momentum energy
Powered by Hydro Tasmania

15 April 2016

Simon Kidd
Assistant Director, Retail Markets
Australian Energy Regulator

By email to: AERInquiry@aer.gov.au

Dear Mr Kidd

AER Sustainable Payment Plans Framework

Momentum Energy welcomes the opportunity to provide the following comments in response to the AER's proposed Sustainable Payment Plans Framework.

Momentum Energy is a second tier retailer authorised to sell electricity in Victoria, New South Wales, South Australia, Queensland and the Australian Capital Territory, and gas in Victoria and South Australia. Momentum is fully owned by Hydro Tasmania, the largest clean energy producer in Australia.

Good practice principles

The issues of energy hardship and energy affordability are complex. Industry, consumers, governments and regulators have been working together on these issues since the 2004 Victorian inquiry into disconnections and capacity to pay. Momentum strongly supports the proposed principles set out in section 1. We agree with the AER's proposition that successful engagement between retailers and customers in relation to the customer's capacity to pay and the establishment of a payment plan needs to be based on empathy and respect, and be characterised by flexibility and consistency. We note that these principles align with the internal principles that guide Momentum's approach to collections, credit, hardship and disconnections.

Good Practice Guide Chart

General position

Momentum is broadly supportive of the process and the approach outlined in the Chart. The required retailer conduct set out in the chart generally aligns with retailers' compliance obligations. To the extent that the chart stipulates something above those obligations on retailers or stipulates how retailers will meet those obligations, it will for the most part lead to appropriate outcomes for individual customers.

However, Momentum does not support the highly prescriptive nature of the way the conversation should start and unfold. We also suggest that the framework should be clearer in relation to retailers' usage monitoring in the situation where a customer is making payments as agreed under their payment plan.

Starting the conversation

In Momentum's view, the relevant objective is appropriate payment plans for people who need them. The core of this is that retailers should not place customers on payment plans that they cannot pay. And this includes the fact that the payment plan agreed to by the customer and the energy retailer should not place the customer into a situation where other necessities of life cannot be purchased. It is appropriate that the NERL says that retailers must not do that.

However, "appropriate payment plans for people who need them" also means that the framework should avoid driving the following perverse outcomes:

1. A customer who can afford to pay for their energy use under their contract should not be unduly assisted by the regulatory framework to avoid meeting their side of that contract – because that incentivises damaging behaviour and injects unnecessary additional cost into aggregate energy bills (ie other customers pay more because the customer in question has gamed the retail energy regulatory rules); and
2. A customer who cannot afford to pay what they owe the energy retailer should not be unduly assisted by the regulatory framework to pay less than what they can afford, especially to an extent that they then accumulate more debt than would have been the case under an appropriate payment plan, or to an extent that a temporary situation is turned into an ongoing credit issue. It is not in a customer's interests for them to be in debt longer than necessary.

What follows from the principles above is that, while we endorse the position in the Draft Sustainable Payments Framework that it is necessary to ask the customer what he or she can afford (and it is part of our existing approach to do that), sometimes it is appropriate to contextualise the question.

Therefore, Momentum does not agree with the proposal that the retailer's initial conversation with the customer after being told that the customer cannot pay what they owe should always start with the retailer asking the customer what they can afford to pay. While this is often the appropriate way to start such a conversation, this is not always the case. For example, there will be instances where the customer's response to that question will be a larger amount if the question is asked after some discussion of the customer's circumstances, and where that larger amount is more appropriate because it is closer to, while still being within, the customer's actual capacity to pay.

The problem is that stipulating that we will always start such conversations by asking the customer what they can afford will lead, in relation to some customers, to the perverse outcomes noted above. The appropriate balance is that the prima facie position that people meet their contractual obligations should remain clear, alongside the strong essential service protection that obliges all energy retailers to agree to appropriate payment plans for people who need them. That retailers face strong consequences if they don't do the latter is appropriate and is sufficient to drive appropriate retailer conduct. It is not necessary for the framework to drive the perverse outcomes listed above and, in fact, those perverse outcomes hurt net consumer welfare by lifting retailer costs and thus energy prices, which has a greater impact on less well-off customers. Momentum would be disappointed if the adoption of the Framework resulted in assistance measures being diverted from those who need it.

Usage monitoring

The draft chart stipulates that, in a situation where a customer is making payments as agreed under the payment plan, "the retailer should monitor the customer's payments and usage and contact the customer if their usage changes to the extent that the payment plan may no longer be appropriate." At commencement of the Framework, most of the customers to whom it is relevant will not have a smart meter so it should be made clear in the Framework that, for such customers, usage monitoring will generally be every three months when the meter data provider provides the accumulation meter data to the retailer. The Framework should avoid creating usage monitoring expectations that retailers generally cannot meet.

Small businesses

The Framework document and, if applicable the associated AER webpage, should clearly state that it applies only to residential customers. The process set out in the Good Practice Guide Chart is not something that does or should apply to business customers. In addition, while at a high level the principles of empathy and respect, flexibility and consistency are appropriate for retailers' dealings with all customers, some of the dot point elaborations on those principles do not apply to small business customers or have different application to small business customers compared to residential customers.

The Framework should be clear that it does not apply to non-residential customers so that it does not cause some small business customers to be misled as to their actual customer protections, so that the resources available to assist residential customers in need of assistance are not reduced, and so that the Framework is something that retailers can adopt.

It might be appropriate to specify that small business customers seeking more information about a retailer's approach to dealing with their payment difficulties should contact that retailer directly.

The Register

Momentum is unclear on the desirability of the register, for consumers or for retailers. While it is our current intention to adopt the Framework (noting our submissions above in relation to how it should be amended to ensure it avoids driving perverse outcomes and is something with which retailers can comply), we are yet to reach a decision on whether we would opt to sign up to be placed on the proposed register on the AER website even in the event that we decided to adopt the Framework.

Ultimately, whether Momentum decides to adopt the Framework will not be based not on whether the AER implements the register, but on the effectiveness of the Framework in terms of delivery of better outcomes for customers and retailers. We would be more likely to decide that we wish to be placed on the register in the event that it had been shown that the Framework was effective. Therefore, we recommend that there is no register when the Framework commences and that the AER should consider whether a register is appropriate at the time it conducts its first review of the effectiveness of the Framework.

Should you have any questions in relation to this submission, please feel free to give me a call on (03) 8612 6437.

Yours sincerely

Luke Brown
Regulatory Manager