

27 May 2022

Mr Mark Feather
General Manager – Strategic Energy Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Mr Feather,

Re: Retailer authorisation and exemption review – Issues paper

Simply Energy welcomes the opportunity to provide feedback on the issues paper for the retailer authorisation and exemption review.

Simply Energy is a leading energy retailer with approximately 730,000 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 supports the development of effective regulation to facilitate competition and positive consumer outcomes in the market.

Simply Energy's submission provides general feedback that the Australian Energy Regulator (AER) should consider when it assesses whether the scope of the current regulatory framework should be expanded to include new energy-related products, services, and business models.

General comments on the approach to this review

Simply Energy considers that the AER's proposed scope in this review goes beyond the retailer authorisation and exemption frameworks and poses broader questions around whether the National Energy Customer Framework (NECF) remains fit-for-purpose. We consider that referring to this review as the 'retailer authorisation and exemption review' underrepresents its scope and may result in impacted stakeholders not realising the potential implications of this review.

Simply Energy suggests that a review of the NECF's scope would have been more appropriately undertaken by the Australian Energy Market Commission (AEMC), which is responsible for amending the National Energy Retail Rules. If such a review led to an increased scope for the NECF, that would then be an appropriate time for the AER to review its frameworks to ensure that they appropriately accommodate any new products and services that would be subject to the NECF.

Competitive neutrality is an important objective for this review

Simply Energy urges the AER to prioritise competitive neutrality when considering recommending substantial changes to the NECF. This will be particularly important if the NECF evolves to set regulatory obligations based on the type of essential energy service rather than the type of market participant. For example, an authorised retailer that provides an aggregation service should have the same minimum consumer protection obligations as a competitor that is not an authorised retailer. To ensure the long-term efficient operation of the energy market, consumers should not be driven to make inefficient choices between service providers based on differing regulatory settings.

In relation to the AER's review objectives, Simply Energy considers that competitive neutrality should sit alongside the proposed consumer-focused objectives. The concept of competitive neutrality must underpin any significant reforms to the NECF and the authorisation and exemption frameworks.

We also urge the AER to also reference the National Energy Retail Objective (NERO) as one of its review objectives, which is:¹

'...to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy'.

The achievement of the NERO aligns with achieving competitive neutrality, as the long-term efficient investment in, and operation of, energy services is dependent on businesses being able to compete on their merits and not benefit from undue advantages due to the specific regulatory obligations they operate under.

Interaction of new energy products and services with the National Energy Customer Framework

Simply Energy agrees that the NECF does not fully capture new and potential future technologies and business models that provide energy-related services. It is reasonable for the AER to consider the appropriate minimum consumer protections that should apply to these services before a significant uptake from consumers occurs.

As will be discussed in the following sections, the AER's objectives in this review are unlikely to be achieved by identifying gaps and making minor amendments to the existing NECF. Instead, we consider that reopening the scope of the NECF should involve revisiting the whole framework to determine the aspects of energy products and services that are essential and the extent each of these products and services should be subject to sector-specific regulation. Overall, the AER will need to try and strike a fine balance between the prescribed level of consumer protections and the costs that participants would incur to comply with the prescribed rules, which would ultimately be passed through to consumers.

Essentiality of energy

In recent years, the energy market has evolved from the traditional one-way flow of energy. The emergence of new technologies and business models continues to raise questions around which parts of the energy market are 'essential' and must be regulated through sector-specific requirements. It may also be the case that some of the products and services that authorised retailers are currently providing (or may provide in the future) are not 'essential'. As discussed in the issues paper, several new energy technologies may not be essential for consumers and should attract fewer consumer protections. Determining the essentiality of different services is an important first step in determining the critical minimum consumer protections that should be required.

The obligations within the NECF focus on the protections for consumers when they are being sold energy for use in their premises. For that reason, it may be the case that the existing NECF obligations cannot be easily amended to incorporate products and services that do not involve selling energy to consumers. In the instances of many of the new business models highlighted in the issues paper, consumers are either selling their energy to participants or providing control of their energy use to participants. We suggest that if a consumer opts into a contract beyond the traditional supply of energy, these contracts should not be subject to the full suite of NECF protections.

¹ National Energy Retail Law (South Australia) Act 2011, Section 13

Instead of trying to amend existing NECF provisions or guidelines to fit completely different types of products and services, it may be more appropriate to develop new regulatory instruments to address the unique circumstances related to consumers selling energy or control to a participant. When considering how those future regulatory instruments should look, it will be important for the AER to identify the specific market failure or regulatory barrier associated with these products and services that could be addressed through new regulation. As noted previously, the AER would also need to consider whether introducing additional regulatory burden in the market would be justified by the costs that consumers would incur.

We also propose that the AER consider whether different fuels have different levels of essentiality. For example, it may be the case that electricity is the primary essential fuel in the future and gas (and/or hydrogen) may be a non-essential alternative that could be subject to a lower level of obligatory consumer protection. Similarly, it may be the case that technologies that are not essential in 2022 may become essential in the future. For example, there may be a future scenario where widespread adoption of electric vehicles justifies the introduction of higher levels of obligatory consumer protections that apply to energy-related services for electric vehicles.

Technology neutrality

Although it is important to tailor consumer protections to the harms that may arise from specific products and services, the AER should be mindful that the regulatory framework is not seen to be 'picking winners' in relation to different technology types.

Just as the NECF must be competitively neutral, it must also be technology neutral, so that consumers are not driven to make inefficient choices between technologies or services based on the different regulatory settings that apply to the different technologies or services. Failing to do so may lead to an allocatively inefficient market that results in higher prices for consumers in the long-term.

Simply Energy considers that any new regulation for future energy products and services should be principles-based, to avoid requiring significant reforms to regulations every time a new innovative business model, service, or product emerges in the market. Principles-based rules may minimise some of the significant compliance costs that arise from regulation and act as a barrier to entering the energy market.

Similarly, the regulatory framework should not by default disallow new innovative products and services entering the market, which would disadvantage businesses that seek to provide services that are outside of the authorised list. Regulation will generally lag market innovations, and in this period of rapid market transition it is critical that the regulatory frameworks are nimble and able to protect consumers from potential harms that may arise from new products and services.

The regulatory sandboxing toolkit should have a role to play in future amendments to the NECF

As the issues paper is focused on whether new energy products and services are within the scope of the NECF, we were surprised that the AER's regulatory sandboxing toolkit was not mentioned in the paper. We note that the AER's April Positions Paper on the toolkit states:²

'...a new regulatory waiver power allows the AER and Victoria's Essential Services Commission (ESC) to temporarily address certain regulatory barriers by exempting trial projects from complying with specified rules and laws and assess whether there would be benefit from a permanent change. The trial waiver allows innovators to experiment in a real world context, while maintaining consumer, system and market protections and sharing insights gained from the trial with the wider industry.'

² Australian Energy Regulator 2022, Regulatory sandboxing: Positions paper, 19 April, p. 5.

Simply Energy considers that the use of the regulatory sandboxing toolkit could assist the AER to better understand the regulatory barriers and consumer protection issues that relate to new products and services seeking to enter the energy market. The findings from the use of the regulatory sandboxing toolkit could identify market failures that may arise from opening markets for new products and services and whether new regulation may be necessary.

In relation to the exemption framework, the use of the regulatory sandboxing toolkit seems to be the most effective method to enable short-term licence exemptions while the AER and AEMC consider whether specific business models should have an authorisation requirement in the NECF. This may address the issues raised by the AER in relation to new business models not being suited to the current exemption framework and that oversight of exemptions is limited.

Simply Energy notes that if the scope of the NECF and the authorisation and exemption frameworks will be reopened, it would be appropriate to reconsider whether embedded network operators should continue to operate under licence exemptions into the future. From a consumer perspective, their essential energy supply is the same regardless of whether their bill is sent from an on-market or off-market retailer. There does not appear to be a clear reason why a consumer should receive fewer consumer protections when they move into a property that is part of an embedded network. Simply Energy proposes that the AER consider the continued regulation of embedded networks in the context of the principles of competitive and technology neutrality.

Concluding remarks

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact Matthew Giampiccolo, Senior Regulatory Adviser, at [REDACTED]

Yours sincerely



James Barton
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Simply Energy