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RRC0042: Protecting Customers Affected by Family Violence – Draft Determination

AGL Energy (AGL) thanks the Australian Energy Market Commission (AEMC) for the opportunity to provide feedback on the *Protecting customers affected by family violence* Draft Determination, dated 16 June 2022.

Supporting and protecting our customers and staff who are affected by family violence continues to be one of AGL's highest priorities. As one of the first energy retailers in Victoria and across the NECF states to implement a family and domestic violence policy, both at a corporate and customer level, AGL welcomes the opportunity to continue to engage closely with the AEMC on the development of the NECF family violence regulations. Family violence is a complex, multifaceted societal issue and we understand that while the experiences and circumstances of victim-survivors may be vastly different, each are equally sensitive, requiring essential service providers to offer support that is meaningful, dignified and tailored to the customer's needs. AGL maintains the view it previously voiced in its submission to the AEMC on the *Protecting customers affected by family violence* rule change request that better outcomes for affected customers could be achieved through well-structured guidelines on best practice principles which are developed and maintained through ongoing collaboration between industry, government, customers, experts, law enforcement and family violence support services, and by avoiding highly prescriptive regulatory instruments.

Notwithstanding, AGL commends the AEMC for its work to align the proposed NECF family violence regulations with the existing Victorian framework. Harmonisation between the two regimes will allow energy retailers to leverage existing systems, processes, and experiences to provide support and protections for customers experiencing family violence without requiring a fundamental redesign to existing architecture. We believe that minimising fragmentation between NECF and Victorian frameworks will mitigate costs associated with the implementation of the proposed rule change as well as ongoing costs-to-serve while most importantly promoting a consistent experience for customers across the NEM regimes.

Regard to safety and circumstances of affected customers

The implicit purpose of family violence regulations is to maintain the safety of affected customers when dealing with their essential services provider. AGL appreciates the sensitivity and importance of protecting the safety of affected customers and has incorporated this critical aspect into our operations through agent scripting and processes to allow staff to take appropriate action when necessary. However, AGL emphasises that the interpretation of this provision may be subjective as circumstances will vary greatly from customer to



customer. Ultimately, perceived compliance or otherwise with this provision will be at the discretion of the energy regulator and the courts, and this assessment will be based on hindsight. Such interpretations may seem reasonable but may not necessarily be appropriate as the information available to frontline agents at the time of managing the impacted customer may have been different. While frontline agents should be empowered to take appropriate actions to protect the safety of the customer based on the information shared by them, an outcome where agents are expected to assume or infer the extent of the customer's circumstances based on limited information should be avoided.

It is AGL's recommendation that Rule 76A is revised to be the overarching objective of the relevant Part of the NERR to align with the Victorian framework. However, the AEMC may also wish to seek expert advice to develop comprehensive guidance which will assist industry to interpret the operation of this Rule and how the AEMC would expect energy retailers to apply it in practical circumstances using examples of compliant retailer conduct and scenarios which are intended to be captured. In the alternative, this guidance could be developed by industry through close collaboration with advocates, family violence support services, customers, law enforcement and other relevant stakeholders.

Civil Penalty Provisions

AGL maintains that an arbitrarily punitive civil penalty regime which carries a high risk of enforcement action may limit the ability of essential service providers to assist customers in a manner that is most appropriate to their specific needs and circumstances. This is particularly relevant where the regulator takes a 'strict' interpretation of the rules as opposed to a 'customer harm' assessment. A strict interpretation approach results in penalties that may not be befitting of the customer harm but is used by the regulator to send a message that any breach, regardless of customer impact, is not tolerated. Such an approach is appropriate where there are consistent breaches of the rules that may not only have ongoing customer detriment but also impacts the level of consumer trust. We do not believe this is the case in this matter, with many retailers already offering support to customers without these new proposed regulations being in place.

While it is our understanding that Rules 76K and 76L¹ are to some extent designed to mitigate this outcome, their application by the regulator will likely be discretionary and it is unclear how these provisions will interact with other regulatory obligations under this Part of the NERR as well as other provisions.

AGL considers that it may be appropriate in the first instance to monitor the operation of the FV regulatory framework for a period of time after its commencement and undertake a review of outcomes for affected customers after the implementation of the regime. A proper assessment of quantitative and qualitative data from the industry should determine which provisions of the framework should attract a civil penalty to act as a deterrent for improper conduct in the industry. Industry data and trends do not suggest that energy retailers are engaging in deliberate or gross misconduct to cause harm to affected customers. However, the proposed civil penalty regime under the NECF FV framework risks creating a disproportionately punitive regime thereby diluting positive customer outcomes.

¹ Rule 76K(1) of the Draft Rules: If a retailer is unable to fulfil an obligation under a customer retail contract in complying with this Part, the retailer is not in breach of the contract; Rule 76K(1): The terms and conditions of a market retail contract with an affected customer have no effect to the extent of any inconsistency with the application of the retailer's family violence policy to that customer



If you would like to discuss any aspect of AGL's submission, please contact Valeriya Kalpakidis at vkalpakidis@agl.com.au.

Yours sincerely,

Chris Streets

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