



AGL Energy Limited
T 02 9921 2999 Level 24, 200 George St
F 02 9921 2552 Sydney NSW 2000
agl.com.au Locked Bag 1837
ABN: 74 115 061 375 St Leonards NSW 2065

Australian Energy Market Commission

201 Elizabeth Street

Sydney NSW 2000

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Preventing discounts on inflated energy rates

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC's) consultation paper, Preventing discounts on inflated energy rates (Consultation Paper).

AGL is one of Australia's leading integrated energy companies and largest ASX listed owner, operator and developer of renewable generation. AGL is also a significant retailer of energy, providing energy solutions to over 3.6 million customers accounts throughout eastern Australia. AGL is a customer-focussed business and we endeavour to provide customers with products and services that best meet their diverse wants and needs.

AGL supports the AEMC's initial position to restrict retailers from including discounts in market retail contracts where all of the energy rates are above the equivalent rates in a standing offer. It is appropriate to regulate in these specific situations where the information provided to consumers is misleading.

AGL does not support the AEMC recommendation to COAG to introduce civil penalties provision for breaches of the AER's Retail Price Information Guideline (RPIG). AGL believes that the AEMC has not provided evidence that the lack of civil penalties to date has negatively impacted the AER's ability to enforce the RPIG.

The following attachment provides further responses to questions in the Consultation Paper. Our comments are aimed at ensuring the proposed Rule does not lead to any negative and unintended consequences in application.

Should you have any questions or comments, please contact Brigid Richmond on (03) 8633 6631 or brichmond@agl.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux'.

Elizabeth Molyneux

General Manager Energy Market Regulation



Question 3 Standing offers as a ‘base rate’

Should standing offers be considered base rates, or effectively a ‘cap’, for the purpose of applying discounts to market offers?

AGL understands the rationale to conceptualise the standing offer as a base rate for the purposes of the proposed rule.

However, AGL would caution using or relying on the standard offer serving multiple purposes. Specifically, as electricity is an essential service for residential consumers and small businesses, standard offers are a critical consumer protection mechanism that ensures consumers are covered by the full National Energy Retail Rules (NERR) provisions to ensure these consumers continue to maintain access to electricity on fair and reasonable terms when they choose not to accept a market contract. It is important not to dilute this consumer protection function when evaluating this rule change’s role of the standing offer.

Question 5 Civil penalty recommendation

Should a civil penalty provision be added to sections 25 and 37 of the NERL, in respect of the requirement to present standing and market offers in accordance with the RPIG? What would be the benefits of doing so? What would be the costs?

AGL supports the principle of a regulator having a flexible suite of enforcement powers so that appropriate responses are applied to different types and severity of regulatory breach. However, AGL does not support the AEMC’s recommendation that sections 24 and 37 of the National Energy Retail Law (NERL) being subject to civil penalty.

AGL considers that the AEMC has not provided evidence that the current enforcement functions relating to breaches in standing and market offer pricing in the RPIG are inadequate. It is important that an extension of the AER’s enforcement powers is based on clear evidence that the current powers are inadequate and therefore there is a need to introduce a civil penalty regime to improve compliance with the RPIG.

Further, civil penalty provisions are generally used for Guidelines that have clear requirements. For example, the AER’s Performance Reporting Guidelines provide clear guidance to retailers on how and when they need to provide data to meet their performance reporting obligations. The RPIG is less clear in its requirements and allows flexibility on how retailers interpret and apply certain provisions. If the AEMC proceeds with the recommendation, there should be clear guidance on when, compared to other enforcement powers, the AEMC consider civil penalties are a more appropriate action.

Question 9 Materiality and discretion for the AER

Do you think the concept of materiality for differences between tariff structures and benefits and services in standing offers and market retail contracts is appropriate?

AGL considers that the concept of materiality is appropriate to ensure minor differences do not remove the equivalence between standard and market offers. The definition and treatment of ‘material’ should be explicit to ensure the market has certainty in the treatment of different products and services. AGL recommends that the AEMC provide extensive guidance as to the meaning of ‘material,’ including examples, to ensure a common market understanding of its application in this rule change.



Question 17 Civil penalties for part one of the initial position

Is a civil penalty recommendation for a rule reflecting the Commission's initial position in this consultation paper appropriate?

AGL does not consider civil penalties to be appropriate for initial position on this rule.

AGL considers that the market reaction to this rule change request is evidence that the threat of regulation is sufficient enforcement. After the rule change request was submitted in late December 2017, the AEMC identified twenty market energy offers in breach of the indicative drafting of the rule change as at 17 January 2018. These offers had disappeared from the EnergyMadeEasy website by 15 March 2018.¹ This would suggest the threat of regulation was sufficient to change market behaviour.

Question 21 Complementarity of the rule change to potential future arrangements

Would a final RPIG including the comparison pricing table requirement in the draft RPIG published 30 January 2018 reduce the need for, or reduce the benefit for, a potential rule on this rule change request? Are there other aspects of the draft RPIG that would reduce the need for, or reduce the benefits of such a rule?

This rule change request is based on the premise that in the current energy environment consumers cannot easily compare market offers. For example, the current iteration of Energy Price Fact Sheets (EPFS) required by the RPIG are considered complex and overwhelming for consumers.²

To this end, AGL undertook customer behavioural insights research to help inform the AER's review of Energy Price Fact Sheets and comparator information.

AGL recently undertook customer behavioural insights research to help inform the Australian Energy Regulator's (AER) review of Energy Price Fact Sheets and comparator information. AGL's consumer testing found that most participants displayed a clear preference towards an information sheet that featured tariffs with a condensed list of Key offer features. The presence of tariffs was identified as being important in making a clear comparison to current rates when switching. Transparency was a key theme in establishing trust with energy providers and the presence of jargon and absence of detail impacted this trust. That is, customers wanted short, relevant and simplified data with an expectation that there were no hidden fees or requirements.

This research informed the design and information provision of the proposed Basic Product Information. AGL also considers the proposed Contract Summary is the most appropriate method of providing additional information about products and services for customers seeking more detailed information prior to making purchase decision. Ideally, in the future, consumers will be able to access understandable and comparable pricing information and this rule will be less necessary. There is work underway to achieve this aim, such as the RPIG review and the refresh of the Energy Comparator Code of Conduct (ECCC). Ideally the outcomes from the RPIG and ECCC work will provide more tools for consumers to access clear, relevant and comparable information on their energy tariffs. In the interim it is appropriate to implement the initial drafting of this rule change to deal with specific situations where market offers have higher rates than equivalent standing offers.

² AGL submission to Draft Retail pricing information guidelines 2018, 16 March 2018.