

16 January 2020

Mr Conrad Guimaraes
Australian Energy Market Commission
PO Box A2449, Sydney South
NSW 1235

Via AEMC website: <https://www.aemc.gov.au/contact-us/lodge-submission>

Dear Mr Guimaraes,

Re: Regulating conditional discounting – draft rule determination

Simply Energy welcomes the opportunity to provide feedback on the Australian Energy Market Commission's (AEMC) draft rule determination on regulating conditional discounting.

Simply Energy is a leading energy retailer with over 720,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. As a leading retailer focused on continual growth and development, Simply Energy actively supports open market competition and energy affordability.

Simply Energy recommends the AEMC consider the following;

- Whether the objectives described in the initial rule change request have been achieved through regulation introduced around the time of, and since the rule change was requested.
- The impact to consumers of the retrospectivity of the proposed rule and whether such a proposal would achieve the objectives of the initial request.
- To delay the rule change to such time as anticipated future market changes come to fruition.

The initial rule change request highlighted the following policy objectives, which Simply Energy considers have been addressed in a number of ways;

1. Marketing based on discounts is confusing as it is often based on meeting conditions, and does not provide actual price information, meaning customers cannot use discounts to estimate what they can expect to pay.
2. Conditional discounts, frequently based on on-time payment, can impose significant penalties on those facing payment difficulties, leading to equity issues for low income or income insecure households
3. Discounts are applied to different underlying tariffs and different parts of the bill, which is confusing consumers and hindering effective comparison of offers in the market.

Source: Australian Government Rule Change Proposal: Improving consumer outcomes and competition by regulating conditional discounting, August 2019, pg 2

Simply Energy agreed with the overall intent of the rule change request and elements of draft rule determination based on the retail energy market in NECF jurisdictions prior to 1 July 2019.

What is clear from the data presented in the draft rule determination¹ is that the landscape of the energy retail market, regarding conditional pay-on-time discounts especially, has changed.

This change highlights that the default market offer (DMO) and associated regulation has served to address many of the concerns that this proposed rule change sought to remedy. The DMO, reference price requirements and hardship policy requirements manage the concerns of all 3 policy objectives above.

Conditional discounting trends

The AEMC has highlighted that the overall trend seen in the market since the introduction of the DMO is a decrease in both the scale and the frequency of offers with conditional discounts.² Simply Energy understands that the AEMC's justification for the implementation of this rule is to prevent an industry-wide reversion to offers with relatively large conditional discounts³

Simply Energy shares the view that the DMO appears to have been responsible for the decreases in these types of offers and that these practices are largely no longer evident in the market. Based on this understanding, Simply Energy would recommend that the AEMC considers delaying the implementation of this change to such time as any reversion is seen.

To implement the rule change on a possible reversion in the market is insufficient justification for a regulatory change at this time. This, in conjunction with Simply Energy's concerns around the treatment of existing market retail contracts, justifies a delay in implementation.

Customers facing payment difficulties

Simply Energy agrees with both the AEMC and the proponent of the original rule change request that it is vital that customers facing payment difficulties are considered in assessing the merits of this rule change proposal and draft rule determination.

The AEMC have rightly referenced both the National Energy Retail Rules and, more importantly, the Australian Energy Regulator's Customer Hardship Policy Guideline, where required standardised statements include the obligation to have processes in place "to review the appropriateness of a hardship customer's market retail contract"⁴. Simply Energy's hardship policy has been approved by the AER, and mirrors the AER's guideline in this respect. In practice, this requires taking conditional discounts into consideration when discharging this obligation. As a result, hardship customers are already insulated from being penalised by unachievable conditional discounts.

Therefore, Simply Energy considers that implementing this rule change on the basis of supporting the minority of customers in hardship may instead have the adverse effect of penalising those customers who have benefitted and wish to continue benefitting from the types of conditional discounts this draft rule seeks to retrospectively regulate.

Retrospectivity

Simply Energy considers that the retrospectivity of the rule change, applying to existing contracts would not lead to an outcome that benefits consumers in general. Many of Simply Energy's customers continue to receive a 'roll-over' of their existing benefits under an evergreen energy contract. This practice provides support for customers who choose not to engage in the market again after their initial benefit period has expired.

¹ Australian Energy Market Commission draft rule determination "Regulating Conditional Discounting" (21 November 2019) pg. 15

² Australian Energy Market Commission draft rule determination "Regulating Conditional Discounting" (21 November 2019) pg. 15

³ Australian Energy Market Commission draft rule determination "Regulating Conditional Discounting" (21 November 2019) section 3.3.3 pg. 15

⁴ Australian Energy Regulator: Customer Hardship Policy Guideline Version 1 (March 2019) pg. 24

It is possible that a retailer may determine that conditional discounts for customers on existing contracts are higher than the retailer's estimate of the reasonable costs of providing the discount. To require retailers to communicate to customers on existing evergreen contracts that their benefit will be reduced would lead to confusion, increased complaints, and distrust. Customers expect to receive what they signed up for.

Under the National Energy Customer Framework (National Energy Retail Rules section 64), energy retailers are required to disclose information to customers before the formation of a market retail contract.⁵ This information includes describing the benefit (conditional or not). Further to those requirements, From 1 July 2019, retailers are obligated to present an electricity reference price when advertising, publishing at the offered prices, or offering to supply electricity at the offered prices.⁶

Customers who entered into contracts with a retailer after these regulations came into effect in the relevant jurisdictions must have been provided with both the required information and the reference price, in advertising materials or at the point of offer. This, coupled with the fact that many consumers currently contracted on a conditional discount may have experienced a benefit 'roll-over' without the loss or reduction of their benefit, leads to the conclusion that this retrospective application would be to the detriment of the majority of those customers currently on an evergreen contract.

Simply Energy would urge the AEMC to more strongly consider the negative outcomes of mandating a reduction in conditional discount for existing contracts.

Concluding remarks

For the draft rule on regulating conditional discounting, Simply Energy recommends that the AEMC further consider the policy objectives in the rule change request and that Simply Energy consider these objectives have been met with regulation introduced shortly before the proposal of the rule change. Additional regulations, with their negative as well as intended positive consequences, should not be introduced to address a possible scenario that cannot occur in the market due to other regulations. The proposed new regulations should be considered only if the current regulations that make them unnecessary are removed.

In closing, Simply Energy looks forward to continuing to work actively with the AEMC to aid in the implementation of regulation to the benefit of both energy consumers and the competitive energy market.

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact James Ell, Senior Regulatory Adviser, on, telephone, (03) 9617 8352 or at james.ell@simplyenergy.com.au

Yours sincerely



James Barton
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Simply Energy

⁵ National Energy Retail Rules Version 19 (19 December 2019) Section 64, pg. 54

⁶ Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019) Section 12, pg. 8