

29 October 2010

General Manager, Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Attention: Mr Tom Leuner

Dear Mr Leuner

AER Retail Pricing Information Guidelines – Issues Paper

Simply Energy welcomes the opportunity to comment on the AER's Position Paper on the *Retail Pricing Information Guideline* (the Guideline).

Our submission is divided into two parts. In the first part, we wish to take the opportunity to respond to the AER's comments regarding the need for a Retail Pricing Information Guideline. In the second part of the submission, we raise some specific issues with the content of the proposed Guideline.

PART A: The need for a Retail Pricing Information Guideline

The requirements of the proposed Law and Rules

Simply Energy notes the AER's comment that:

... the Retail Law is likely to require the publication of a Guideline in this area ...¹

We have reviewed the second exposure draft of the National Energy Consumer Framework and note that this exposure draft only provides that the AER *may* establish such a Guideline. Clause 242 of the proposed National Energy Retail Law states that:

The AER may, in accordance with the Rules, make and amend guidelines (AER Retail Pricing Information Guidelines) specifying the manner and form in which details of standing offer prices and market offer prices are to be presented.

Rule 255 of the proposed National Energy Retail Rules states that:

For the purposes of section 242 of the Law, the AER may make and amend AER Retail Pricing Information Guidelines in accordance with the retail consultation procedure.

We note the use of the word '*may*' in both of the references to the Guideline in the proposed National Energy Consumer Framework and advocate that this does not place a requirement on the AER to produce a Retail Pricing Information Guideline.

If the AER has had legal advice to the contrary, then this should be made available to stakeholders so that all parties can enter into fully informed debate on this issue.

¹ Australian Energy Regulator 2010 Position Paper: AER Retail Pricing Information Guideline, September, p. 5

In the absence of a specific requirement to produce a Retail Information Pricing Guideline, Simply Energy is of the firm view that the AER must establish a sound economic rationale for introducing a Pricing Guideline. It is customers that will ultimately pay the costs that retailers incur in achieving and maintaining compliance with the provisions of the proposed Guideline and thus there must be sound evidence that customers are willing to pay these costs.

The evidence that the AER has presented

The AER advocates that:

... the rationale for regulating price disclosure is to address market failure caused by information asymmetry.²

The AER then claims that evidence of information asymmetry in energy retail markets is substantiated by consumer research undertaken by the Wallis Consulting Group which states that there is evidence that trying to compare prices is difficult for customers.³

Simply Energy has reviewed the report prepared for the AER by the Wallis Consulting Group and notes that Wallis Consulting Group's evidence that comparing price is difficult appears to rely on previous work undertaken for other regulators. The first piece of previous work is a 2001 report for the ESCV which Simply Energy considers is now out of date given the development of the competitive market in Victoria. The second piece is a 2007 report for the AEMC that remains unpublished and thus untested in a public forum.

Other comments that Wallis Consulting Group make in their report to the AER could also be used to suggest that a Retail Pricing Information Guideline is not required:

- "Few respondents had proactively looked for independent pricing information prior to choosing a retailer".⁴
- "There is little interest in the category — provided the lights come on or the fire/heater ignites, most customers have little cause for complaint and see little difference between brands and retailers ... Even the introduction of new products such as 'green energy' and more recent innovations such as solar power have done little to stimulate interest";⁵ and

We would also query the statistical significance of Wallis Consulting Group's results. According to Wallis Consulting, they interviewed 48 energy consumers about the benefits of pricing disclosure. This is unlikely to produce a statistically significant result given that there are over 8.8 million customers in the NEM.

Simply Energy advocates that the AER has not yet presented undeniable proof that demonstrates that customers are unable to make efficient and effective choices using the information currently provided by energy retailers.

Incentives of the market place and existing levels of customer awareness

In re-examining its reasons for introducing a Retail Information Pricing Guideline, the AER needs to examine the incentives that retailers currently operate under and demonstrate that these are insufficient for ensuring that customers receive the information that they require to make an informed choice.

² Ibid, p. 5

³ Ibid, p. 6

⁴ Ibid, p. 2

⁵ Wallis Consulting Group 2010 Australian Energy Regulator Retail Energy Pricing Guidelines, Melbourne, p. 6

The intensity of competition in the retail market creates strong incentives for retailers to present pricing information to customers in a clear and understandable manner. If a customer finds the information confusing or unclear, they will be attracted to another retailer that presents information in a clearer way. This creates very strong incentives on retailers to ensure their pricing offer is the best they can provide and is presented clearly and in a manner that customers will understand.

After close to a decade of full retail contestability in Victoria and South Australia, customers wishing to take advantage of the competitive market have developed the ability to absorb and compare competing price offers. In Simply Energy's view, the AER will need to test the current level of community awareness about energy pricing in a more rigorous manner as a precursor to regulatory intervention. If, following this analysis, the AER determines there is a need to address particular shortcomings in awareness, there needs to be consideration of the range of options about how this is addressed; introduction a Retail Pricing Information Guideline is only one option, and may be less effective than general information campaigns promoted by government in conjunction with industry.

Willingness to pay for information

In the event that in re-examining the reasons for a Guideline, the AER does find unambiguous evidence of a market failure, it is still not an automatic conclusion that a Guideline should be introduced.

The creation and distribution of fact sheets in response to the AER's proposed Guideline imposes costs on retailers that retailers will pass through to customers. Thus, Simply Energy believes that, in the unlikely event of market failure being identified, the decision on whether to introduce such a Guideline should be based on customers' willingness to pay for this information.

Simply Energy notes that the Wallis Consulting Group did not appear to ask their interview participants about their willingness to pay for the information they were shown. We suggest that their interviewees' responses may have been different had cost been factored into the questions.

In its Review of Australia's Consumer Policy Framework, the Productivity Commission noted that:

Establishing an in-principle rationale for intervention — based on either market failure or social justice grounds — is not by itself sufficient to justify a policy response. Intervention has costs which can be significant and take various forms. ... Ultimately, most of these costs will be borne by consumers in the form of higher prices, less choice and, to the extent that productivity is diminished, through lower incomes. The upshot is that even where an in-principle case for government involvement can be made, these costs may sometimes more than offset the potential benefits of that involvement.⁶

The Commission concluded that:

... assessing the future benefits and costs of proposed policy interventions will be central in determining whether those interventions would in fact serve to promote the interests of consumers and the wider community.⁷

To date, the AER has not published a Regulatory Impact Statement on the need for a Pricing Information Guideline. Simply Energy considers that such a study should be a matter of priority for the AER prior to making its Final Determination on this matter.

⁶ Productivity Commission 2008 Review of Australia's Consumer Policy Framework, Final Report, Canberra, pp. 36&38

⁷ Ibid, p. 38

At present, there is a real risk that customers will end up paying for the preparation and printing of 'Energy Fact Sheets' that will simply end up 'in the bin'.

PART B: Specific comments on the AER's proposed Guideline

Subject to satisfactory resolution of the issues raised above, Simply Energy considers that any Guideline eventually adopted should address the following specific concerns.

Application – customer categories

The draft Guideline is proposed to apply to tariffs offered to 'small customers', defined in the second exposure draft of the NECF as all residential customers, and those small business customers consuming less than 100 MWh p.a. of electricity or 1TJ p.a. of gas.

In Simply Energy's view, small business customers are sufficiently resourced and incentivised to determine a favourable energy product from among those available in the market. It is inappropriate for all customers to effectively subsidise the costs of regulated information provision to small business customers, whose commercial interests should be sufficient to compel them to make informed purchasing decisions.

Application – retailer's tariffs

The draft Guideline proposes to require retailers to provide an Energy Price Fact Sheet for each standing and market offer it has available. This is a significant extension to the Victorian requirement to provide pricing information on **at least** one market offer that is 'generally available'.

Having to comply with this requirement will mean retailers may need to produce a large range of product information (depending on the number of products currently being marketed). For example, Simply Energy estimates that in Victoria, it would need to produce approximately 180 different Energy Fact Sheets under the proposed Guideline. This is partly the result of electricity and gas distribution areas not being contiguous, so that multiple gas tariffs would apply in a given electricity distribution area, and partly the result of the variety of offers a retailer is incentivised to create in a highly competitive retail environment. Further, the current drafting would require retailers to present Energy Price Fact Sheets on all applicable residential and small business tariffs to, for example, a residential customer. As noted above, it is not clear that the benefit of this material would outweigh the costs in producing and distributing it.

In competitive retail markets, retailers already have an incentive to present their 'best' offer (whether based solely on price, or price and product features such as loyalty programs). On this basis, Simply Energy considers that regulation of which products are to be subject to the pricing information requirements should be kept to a minimum. The Victorian model has some merit in this regard.

Provision of pricing information when conducting door-to-door sales

The draft Guideline proposes to require retailers to provide all relevant Energy Price Fact Sheets to all small customers, when marketing in a door-to-door or in-person setting. This greatly increases the costs of compliance, compared to, for example, the Victorian requirement to provide relevant pricing information on request. Again, without quantified costs and benefits, it is not clear that a rationale for this proposal exists.



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Provision of pricing information when conducting telemarketing sales

The draft Guideline proposes to require retailers to advise all small customers that Energy Price Fact Sheets are available on the retailer's website. As above, retailers have every incentive in a competitive market to disclose their best offer; a requirement such as that proposed would likely result in customer confusion, undermining the attempt of the retailer to market its products.

Mass media

As noted in its previous submission, Simply Energy does not consider that additional regulation of mass media advertising (beyond Trade Practices Act requirements) is warranted. The proposed statement pointing the customer to the retailer's website for pricing information appears redundant, given the retailer would want to prominently advertise its website and, on the website, display its prices in a clear and compelling manner. Given the costs of mass media advertising, it is difficult to see that a clear cost-benefit case exist for this proposal.

Additional information to be provided on Energy Price Fact Sheets

The draft Guideline will require retailers to provide information on the "distribution area applicable to the contract offer and an explanation of whether this affects customer eligibility for this offer". Simply Energy is not clear on what this requirement would entail, or what purpose information about the distributor would serve; customers are not able to choose their distributor, so there is virtually no customer benefit in knowing more about the distributor at the point of sale.

Changes in tariffs

The AER is seeking comment on whether it should require retailers to provide information to customers about tariff variations, additional to that outlined in the NECF. The AER notes that the Guideline might require retailers to provide an updated Energy Price Fact Sheet in the first energy bill to the customer following a price variation. Simply Energy considers a bill message is a more efficient and cost-effective means of informing customers of price increases.

Please feel free to contact me if you would like to discuss this submission further.

Yours sincerely

Dianne Shields
Senior Regulatory Manager