

24 December 2010

Mr Tom Leuner
General Manager, Markets Branch
Australian Energy Regulator
GPO Box 520
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Dear Mr Leuner

Position Paper – AER Retail Market Performance Reporting

Simply Energy welcomes the opportunity to comment on the AER's *Position Paper – Retail Market Performance Reporting*. In addition to the remarks below, we endorse the submission made by the Energy Retailers Association of Australia.

Scope of proposed reporting requirements

In Simply Energy's view, the drafting of the National Energy Customer Framework (NECF) envisages a relatively minimalist retail performance and hardship reporting framework, addressing defined areas of industry performance and public policy concern. Sections 75 (hardship), 166 and 167 (retail performance) of the National Energy Retail Rules (NERR) prescribe the scope of the reporting requirements in a general fashion. This leaves some need for the AER to define the detailed requirements but not, in Simply Energy's view, the remit to build upon the requirements in a substantive manner, as appears to be the case in the proposed Guideline.

While Simply Energy understands there may be a need to go beyond basic NERR requirements to fulfil some policy or regulatory objective, any such extension needs to have a demonstrable and unambiguous connection to regulatory obligations in the NECF. It is not sufficient to propose reporting requirements on the basis that they may have use to a policymaker or general reader at some point in the future, given the compliance costs that will be incurred by retailers, and ultimately customers, in producing this information.

The ambiguous information needs of policymakers has figured in the AER's discussion papers and public forums, as a rationale for extending the scope of reporting requirements beyond those explicitly provided for in the NECF. In Simply Energy's view, the NECF *itself* represents the requirements of policymakers as currently understood; the development of the NECF was a lengthy and consultative process that allowed views of all interested stakeholders to be tabled and considered. Any future information requirements of policymakers should be reflected in changes to regulatory obligations and reporting requirements, without which there are no grounds for including 'general interest' indicators in the Guideline at this time.

Process for development of the Guideline

More generally, Simply Energy is concerned about the failure of the proposed indicators to be subjected to a Regulatory Impact Statement (RIS), in accordance with Commonwealth Office of Best Practice Regulation guidance¹. The Guideline represents a significant piece of proposed regulation, with upfront and ongoing compliance costs, and pass-through of these costs to consumers; as such, it should undergo a rigorous assessment of net benefits. We note that the AER, in public forums, has asked that retailers comment on

¹ Department of Finance and Deregulation (2010), *Best Practice Regulation Handbook*, Canberra, available at: <http://www.finance.gov.au/obpr/proposal/gov-requirements.html#handbook>

incremental, rather than total, costs involved in reporting the proposed indicators, over and above current jurisdictional requirements. Costs associated with the current jurisdictional requirements should not be treated as a given if they are to be enshrined in the national arrangements; the full extent of the national reporting requirements should be examined on a cost-benefit basis.

Current jurisdictional requirements can usefully indicate the areas in which the AER may wish to collect and report on performance; they should not, however, be included in the national requirements by virtue of already being in place. If this was the intent of the policymakers, it would be written into the NECF. As the NECF prescribes only minimal reporting requirements, we believe reporting requirements should not build substantially above the level required by the law.

In Simply Energy's view, the process of arriving at the final indicators should proceed as follows:

1. Incorporate indicators mandatorily required by the NECF.
2. Propose optional indicators that, while not explicitly provided for in the NECF, unambiguously assist the AER in analysing performance against defined NECF obligations.
3. Perform a RIS on the full suite of proposed indicators.
4. Arrive at the final requirements, bringing together the most efficient ways of reporting on the mandatory indicators, and only those optional indicators that have a net positive business case.

Simply Energy has attempted to follow a similar process in providing detailed commentary on individual indicators; this commentary is provided in the attached.

Reporting frequency

Finally, Simply Energy does not consider the Guideline, as currently drafted, is consistent with section 284 of the National Energy Retail Law (NERL). This section requires that the AER publish a retail marketing performance report "in respect of the period of 12 months ending with 30 June in that year". The Guideline, by requiring that retailers produce and submit the AER data quarterly, and the AER's expressed intention to publish information quarterly, clearly exceeds this requirement. In Simply Energy's view, the production of quarterly data is reasonable to draw attention to seasonal trends; however, consistent with section 284 of the NERL, this should only be reported to the AER, and by the AER to the public, on an annual basis.

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

Yours sincerely

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Attachment – Simply Energy's detailed comments on the proposed indicators

Proposed indicator	NECF ref.	Comments on policy rationale	System and cost impacts	Suggested approach
A.1 Retail market overview				
A.1.1.1 The number of customers on <i>standard retail contracts</i>	s166(c) NERR	Required by NERR	Need to introduce flags for 'standard' contracts in system to facilitate reporting.	Adopt
A.1.1.2 The number of customers on <i>market retail contracts</i>	s166(c) NERR	Required by NERR	Need to introduce flags for 'market' contracts in system to facilitate reporting.	Adopt
A.2 Handling of customers experiencing payment difficulties				
A.2.1.1 Number of <i>small customers</i> repaying an energy bill debt	Not explicitly required by NECF	Debt levels of hardship customers call for greater scrutiny, but there is no regulatory obligation, or policy rationale, for extending this to the wider customer base. Debt levels in the wider customer base are a function of energy prices, customer income, payment behaviour and changes in personal circumstances, and retailer practices. Only the latter is regulated under the NECF. Rather inferring failings on the part of retailers as a result of changes in total debt levels, the AER should focus on, and produced targeted indicators for, those areas of retailer performance for which retailers have regulatory obligations (e.g. assisting customers experiencing payment difficulties).	Need to extend debt reporting currently in place for hardship customers in Victoria, to all small customers. This will significantly increase reporting burden, and data storage costs.	Do not adopt
A.2.1.2 Average amount of energy bill debt for <i>small customers</i>	Not explicitly required by NECF	As above	As above	Do not adopt
A.2.1.3 Level of <i>residential customer</i> energy bill debt	Not explicitly required by NECF	As above	As above	Do not adopt
A.2.2.1 Number of <i>residential customers</i> using Centrepay	Not explicitly required by NECF	Retailers are required by s74 of the NERR to provide access to Centrepay; it is not clear what performance indicators will establish beyond retailers' reporting of any compliance breaches in this area, and datasets that Centrelink may already maintain.	Need to flag Centrepay payments in system, as distinct from standard direct debit payments, to facilitate reporting. This may be technically difficult to achieve.	Do not adopt
A.2.3.1 Number of <i>residential customers</i> (excluding <i>hardship program customers</i>) on a payment plan	Not explicitly required by NECF	The implication here appears to be that the number payment plans is a proxy indicator of payment difficulties, and that this indicator would support the AER's requirements under s167(1)(b) of the NERR.	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt

Proposed indicator	NECF ref.	Comments on policy rationale	System and cost impacts	Suggested approach
		This is not justifiable; many customers without payment difficulties use payment plans for convenience, and those in hardship are placed on hardship programs. As such, the policy rationale for collecting this information is not clear.		
A.2.3.2 Number of payment plans successfully completed	Not explicitly required by NECF	As per A.2.3.1	As per A.2.3.1	Do not adopt
A.2.3.3 Number of payment plans cancelled by the retailer for non-payment	Not explicitly required by NECF	As per A.2.3.1	As per A.2.3.1	Do not adopt
A.2.3.4 Number of <i>residential customers</i> (excluding <i>hardship program customers</i>) with two or more payment plans cancelled for nonpayment in the last 12 months	Not explicitly required by NECF	As per A.2.3.1	As per A.2.3.1	Do not adopt
A.3 De-energisation (disconnection) and re-energisation (reconnection)				
A.3.1.1 Number of <i>residential</i> and <i>small business customers</i> disconnected for non-payment	s167(1)(d) NERR	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.3.1.2 Number of <i>residential</i> and <i>small business customers</i> disconnected for non-payment on more than one occasion in the same name and at the same address in the previous 24 months	Not explicitly required by NECF	This indicator appears to be designed to measure retailers' performance in identifying customers experiencing ongoing financial hardship. It is not possible to make a clear assessment of retailers' performance using this indicator. Retailers cannot control or predict most of the factors that may lead to hardship over a two year period, nor should they be expected to. Given the multiple factors related to an individual's circumstances that will impact the data, results against this indicator would be so contestable as to make them meaningless.	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt
A.3.1.3 Number of <i>residential</i> and <i>small business customers</i> reconnected within 7 days of disconnection, in the same name and at the same address	Not explicitly required by NECF	The implication appears to be that, if this indicator shows a 'high' figure, the original disconnection was incorrect. Retailers only disconnect customers as a last resort, where other methods of engagement have failed. As such, it is not possible to make a clear assessment of retailers' performance using this indicator.	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt
A.3.1.4 Number of <i>residential</i> and <i>small business customers</i> reconnected in the same name at the same address (regardless of the date of disconnection)	Not explicitly required by NECF	As per A.3.1.3	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt

Proposed indicator	NECF ref.	Comments on policy rationale	System and cost impacts	Suggested approach
A.3.1.5 Number of <i>hardship program customers</i> disconnected for nonpayment	s167(1)(d) NERR	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.3.1.6 Number of <i>hardship program customers</i> reconnected within 7 days of disconnection, in the same name and at the same address	Not explicitly required by NECF	<p>As with A.3.1.3, this indicator appears to be designed to measure the 'correctness' of the retailer's disconnection of the customer.</p> <p>Retailers' hardship programs have clearly defined rules around participation, particularly that customers must remain in contact and make payments in accordance with agreed payment plans. Where either of these ceases to occur, both customers and retailers face the risk of escalating debt levels. Disconnection is a last resort means of addressing these risks, and may have the positive outcome of compelling the customer to re-engage.</p> <p>Given this, it is not clear what useful purpose the indicator may serve; a 'high' or 'low' figure in itself has no meaning. The key question is whether a retailer's hardship program is compliant with regulatory obligations and sufficiently resourced. This indicator will provide no insight into these questions.</p>	Need to flag hardship disconnections and reconnections within 7 days in system.	Do not adopt
A.3.1.7 Number of <i>energy concession customers</i> disconnected for nonpayment	Not explicitly required by NECF	<p>As with A.3.1.3 and A.3.1.6, this indicator appears to be designed to measure the 'correctness' of the retailer's disconnection of the customer.</p> <p>In addition, there appears to be a direct link being made between concession entitlement and hardship; this link is not necessarily tenable, as significant numbers of customers are entitled to (e.g. aged pensioner) concessions without experiencing financial difficulties in paying their energy bills.</p> <p>The NECF (see s167(1)(f) NERR) requires only that the AER collect statistics on the administration of concessions; the link between concessions and hardship/disconnection policy is not made explicit. This is the correct approach.</p> <p>Additionally, it is not clear what a 'high' or 'low' figure would actually demonstrate; the key question is whether retailers are both properly availing customers of their concessions entitlements and disconnecting in accordance with the NECF, and this indicator will not shed light on this.</p>	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt



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A.3.1.8 Number of <i>energy concession customers</i> reconnected within 7 days of disconnection, in the same name and at the same address	Not explicitly required by NECF	As per A.3.1.3, A.3.1.6 and A.3.1.7	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt
A.3.1.9 Number of <i>residential customers (excluding hardship program customers)</i> disconnected for nonpayment of a bill who were on a <i>payment plan</i> in the previous 12 Months	s167(1)(d)	Required by the NERR – however, the data should be interpreted with caution. If the implication from a ‘high’ number is that retailers have not properly assessed the customer’s capacity to pay, this is an untested claim that can only be verified with an assessment of actual compliance. Therefore, limited inferences should be drawn from this data.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.3.1.10 Number of <i>residential customers (excluding hardship program customers)</i> who were on a <i>payment plan</i> in the previous 12 months who were reconnected within seven days of disconnection in the same name and at the same address	s167(1)(e)	As per A.3.1.2 and A.3.1.9	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.4 Concessions				
A.4.1.1 Number of <i>residential customers</i> recorded by the retailer as entitled to a government funded energy concession administered or delivered by the retailer	s167(1)(f) NERR	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.5 Prepayment meters				
A.5.1.1 Total number of <i>PPM customers</i>	Simply Energy does not provide comment on these proposed indicators			
A.5.1.2 Number of <i>PPM customers</i> that receive an energy concession				
A.5.1.3 Number of PPMs removed due to payment difficulties				
A.5.1.4 Number of <i>PPM customers</i> using a PPM system capable of detecting and reporting self-disconnections				
A.5.1.5 Total number of PPM self disconnection events				
A.5.1.6 Total number of <i>PPM customers</i> self disconnected				
A.5.1.7 <i>Average duration of self disconnection events</i>				

Proposed indicator	NECF ref.	Comments on policy rationale	System and cost impacts	Suggested approach
A.5.1.8 <i>Duration of self-disconnection events</i>				
A.6 Security deposits				
A.6.1.1 Number and aggregate value of security deposits held by retailers for <i>residential</i> and <i>small business customers</i>	s167(1)(g) NERR	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.6.1.2 Number and aggregate value of security deposits held for longer than 12 months for <i>residential customers</i> and 24 months for <i>small business customers</i>	Not explicitly required by NECF	The policy rationale is not clear, nor is the indicator likely to be meaningful – what would a ‘high’ figure represent? Prudent risk management by retailers, or over-caution? How would the AER or other interested parties assess this?	Need to flag and capture this data to permit reporting – increasing reporting burden and storage costs	Do not adopt
A.7 Customer service				
A.7.1.1 Total number of calls to an operator	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.7.1.2 Number and percentage of calls forwarded to an operator that are answered within 30 seconds.	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.7.1.3 Average time before an operator answers a call	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.7.1.4 Number and percentage of calls abandoned before being answered by an operator.	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.8 Complaints				
A.8.1.1 Complaints – total	s167(1)(a)	Required by NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.8.1.2 Complaints – marketing	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.8.1.3 Complaints – billing	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.8.1.4 Complaints – customer transfers	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine ‘performance’ metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt

Proposed indicator	NECF ref.	Comments on policy rationale	System and cost impacts	Suggested approach
A.8.1.5 Complaints – Other	s167(1)(a)	Not explicitly required by the NERR, however an important area of customer concern to monitor, and a genuine 'performance' metric.	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9 Hardship program indicators				
A.9.1.1 Number of customers <i>on a retailer's hardship program</i>	s75(2)(b)	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9.1.2 Number of <i>hardship program customers</i> recorded by the retailer as entitled to receive a government funded energy concession, administered or delivered by the retailer	s75(2)(c)	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9.1.3 Number of customers <i>denied access</i> to the hardship program	s75(2)(a)	Required by the NERR	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9.1.4 Average <i>debt</i> upon entry into the hardship program	s75(2)(a)	Not explicitly required by the NERR, but will facilitate s75(2)(a).	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9.1.5 Levels of debt of customers entering the hardship program	s75(2)(a)	No explicitly required by the NERR. This is an inferior indicator to A.9.1.4 for time-series analysis, as it will be overly complex to review and make meaningful conclusions. As energy prices rise, the meaningfulness of the categories will diminish; 'bracket creep' is inevitable, which will show 'trends' in the data that do not necessarily reflect retailers' hardship customer identification processes.	Will require new reporting processes to categorise it according to the brackets.	Do not adopt
A.9.1.6 Average <i>debt</i> of hardship program customers	s75(2)(b)/(c)	Not explicitly required by the NERR, but will facilitate s75(2)(b) and (c).	Will require new reporting processes to flag and capture debt levels for all customers.	Adopt
A.9.1.7 Proportion of <i>hardship program customers</i> who are: <input type="checkbox"/> Not meeting ongoing energy costs (debt increasing); <input type="checkbox"/> Covering ongoing energy costs (debt stable); <input type="checkbox"/> Covering ongoing energy costs and portion of arrears (debt reducing).	s75(2)(b)	Not explicitly required by the NERR.	The reporting implications of this proposed indicator are significant. We anticipate individual analysis of accounts would be necessary, without opportunities for automation, leading to labour cost impacts. Further, it is not clear whether this cost is justified by the additional information this will	Do not adopt

Proposed indicator	NECF ref.	Comments on policy rationale	System and cost impacts	Suggested approach
			provide over A.9.1.6.	
A.9.1.8 Customers who are managing their payment plans (payment plan success rate)	s75(2)(b)	As per A.9.1.7	As per A.9.1.7	Do not adopt
A.9.1.9 Number of customers exiting the hardship program	s75(2)(b)	Not explicitly required by the NERR, but will facilitate s75(2)(b).	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9.1.10 Number of customers who: <input type="checkbox"/> Successfully completed the program or exited the hardship program by agreement with the retailer; <input type="checkbox"/> Were excluded /removed from the program for non compliance; <input type="checkbox"/> Transferred away from the retailer.	s75(2)(b)	Not explicitly required by the NERR, but will facilitate s75(2)(b).	Currently reported – may be minor adjustments as a result of definitional differences	Adopt
A.9.1.11 Number of <i>residential customers</i> disconnected for non-payment of a bill who successfully completed the hardship program in the previous 12 months	s75(2)(c)	This indicator seems to suggest that retailers have a permanent obligation to avoid disconnecting individual customers that have participated in their hardship program; the implication is that successful participation in a hardship program should in itself prevent future disconnection. This is not envisaged in the NECF. Rather, retailers have a general obligation to appropriately address customers with capacity to pay issues, and then offer a range of services to customers once on a hardship program. Indicators should be focussed on these two key areas of performance, rather than seeking to make inferences about retailers' original assistance to the customer based on future events that are likely to be outside of their control.	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt
A.9.1.12 Number of <i>residential customers</i> who successfully completed the <i>hardship program</i> in the previous 12 months who were reconnected in the same name and at the same address within seven days of disconnection	s75(2)(c)	As per A.9.1.11	Currently reported – may be minor adjustments as a result of definitional differences	Do not adopt
A.9.1.13 Assistance provided to <i>hardship program customers</i>	s75(2)(b)	Not explicitly required by the NERR. It is not clear that reporting on inputs, rather than outcomes as elsewhere, is justified, particularly given the additional cost – flags, possibly manually applied by staff, would need to be created against each individual hardship customer, to enable reporting.	Significant reporting and labour cost impacts.	Do not adopt
A.9.1.14 Payment methods of <i>hardship program customers</i>		As per A.9.1.13 In addition:	Significant reporting and labour cost impacts.	Do not adopt



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		Centrepay – as per 2.2.1 Payment plans – all customer on the hardship program will be on some for payment plan		