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Attention: Mr Drew Butterworth

Australian Energy Market Commission

By Online Submission and Email: [Drew.Butterworth@aemc.gov.au](mailto:Drew.Butterworth@aemc.gov.au)

Reference Code: ERC0378

16 September 2024

Dear Drew,

### **Directions Paper – Accelerating Smart Meter Deployment**

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Australian Energy Market Commission (the AEMC) in response to the abovementioned Directions Paper (the Directions Paper).

Proudly Australian since 1837, AGL delivers around 4.5 million gas, electricity, and telecommunications services to our residential, small, and large business, and wholesale customers across Australia. AGL is a market leader in the development of innovative products and services that enable consumers to make informed decisions on how and when to optimise their energy usage and better manage their energy costs. As highlighted in our response to the AEMC's Draft Report on the Review of the Regulatory Framework for Metering Services (the Review), AGL pioneered the rollout of smart meters to its customers under the National Energy Customer Framework (NECF) jurisdictions through its industry-leading smart meter deployment program.

AGL broadly supports the intention of the AEMC to introduce additional consumer safeguards to improve customer experience and agency, and more clearly differentiate the issues related to installation of smart meters from those related to the implementation of the AEMC's cost-reflective network tariff reforms.

We do not support aspects of the Directions Paper recommendations. To achieve the best outcomes for customers we believe it is important that the AEMC look more holistically to address the root cause of the cost change (or "bill shock") which arises from when the network reassigns the customer to a 'cost-reflective network tariff' following the installation of a smart meter. The current proposal to simply make the retailer absorb and socialise the impacts of the change in underlying network tariff is likely to have unintended and perverse outcomes, increasing costs for all customers and reducing the ability for some customers to obtain competitive offers in the market.

A more comprehensive and customer centric approach would involve:

1. **Simpler, more actionable, and fairer cost reflective network tariffs.** Network tariff structures that can be readily integrated into retail tariffs, that customers can understand and take action to respond to the price signal, with pricing that is not punitive for customers who are unable to change their consumption pattern. This should be underpinned by greater consistency between networks.
2. **A 12-month transitional period** for network tariff reassignments post meter exchange and then a customer opt-out right (for both retail and network tariffs) following the network tariff change to better balance consumer protection and customer tariff transformation. Preferably the customer's opt-out right to a flat tariff would extend to the right to return to being allocated to a flat network tariff.



3. **Align communication and regulatory framework to support network tariff reform.** Policy makers have mandated the move to more cost-reflective network tariffs, to maximise consumer benefits and ensure effective consumer protections, so the regulatory framework should be aligned to support uptake of these tariffs while also providing ability for customers to opt out. While retailers will naturally have the main role in communicating to customers, this should be supported by clear and aligned communication from policy makers and networks.

While we appreciate the AEMC intends to consider these issues more holistically through the upcoming review into '*Electricity Pricing for a Consumer-Driven Future*', it is important that changes made to support the Accelerating Smart Meter Deployment consider the end-to-end customer experience with network tariff assignment to achieve the best outcomes for customers.

AGL's detailed feedback on the recommendations in the Directions Paper are set out within Appendix A attached herewith along with a list of clarification questions previously sent to the AEMC in Appendix B. We also refer to our response to the AEMC's Draft Determination submitted on 30 May 2024.

If you have any questions in relation to this submission, please contact Liam Jones on [ljones3@agl.com.au](mailto:ljones3@agl.com.au).

Yours sincerely,

A handwritten signature in black ink that reads 'Liam Jones'.

Liam Jones  
Senior Manager Policy and Market Regulation



## Appendix A – AGL’s Feedback on the Directions Paper

### Part 1 – Context for Change – Cost-reflective Tariffs

#### 1.1 Summary of AGL Position

- a. While this Directions Paper has been issued under the ‘*Accelerating Smart Meter Deployment*’ rule change, it is ultimately seeking to address issues that are distinct from the rollout of smart meters.
- b. The real issue for consideration is the concept of tariff design – both at a network and retail level.
- c. The AEMC forms the view that the Directions Paper is “not the appropriate vehicle to holistically consider broader reforms to network pricing arrangements”<sup>1</sup>. AGL disagrees and recommends a more ‘end to end’ view of the network tariff reassignment process is needed to create the right consumer protections and proposes modified solutions that would enable key issues to be better addressed now. In the alternative, these arrangements should also be considered as a matter of priority through the ‘*Electricity Pricing for a Consumer-Driven Future*’ review.
- d. The AEMC should resist the urge to implement an interim fix that does not holistically consider the underlying issues and which risks creating significant unintended consequences for customers including increased costs and poor customer experience.

#### 1.2 The Case for Change

AGL strongly believes in the need for tariffs to be **simple, actionable** and **fair**. This is underpinned by the need for customers to have choice, informed by clearly communicated propositions from their energy retailer. While it is the overall retail tariff that is ‘visible’ to the consumer, efficient retail tariffs reflect underlying costs. Network tariffs are a large proportion of the cost base for servicing residential customers and it is important to consider the issue of cost reflective network tariff reform *holistically* to deliver the intended benefits of this reform to customers. We understand the AEMC intends to address the issues of tariff design and consumer pricing more holistically through the review into ‘*Electricity Pricing for a Consumer-Driven Future*’, however it is still important that this Directions Paper considers the overall context when finalising recommendations to enable the best outcomes for customers.

Coinciding with the release of the AEMC’s Draft Determination on ‘*Accelerating Smart Meter Deployment*’, there has been increased media coverage around the perverse consumer impacts related to cost-reflective tariffs. The media coverage<sup>2</sup> highlights real-world frustration with cost-reflective network tariffs and the ensuing impacts they have on some consumers, which when replicated through retail tariffs, may manifest as “bill shock”. While smart meters and cost-reflective tariffs are not synonymous, the two issues have become conflated, noting that having a smart meter is almost always a pre-requisite for cost-reflective tariffs and the replacement of a legacy meter to a smart meter will often be the catalyst for a customer being reassigned to a cost-reflective tariff by either their network and/or retailer. In the face of increasing government and regulatory pressure, the AEMC’s Final Determination was delayed, allowing additional consultation on further consumer safeguards.

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<sup>1</sup> Australian Energy Market Commission (AEMC), *Accelerating Smart Meter Deployment Directions Paper*, 15 August 2024, p. 13.

<sup>2</sup> See for example: [Power bill shocks and 'convoluted' prices spark calls for an end to Australia's energy tariff 'nightmare'](#), [Claims complex power prices 'all pain, no gain' spark calls for tariff rethink](#), [Energy companies under fire over move to 'punishing' time-of-use tariffs](#), [Power price structures have radically changed, but nobody thought to tell consumers about it](#), [Energy retailers' 'insidious' power pricing charges households based on highest point of use](#) and [Australian energy rule maker signals shake-up of complex power prices amid user concerns](#).



It is important to distinguish the implications of the smart meter roll out and the implications of the move to cost reflective network tariffs that they enable to focus on addressing the root cause of the issue. AGL continues to advocate for the need for holistic, end-to-end review of tariff design encompassing the relationship between both the network and retail tariffs that customers are faced with. We continue to support the objectives of the network tariff reforms and note that success will require clear guidance and leadership from government and regulators on the future shape and role of cost-reflective pricing as the energy transition progresses.

Prior to this Directions Paper, regulatory policy has favoured a “network pricing framework which will enhance the likelihood of retailers passing through network pricing signals to consumers”<sup>3</sup>. The issues contemplated in this Directions Paper should create cause for reflection on the way forward as there appears to be questions as to whether the current structure of network tariffs arising from this reform align with the expectations of policy makers and consumers in balancing fairness and sending appropriate price signals to reduce future costs. A recent report by Energy Consumers Australia also questioned the rationale noting that “mandatorily rolling out cost-reflective network tariffs appears to be an inefficient and ineffective approach to minimising network costs”<sup>4</sup>.

While AGL acknowledges some of the AEMC’s apprehensions about tackling the broader tariff reform issues in this Directions Paper, the by-product of the fast-tracked approach adopted by the Directions Paper is a narrow, near-sighted and incomplete response to the symptoms rather than the cause. The current tariff framework was established under the premise that retailers would have “significant incentive to pass on network price signals to consumers in some form through the structure of its retail prices”<sup>5</sup>, but the Directions Paper makes recommendations to curtail retailers from passing through the regulated tariffs undermining the purpose of the reform.

AGL accepts a fundamental part of our role as retailer is to manage complexity and risk on behalf of our customers. This includes combining and simplifying network and wholesale cost inputs to the best products for customers. However, this does not undermine the importance of ensuring the underlying regulated network tariffs are well designed. Complexity creates cost. Importantly if the underlying network tariff is not well designed to support and enable customers to respond (directly or through their retailer/agggregator) then the network tariff reform will not achieve the key reform objective to increase productivity and reduce network costs over time.

It is also important to note that a network tariff is applied directly to the specific customer, which has implications for that customer and market efficiency more broadly. These reforms are intended to deliver long run benefits to all consumers. Yet, for some customers network costs will rise while for others the network costs will fall in the short term<sup>6</sup>. If the network changes the tariff in a way that substantially increases the network bill for that customer, then in an efficient competitive market, the customer is likely to be disadvantaged when they shop for new retail offers even if their existing retailer is restricted from reflecting the increased cost. On the positive side, customers whose network costs have fallen as a result of the network tariff change will be well placed to obtain better offers.

AGL agrees with the need for adequate consumer protections and safeguards. However, we disagree with the approach adopted by the Directions Paper on the basis that it does not actually solve the true underlying problem of ensuring simple, actionable and fair cost-reflective network tariffs.

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<sup>3</sup> AEMC, [National Electricity Amendment \(Distribution Network Pricing Arrangements\) Rule 2014](#), 27 November 2014, p. 30.

<sup>4</sup> Energy Consumers Australia (ECA), [Cost-reflective network tariffs aren't very cost-reflective](#), 27 August 2024, p. 7.

<sup>5</sup> AEMC, [National Electricity Amendment \(Distribution Network Pricing Arrangements\) Rule 2014](#), 27 November 2014, p. 30.

<sup>6</sup> See for example: SA Power Networks, [2025-30 Regulatory Proposal Overview](#), January 2024, p. 88.



In attempting to do so, the proposed approach introduces a number of additional issues and challenges that will increase complexity and cost for consumers and retailers alike and as such, should not be pursued. Instead, as will be argued herein, AGL contends that its proposed solution is preferable on two grounds: (1) it addresses the AEMC’s concerns for added consumer protection, whilst (2) doing so in a manner that avoids any of the potential pitfalls of the current approach.

## Part 2 – Explicit Informed Consent (EIC)

### 2.1 Summary of AGL Position

- a. EIC is an inherent and important part of enabling customer choice and there are **benefits** to requiring EIC from customers before varying their retail tariff.
- b. However, in the specific circumstance of network-initiated tariff reassignment, where the AER has approved the default price and structure as appropriate on behalf of customers, the requirement imposes **unnecessary** and **excessive obligations** with **unintended consequences**.
- c. Imposing an EIC obligation in this limited circumstance may lead to **poor customer experience**, **negative outcomes** for some consumers, will **exacerbate retailers’ risk** and **increase costs**.
- d. Better safeguards could be achieved through **alternative means** that achieve better customer outcomes and avoid these negatives.
- e. There are **unresolved design issues** and **implementation concerns** that require resolution prior to the Final Determination for retailers to be ready for go-live.

### 2.2 Benefits

The imposition of this new EIC requirement is intended to provide additional safeguards by ensuring that customers willingly and knowingly accept a retail tariff change (and the associated flow-on implications) following the installation of a smart meter. AGL recognises that there are some potential benefits for adopting this approach. These may include:

- a. **Customer awareness** – retailers would be required to have “clearly, fully and adequately disclosed all matters relevant”<sup>7</sup> to the customer prior to them making any decision around retail tariff variation. We are supportive of the notion that customers are provided with transparent information relevant to their circumstances to empower informed choice.
- b. **Customer choice** – once provided with relevant information, it would be up to the customer to choose whether they accept that tariff variation or not. Customers who will not benefit from cost-reflective tariffs may choose not to proceed with such a change.

In this context, it is AGL’s view that the benefits of an EIC mechanism for tariff reassignment are overshadowed by its complexity, and the issues and challenges associated with operationalising this requirement. In Part 4 of this submission, AGL puts forward a number of recommendations which better balance consumer protection safeguards, operational considerations for the industry and the consumer experience.

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<sup>7</sup> National Energy Retail Law, s. 39(1)(a).



## 2.3 Issues & Challenges

The AEMC will be aware that any regulatory or legal obligation which involves capturing the consumer's explicit informed consent is inherently more complex and onerous. Below, AGL outlines the challenges and issues associated with any EIC process, and the considerations for this consultation that must remain front of mind for the AEMC in developing the Final Determination.

- a. **Insufficient meter data to inform customers** – s. 39 of the National Energy Retail Law (NERL) sets out the general 'nature' of the EIC requirements. We note there is presently no supplementary guidance or guidelines as to how the EIC obligations might apply in the specific context of a retail tariff reassignment, and what will amount to being informed. Where a customer's network tariff and in turn, retail tariff is proposed to be varied immediately following the replacement of their legacy meter to a smart meter, there are real concerns around how a retailer might go about disclosing all matters relevant to EIC in circumstances where there is a paucity of smart meter data to properly inform the customer of factors such as the cost implications of moving from a flat rate tariff to a cost-reflective tariff.

This eventuality is contemplated by the draft rules in the Directions Paper, where at Schedule [X] r. 2(2)(f), there is an exception to the requirement to provide a bill comparison on the tariff reassignment notice where smart meter data is not available. In effect, customers would be required to give consent to a change where the impacts of that change are unidentifiable or unquantifiable by the retailer at the point of making that decision. This lack of data in the near-term supports AGL's recommendations (as discussed at Part 4 below) that there should be a moratorium on any network and retail tariff reassignments for a fixed duration (AGL recommends at least 12 months) following the smart meter replacement. This is not to suggest that a customer should not be able to request tariff reassignment at any time, as a customer can have information beyond meter data to inform their decision.

- b. **EIC introduces unnecessary complexity** - by their very nature, EIC obligations are inherently complex for both consumers and retailers alike for the following reasons:
  - i. **Implementation** – retailers are being required to introduce systems and processes necessary to comply with additional, new EIC obligations in an exceptionally short and unrealistic timeframe, noting the Final Determination is expected on 28 November 2024 and the EIC obligations commence from 1 January 2025 - a mere 5 weeks later - which in practice is less than that due to the Christmas period shutdown. AGL notes that the *minimum* timeframe required to implement necessary system and process changes would be 6 months from the date of the Final Determination. While the AEMC has provided informal guidance that retailers have had sufficient notice since the Draft Determination to build solutions, we note these are merely draft rules and are subject to change having regard to the range of stakeholder feedback provided through the consultation process. It is not good practice or prudent to build system solutions based off draft rules as these may be subject to change, nor should retailers be expected to do so consistent with the relevant objectives in the NEO and NERO<sup>8</sup>.
  - ii. **Bill comparisons** – the system functionality required to recalculate a historical bill with pricing for the proposed tariffs is highly complex and requires specific requirements to ensure consistent, accurate and meaningful comparisons for customers.

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<sup>8</sup> National Electricity Law, s. 88 and National Energy Retail Law, s. 236.



- iii. **Retailer resourcing** – under the proposed solution, retailers will be required to have two-way interactions – most likely through telephone conversations – with prospective tariff reassignment customers. The additional EIC scripting component of the conversation will increase the length of these phone calls between a retailer and its customers (measured as average handling time or AHT). This additional call duration multiplied by the hundreds of thousands of anticipated calls will result in increased cost-to serve and/or potentially impacting the retailer’s call-centre service levels.
  - iv. **Scripting** – in order to ensure compliance with the EIC obligation, retailers would be required to adopt heavily prescriptive, legalistic terms and conditions which would be read to customers. There are question marks over the effectiveness and customer experience of such an approach. Tariff conversations are inherently difficult for consumers and instead of pursuing an approach which will simplify the concepts, the risk is that an EIC approach does the opposite and imposes more complexity and bureaucracy onto consumers.
  - v. **Sequencing** – on current drafting of the rules, retailers must first provide notice of a proposed change to tariff structure resulting from a smart meter replacement, following which, they must obtain the customer’s EIC<sup>9</sup>. Notwithstanding that there are no timeframes specified, the rigid nature of the process flow may result in retailers not being able to service some requests for a change of tariff. For example, a customer who upgrades to a solar and battery installation at their property including a smart meter replacement may call their retailer on completion to access a preferable time of use tariff. However, the retailer may not be able to service that request if they haven’t yet sent the mandatory notice, requiring the customer to callback at a later date to request the change and provide EIC.
  - vi. **Loss of EIC protection** - customer churn rates of around 20%<sup>10</sup> will mean that many customers do not retain their tariff variation EIC protections for the full 3-year EIC period. We also note that the exceptions contemplated in Schedule [X] r. 5(1) will create confusion and complexity in retailer processes as it will be necessary to build different approaches to determine and cater for whether the retailer was the original meter exchange retailer or a subsequent retailer. The number of different permutations will increase as customers change either retailer and/or premises over the meter replacement period.
- c. **EIC will minimise engagement** - in Section 3.3.1 of the Directions Paper, it is noted that the alternative solution of an opt-out approach would have been reliant on customers engaging with their retailers. Encouraging consumers to engage with their retailers is critically important and should be encouraged. Had this approach been adopted, there would have been incentive for retailers to increase engagement and awareness with consumers. Instead, the Directions Paper highlights stakeholder feedback around consumer willingness to engage and instead takes the undesirable approach of requiring steps which add further friction and complexity to the process, thus reducing the likelihood of customers engaging. Stated another way, it is likely and perhaps intended that all things being equal, *fewer* customers would be expected to provide EIC than the alternative option of customers opting out even for customers who would actually be better off under the cost reflective network tariff. This has the net effect of encouraging customer disengagement with network tariff reform and the broader energy transition.

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<sup>9</sup> Schedule [X], r. 2(3)

<sup>10</sup> <https://www.2024datacentre.agl.com.au/customers/customer-churn>



- d. **Some customers may be better off from cost-reflective tariffs** - due to the varied nature of energy consumption across consumers, there are many different outcomes and permutations. While the Directions Paper is concerned with introducing protections to protect customers who may not benefit from these pricing structures, it is important to note that the broad-ranging nature of EIC means that it will impact all customers, including those who would otherwise have benefitted from accessing cost-reflective tariffs. We are concerned that customers who would benefit from tariff variation (including to a cost-reflective tariff) will be prevented from doing so due to the onerous nature of the EIC process.
- e. **Network price signals** - network tariff reform has been considered through numerous reviews and consultations over the last decade. These reforms have been led by the AEMC and AER to require the gradual implementation of cost-reflective pricing in network tariff design. As set out in the Directions Paper, the policy intent behind cost-reflective network tariffs is to ensure that the prices consumers pay for electricity can more accurately reflect the actual costs of generating and delivering that electricity. The desired outcome of cost-reflective network pricing is that consumers are incentivised through price signals to use electricity more efficiently, resulting in reduction of overall system demand especially during peak times. They are intended to support more efficient network investment decisions and may also contribute to increased uptake of consumer energy resources. This being the case, it is AGL's view that the desirable policy position is one that makes it easier and simpler for customers to be aligned to cost-reflective network pricing. For policy makers and the regulator, the ask is to ensure the underlying regulated network tariff designs and default tariff for customers appropriately balance the competing 'fairness' arguments on network cost recovery.

The Directions Paper adopts the position that cost-reflective pricing is not for everyone – indeed there are rational reasons why not all consumers may benefit from the adoption of cost-reflective pricing. Ultimately however, if this is the new paradigm – an acceptance that there should be optionality for cost-reflective pricing – then this should be reflected in the network tariff structures and statements. If policy makers determine customers should opt-in to cost reflective network tariffs, then this should apply in the setting of network default tariffs. This will protect customers' ability to engage in the market to choose the retailer and products that suit them.

- f. **Costs and risk will increase** - AGL is concerned at the cost and risk implications for retailers and customers alike. From a retailer perspective, the concerns highlighted in (b) above will result in increased cost-to-serve for retailers, which will ultimately be borne by consumers. These added costs will emanate from the additional investment in systems, processes, resourcing and associated quality and compliance controls to manage EIC obligations (over and above existing retailer capabilities).

Additionally, there would be increased retailer cost risk through greater misalignment between a retailer's exposure to cost-reflective network tariffs and flat rate retail tariffs. From a customer perspective, the by-product of the retailer impacts will mean increased costs. At worst, customers may find they become 'stranded' with their incumbent retailer where there is a disconnect between their underlying network tariff and an unwillingness to adopt a cost-reflective tariff, the effect of which will be to reduce market competition and consumers' ability to access the lowest cost energy prices. In this regard, a customer's default regulated network tariff may act as 'anchor' that they carry with them.

- g. **Access to innovative products** - without an appropriate exception framework, we anticipate that EIC requirements would pose a barrier or impediment to retailers seeking to innovate new products and services. As highlighted in the [REDACTED] case study below, we may have to reconsider feasibility and design of the project as the likely impacts of EIC would render it too difficult to recruit sufficient customers to make it commercially viable.





AGL Case Study

[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA), sections 31 and 108 of the National Electricity Law and sections 223 and 268 of the National Energy Retail Law.]

## 2.4 Further Clarification Required

Notwithstanding AGL’s concerns outlined above, should the AEMC continue with its proposal as outlined in the Directions Paper, we have identified a number of key clarifications and corresponding recommendations that are required to operationalise these changes. These include:

Clarification	AGL Recommendation
<p><b>Implementation timeframes</b> – retailers need urgent clarification and reconsideration on the expected dates of commencement as those that have been indicatively communicated by the AEMC remain manifestly insufficient.</p>	<p>Out outlined in Part 4 below, AGL recommends that instead of the proposed EIC approach, there should be a 12-month transitional period for tariff reassignments post meter exchange – this should apply to both network and retail tariffs. If this obligation commenced from 1 January 2025, AGL would be in a position to implement the recommended reporting and insights to facilitate potential tariff reassignments from January 2026 onwards.</p> <p>In the alternative, should the AEMC continue with the current EIC approach (which is not supported by AGL), then we would require at least <b>6 months</b> from the date of the Final Determination to implement the necessary systems and processes for tariff variation EIC.</p>
<p><b>EIC mechanisms</b> – will there be any supporting guidance or guidelines with respect to how EIC will operate in the specific context of retail tariff reassignments? This may include scripting requirements, permitted channels and/or number of EIC requests a retailer can make etc.</p>	<p>AGL recommends that the AEMC or AER publish a supporting guidance note on the operation of the new EIC obligations. This will be required by retailers <i>prior</i> to the commencement of the new framework to ensure that retailers build compliant processes.</p>



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**Sequencing of steps** – clarification around the order of the tariff variation notice and EIC, the timing between these steps, the relationship of when the letter can be sent i.e. before meter replacement, consolidation with the r. 59A notice and what happens if the customer initiates the request for a tariff variation.

- a. Where required, retailers should be permitted to obtain customer EIC prior to issuing the tariff variation notice.
- b. If a retailer obtains customer EIC in accordance with (a) above, then it should not be necessary to subsequently send the tariff variation notice.
- c. Retailers should have flexibility to send the tariff variation notice at timeframe(s) they deem appropriate, including being consolidated with the r. 59A meter replacement notice.
- d. Retailers should retain discretion to determine the appropriate timeframes between notice and EIC attempts.

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**Customer-initiated vs retailer-initiated tariff variations** – the Schedule [X] r. 2(1) notice requirement applies where the “retailer intends to vary the tariff structure”, leaving it open to interpretation that a corollary of this is that a customer-requested variation does not require notice. However, Schedule [X], r. 2(3) talks to tariff variations more broadly and requires the notice to be sent (no reference to which party initiated the request). Is there any distinction in the process to be followed depending on who initiates the request?

There is benefit in streamlining the tariff variation process for changes initiated proactively by the customer. These customer-initiated tariff variations should be expressly excluded from both the tariff variation notice and EIC requirements.

It may be helpful to also provide clear guidance on the distinction between a retailer-initiated and customer-initiated tariff variation.

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**Pre-2025 smart meter installations** – what is the approach for smart meters installed prior to 1 January 2025, but which have a proposed tariff variation after 1 January 2025?

These installations should be exempt from the new tariff variation notice and EIC obligations.

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**Bill comparison methodology** – what are the requirements for the bill comparison contemplated in Schedule [X] r. 2(2)(f)?

The provision should be redrafted to provide specific details of the nature of the comparison calculation including but not limited to, which historical bill period(s) should be compared, the comparison calculation methodology and the appropriate customer messaging where that historical data is not available.

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**Obligations of second or subsequent retailers** – by virtue of Schedule [X] r. 5(2), the new Directions Paper rules apply instead of the current r. 46. However, Schedule [X] r. 5(1)(a) says that the tariff variation notice and EIC obligations do not apply to

Provide clearer drafting as to the obligation for second/subsequent retailers who wish to vary a customer’s retail tariff, which should be the existing r. 46 process.



retailers that were not responsible for changing the relevant small customer’s legacy meter to a smart meter. These obligations are seemingly contradictory in nature.

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**Return customers** – in accordance with Schedule [X] r. 5(1)(a), what are the obligations if for example, Retailer A undertakes a smart meter replacement for a customer, then the customer churns to Retailer B, but later churns back to Retailer A, all within the 3-year EIC protection period? Do the tariff variation notice and EIC obligations become ‘re-enlivened’ for Retailer A as they were originally responsible for changing the customer’s legacy meter.

The tariff variation notice and EIC obligation should only apply to the retailer who undertakes the meter replacement within the relevant timeframe and does not become ‘re-enlivened’ as per the hypothetical example.

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**Specific Product Terms** – what is the appropriate treatment in the instance of products that have specific conditions built into the terms and conditions that require specific retail tariffs or involve the retail tariff being aligned to the network tariff?

AGL recommends that there should be an express provision built into the rules that exempts retailers from complying with the tariff variation notice and EIC requirements where the terms and conditions of the customer’s existing offer impose obligations on the retailer such as reflecting the underlying network tariff.

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**Retailer of Last Resort** – if a retailer becomes a Designated RoLR (within the meaning of the RoLR framework), is that retailer considered a subsequent retailer for the purposes of Schedule [X] r. 5(1)(a)?

AGL recommends that Designated RoLRs should be deemed subsequent retailers within the meaning of Schedule [X] r. 5(1)(a).

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**Duration of EIC Period** – the Directions Paper does not set out the justification or rationale behind the 3-year EIC period.

AGL recommends that the EIC period should be reduced to 12 months from the date of the smart meter replacement.

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## Part 3 – Flat Tariff Standing Offers

### 3.1 Summary of AGL Position

- a. We agree that **optionality** for customers is important.
- b. We also believe it is important for customers to make **informed decisions**, which should be **supported by data and insights** from their energy retailer.
- c. There is a role to play for **flat tariffs** for some customers.
- d. Creating further discrepancies between network and retail tariff structures creates **unnecessary cost risk**.
- e. This reform would deliver better customer outcomes paired with a reciprocal responsibility for the network to also provide a flat tariff option on request.



### 3.2 Benefits

AGL acknowledges that there are cohorts of customers who cannot or will not be able to make the necessary adjustments to their energy usage behaviour to benefit from cost-reflective pricing. This is especially true for consumers who cannot make the necessary investments in consumer energy resources or energy efficient appliances. In AGL's experience, this can be driven by the cost-prohibitive nature of these investments (especially amid a cost-of-living crisis), through an inability to make these investment choices such as renters or a combination of both.

In this regard, we broadly agree with the notion that there are consumer benefits in offering flat tariff standing offers for customers following smart meter deployment. The benefits of doing so include:

- a. **Simplicity** – tariff structures with flat, consistent pricing are often easier and more predictable for consumers to understand.
- b. **Reduced complaints** – following on from the above, this in turn reduces the risk of bill shock through unexpected energy costs, which may culminate in customer complaints and dissatisfaction. As previously discussed, in the periods following the AEMC's Draft Determination, there was prominent media coverage highlighting some of these bill shock case studies.
- c. **Consumer preference** – the reality is that some customers can't or won't shift their energy consumption behaviours. Even if they can understand the implications of cost-reflective pricing, there is a recognition that many consumers can't make the necessary modifications to their energy usage. This is driven by financial constraints – an inability to invest in CER assets or energy efficiency upgrades or through behavioural constraints – where the customer's lifestyle and behavioural characteristics do not possess the necessary flexibility to adapt.
- d. **Optionality** – customers would benefit from having the choice and flexibility to select the energy tariff structure that suits their needs and budget. As noted in the Directions Paper, this may include a price premium to value the simplicity of a flat tariff product as compared to a cost-reflective tariff.

### 3.3 Issues & Challenges

Notwithstanding the above benefits, AGL notes that there are inherent challenges with mandating flat tariff standing offers and the mechanism by which the obligation is intended to be applied. These include:

- a. **Jurisdictional derogations** – given this recommendation would need to be adopted by the jurisdictions through local instruments, there is a concern that jurisdictions may seek to derogate or modify the application to suit their jurisdictional preferences. This appears to be the case in Queensland for example, who have already announced their own approach to dealing with this issue<sup>11</sup>. Differentiated jurisdictional approaches may lead to greater complexity, inefficiency and costs.
- b. **Higher costs** – these tariffs may result in consumers paying more for their energy costs through either:
  - i. **Cross-subsidisation** – greater disparity between a retailer's network costs exposure and corresponding retail tariffs may necessitate greater cross-subsidisation.
  - ii. **Price premium** – as contemplated in the Directions Paper, these flat rate tariff structures may need to include a price premium to account for the added consistency and predictability.

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<sup>11</sup> <https://statements.qld.gov.au/statements/101123>



- iii. **Opportunity cost** – some consumers may fail to take advantage of cost-reflective pricing which might otherwise benefit them.
- iv. **Price competitiveness** – standing offer prices might be more expensive than market offers so customers might be inadvertently worse off.
- c. **Price signals** – as discussed herein, these safeguards diminish the notion that “there is a strong and necessary case for transferring every household and small business to a cost-reflective network tariff, even if the retailer doesn’t pass it on”<sup>12</sup>. By further diminishing the relationship between network pricing as the underlying cost structure and retail pricing signals as the visible, customer-facing structure, customers will be less incentivised to shift usage patterns.
- d. **Energy transition and network demand** – since 2014, ‘long run marginal cost’ has been used as the economic mechanism to “signal the future costs of investing in the network”<sup>13</sup> by ensuring that “current network tariffs need to reflect the expected additional costs from additional consumption”<sup>14</sup> especially during periods of peak demand. The intent of these mechanisms is to send price signals to consumers to reduce peak consumption which in turn would reduce network costs. As noted above the regulated network tariff follows the customer. If the policy intent is to ensure customers can always access a competitive flat tariff, then this reform would deliver better customer outcomes if paired with an obligation on the network to also allocate a flat tariff on request. Customers would then be able to access competitive flat tariffs from a range of retailers.
- e. **Could impede future adoption of cost-reflective pricing** – while there are arguments today against the need for additional network augmentation capital expenditure, this may change in the future as energy needs evolve such as the proliferation of electric vehicles. The measures we take today could have flow-on effects into the future by delaying consumer behavioural changes and/or CER investment.
- f. **EIC obligations** – on initial reading of the Directions Paper rule change, it would appear that retailers would still need to comply with the EIC obligations discussed above in Part 2. For the reasons outlined therein, we remain concerned that customers would not readily access these offers due to the onerous engagement obligations they impose.

### 3.4 Further Clarification Required

Notwithstanding AGL’s concerns outlined above, should the AEMC continue with its proposal as outlined in the Directions Paper, we have identified a number of key details and clarifications that are required to operationalise these changes. These include:

Clarification	AGL Recommendation
Interaction with DMO methodology – the Directions Paper rule changes will introduce complexity in the assumptions around the network cost component of the DMO price	<p>DMO methodology may need to change when calculating the network charge for the DMO price (currently based on a flat rate).</p> <p>If a weighting of cost-reflective network tariffs and flat rate tariffs is applied, there will be added complexity with applying a daily usage profile for</p>

<sup>12</sup> Energy Consumers Australia (ECA), [Cost-reflective network tariffs aren't very cost-reflective](#), 27 August 2024, p. 1.

<sup>13</sup> AEMC, [Consultation Paper: National Electricity Amendment \(Distribution Network Pricing Arrangements\) Rule 2014](#), 14 November 2013, p. 13.

<sup>14</sup> Ibid p. 13.



this customer type. It is unlikely that the customer usage profile will be the same as the previous TOU usage profile decisions.

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**Features of the alternative flat tariff** – beyond the detail specified in Schedule [X] r. 4(3), are there any other specific features of the mandatory flat tariff standing offer that retailers need to incorporate into their product design?

Retailers should be given as much flexibility to design products and services as possible. AGL recommends limiting the degree of prescription beyond the minimum requirements of the new product.

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Is the flat tariff obligation active or passive?

AGL recommends that the obligation should be passive in so far as the flat tariff standing offer should be available to all eligible customers on request, but retailers should not be obligated to proactively offer it to customers (beyond any existing obligations should as deemed better offer).

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**What if customers are already on a cost-reflective tariff** – can they revert to a flat rate tariff? Schedule [X] r. 5(3) sets out that the new rules in the Directions Paper only apply to smart meter replacements occurring between 1 January 2025 and 31 May 2031. However, r. 4 relating to flat tariff standing offers is excluded from this date range. Is the implication of this carve out intended to mean that the flat tariff standing offer obligation applies to smart meter replacement including those that occurred prior to the commencement of the rules?

AGL recommends that the flat tariff standing offer obligation should also apply prospectively from 1 January 2025.

In the alternative, if the intention is for the flat tariff standing offer obligation to apply to retrospective smart meter installations, then AGL’s recommendation is that the obligation should be a passive one – i.e., they are available on request by a customer.

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Do the EIC and tariff variation notice obligations apply if the customer wants to take up the flat tariff standing offer? As set out in 2.4(c) above, Schedule [X] r. 2(1) sets out the EIC obligation where the “customer’s retailer intends to vary the tariff structure”.

AGL recommends that as this would be a customer-initiated change, then the notice and EIC obligations set out in Schedule [X] r. 2 would not apply.



## Part 4 – AGL’s Recommendations

### 4.1 Summary of AGL’s Position

- a. We remain **supportive** of the accelerated rollout of smart meters and the need to have **adequate consumer protections and safeguards**.
- b. We believe it is important for customers to make **informed decisions**, which should be supported by data and insights from their energy retailer.
- c. We believe there is a need to improve **customer communications** around retail tariff reassignments.
- d. We maintain that tariff design and reform needs to be considered **holistically** - a key focus must be on addressing the root cause of customer frustration - the network tariff reassignment and network tariff design. AGL is keen to work with the AEMC, AER and networks to create a better overall customer outcome.
- e. We agree that **optionality** for customers is important, and retailers need to do a better job of transparency on the impact of tariff reassignment including information about how to save money/change behaviour.
- f. A potential future pathway is to have a hiatus of 12 months on any unilateral tariff reassignment (both network and retail) following the installation of a smart meter. This time would be utilised to collect consumption data and provide the customer with meaningful insights and recommendations. Tariff variations could then occur with an opt-out right.

### 4.2 An Alternative Way Forward

AGL is committed to improving the experience for consumers through the accelerated rollout of smart meters and through the energy transition more broadly. In this regard, we recommend the AEMC adopt the following three principles as part of its Final Determination and the review into ‘*Electricity Pricing for a Consumer-Driven Future*’ more broadly:

1. **Simplified network tariffs with greater consistency across distribution network businesses - improve market efficiency to lower overall costs for consumers.**
  - ✓ Avoid interim or partial fixes impacting only retail tariffs - tariff reform needs to be considered holistically encompassing both network and retail tariffs.
  - ✓ Tariffs should be designed in a manner that is **Simple, Actionable** and **Fair**. This involves tariffs being easy for consumers to understand, capable of making meaningful changes to leverage the benefits from and not being punitive in nature.
  - ✓ The implementation of network tariff reform has also underlined the significant variation of approaches to tariff design in each distribution network. Whilst this is a result of the existing network regulation framework, there is an opportunity to consider if network tariff structures can become more uniform and aligned across all distribution networks. The various tariffs create significant complexity that hampers the ability of retailers to implement innovative products across all distribution networks they operate in.
  - ✓ Consider the role of cost-reflective tariffs as an effective means to manage the network costs associated with peak demand - either overall or for certain cohorts of customers.
  - ✓ Where cost-reflective tariffs are considered ineffective (such as for the customer cohorts and scenarios set out by the AEMC in its Directions Paper), then retailers should not be expected to carry the cost risk of them – they should also be stopped at the network level.



**2. A 12-month transitional period for tariff reassignments post meter exchange & customer opt-out retailer obligations - balance consumer protection and customer tariff transformation.**

- ✓ We recommend an alternative approach whereby following a customer smart meter installation, there would be no tariff reassignment (either network or retail) performed (unless requested by the consumer) for a period of 12-months.
- ✓ During this time, the retailer would accumulate smart meter data and insights to present to the customer for informed decision.
- ✓ The customer would need to receive mandated communications in the period leading up to the expiry of the 12-month period – not dissimilar to the information notice contemplated today.
- ✓ The communications strategy would be focussed on ensuring maximum customer awareness of the implications of a tariff change and the options available to the customer to leverage their smart meter data to make meaningful interventions (as required).
- ✓ Where a network tariff reassignment occurs and there is an intention to follow with the retail tariff, the customer would have an opt-out right (for both retail and network tariffs), with the right to return to being allocated to a flat network tariff.

**3. Provide clear integrated regulatory frameworks to support the transition and uptake of more cost-reflective retail tariffs - support retailers to manage a considered energy transition by mitigating risk & uncertainty.**

- ✓ The pursuit of economic efficiency in network regulation is essential to ensure customers pay no more than is necessary for the use of the network. However recent tariff reforms for network demand, or capacity, charges demonstrate the risks of implementing a prescriptive and targeted price signal to all customer types.
- ✓ The varying approaches to implementing this price signal have led to a complex array of network business approaches to address the reform directive. The prescriptive requirement to implement these tariff charges has also led to unintended consequences that likely arose due to network businesses having to make necessary compromises to effectively implement this type of tariff to all customer types. In many cases, the tariff now creates a disincentive to use the network when excess capacity exists, or worse - limits the incentive for customers to limit their energy use when the network is at capacity.
- ✓ Avoid jurisdictional derogations – adopt a consistent, harmonised approach across jurisdictions and distribution networks.
- ✓ Allow sufficient and reasonable timeframes for retailers to develop and implement solutions.
- ✓ Provide clear guidance on clarifications highlighted herein.





## **Appendix B – AGL’s Specific Clarification Questions for the AEMC**

### **Explicit Informed Consent**

1. The draft rules don't define the term 'tariff *structure* change' (emphasis added). It is evident the rule is intended to capture reassigning customers from one tariff structure to another (e.g. from a flat rate to TOU tariff ). However, it is less clear for example, whether retailers could reassign customers from a TOU tariff with 3-time bands (i.e. shoulder, peak and off peak) to a TOU tariff with 2 time bands (i.e. peak and off peak). Can the AEMC more clearly define what is meant by the term 'tariff structure change'?
2. Where a customer is required to install Controlled Load (e.g. EV chargers in Qld or Hot Water) are retailers able to price the controlled load differently to the peak load with or without EIC?
3. In the Directions Paper, Schedule [X] r. 5(3) says: "*This Division [X] (excluding rule 4) only applies where a retailer intends to vary a tariff structure following the replacement of a Legacy Meter with a Type 4 or Type 4A meter during the period from 1 January 2025 and 31 May 2031*".

Does the date range of 1-Jan-2025 to 31-May-2031 relate to the timeframe during which:

- a. The retailer intends to vary the retail tariff; or
  - b. A qualifying smart meter replacement occurs (this is our interpretation of the intent).
4. The drafting of the obligation to provide a historical bill comparison in Schedule [X] r. 2(2)(f) is unclear. Can the AEMC provide clarification around which historical bill the obligation relates to? Is there a preferred or specific methodology? Is it at the retailer's discretion? Is there an expectation that retailers have smart meter data available for the same corresponding billing period to be able to provide a like-for-like comparison?
  5. In relation to the historical bill comparison obligation in Schedule [X] r. 2(2)(f) can the AEMC please clarify where there is insufficient or incomplete smart meter data available to make a meaningful comparison (e.g. where a tariff reassignment is proposed in close proximity to a meter replacement), do retailers simply advise customers there is insufficient data available for comparison to discharge this obligation?
  6. Under the Draft Determination, retailers intending to reassign a retail tariff would have needed to issue a notice at least 30 business days before any variation to the retail tariff. Under the Directions Paper however, this appears to only apply to tariff changes that occur *after* the three-year explicit informed consent period. Can the AEMC please clarify:
    - What are the timelines for the notice *during* the consent period?
    - Can the notice be sent prior to or concurrently to the meter replacement?
    - Does the customer have to provide EIC after a specified timeframe (following notification) or can they provide consent concurrently to the notice timeframe?
  7. Under the Directions Paper, Schedule [X] r. 2(3) requires that retailers obtain the customer's explicit informed consent (EIC) "*following notification*", which implies that the notice is a prerequisite obligation to obtaining EIC. If this is the case, can the AEMC please clarify:
    - What happens if a customer initiates contact with their retailer to request/enquire about a tariff reassignment prior to receiving the notice? Is the retailer to inform the customer they will need to send them a notice and the customer will need to call back to provide EIC?



- If a customer is in contact with the retailer and is able to provide their EIC prior to receiving a notice, then does the notice remain a mandatory prerequisite? EIC will require the customer to be informed of all relevant factors and provide their willing consent, which implies that the notice shouldn't be required i.e. it won't tell the customer anything they won't already know or have been able to agree to.
8. What is the role of communications being developed by Energy Consumers Australia and how will this interact with the retailer notice requirements? I.e. will there be an expectation that retailers use ECA collateral or will this be for 'better practice' guidance?
  9. Under Schedule [X] r. 2(5)(a), the notice and explicit informed consent provisions do not apply to subsequent retailers of a premise where a legacy meter was previously replaced by a different retailer. Schedule [X] r. 2(5)(2) says that r. 46 does not apply. If the subsequent retailer wishes to reassign the customer's retail tariff, what obligations if any does it need to follow?
  10. How do existing B2B processes such as won in error and lost in error interact with the new requirements both in terms of having to obtain explicit informed consent and whether the retailer is still deemed the 'original' retailer or a 'subsequent' retailer?
  11. The Directions Paper sets out that the EIC requirement also applies to new connections. Is this correct as the intent of the rule change is clearly for replacement of legacy meters rather than when establishing a completely new connection and corresponding tariff? I.e. a new connection would not have a legacy meter to replace. Additionally, the nature of the new connections process means builders are often the initial point of contact, so there's a different kind of customer relationship / commercial arrangement (e.g. fixed invoice products) in place which these rules don't anticipate.
  12. The new EIC protections apply to all customers and not just those who need to be protected from cost-reflective pricing. We know that some customers will benefit from having their tariff reassigned following a smart meter replacement. A particular example is where retailers are seeking to innovate and deploy new products and services. Would the AEMC consider an exception framework for innovative products? There is a concern that EIC requirements will prevent customers from accessing these products and services which may benefit them.
  13. Given that customer-initiated meter changes are also in scope for the new EIC requirement, can we ensure the rules are worded to make it clear that this would only pertain to the primary tariff in such circumstances?
  14. Under the draft to the NERR Rules, the new draft rule 59A(3)(f) requires retailers to include details of "*any changes to the customer's contract as a result of the new meter deployment or meter replacement, including regarding and tariff changes*" in the 59A notice sent to the customer. Retailers are also required to provide this information in the notice referred to in the Directions Paper. Given we have to send the Directions Paper notice which talks to tariff changes, why are we required to give details of the tariff changes in the 59A notice? This seems like a double up. Is the intention for the information in the Directions Paper notice and the 59A notice to be provided in one notice?
  15. With regards the 30 days' notice period, is there an option to consider the notice period should be in line with benefit change notice periods (no later than 20 business days)? Outside of the explicit informed consent period, the most practical time to amend a customer's tariff could be at recontracting. However, if a longer notice period is required for a tariff change than for a benefit change, there is no option to consolidate and therefore simplify customer communications.



16. Would the AEMC consider a carve out for EIC where a retailer calculation shows that the customer would be better off on the proposed new tariff? We know engagement in energy is low, and the reality is that this rule change will mean some customers don't benefit from a favourable automatic tariff change implemented by the retailer?

#### **Flat Rate Tariff**

17. If a customer is already on a flat tariff structure with their legacy meter, then has a smart meter replacement but the retailer chooses to leave their tariff unchanged, does this fulfil the requirements of Schedule [X] r. 4(2)? Are there any other pre-requisite features of the new flat tariff standing offer other than the detail provided in Schedule [X] r. 4(3)?
18. With reference to the question above in relation to the definition of a 'retail tariff structure', does the new EIC obligation also apply if the retailer wishes to reassign the customer from their 'existing' flat tariff to a 'new' flat tariff?
19. For the obligation to offer flat tariff standing offers, is this a positive obligation – i.e. the retailer must actively communicate the availability of that tariff to a customer or is it a passive obligation – i.e. the retailer is obligated to have one available if requested by the customer?

#### **Implementation**

20. This direction adds significant complexity and effort to the systems and process build over and above what was proposed in the Draft Determination. This will take several months to build, test and deploy. As pointed out, retailers are faced with the prospect of having to start now based on the draft content of the directions paper (which may change) or risk being non-compliant if they wait until the final determination. Is the AEMC open to transitional rules to support retailers make the necessary changes? Is the AEMC open to transitional rules to support retailers make the necessary changes?
21. There are concerns that if retailers cannot complete the necessary system and process builds in time, retailers may cease reassigning customer tariff structures (where permitted) until they can update their systems and processes to ensure they can capture EIC to meet this requirement. Has the AEMC considered the negative impacts to customers during this period as some customers may be better off with a tariff structure change or wish to move to a new tariff structure?
22. How this will interact with the pricing review and if it creates a period where the findings (if adopted as a rule change) can't work appropriately
23. When might we expect to receive formal clarification on dates? If retailers wait until the Final Determination, then they will not have sufficient time to implement the changes. However, if retailers start building towards the draft rules and there are changes or further delays, then retailers will risk having non-compliant processes. If retailers wait until the Final Determination, then they will not have sufficient time to implement the changes. However, if retailers start building towards the draft rules and there are changes or further delays, then retailers will risk having non-compliant processes.