

2 April 2008

Energy Regulatory Review
Essential Services Commission
2nd Floor, 35 Spring St
Melbourne VIC 3000

Review of Energy Regulatory Instruments

Simply Energy welcomes the opportunity to contribute to the Commission's review of its energy retail regulatory instruments.

In the attached table, Simply Energy has identified a number of provisions of the Commission's codes and guidelines which it considers warrant review.

Simply Energy trusts that the review of regulatory instruments will follow the Commission's Charter of Consultation and Regulatory Practice, and therefore include the release of an issues paper and draft report. Simply Energy would appreciate the opportunity to provide comment at each stage of the review.

In carrying out its review, Simply Energy also urges the Commission to be mindful of the work being undertaken by the Retail Policy Working Group in developing a national regulatory framework.

Please contact me if you would like to discuss any aspect of this submission with me further.

Yours sincerely



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Legal & Regulatory Manager

ESC Review of Energy Regulatory Instruments

Instrument	Provision		Comment
Energy Retail Code	2	Retailer's obligation to connect	This provision appears to impose an obligation on all retailers, including second-tier retailers, to connect a customer on request. If so, this is not consistent with the Electricity and Gas Industry Acts and the relevant Orders In Council, which only place an obligation to supply on incumbent retailers. It is suggested that this provision be limited in its application to incumbent retailers.
	4.3	Bundled charges	It is not clear what paragraph 4.3 obliges a retailer to do. On one reading, it would appear to require the retailer to provide, on request, the amount of the network, retail and other components of the bundled charge. Such information is likely to be confidential to a retailer, and not of particular interest to a customer. It is suggested that this provision be removed.
	5.3	Bill Smoothing	Paragraph 5.3 of the ERC requires a true-up after the first 6 months of a plan "...taking into account...relevant seasonal factors". However, in most cases, 6 months is inadequate to be able to calculate seasonal variations and a minimum 12-month period is required for this. It is suggested that re-estimations on bill smoothing plans occur every 12 months.
	6.2	Undercharging	Paragraph 6.2(a) of the ERC allows the retailer to recover the amount undercharged in the 9 months prior to the date on which the retailer notifies the customer that undercharging has occurred. It is suggested that this time period be increased to 12 months, so that it is consistent with regulation in South Australia.
	6.3	Overcharging	Paragraph 6.3 of the ERC requires a retailer to inform a customer within 10 business days of becoming aware of the overcharging. In practice, 10 business days is not reasonably achievable, particularly when a large number of customers is involved. It is suggested that

ESC Review of Energy Regulatory Instruments

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		this time period be stated as 'as soon as practicable'.
	7.2 Payment methods	Paragraph 7.2(b) of the ERC states that a direct debit arrangement between a retailer and a customer must be in writing. It was proposed that the ERC be amended to allow direct debit arrangements to be agreed verbally over the phone. It is suggested the direct debit arrangements be allowed to be made verbally, provided the customer gives explicit informed consent.
	12.2 Requirements for an Instalment Plan	Paragraph 12.2(d) of the ERC requires that a retailer give advice on energy efficiency and the availability of an independent financial counsellor when offering a customer an instalment plan. In Simply Energy's experience, this leads to a negative reaction from customers as the majority of customers wishing to have an instalment plan are doing so out of convenience rather than having capacity to pay issues. It is suggested that it should only be a requirement to provide energy efficiency advice and the availability of an independent financial advisor to hardship customers. Further, paragraph 12.2(c) requires the retailer to undertake to monitor the customer's consumption while the customer is on an instalment plan. Again, this is appropriate for hardship customers but not those customers that take on an instalment plan out of convenience. It is suggested that this provision be limited to hardship customers.
	15.2(b) Time for reconnection	Paragraph 15.2(b) of the ERC provides that the obligation to reconnect a customer in paragraph 15.2(a) is absolute – it is not sufficient for a retailer to use best endeavours to procure the distributor to reconnect. This is unreasonable in circumstances where reconnection is not entirely in the control of the retailer. It is suggested that this provision be removed.
	21.1 Gazetted tariffs and gazetted terms and	This provision will need to be reviewed in light of any decision

ESC Review of Energy Regulatory Instruments

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	conditions	made by the Victorian Government in respect of regulated pricing and the obligation to offer to supply.
23	Cooling-off	There is significant overlap between the provisions of the Fair Trading Act and the ERC with respect to cooling-off. The Fair Trading Act is very thorough in respect of cooling-off, and the overlap of regulation makes it difficult to ascertain what a retailer's rights and obligations are. It is suggested that the energy-specific cooling-off regulations in the ERC be removed in favour of the Fair Trading Act provisions.
24.3	Expiry of fixed term contract	This provision is substantially duplicated in the retail licences.
24.4	Termination of deemed contract	Paragraph 24.4 of the ERC states that a deemed contract comes to an end by the end of the period covered by the second bill (i.e. after about 6 months). However, the ERC (and the Electricity and Gas Industry Acts) is silent as to what happens after this when no market contract is entered into. One option for consideration is that, when a deemed contract exists, the retailer may give reasonable notice to customer that on expiry of the deemed contract no supply contact will exist and the premises may be disconnected if the customer has not made alternative supply arrangements.
28.2	Advice on customer's rights	This provision requires the retailer to inform the customer of its right to refer the complaint to EWOV in writing. While it is appropriate to notify a customer of the right to refer the complaint to EWOV, it is an unnecessary burden on retailers to require them to do so in writing.
30 13	Illegal Consumption Grounds for disconnection	There is nothing in the ERC that allows a retailer to disconnect a customer that has illegally consumed electricity. Further, if convicted of the offence, the retailer only has relief from the requirements of paragraph 11.2. On the other hand, paragraph

ESC Review of Energy Regulatory Instruments

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		<p>15.1(c) of the ERC contemplates a situation in which the retailer has disconnected a customer because the customer has obtained supply otherwise than in accordance with applicable laws and codes. It is suggested that the ERC provide that once a file is sent to police regarding illegal consumption, the customer loses its protection under the disconnection provisions.</p>
<p>Operating Procedure – Compensation for Wrongful Disconnection</p>	<p>2(i) Wrongful Disconnection Circumstances</p>	<p>Paragraph 2(i) of Appendix A of the Operating Procedure Compensation for Wrongful Disconnection provides that it is wrongful disconnection if, “for a customer with insufficient income, the retailer did not use “best endeavours” to contact the customer in person or by telephone (ERC 13.2)”. The Code Interpretative Guidance states the circumstances under which registered letters and / or field visits are required.</p> <p>In Simply Energy’s experience over the time in which these operating procedures have been in place, there is negligible benefit from using either registered letters or field visits. If a customer does not respond to repeated phone calls and letters sent by normal mail then there is little chance of getting a response from any other method. Furthermore, the operational expense of these requirements is merely passed on to all customers with very little benefit to any customer. It is suggested that “best endeavours” be described as “a combination of telephone calls and letters to a customer not more than a month prior to disconnection”.</p>