



Australian Energy Market Commission

Submitted online

16 August 2018

Australian Energy Market Commission Draft Determination - National Energy Retail Amendment (Advance notice of price changes) Rule 2018

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission (Commission) Draft Determination on advance notice to customers for price change (Draft Rule).

AGL are generally supportive of the Commission's proposed approach to the Draft Rule. AGL continue to support ensuring customers are provided with clear and simple information that will help them understand the changes to their energy plan and are generally supportive of the intention of the draft determination. However, the short timeframe available to retailers to provide tailored customer notifications will substantially impact the quality of the information provided to customers resulting in a poor customer experience.

While the Draft Rule allows a degree of flexibility for retailers in communicating to customers about price changes AGL remains concerned about the limited timeframe being provided to retailers, particularly those with a larger customer base. The Commission should not impose regulation that will impact notice periods for retailers differently based on the size of their customer base. Regulation should set a minimum standard for a market failure to allow regulated entities to develop processes to be competitive against one another. The Commission's statement on price-leading in the Draft Determination on page 23 conflicts with this regulatory principle.¹ By setting a minimum-requirement that is best suited for small-medium size retailers the Commission is setting a regulatory benchmark that is inequitable across retailers.

This type of regulation also indicates that retailers with a smaller customer base will have greater time to ensure the quality and accuracy of their communications against that of larger retailers. This may also raise Competition and Consumer Act concerns regarding perceived price-fixing conduct or concerted practices if the expectation is that larger retailers should be setting price leads for smaller retailers.

AGL key points raised in this submission are:

1. Four weeks is insufficient for larger retailers to do price changes for the entire cost-stack as well as coordinate customer-tailored notifications, particularly as third-party providers require time for coding and coordination and will be responsible for delivering a large portion of this work.
2. Regulation should set a minimum standard for regulated entities to allow for the development of efficient solutions within those requirements. Regulation should not impact regulated entities

¹ It is expected that larger retailers will begin notifying customers such that some customers receive notice more than five business days in advance, and in many instances close to ten business days, as their mail out campaigns ramps up to meet the minimum five-day requirement. It is also expected that smaller retailers, who tend to take their pricing lead from the larger retailers, will have more time to assess their price offers in response to moves by the bigger retailers, and send these offers to their customer base with the required five business days' notice <https://www.aemc.gov.au/sites/default/files/2018-07/Draft%20determination.pdf> p.23



Certain parts of this submission containing confidential information have been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

differently based on the size of their customer base (i.e. the notice period required by larger retailers as a result of mailing limitations).

3. Recognition that it is in a retailer's interest to shift customers to digital solutions, but that regulation should not be developed to favour one communication form over another, particularly where retailers cannot control uptake of digital adoption by customers.

AGL recommend that prior to the final determination the Commission consider:

1. Recommending reductions or changes to other processes within the price-change event timeline (i.e. a reduction of time for consideration of network prices by the AER, or the process to start / finish earlier).
2. Regulation should be technology agnostic in recognition of the current limitations on retailers to be able to transition customers to digital communications due to Explicit Informed Consent (EIC) requirements (meaning existing customers must opt-in to digital communications).
3. Removing gazette/newspaper notice requirements on retailers as all customers would be receiving prior notice of a change under the Draft Determination.
4. Network tariff reassignments be exempt from the Rule change.
5. Competition and Consumer Act obligations on retailers before imposing regulation that may result in the appearance of price-fixing or concerted practices.

Further, AGL submit that given the unreasonableness of these timeframes, the reliance on third party providers for mail-outs and the inability to complete any reasonable quality assurance programs, that this rule should not be subject to civil penalty provisions, or such a provision should be for the intentional and/or ongoing systemic issues within a retailers control.

AGL agree with the Commission's consideration of the primary purpose of the notice to inform customers of a price change and support the general scope of the rule change but have provided additional comments and concerns in the remainder of the submission. Some elements have been marked as confidential and we request that this information not be shared.

Should you have any questions or comments, please contact Kathryn Burela on [REDACTED]

Regards

Elizabeth Molyneux

[Signed]

General Manager Energy Markets Regulation



Timeframes and accuracy

AGL consider that the Draft Rule is imposing a regulatory timeframe that is impractical from an operational perspective which will lead to errors due to a reliance on third-party providers (such as mail-houses) and insufficient time for quality assurance and development processes which will ultimately set retailers up for failure.

The timeline at Table 5.1 in the Commission's draft determination is not accurate and demonstrates timelines that are not achievable by retailers who rely on third-party providers to deliver this requirement.² For example, the Commission's timeline indicates that the AER finalise their network tariffs on the week beginning 29 April.

The AER have 30 business days to make their network pricing decision and often take at least this time, sometimes longer. During this 30 business days the AER is only required to make determinations in relation to network pricing and do not need to do any form communication to a large customer base. AGL note that in 2018 the decision was not finalised and released until 18 May – 2 weeks later than the Commission's Table 5.1 example. As demonstrated in Table 2 below, the proposed timeframes would give retailers approximately 1-2 business days to make pricing decisions that account for the entire cost-stack to still allow a minimum amount of time to complete the communications requirement with third-parties (which will include complex logic for individualised rates tables for customers).

Further, the processes described in the Commission's Table indicate that all processes are internal to a retailer, however the data briefing, customer copy and testing are all processes that must be managed with a third-party provider. These providers require time to develop the code necessary to coordinate the merging of different types of customer data (i.e. their billing related information which includes product type, fuel type, jurisdiction, customer name etc, with the relevant change information (i.e. new rates figures, copy content and messages for decrease, increase and no change scenarios etc). Retailers cannot simply request or pay more for additional resources for the coding and development phase, as this can only be completed by one coder at a time. Attempting to merge sections of code together will only result in errors and require further quality assurance, particularly in such a short timeframe.

AGL currently meet the regulatory requirements for Queensland because of:

- the lower number of impacted customers and;
- Application to electricity only, and;
- Referring customers to a URL allowing more time to develop rates tables, and;
- Queensland decisions are prioritised over other jurisdictions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² AEMC Draft Rule Determination – 5 July 2018 <https://www.aemc.gov.au/sites/default/files/2018-07/Draft%20determination.pdf> p.24



Certain parts of this submission containing confidential information have been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

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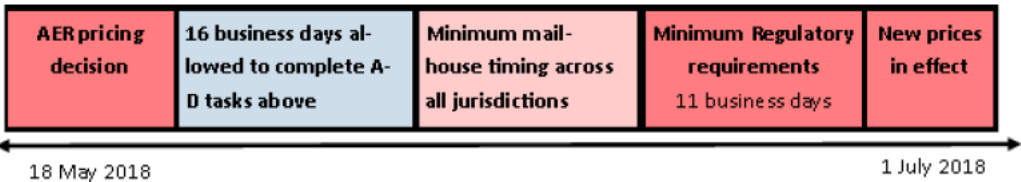
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AGL stress that the timing provided to retailers and the indicative Tables above, leaves no time for relevant or meaningful internal activities including quality-assurance against letter variations and sufficient test-sampling on batch customer-samples. AGL note that retailers are able to express-mail information which would reduce the 6 business days to 2-3 business days, but this is at an additional cost that ultimately would be borne by the customer.

Table 2: Allowable timeframes of Draft Determination within 2018 calendar

The following table indicates the allowed timeframes for retailers to complete Price Change process to inform mail-houses under the Draft Determination.



While AGL understand the motivation to recommend that this apply as a civil penalty provision, however it is impractical to expect that retailers will be able to send accurate, quality communications to all customers in such a condensed timeframe. The regulation will be set in such a way that retailers will be open to liability, even where as much rigour as possible has been placed in such a short timeframe. Inaccuracies would most likely be a result of minor technical issues, particularly where retailers are required to involve



third party providers to manage mailouts (i.e. the contracting of mail-houses). AGL consider that the imposition of civil penalties on this type of regulation to be grossly unfair and at a minimum should be limited to deliberate and/or systemic issues within a retailer’s control.

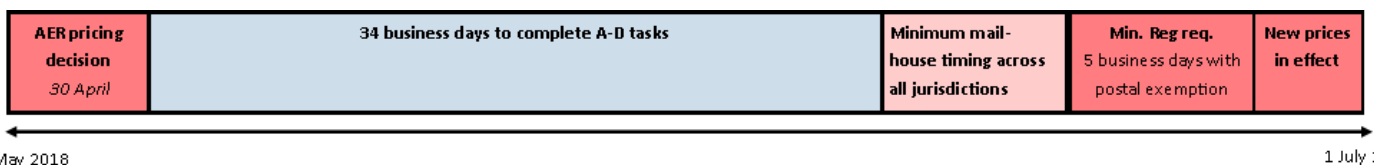
Recommendations

AGL supports the intent of the proposed Rule and as such offers the following recommendations which we provide retailers with an additional 15-20 business days for the price change process on top of the time currently made available under the Draft Rule.

- Recommend a reduction or a change in the regulated dates/timings provided to network businesses and the Australian Energy Regulator (AER) in setting the network prices each year rather than only cutting into timeframes at the end of the process.
 - Recommend amending the AER consideration period, instead of 30 business days require a decision by 30 April each year. This would provide retailers an additional 10-15 business days to consider pricing and complete the communications requirement.
- Waive postage limitation requirements and require Notices to be **sent** 6 business days prior (i.e. if a retailer can demonstrate the notice was sent before the 5-business day regulatory requirement that retailers are not accountable for delays due to Auspost).

Table 3: Timeframe if all AGL recommendations above are adopted

If retailers received final network pricing information by 30 April and an exemption for postage requirements were to be applied, then retailers would have approximately 30-34 business days to complete the price change requirements and provide customers with prior notification.



Other recommendations regarding civil penalty provisions.

- The Commission should not require this provision to be a civil penalty provision if retailers are not provided sufficient time to do quality assurance on the letters, or
- Setting a threshold for a civil penalty provision where conduct is intentional or systemic.

Regulatory response

Consumer testing

AGL is supportive of providing clear information to customers but want to ensure that the intention of regulation is met in a way that is both most likely to accurately inform the customer in a way that encourages a positive customer experience, in the most cost-effective way. AGL therefore consider that



requirements imposed by regulation should be trialled to ensure that there is rigorous evidence base to support the decision.

Timing - AGL note that some stakeholders have suggested that 10 business days (and therefore 5 business days) is insufficient time for customers to engage with, and act on, the information they are provided. Under the Commission's draft determination, customers will have approximately a week to consider the price change and consider options of engaging further with the market. However, there is consumer research that suggests that customers are most likely to engage and act on information with relative immediacy. For example, in 2012 the United Kingdom electricity regulator OFGEM found that a short deadline on communications from electricity suppliers would be likely to be acted upon straightaway, whereas a longer one may be put off and not acted upon at all.³ AGL consider that advance notice is therefore all that is necessary, rather than a prescribed set of days.

Content - Given the cost involved to develop the systems to produce letters and emails that include rates tables, as well as the additional time that will be required for both mail-house development and quality assurance, AGL want to ensure that their inclusion is the most effective way to communicate the information to a customer.

AGL note that the Behavioural Insights Team, on behalf of the Australian Energy Regulator (AER) recently undertook a field experiment to test versions of the proposed Benefit Change Notice. The report found that there was no statistically significant difference between the likelihood of customers acting in response to a Notice from the retailer, whether the Notice included a chart visualising the cost difference of the change or not.⁴ The OFGEM report notes that communication should focus on a single message which supports the Commission's decision to focus on the primary purpose of the notification to inform customers of a price change.⁵

Interactions - While the Commission considers click-through rates to retailer websites to be low, it is possible that this figure is reflective of overall consumer engagement with this type of content. AGL encourage the Commission to conduct or consider evidence-based research about customer engagement with material. For example, the OFGEM report noted above found that 81% of customers who open mail from their utility provider do so only to review the bill amount, disregarding any other information.⁶

Public notice

AGL encourage the Commission to consider whether under the new regulations there remains value in requiring retailers to publish newspaper notifications. AGL consider that this requirement should be removed as all customers will be receiving prior notification in their preferred communication method. Given the formal, legalistic nature of these public notices, the information is not customer-friendly and AGL is not aware of evidence that newspaper notices are effective for communicating this type of message to customers.

³ OFGEM report - Prompting engagement with and retention of written customer communications p.23.

⁴ AER technical appendix: [review of benefit change notice](#)

⁵ OFGEM report p.21.

⁶ OFGEM report p.20.



Digital communications

In energy, we have specific restrictions under the Energy Rules and Laws which prevent retailers from moving an existing customer onto electronic communications.

The Commission's comment in the Draft Determination that retailer's efforts to move customers to digital communications will be further incentivised by this rule requirement.⁷ AGL acknowledge the benefits for customers adopting digital platforms and solutions as they allow businesses to provide customers with their own personalised that is directly relevant to them in a cost-effective way (i.e. through AGL's MyAccount application). There is also a government shift away from paper bill fees, with New South Wales banning these last year.

Therefore, there is already a strong business incentive for retailers to ensure that customers adopt digital communications and solutions where possible or appropriate for their personal circumstances. However, retailers can only move a customer to electronic communications by obtaining the customer's explicit informed consent (EIC) which means a customer has to opt-in to being communicated this way. While this is easier to do for new customers at the point of sale, it is more difficult to entice or engage existing customers to make the switch.



Recommendations

- Remove the requirement for notification in newspapers of price changes.
- Amendments to the Energy Rules to amend Explicit Informed Consent requirements around communication methods to allow retailers to have digital as the default and a customer may opt-out.

Exemptions

Price change events

The Draft Rule appears to account for the larger, yearly price change event around 1 July, however there are other scenarios where customer prices may change that will be impacted by the new Rules. Network tariff reassignment can occur where a new or existing customer's load, connection or metering characteristics changes and this reassignment can be initiated either by the distributor or the customer/customer representative. For example, customer-initiated changes can occur where a customer approaches the retailer to change from a single rate tariff to a time-of-use tariff.

For distributor led changes of a network tariff, changes often occur before retailers are notified. These reassignments impact the way many retailers set the retail tariff as the charges are often passed directly

⁷ AEMC Draft determination p.23



through to the customer. Retailers generally pass these changes on to the customer as soon as practicable and can include increases and decreases to customer charges.

Other

AGL consider that the exemption period of 10 business days from point of contract entry should be extended to account for the likely new timing requirements for pricing decisions. If a retailer determines the price set-up by late May, then new customers can be informed from this point on. By extending the exemption period to 20-25 business days, it would help ensure that customers who were informed of the change are not receiving unnecessary or excessive communications (i.e. welcome pack, notice of variation and possibly monthly bill).

AGL reiterate the point made in our previous submission that in the event of a clear decrease (i.e. that one or more elements are decreasing, and the others are remaining static) that retailers should not be required by regulation to notify the customer. This is a good news story that retailers would be incentivised to share with customers to encourage retention and the way this message is communicated should not be prescribed under regulation. Regulation is intended to address market failure, and there are a number of other customer communication obligations on retailers to help customers engage with the market and be informed.

Recommendations

- Network tariff reassignments should be excluded from the new price change notification obligations proposed under 4B of the Rules.
- Extend the new contract exemption period to 20-25 business days to reduce multiple and potentially confusing customer contacts within a short period.
- Providing an exclusion to the prior notification obligation where there is a clear price decrease as described above.

Other matters

AGL have some further minor comments for the Commission's consideration:

1. The drafting of the proposed rule at 46(4A)(a) should be amended to be *that the customer's tariffs or charges are being varied*;
2. AGL recommend the Commission consider an effective date from 1 April 2019 to allow retailers time to make all necessary system and process changes in light of other major changes being imposed on the energy sector such as the Payment Difficulties Framework from 1 January 2019 in Victoria.
3. That call centre consumer contact rates will be impacted irrespective of the amount of information provided to customers in the Notice as customers will seek different kinds of clarification/further information from their retailer. Extended call wait times may lead to a poorer customer experience and result in additional complaints to ombudsman, media or local MP's. It will also impact



performance reporting to the AER and should be a consideration of the Commission in the final determination.

Additionally, the matters raised by AGL in this submission focus on the timelines that are reliant on another party. AGL has previously submitted information about internal processes for quality assurance and timelines (see figure 1 of the confidential submission by AGL from May 2018), which we continue to encourage the Commission to consider when determining the final determination and the application of civil penalties.