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Submitted via webform: https://www.aemc.gov.au/contact-us/lodge-submission

**National Energy Retail Rules Amendment 2025 – Changes to energy retail contracts**

AGL Energy (AGL) thanks the Australian Energy Market Commission (AEMC) for the opportunity to comment on the *Delivering more protections for energy consumers: changes to energy retail contracts* Consultation Paper, dated 28 November 2024.

AGL's customer insights and energy market observations indicate that the incidence and level of consumer detriment resulting from the issues raised in the proponent's rule change are generally low. Following the Essential Services Commission's (ESC) *Ensuring energy contracts are clear and fair* and the AEMC's *Regulating conditional discounts* rule changes in 2020, many energy retailers, particularly those operating across multiple jurisdictions in the National Energy Market (NEM), have already implemented solutions to address contract and pricing matters subject to this consultation. Accordingly, the AEMC will need to ensure that these regulatory reforms do not substantively depart from the solutions and established systems already in place and do not impose a major costs burden on retailers and consumers.

In relation to the four proposed rule changes, AGL's high-level positions are:

1. The *Ensuring energy plan benefits last the duration of the contract* rule change should apply prospectively to new energy retail contracts and reflect the existing provisions in the Victorian Energy Retail Code of Practice (ERCoP) to the extent possible to promote greater harmonisation, avoid duplicative build out to retailers' IT systems architecture and allow retailers to best manage the transition.
2. AGL supports removing *Unreasonable conditional discounts* and has already committed to transitioning its remaining customers from legacy products onto new energy offers.
3. AGL supports the principle that where fees are charged, these fees should be cost-reflective. AGL does not support the proposal to ban retailers from passing through regulated DNSP or Meter Coordinator/Provider special meter read fees for customer move in/move out. Further, retailers should continue to be permitted to charge cost-reflective paper bill fees.
4. While AGL understands the intent of the *Preventing price increases for a fixed period* rule change is to target specific outlier behaviour, the recommended reform options have broad-reaching implications. AGL does not support the proposed reforms and instead encourages the AEMC to consider alternative and targeted measures to address the proponent's concerns. Of the options presented, preventing price increases for a fixed period after a market retail contract commences is an operationally preferable solution than limiting a price change event to one day a year.

AGL's feedback to this Consultation is based on our longstanding history as one of Australia's largest providers of essential services, our insights and observations on comparable changes in the Victorian energy regulations framework and AGL's participation in the AER's Game Changer Design and Leadership Groups to develop some of the initiatives referenced in the Energy and Climate Ministerial Council's (ECMC) suite of consumer-focused retail reforms.

**Effects on competition and different regulatory reforms**

The AEMC should have regard for the interrelationship between different regulatory reforms, and the cumulative effect that such changes could have on a retailer's ability to manage its costs and margins. For example, the combination of price certainty regulations, benefit and contract duration restrictions and explicit informed consent requirements for tariff reassignment post-smart meter exchange may result in customers remaining on energy products that are not reflective of the market. Further, the AEMC wishes to transition customers off conditional discount plans but the retailers' ability for doing this efficiently may be limited by restricting the ability to adjust prices more than once in a 12-month period.

The AEMC should be cognisant that limiting retailers' flexibility to change prices may lead to pricing premiums being built into energy plans to mitigate commercial risks, contrary to the proponent's intention for this rule change.

The AEMC should consider the totality of existing regulations against the new reforms through a holistic review to ensure that it takes a cohesive approach to addressing the proponent's problem statements.

Further, the AEMC will be aware that recent findings by the Australian Competition and Consumer Commission (ACCC) show that competition in the energy retail market is improving with the number of available energy products increasing, and the number of retailers entering the electricity retail market also exceeding market exits for the first time since 2021. This increase in competition should mean that consumers have access to a wider pool of energy offers and products to select to best suit their energy needs and objectives. The AEMC should take care to ensure that the proposed reforms do not represent a substantive departure from existing policy and do not adversely impact retail competition by shrinking the availability of competitive offers and participants in the market.

**Implementation timeframe**

AGL anticipates that industry will need an implementation period of between 12 to 24 months depending on the specific rule change proposed in this Consultation Paper. A shorter implementation period can be achieved if the AEMC pursues the recommendations made by AGL in its submission below which avoid the need for significant changes to IT systems, business processes and other existing solutions already implemented by retailers.

For rule changes which will require retailers to transfer customers to a new energy plan, the AEMC should set the industry and consumers up for a successful transition by allowing for appropriate timeframes to undertake proactive customer notification and engagement campaigns.

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

Yours sincerely,

Liam Jones

Liam Jones

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**AGL Energy**

# 1. Appendix A

## 1.1. Ensuring energy plan benefits last the length of the contract

It is AGL's recommendation that the proposed rules mirror the existing provisions in the Victorian ERCoP to the extent possible. Closer harmonisation with the Victorian energy regulations will avoid retailers having to design, develop and implement jurisdiction-specific logic into their systems and processes, and avoids extensive changes to customer-facing material, including letters and retail contract terms. Alignment between the NECF and Victorian energy regulations frameworks can help minimise retailers' implementation costs and costs to serve.

**Application of the rule**

It is AGL's strong recommendation that the proposed rules apply prospectively to new retail contracts created after the commencement date of this regulation, rather than a retrospective application to existing or legacy contracts already in effect. AGL understands that the AEMC is engaging the ESC as part of the suite of the ECMC customer-fused retail reforms. As part of the parallel Victorian Energy Consumer Reforms consultation, the ESC is proposing to remove the grandfathering arrangement for the 2020 *Ensuring energy contracts are clear and fair* rule change. It is important that the AEMC aligns the new NECF provisions with the existing equivalent provisions in the ERCoP.

Prospective application would be consistent with the approach taken by the AEMC as part of its July 2020 *Regulating conditional discounts* rule change which applied only to new retail contracts and not to contracts already inflight.

Retailers should retain discretion over the treatment of existing customers at the end of a fixed benefit period which may include renewing their energy plan for another term or moving the customer onto an evergreen market plan that is compliant with the new rules. Customers on existing products with a fixed benefit period should not be forced to rollover to a Standard Retail Contract at the end of that benefit period, as the DMO is often priced higher than market retail contracts. AGL notes that this is the exact scenario this rule change is seeking to protect consumers from.

Should the AEMC extend this requirement to existing energy plans already in place (i.e. retrospective application of the rules), it is important to allow for an appropriate transitional period of 24-months. The AEMC may be aware that some retailers, including AGL, offer energy plans in market with a 24-month benefit period. AGL anticipates a substantial program of work and moderate costs associated with updating its energy product portfolio to accommodate for this rule change if it were to apply retrospectively.

**Relationship with other rule changes**

The combination of this rule change and the option under the *Preventing price increases* to limit price increases to once a year could put retailers in a position where they are less able to recover their costs or create customer-centric products that enable choice, market innovation and competition. This is particularly true if the rule is applied to plans already in effect. The AEMC should also have regard to the impact of these rule changes in the context of other regulatory reforms such as the consumer safeguards protections in the *Accelerating smart meter deployment* rule change which similarly place restrictions on the ability for retailers to effectively and fairly manage their cost risks. Ultimately, removing the ability for retailers to balance their margin at the end of a benefit period puts greater pressure on the annual price change to achieve this objective, and therefore makes the methodology for setting the DMO at a sustainable level even more critical.

**Exemptions**

It is appropriate and necessary for some energy plans and products to be exempt from the new regulations, particularly where these plans cater to specific customer needs. Such exemptions allow retailers to continue to develop and offer innovative plans in response to changing consumer needs and preferences. The AEMC should establish an efficient exemption process akin to the Victorian product exemption process from the price certainty regulations (discussed in detail under Section 1.4 *Preventing Price increases for a fixed period)* to ensure such products continue to be sold in market. An example would be AGL's New Home Plan which charges a six-month fixed price invoice instead of regular usage charges to builders.

Additionally, certain non-financial benefits like loyalty schemes, tangible gifts, subscriptions, value-adds/bolt-on and upfront incentives should be exempt from the proposed rule, consistent with the approach taken by the ESC in Victoria.

Another consideration is that some retailers may have partnership offers or offer restricted plans to customers experiencing vulnerable circumstances that have specific plan characteristics which would otherwise disqualify these products under the new rule. For example, an energy plan with a six-month fixed benefit period and 100% discount after which the customer is moved onto the retailer's better offer. To overcome this, the AEMC may choose to use a clear definition of the types of benefits that must continue for the duration of the plan or introduce an exemption process to permit retailers to offer these types of products in specific circumstances.

Similarly, exemptions should be made for legacy plans that have been reactivated following a transfer in error. Retailers have an obligation to put the customer on their original contract if they had been transferred to another retailer without explicit informed consent. In these circumstances, retailers should be permitted to reinstate the customer's legacy energy plan in its original form, even if it includes fixed term benefits that do not last the duration of the contract (i.e. the plan existed pre-commencement of this rule and should be reinstated to its original version).

## 1.2. Removing unreasonable conditional discounts

Following the AEMC's July 2020 *Regulating conditional discounts* rule change, AGL ceased offering generally available energy plans with conditional discounts in the NECF and has taken proactive steps to reduce the volume of existing customers on these plans. AGL has made a business decision to actively transition the remaining customers to plans which do not contain conditional discounts.

Confidential information has 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.

Noting that only a small proportion of customers remain on legacy contracts with a high conditional discount, and of those, 91% of residential and 85% of small business customers are meeting the terms to receive the discount[1], overall customer detriment arising from these energy plans is likely to be on the lower end of the scale. Nevertheless, AGL acknowledges that where conditional discounts are not achieved, the proportion of customers with annual prices at or above DMO increases and that conditional discounts can make up a significant portion of a customer's bill. The AEMC should pursue the simplest, least-cost solution to fulfil the intent of the proponent's rule change request and permit retailers some degree of flexibility to determine the most effective approach from a business and customer experience perspective. For AGL, this could include using existing processes and channels to transition customers off their conditional discount plans by:

- Moving customers onto a non-conditional plan when they reach the end of their benefit period (noting most benefit periods are 12 or 24 months long).

[1] The Australian Competition and Consumer Commission, Inquiry into the National Energy Market Report June 2024 report, found only 10% of residential customers and 14% of small business customers failed to achieve their conditional discounts as of 1 July 2023.

- Proactively engaging with customers on other non-conditional products that might better suit their needs outside of the benefit period end.
- Terminating the existing conditional discount products and moving customers to a Standard Retail Contract, with the option to choose a better deal.

AGL recommends that retailers are given sufficient time to complete this transition to minimise the need for out of cycle price changes and particularly noting that the requirement for retailers to gain explicit informed consent for any proactive product swap activities takes time to fulfil.

With respect to specific products, some retailers in the NEM, including AGL, may offer employee energy plans that have conditional discounts contingent on the customer being an employee of the retailer. We recommend that these types of offers be exempt from the rule change as they represent a specific employment benefit provided to informed and engaged customers receiving a restricted offer.

## 1.3. Removing Fees and Charges

AGL welcomes greater consistency in the treatment of various fees and charges across the states, as state-based derogations add complexity to retailer operations, for example, state-specific QLD and NSW derogations relating to fees for Standard Retail Contracts.

In setting the policy direction for this rule change, it is important that the AEMC makes clear in its determination that fees that cannot be recovered by retailers directly from the customer who incurs the fees under a 'user pays model' will be subsidised by and recovered from *all* customers in the NECF.

As an example, Paper Bill Fees are incurred only by customers who elect to receive their bills via post over digital bills. The fee reflects the reasonable costs of business incurred by the retailer, including the costs incurred from Australia Post for its services (which, incidentally, are continuing to increase). By prohibiting this fee, retailers will instead incorporate it into the retail costs stack for *all* NECF customers, rather than charging only the customer cohort who use these services. Further, by removing the direct passthrough of these fees, the AEMC is hiding the pricing signal to consumers to opt-for lower cost, sustainable alternatives.

The table below details the potential impacts of the proponent's rule change request on retailers and consumers.

| Fee Type | AGL Comment |
|---|---|
| **Account establishment fees** | AGL has no specific comments as we do not charge account establishment fees. |
| **Special meter read fees for move in/move out** | Special meter read fees are a direct passthrough for services provided by the distribution business and/or Metering Coordinators/Providers. Accordingly, AGL does not support a prohibition on charging special meter read fees directly to customers who request a special read service order. Noting that these third parties charge the retailer different fees based on the geographical location, smart meter status and time of service order request, AGL does not consider it fair and equitable for all customers to subsidise the cost of a move in/move out special read service order request which some customers may use repeatedly throughout their lifetime, while other customers may not move properties at all. |

| | |
|---|---|
| | This matter can be revisited once the smart meter rollout is nearing completion and retailers have had the opportunity to renegotiate fees with Metering Coordinators.<br><br>Further on regulated network fees, if a network fee should not be charged to retail customers, it should not be imposed by the distributor onto the retailer. This matter is within the remit of the AER to set the policy direction through its regulation of network fees and charges. |
| **Credit Card Payment fees** | Card Payment Fees are governed by the Reserve Bank of Australia (RBA) and are already required to be cost reflective. Additionally, the government is considering a ban on debit card fees, tentatively earmarked for 1 January 2026.<br><br>Whilst we support the intent that these fees should be cost reflective, regulating these fees (and any fees within the remit of the Treasury/RBA) within the energy framework is unnecessary and likely to result in conflicting regulatory obligations being placed on retailers. |
| **Late Payment Fees** | While AGL currently charges a late payment fee, the fee is cost reflective. AGL supports the proposal for this fee to continue to be cost reflective to allow businesses to recover costs incurred as a result of the late payment or non-payment of an invoice.<br><br>AGL also considers that fees of this nature may incentivise timely payment of invoices, with most retailers removing Pay on Time discounts in favour of direct fees instead. |
| **Early Termination Fees** | AGL does not currently charge early termination fees.<br><br>However, we propose that if early termination fees are to be banned, there should be a standing exemption or an exemption process in place for specific types of energy plans that offer significant upfront value customers. Examples include plans which offer fixed prices for an extended period of time or plans which include upfront installation of energy related hardware. |
| **Over the Counter (OTC) Fees** | While AGL currently imposes an OTC fee, AGL is proactively exploring options to remove the fee for its customers, despite costs from Australia Post increasing over time. In AGL's experience, customers who elect to use this payment channel are disproportionately affected by payment difficulties and/or other vulnerable circumstances. AGL's standard practice is to waive OTC fees incurred by customers enrolled in hardship, receiving concession entitlements, or impacted by other vulnerable circumstances such as family violence.<br><br>AGL is open to the AEMC explicitly removing OTC fees for all customers. |
| **Paper Bill Fees** | As above, AGL has taken a customer-centric approach by waiving Paper Bill Fees for vulnerable customers, customers receiving concession entitlements and those who are not digitally enabled to ensure these customer cohorts are not unfairly disadvantaged. |

AGL's preference is to retain the Paper Bill Fee as an important behavioural cue and price signal for customers to transition away from paper billing towards digital bills, where possible and practicable. By removing visibility of this fee, customers lose valuable incentive to transition to more sustainable methods of communication including the customer experience benefits of digital channels (for example, the opportunity for digital bills to facilitate easier switching to the better offer).

**Default Market Offer and Standard Retail Contract Customers**

The proposal suggests that where fees are banned, the retailer's costs can be recovered through tariffs instead. This necessitates those same costs to be factored into the DMO calculation, otherwise retailers will not have the opportunity to recover costs for Standard Retail Contract customers.

**Changes to Fees**

As fees apply across the customer base, the "*preventing price increases for a fixed period under market retail contracts*" rule change should have a carve out for changing fee amounts, especially, where retailers are required to continuously revise fees to ensure they remain cost-reflective such the payment processing fee under the RBA standards. Otherwise, retailers may find themselves having to hold a specific fee (e.g. late payment fee) unchanged for some customers for a period of time but not for others, resulting in having multiple versions of the late payment fee live at any point in time. This would result in operational complexity for retailers to manage from a product and pricing portfolio perspective and lead to suboptimal customer outcomes.

Where the proposal suggests fees should be cost reflective, it is important to note that this expectation should apply no more than once per year. It is neither practical nor cost effective for retailers to amend fees multiple times in a year. New rules to calculate and revise fees more regularly to reflect the latest costs will result in significant operational cost primarily because of the obligation to provide advance notification to customers.

## 1.4. Preventing price increases for a fixed period

AGL has carefully considered the proponent's options for a potential solution to price certainty regulations in the NECF. AGL understands that the intent of the rule change is to target specific outlier behaviour where businesses engage in discount advertising to induce customers to sign up and in some instances pass through large price increases shortly after. AGL details below the broad reaching implications that the recommended reform options will have for retailers and consumers. For this reason, AGL does not support any of the proponent's proposed solutions and instead encourages the AEMC to consider alternative and targeted measures to address the problem statement. For example, should the AEMC refer the ACCC to use its investigative powers under the ACL to investigate potential instances of misleading and deceptive conduct, bait advertising or predatory conduct.

However, should the AEMC be minded to pursue the proponent's recommended reforms, of the options presented, preventing price increases for a certain number of days after entering into a market retail contract is an operationally preferable solution than limiting a price change event to one day a year for retailers.

AGL's preference for a potential solution is the first option presented by the AEMC whereby retailers cannot increase prices for a fixed period of time after the customer enters into a new retail contract. The rule change proponent originally recommended a fixed period of 100 days post-contract sign up during which the retailer cannot change prices. AGL suggests a revision of the fixed period from 100 to 60 days to avoid a situation where retailers price energy plans at a premium in anticipation of not being able to recover costs in the months leading up to the mid-year price change event. Having the final DMO Determination available earlier from the AER could mitigate some of the uncertainty retailers face about future prices (for example, network costs changing on first of 1 July) during the immediate lead up to the annual price change. Currently, this

information is only made available to industry in mid-May or as late as end of May if a new 5-year Network Determination Period is commencing. These delays in receiving the DMO create immense pressure for retailers to operationalise a price change event by the prescribed date.

AGL considers that the revised 60-day fixed period remains fair, practical and in the spirit of the proponent's request. Retailers have to comply with a number of consumer safeguards relating to transparency and clear advice of an upcoming price change event as well as the availability of bill smoothing arrangements for customers who require a greater degree of certainty for budgeting and managing their bills. Accordingly, AGL believes the customer impact will be low.

AGL notes that the proponent's rule change sometimes references the commencement of an energy plan or contract, as opposed to the commencement of a new contract for a customer who is new to the retailer. AGL strongly recommends that any decision for preventing price changes within a fixed period should only apply to new customers joining a retailer which is consistent with the problem statement raised by the proponent.

It is AGL suggestion that, if the AEMC elects this option as the preferred solution, the rules are not made effective until after the mid-year 2025 price change event. As it currently stands, there will be insufficient time for retailers to put in place processes to identify, ringfence and exempt customers acquired in the previous 100 (or 60) days from the upcoming price change. Indeed, many of the price change letters/emails will have already been sent by the time the AEMC publishes its Final Determination.

**Victorian Price Certainty Regulations**

While the Victorian price certainty model is not AGL's preferred solution, should the AEMC pursue this approach, AGL recommends that retailers retain the discretion to choose the date on which the annual price change event should take place. Alternatively, the AEMC could also consider an annual price increase date of 1 July which is consistent with the date that retailers' costs change, including network and wholesale. AGL strongly recommend against a 1 August price change date (as in Victoria) due to the operational inflexibility for this date and the delay between the release of the DMO Final Determination and the price change date is suboptimal from a cost recovery perspective.

When considered alongside the full regulatory reform agenda, including, for example, changes to limit the retailer's ability to reassign the customer's tariff to match the network tariff, the Victorian model forces retailers to absorb more of the financial impact of market changes.

**Exemptions**

AGL welcomes the AEMC and AER working collaboratively to develop an exemption process for retailers to apply for a waiver for specific energy plans or products from the requirement to restrict price increases to once a year. Akin to the Victorian Guideline for exemptions to once a year price increases, the NECF jurisdiction will need an exemption framework to continue to incentivise the development of innovative propositions with clear customer benefits. One such example is AGL's New Home and New Home Builder Plans, which are tailormade for builders and charge a six-month flat fee instead of standard energy charges for the first part of the plan.

Other proposed exemptions from the once-a-year price certainty regulation should include:

- **Price decreases:** Akin to the Victorian regulations, retailers should be permitted to modify prices at any time where the calculations show that the customer would pay less on their estimated annual bill.
- **Fees:** Reasons set out in detail under AGL's response to the *Removing fees and charges* rule change, above.

- **Multisite agreements:** Multisite arrangements represent a different type of customer-retailer relationship based on commercial negotiations with an organisation, and do not reflect the typical mass market customers that this regulation seeks to protect.
- **Network tariff reassignment:** Network tariff reassignment can occur where a new or existing customer's load, connection or metering characteristics change. Reassignment of the network component of the customer's tariff can be initiated either by the distributor or the customer/customer representative. For distributor-led reassignment of a network tariff, these changes often occur before retailers are notified. Retailers pass these changes on to the customer as soon as practicable (subject to the new consumer EIC safeguards) and can be either an increase or decrease to customer charges.
- **Misquote:** Refers to a situation where the retailer needs to correct the original offer made to the customer following receipt of updated or revised market information (e.g. residential vs. business, meter type, solar, etc.) which is different from original quote assumptions.
- **Prepaid products:** Customer pays upfront to purchase an amount of energy to use.
- **Plans that vary based on spot price.**
- **GreenPower:** Where customers can elect to have electricity equal to 10%, 20% or 100% sourced from renewable energy sources. This is approved under the National GreenPower Accreditation Program. It is not feasible to have different prices live at any time for existing vs. new customers.
- **Non-energy services:** e.g. bolt-on line items on energy invoices such as Carbon Neutral.
- **Government energy concession changes**
- **Changes to the solar feed-in tariff**
- **Products with a payback element**: For example, retailers may give customers the option to purchase hardware such as batteries or solar and give the option to pay back through energy bills.
- **Transfers in error:** Customers who return to a retailer after a transfer in error situation pursuant to Rule 57A of the NERR should be excluded from the price certainty requirements. Retailers have an obligation to put the customer back on their original plan and prices prior to the transfer occurring. These older prices may be in line for an upcoming price change which retailers need to enact as there is no efficient way to ringfence them from it.