reports of breaches from other stakeholders”. This is appropriate, because reporting of breaches can only be formally be carried out by the retailer itself.

3.2.3 Compliance responses to established breaches

The ESC should change the section heading from “established” to “identified” for consistency with the Policy.

Simply Energy also refers to part (d) of this section; “using our powers to clarify the standard of compliance required”. The ESC needs to expand the Policy further to advise how this part (d) is to be applied in practice.

3.2.4 Investigation and consideration of further action

Simply Energy supports the removal of point (b); “the impact of consumer confidence in Victorian energy markets”.

The question of whether a retailer’s particular breach has an impact on broader consumer confidence in Victorian energy markets can only be answered reliably by a specific methodology that assesses such an impact. If point (b) is retained then the ESC should consult on the methodology that it will apply when assessing the potential impact on consumer confidence.

Simply Energy considers that section (c) is amended to read as follows: “how the breach was identified and reported in a timely manner”. This aids the Policy in recognising that potential breaches can be identified by different stakeholders including customers, the ESC and EWOV.

3.2.6 Due process and procedural fairness

The ESC needs to define more effectively and explain the context of the term “model litigant principles” in relation to energy regulation.

In the fourth sentence of this section The ESC should omit the word “process” and insert “application” as the action being taken here is to apply an enforcement power. The ESC should also expand on how this sentence is to be applied under the Policy.

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

Yours sincerely

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