

15 July 2019

Mr Darrell Channing
Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601
By Email: adjudication@accc.gov.au

Dear Mr Channing

Australian Energy Market Operator Limited application for re-authorisation AA1000445

Simply Energy welcomes the opportunity to comment on the re-authorisation application from the Australian Energy Market Operator Limited (AEMO) for Chapter 5 (Allocation, Reconciliation and Swing Service) and Chapter 6 (Compliance and Interpretation) of the Western Australian Gas Retail Market Procedures.

Simply Energy is a leading second-tier energy retailer with over 710,000 customer accounts across New South Wales, Queensland, South Australia, Victoria and Western Australia. As one of Australia's leading energy retailers and one of the most recent participants to enter into the Western Australian Gas Market, Simply Energy noted that there are some unique differences between the WA Gas Market and those that are similar in operation and scheme management in other states.

Simply Energy believes that there are certain elements of Chapter 6 (Compliance and Interpretation) of the Retail Market Procedures (WA) (the procedures), including the procedures themselves, that could benefit from being aligned with other markets. These elements include the management of competitors and disputes about the procedures, the necessity of AEMO auditing participants (given that this duplicates other audit processes and obligations), and the determination of materiality and associated value of penalties under the procedures.

Compliance reporting and competition

One of the obligations outlined under Chapter 6 (Compliance and Interpretation) enables participants to refer matters of potential non-compliance relating to the procedures to AEMO for investigation¹ and/or subsequent determination by the Compliance Panel². The procedures also require AEMO to send notices to participants³ outlining the details of the potential non-compliance to which AEMO invites comments. In Simply Energy's experience this invites participants that are competitors to disclose to AEMO potential impacts that are not contemplated by the procedures, such as competition impacts and consent arrangements. Simply Energy believes that this invitation to comment on competitive matters undermines competition

¹ Retail Market Procedures (WA) Part 6.3 Matters referred to AEMO – Section 325

² Retail Market Procedures (WA) Part 6.1 The independent compliance panel

³ Retail Market procedures (WA) Part 6.3 Matters referred to AEMO – Section 327 AEMO to give notice to participants

and focuses AEMO's attention on disputes between parties, instead of on compliance with the procedures and the impacts on consumers.

Auditing and efficacy

While unrelated to the requirements of Chapter 6, Simply Energy also notes that the procedures require participants undertake a negative assurance audit on consumer consent, to ensure that retailers have procedures in place that facilitate compliance with the procedures. While this is expected by current participants in the market, the Economic Regulatory Authority (ERA) imposes license conditions on retailers to undertake more comprehensive assurance audits on multiple license conditions, including consent, making AEMO's procedural audit somewhat redundant. This example highlights misalignment between the procedures and the regulatory regime in the same market, and the very different levels of assurance for overlapping obligations.

Determination of materiality

Under Chapter 6, AEMO can be delegated the task of determining the impact of a breach to be material⁴. However, the impacts of a breach may be difficult to quantify which, with a potential financial penalty of \$50,000 for each breach, the financial impact on a retailer could be substantial. Simply Energy also notes that the procedures do not contain a method or measure for materiality. Rather it is tested based on the feedback from competitors as part of the consultation process. This allows for competitors to influence the nature and impact of enforcement, which Simply Energy considers inappropriate. While the compliance panel may make the final order, if determined to be a transaction breach there could be a significant volume and consequent financial impact.

Value of penalties

Simply Energy also considers the maximum financial penalty of \$50,000 to be excessive and significantly higher than other penalties in similar regimes, noting that the Essential Services Commission in Victoria can issue penalties of \$20,000 for similar material non-compliance. In context with the earlier point regarding overlaps in obligations, especially around consent, of which the procedures only relate to obtaining consent to the transfers and not the retail contract in its entirety, this is somewhat excessive.

Simply Energy supports the need to have the authorisation in place although would like to see more rigor around AEMO's arrangements for consulting participants on potential non-compliance and stronger arrangements around the application of competition principles now that there are an increasing number of retailers in the market.

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact Ross Evans Senior Regulatory Analyst, on, telephone, 0488 700 696 or at Ross.Evans@simplyenergy.com.au

Yours sincerely



James Barton
General Manager, Regulation
Simply Energy

⁴ Retail Market Procedures(WA) Part 6.4 Referral of matters to compliance panel – Section 343 (3)