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National Energy Retail Rules Amendment 2025 – Assisting hardship customers

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) *Assisting Hardship Customers* Consultation Paper, dated 28 November 2024.

AGL supports the proposition that customers experiencing financial hardship should be able to easily access the lowest cost energy offers available. As part of the Australian Energy Regulator's (AER's) Game Changer initiative, AGL was supportive of the *automatic better offer* reforms to permit retailers to independently switch hardship customers to the lowest cost offer where it is in the best interest to do so. Notwithstanding the AEMC's reservations about the impact of automated better offer switching on explicit informed consent, AGL strongly believes that this solution is most likely to promote strong customer outcomes, confer enduring rather than temporary benefits to hardship customers, and increase confidence in the energy retail industry.

AGL's feedback to this Consultation Paper is based on our longstanding history as one of Australia's largest providers of essential services, our extensive experience in supporting consumers experiencing vulnerable circumstances and AGL's participation in the AER's Game Changer Design and Leadership Groups to develop the automated better offer solution referenced in the Energy and Climate Ministerial Council's (ECMC) consumer reform package.

Broadly, AGL's position is that:

1. First and foremost, AGL does not support crediting the difference between the deemed better offer and the customer's current offer as the costs associated with developing and implementing the complex calculations and IT architecture are not outweighed by the benefits for customers experiencing financial hardship, which, as acknowledged by the AEMC, are unquantified and unknown[1].
2. Instead, AGL strongly advocates for the AEMC to make a preferable rule to pursue *automatic switching to the better offer with general consent for future switching* as the preferred implementation option for NECF.
3. Alternatively, the AEMC and the AER should investigate the effectiveness of the AER's Customer Hardship Policy Guideline that requires retailers to review the appropriateness of the hardship customer's market retail contract arrangements[2]. If the existing requirements can be optimised, or if it is a matter of industry compliance with the regulations, the AEMC could avoid the need to build out complex switching or crediting mechanisms.

[1] Australian Energy Market Commission, Assisting hardship customers, Consultation paper, 28 November 2024, p8.
[2] Australian Energy Regulator, Customer Hardship Policy Guidelines, version 1, 2019, p24.

The AEMC may be aware that there is already widespread evidence of energy retailers providing voluntary payment relief measures to combat the ongoing cost-of-living crisis, above and beyond their regulatory obligations. For AGL, supporting our customers, particularly those who may be experiencing vulnerable circumstances, continues to be an enduring priority. AGL is delivering on its commitment to provide effective and meaningful support to customers when they need it most. AGL's $90 million Customer Support Package is helping customers get back on track through debt relief, payment matching, no cost solar installation for eligible hardship customers, and proactive outreach initiatives to customers showing early signs of hardship. To date, AGL has delivered $63 million to assist customers who need it most and installed 189 no-cost solar systems through our innovation solar fund for eligible customers providing them long-term sustainable energy solutions.[3]

It is critical that the AEMC's reform package adequately balances implementation and operational costs, against the short, medium and long-term interests of the consumers. The rule change should not inadvertently hamstring payment relief initiatives already underway in the industry by diverting labour and financial resources away from retailers' ongoing streams of work.

Crediting the difference between the current plan and the best offer

The AEMC states it will pursue the crediting solution as the approach most likely to reduce economic costs for hardship customers and improve their debt/payment outcomes while incurring only moderate implementation costs for retailers and avoiding substantive changes to the underlying explicit informed consent framework. AGL disagrees with the AEMC's conclusion.

Neither the proponent nor the AEMC have been able to quantify the number or proportion of hardship customers who will benefit from this change and have instead relied on general observations around the overall customer base who might benefit from switching.[4] However, this does not consider the impact of specific retailer obligations to discuss better offers (see AER Customer Hardship Policy Guideline standardised statement 6)[5] or additional steps that retailers take to support hardship customers. Given there are measures in place to ensure this occurs and there is no evidence to the contrary that this is not working or being delivered, it is unclear the basis on which there are any potential benefits from this change.

Firstly, from an implementation and systems perspective, the AEMC's assessment that "costs to retailers are likely to be moderate as the proposed approach aims to build and leverage on existing systems",[6] is not accurate. AGL's review of its systems for the current better offer calculation process determined that the crediting solution cannot be built into or leveraged off the existing system functionality and will necessitate entirely new and complex IT development and build.

AGL is extremely concerned that this new, additional functionality will carry significant implementation costs, which we argue would likely outweigh the benefits to the impacted customers (noting the benefits can also be achieved through other lower cost mechanisms). Furthermore, these implementation costs need to be considered in the context of the other related ECMC rule changes and the broader regulatory reform landscape such as for example the *Accelerating Smart Meter Deployment* rule change and NEM reform initiatives amongst many others. AGL's concerns around implication costs and complexity are predominantly driven by:

- The existing better offer calculation acts as a snapshot at a point-in-time (being the date on which the calculation is performed by the system) that compares the customer's current plan and AGL's current in

[3] AGL Energy Limited Annual Report 2024, p27.

[4] Australian Energy Market Commission, Assisting hardship customers, Consultation paper, 28 November 2024, p7-8

[5] As part of the AER's Customer Hardship Policy Guidelines, energy retailers are required to have processes in place "to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy".

[6] Australian Energy Market Commission, Assisting hardship customers, Consultation paper, 28 November 2024, p11.

market deemed better offer, pro-rated over a 12-month period. On the other hand, the proposed crediting option requires the ongoing application of credits to the customer's account. These two functions are distinctly different because:

  - In-market deemed better offers are constantly changing as retailers react to the competitive market within which we operate. Within a single billing period, there could be multiple better offers in market at different times; and
  - A hardship customer might choose to change their product one or more times within a single billing period. Changes in product can also be cancelled and reversed due to a change of mind.

- As a result, the proposed crediting solution would require retailers to perform daily calculations on each NECF customer account that is participating in a payment hardship program. This is necessary to ensure correct time slicing and apportionment of plan differences vs. daily consumption. This will impact overall system performance due to the increased calculation load ('number crunching').

- The methodology determines the better offer as at the date of the snapshot and gives a comparison of the cost differential for illustrative purposes only, i.e. the customer cannot retrospectively apply the deemed better offer to their historical bills, rather they can only seek to access it *prospectively*. However, with this proposal, the methodology appears to contemplate applying a current price to historical consumption (where that price might not have been available during the billing period in question) or alternatively, to recalculate the historical deemed better offer for each previous timeframe to apply that to the historical consumption. The former scenario involves a disproportionate transfer of risk to retailers and the latter scenario invites significant complexity for both retailers and customers.

Secondly, as part of AGL's response to the Essential Services Commission's (ESC)'s Energy Consumer Reforms Discussion Paper, we raised that the crediting option was the *least* desirable of the three options presented by the ESC as it involved significant complexity for retailers to implement and administer, and carries the highest likelihood of poor customer outcomes, such as:

a. ***Complexity*** – as outlined above, retailers will need to develop and implement new system capabilities to dynamically calculate the difference between a customer's actual bill versus the better offer during each day of that billing period and then apply corresponding bill credits for the delta. This will involve building a sophisticated algorithm that can recalculate concessions rebates, backdated charges, non-energy charges and other complex components of the customer's billing calculation at scale. We envisage that despite retailers' best efforts this complexity will inevitably result in compliance challenges.
b. ***Limited duration*** - credits would only be applied for the duration of time the customer is enrolled in the hardship program, meaning that the customer will cease receiving the benefits of the credits upon exit. This may result in poor customer outcomes by perpetuating the cycle of payment difficulties and providing only temporary relief. Customers often enter into a hardship program once they have incurred debt (as evidenced by the average debt on entry to hardship programs), meaning the customer has already been impacted by higher energy costs. From a financial impact perspective, this customer segment would genuinely benefit if they moved onto and stayed on the lowest priced energy plan beyond their time on the hardship program.

c. ***Bill accuracy*** – The application of credits could adversely impact bill accuracy with respect to the application and validation of concessions, the calculation of solar exports, treatment of product swaps and transfers and the processing of meter data adjustments from the market. This complexity would invariably extend to consumers potentially leading to confusion, complaints and decreased consumer comprehension of their bills.

d. ***Perverse outcomes*** – under this proposal, consumers will have the option to remain on higher-priced offers which may include additional perks or benefits (for example, streaming service subscriptions, movie and event tickets) whilst still being credited the difference for the better offer.

This could occur through a conscious decision or through disengagement and may lead to a situation where customers continue to receive these added benefits which are subsidised by retailers (and by extension, other consumers). In circumstances where customers are not able to afford their ongoing energy usage, it is AGL's position that it is not appropriate to remain on these higher-priced offers with added benefits that are subsidised by other consumers. Ultimately, the AEMC will need to take a firm position and clearly define what constitutes the "best" offer in the context of customers who cannot afford their ongoing energy usage.[7]

e. ***Customer experience***: It would be very difficult for customers to understand how the credit in any billing period was calculated and applied. The quantum of credits may vary vastly from bill to bill (based on comparative position of plans in that period) and this is likely to trigger questions that frontline staff may find challenging to explain without taking the customer through a spreadsheet of calculations. Given this customer group is one which the proposal suggests find it hard to navigate and understand energy bills, this will undoubtedly become a problem and is likely to lead to distrust and a reduction in transparency around energy costs

Automated switching to the better offer

The AER's Game Changer project brought together a broad cross-section of energy sector stakeholders including "energy businesses, consumer groups, researchers, government and market bodies"[8] who worked collaboratively to develop a package of reforms outlined in the AER's Final Report including the need to switch hardship customers onto better offers. Significantly, the design and leadership groups did not consider the proponent's crediting option as a viable or impactful approach to solving this problem and instead, favoured automated switching with a number of methodologies outlined.

In considering whether automated switching to the better offer for hardship customers is a viable option, the proponent noted that "Avenues 1 [automated switching with post-switch reversal] and 2 [automated switching with pre-switch opt-out and post switch reversal] are not possible in the NECF as they would contravene existing explicit informed consent requirements under the NERL"[9]. However, Avenue 3 – *General consent for automated best offer in the future* "is possible", but perhaps not preferable if alternative pathways are available.[10] While AGL believes all avenues are likely to incur significant complexities, challenges and costs for energy retailers, if the AEMC is minded to choose one of the AER's Game Changer solutions, *Automated switching with general consent for automated better offer in the future* is the better solution for both consumers and industry. Accordingly, the AEMC should make a preferable rule to implement this option as one that is more likely to contribute to the National Energy Retail Objective as the implementation costs for developing a new crediting mechanism and maintaining these calculations and processes would likely be higher overall than the costs for the automated switching with the future consent mechanism.

With respect to the longevity of the benefits, simply applying a bill credit for the difference between plans provides only temporary relief to the customer for the duration of their hardship arrangement with the retailer. Should the customer exit the hardship program (whether by successfully completing it or for non-participation), the benefits of these payments cease, reverting the customer to their original position. For context, almost half of AGL's hardship applications over the past two years have had an average time on the hardship program of less than 90 days. Automated switching to the better offer, however, confers enduring

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[7] AGL Energy, Response to the Essential Services Commission Energy Consumer Reforms Discussions Paper, November 26, p 4-5.
[8] Australian Energy Regulator, *Game Changer - A package of reforms to improve outcomes for consumers in energy hardship*, Final Report, p 6.
[9] ECMC, Assisting Hardship Customers Rule Change Request, p3.
[10] Ibid.

benefits on the customer which is particularly advantageous for chronically disengaged customers who do not contact or respond to contact from their retailer.

AGL understands there may be complexities and delays associated with seeking legislative changes to the explicit informed consent requirements in the National Energy Retail Law (NERL). AGL does not believe this should deter the AEMC from pursuing automated switching to the better offer. We acknowledge that this process may take a longer than originally anticipated by the proponent or the AEMC, however, there are interim measures available. The AEMC may consider implementing appropriate transitional arrangements through the Rules or allow industry to use this time to prepare systems, staff and processes for the commencement date of the automated better offer switching.

Alternative solutions

The AEMC will be aware that under the AER Customer Hardship Policy Guideline, Standardised Statement 6, retailers are already required to have "Processes to review the appropriateness of a hardship customer's market retail contract in accordance with the purpose of the customer hardship policy". If there is a better offer available to the customer, the retailer is required to "explain why the plan is better" and "ask if you'd [the customer] like to transfer to the new plan for free". Accordingly, consideration of the better offer should already be occurring for customers enrolling into a retailer's payment hardship program.

Rather than pursuing broad reaching regulatory reforms with significant costs and customer impact, the AEMC may wish to work with the AER to investigate whether or why there is a discrepancy between hardship customers who ought to be on the retailer's better offer but are not. If there are underlying compliance issues at hand, then this may be better addressed through targeted compliance programs, and/or action against offending retailers as this may be more effective at addressing the underlying cause of the issue. However, at the time of this submission, the AEMC has not provided any empirical evidence in the form of data and analysis to substantiate poor retailer behaviour or widespread non-compliant conduct.

If the AER's investigation reveals that customers largely elect not to transfer to the deemed better offer to continue to reap the intrinsic, additional and/or non-price benefits of their existing energy plan, then the crediting mechanism will raise serious questions of equity and cross-subsidisation that the AEMC will need to explicitly address.[11]

Ironically, if this rule change progresses with the crediting option, it will alter the advice that retailers might give to customers both verbally and through Better Bills Guidelines messaging insofar as a hardship customer might actually be better ignoring the deemed better offer message and staying on their existing offer (potentially with added benefits) to have the difference credited by their retailer.

AGL considers that leveraging the existing hardship obligations is a viable alternative solution to regulatory intervention. In its Energy Consumer Reforms Discussion Paper, the ESC notes that comparable Victorian Payment Difficulty Framework obligations to review the tariff most likely to minimise the customer's energy costs are largely effective, and on average "customers receiving payment difficulty assistance paying lower effective prices than customers not receiving this assistance".[12] Importantly, targeted enhancements to the existing obligations will not require modification or variation of the underlying explicit informed consent requirements in the NECF and will take significantly less time to implement for retailers than the automated better offer or crediting options.

[11] Discussed in more detail in under the subheading 'Perverse Outcomes' above: Is it fair and equitable that all consumers subsidise the costs of a hardship customer's decision to retain a higher-priced offer to reap other benefits while also receiving credits for the difference between the lowest-cost better offer and their energy plan?

[12] Essential Services Commission, Energy Consumer Reforms: Discussion Paper, 24 October 2024, page 6.

Regulatory Sandboxing Arrangements

As part of its response to the ESC's Energy Consumer Reforms Discussion Paper, AGL recommended that the Regulatory Sandboxing Arrangements may be an appropriate mechanism to trial and test the concepts for the automatic better offer and the other solutions. AGL is also aware that the AER has been working with various energy market participants to improve the uptake of its Regulatory Sandboxing Arrangements to test innovative, forward-thinking ideas in the energy industry. AGL's view is that the proposed automated best offer reform package presents an opportunity to utilise these trial waiver arrangements to develop a viable consumer-centric solution that considers all intended and unintended consequences and ways to mitigate adverse customer outcomes before it becomes regulation. The AEMC and the AER could work with industry and consumer representatives to explore how different models (i.e. switching versus crediting) or characteristics could impact the customer experiences and outcomes during a timebound pilot.

Implementation Timeframe

It is critical that the AEMC allows for an appropriate timeframe for implementation regardless of whether the AEMC opts for the crediting mechanism or the automated switching to the better offer. AGL recommends a period of 18 – 24 months noting the complexity of the changes and the volume of IT systems infrastructure that will need to be built, designed, tested and deployed.

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

Yours sincerely,

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