

16 June 2017

Dr Ron Ben-David  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

By email: [paymentdifficulties@esc.vic.gov.au](mailto:paymentdifficulties@esc.vic.gov.au)

Dear Dr. Ben-David,

### **Revised Draft Payment Difficulties Framework**

Simply Energy welcomes the opportunity to respond to the Essential Services Commission (the Commission) Revised Draft Payment Difficulties Framework (the Framework).

Simply Energy operates in Victoria, South Australia, New South Wales, Queensland and the Australian Capital Territory retailing electricity and gas to approximately 600,000 customer accounts.

Simply Energy understands that the Commission has revised its initial Draft Decision in response to stakeholder concern about possible unintended consequences resulting from the initial proposal. The purpose of the Framework is to ensure that consumers receive timely, meaningful assistance to lower their energy costs and give them agency to manage their payments and arrears. Unfortunately, Simply Energy considers that the Framework as drafted will tend instead to increase arrears and consumers who would have otherwise found their energy bills manageable will end up in greater difficulty.

The Framework also aims to ensure that retailers use disconnection as a last resort. Simply Energy considers that the way the Framework is drafted makes it operationally difficult to develop evidence that demonstrates that disconnection is used as a last resort in any particular case. Additionally, in some areas the drafting unintentionally creates multiple, competing minimum standards for the same issue. As outlined under the subheading *Concurrent and conflicting minimums*, these will cause confusion for consumers, retailers, the Energy and Water Ombudsman Victoria (EWOV), and other interested parties.

### **Consultation**

Simply Energy shares the concerns expressed by other stakeholders and acknowledged by the Commission with respect to the effectiveness of the consultation process so far. Rather than restate these concerns in this submission, Simply Energy considers that it is more useful to focus on current opportunities to improve the process.

In particular, we consider that it is critical for success of the Framework that the Commission, retailers, consumers, EWOV, and other stakeholders have a shared understanding of the meaning and application of the terms of the Framework. Unfortunately, when the Framework draft decision was released, the Commission was unable to provide clear answers to direct questions about how the Commission would interpret compliance with certain clauses. This lack of clarity

has persisted in the subsequent workshops, and if unaddressed will lead to divergent system and process implementations by retailers and the subsequent uncertainty and other adverse customer outcomes

## Revised Draft Payment Difficulties Framework – Key concerns

### *Lack of consistency*

The lack of shared understanding of the Framework requirements, as outlined above, risks undermining the Commission's goal to provide consumers with 'meaningful assistance on an equitable basis'. The current Energy Retail Code (version 11) (ERC) contains instruction on the timeframes associated with certain steps in the collection process, and guidance on what the Commission considers to be indicators that a customer is or may be experiencing payment difficulty. The current ERC creates a set of objective requirements that can be translated to systems and procedures. This means that the process can be explained logically to a customer so they can understand their options, and the potential outcomes of any decision they make. This clarity is missing from the current drafting of the Framework.

For example, under the Framework as drafted there are a large number of variables over which the retailer has no control that can alter the path a customer takes. This complexity means that it will not be possible to explain the options available to a customer *and* the potential outcomes of those options in a way that customers, including vulnerable consumers, will understand.

Similarly, Simply Energy is concerned that the Frameworks' repeated use of the terminology 'that are known, or should reasonably have been known' in relation to customer circumstances moves away from the current, demonstrable 'reasonably believes' to a conceptual (and therefore indemonstrable) basis. Simply Energy proposes that the wording of Clauses 79-82 of the draft ERC version 12 returns to 'reasonably believes', as the retailer can only rely on information available to it at the time any action is decided necessary. Only in this way can compliance with Clause 111A(d) be objectively determined.

Consistency is particularly important considering the Commission's focus on the minimum requirement being 'met, not matched'.<sup>1</sup> Effectively this removes the ability for retailers to innovate outside of the prescribed framework, which historically has generated some positive consumer outcomes, and still comply. In contrast to the Commission's claim,<sup>2</sup> Simply Energy does not consider that retailers have discretion under the proposed framework, given that deviation from the minimum standard is so constrained. This approach of strict regulation of what is described as a minimum is concerning on two key counts. Firstly, we are concerned that the current drafting does not effectively set out minimum requirements (as outlined in the next section) and secondly, that the Framework's approach implies that there can be nothing better than the minimum set out in it. The very definition of minimum as 'the least amount required' would indicate that the regulation should, and is intended to be built on where a greater standard of protection or service can be demonstrated. Removing the ability of service providers to match or better a minimum standard by requiring that the minimum only be 'met' seems inconsistent with the wider objective of maximising the long-term interests of consumers.

### *Concurrent and conflicting minimums*

Our review of the draft ERC version 12 suggests that there are conflicting and concurrent minimum standards within the draft clauses. Of particular note, Part 3 Clause 79 aims to set out

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<sup>1</sup> PAYMENT DIFFICULTY FRAMEWORK Revised Draft Decision 9 May 2017 Presentation(s) by: Dr Ron Ben-David Chairperson Essential Services Commission, Pg 7.

<sup>2</sup> PAYMENT DIFFICULTY FRAMEWORK Revised Draft Decision 9 May 2017 Presentation(s) by: Dr Ron Ben-David Chairperson Essential Services Commission, Pg 6.

the minimum assistance available to customers. Clause 79(1)a-d apply to customers who can pay the ongoing part of their usage, while 79(1)e-f apply to customers who cannot. 79(3) and (4) then create further 'minimums' to apply based on a series of 'if' scenarios. Effectively this creates an additional minimum standard for a subset of customers (those who fall within the scope of an 'if' scenario) that exists concurrently with the minimum standard for all customers. Simply Energy does not understand how it is possible to demonstrate compliance when requirements are so complex, especially if compliance is assessed against information obtained after the decision was made. For example, retailer knowledge at the time the customer is assisted would lead them to believe that the general customer minimum would apply, and only retrospectively could a retailer understand that a minimum relevant to only a subset of customers should have applied. Further, customer outcomes under this concurrent minimum requirement could be very different, and an operational ability to explain what happens next to a customer in need of assistance is so complex as to be impossible for practical purposes.

We note that retailer Hardship Policies are retained under the Framework, but that there is no clear use for them within it. It is possible that as defined in Clause 87 the Commission intends for all customers who receive minimum assistance (as described in draft Clause 79) and default assistance (as described in draft Clause 85) to be covered by the retailer's Hardship Policy. We consider that this represents significant over-capture of customers who need assistance, but can fundamentally afford their ongoing usage to some degree at least.

A more suitable solution to providing protections for the subset of customers that draft Clauses 79(1) e-f are designed to capture would be to utilise the retailers' hardship policies to allow innovation where customers are not able to meet the costs of their ongoing usage, and allow for the management of customers under these policies. This will help avoid over-capture, which will otherwise drive up costs, which are recovered from other households and businesses. Reducing the number of customers defined as 'hardship customers' to a more targeted level, such as only those who cannot afford their ongoing use, is a more sensible approach.

#### *Lexicon vs. Customer experience*

The draft framework has shifted in terminology from 'payment plans' to 'payment proposals', and from 'debt' to 'arrear'. Unfortunately, the shift from 'debt' to 'arrear' (as defined by the Commission) creates more problems than it resolves. 'Debt' exists as a defined term and has application and meaning outside of the energy industry. 'Arrear' does not exist as a separate term, other than being a direct substitute for debt and carrying the same meaning. Customers do not separate amounts owed into what is effectively an aged debt, a current debt, and a future bill. When a customer wants to arrange payment of their account, it is reasonable to expect that the schedule of payments will cover at least the entire owed amount. It would also be reasonable to expect that the agreed payments would not fluctuate wildly due to any reason outside the customers' control.

The Framework drafting creates multiple concurrent treatment events, which relate to amounts defined by the Commission as 'arrear', current amounts owed not directly covered by an agreement, and new billing. In such a scenario the customer is guaranteed to receive a schedule for the 'arrear' amount, a reminder notice which potentially refers to availability of assistance for an owed amount (other than the 'arrear' amount), and a new billed amount, all referring to different dollar amounts. These communications would likely be received in very quick succession, especially if the customer was receiving monthly billing. Equally, it is easy to understand how a customer could ignore the subsequent communications once they had agreed a repayment schedule for the first 'arrear' amount. Unfortunately, the way the Framework separates out amounts owed by the customer means that this would be an error on the customer's part, triggering further communication and action from the retailer. The current

Framework drafting also removes the predictability of payment amounts, because the first payment for the oldest arrears will not be made until the customer has potentially received at least one additional invoice. This prolongs the time in which nothing is done to address the customers growing indebtedness and has the flow on impact of making dealing with it much more difficult than it would otherwise have been (because the amounts are greater). We expect this to result in a negative customer experience, with negative impacts wider than their energy bills.

Customer experience is linked directly to consumer confidence, and while retailers acknowledge responsibility for overall customer experience, requirements that result in unpredictable steps that cannot be explained clearly and simply to a consumer do not help.

### **The Energy Retail Code does not exist in isolation**

Simply Energy is concerned that the Framework makes it impossible for retailers to comply with some external guidance referenced by the Framework. For example, the Commission has included reference to the *Debt Collection Guidelines* in Clause 94 of the ERC, while the Framework as drafted makes it impossible for retailers to comply with these guidelines.

This is a key concern for Simply Energy, as the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investments Commission (ASIC) monitor compliance with the Debt Collection Guidelines, in that those bodies are responsible for the enforcement of Commonwealth consumer protection laws, including laws relevant to debt collection.

Another challenge from the current drafting is that Clause 94 uses the terms 'debt' and 'arrears' interchangeably, with their usual meanings, whereas the Framework applies a different meaning to 'debt' than to 'arrears'.

Additionally, clause 96 as drafted states that retailers must either object to, or reverse, a transfer request made in accordance with the *Market Retail Procedures* (Procedures), where a customer is subject to the secondary minimum of clause 79 (discussed previously). The relevant Procedures are currently changing under the concurrent Power of Choice reforms and any such ability for retailers to comply with clause 96 will disappear.

### **Wider policy issue not addressed**

In the Energy Hardship Inquiry Final Report (the Report), the Commission noted that retailer assistance to customers experiencing payment difficulty complements wider social policy objectives.<sup>3</sup> Simply Energy agrees, and we are keen to see how the wider socio-economic issues are being addressed by the Commonwealth and Victorian Governments, and how the assistance we provide to consumers complements this.

Retailers can provide some support and assistance to households and small businesses, but the cost of doing so is borne by the remaining market and as a result, poorly thought out regulation will directly result in increasing energy costs, putting further financial stress on households and businesses. This stress is increased by the Framework's requirement on retailers to accept proposals made by customers that are well below their actual usage costs, and result in faster,

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<sup>3</sup> Essential Services Commission 2016, Supporting Customers, Avoiding Labels. Energy Hardship Inquiry, Final Report, February 2016, Pg 50.

larger indebtedness for costs already borne by the retailer, which will ultimately need to be recovered from other households and businesses.

Also, a major contributor to many consumers' energy billing are the costs charged by the distribution networks. These are unavoidable, yet networks have no responsibility to consumers in difficulty and bear no cost of supporting those who need assistance.

## Conclusion

Simply Energy anticipates that there will be further changes to the ERC, and the proposed framework, in order to achieve the desired outcomes of ensuring that consumers receive timely, meaningful assistance to lower their energy costs and ensuring disconnection is a last resort.

Simply Energy looks forward to working with the Commission on testing and reviewing all the specific requirements, challenges and capabilities of the framework and the ERC changes before they are formally adopted as regulatory requirements.

If you have any questions about this submission please do not hesitate to contact me on

Yours sincerely

A handwritten signature in blue ink, appearing to read 'James Barton', with a stylized flourish extending to the right.

James Barton  
General Manager Regulation