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National Energy, Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017, September 2017

AGL Energy (**AGL**) welcomes the opportunity to respond to the Australian Energy Market Commission's (**the Commission's**) National Energy, Retail Amendment (Notification of the end of a fixed benefit period) Rule 2017, September 2017 (**Consultation Paper**).

AGL is one of Australia's leading integrated energy companies and largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy, providing energy solutions to over 3.7 million customers throughout eastern Australia.

AGL is a customer-focussed business and we endeavour to provide customers with products and services that best meet their diverse wants and needs. We have undertaken extensive consultation and research to obtain feedback on the ways in which we can better serve our customers. For example, AGL is developing solutions to help customers better manage their energy usage in their homes and business. Our Energy Insights App, part of a \$300 million program of digitally transforming how customers interact and engage with us, educates customers about the drivers of their own energy consumption and how to save on it. Other innovative offerings include our Self-Service Meter Read and One Minute Move.

The price, product and service benefits that flow to customers from competitive energy retail markets are predicated on the ability of customers to participate effectively in those markets. AGL supports policy and regulatory reforms that remove barriers to consumer participation.

AGL specifically supports the proposed Rule that will require retailers to communicate with customers who have reached the end of their benefit period if the benefits change, as well as direct the customer to the AER's Energy Made Easy comparison web-site. Indeed, it is already AGL's practice to notify customers whose benefits are changing prior to the expiry of a fixed benefit period.

According to AGL's current practices, at the end of the fixed benefit period one of two things may occur to AGL's customers' benefits. Customers' benefits, including discounts, are either continued for another benefit period (i.e., the discount does not change) or AGL's customers are sent a letter which informs them that they will be automatically rolled over onto a new discounted benefit period if they take no action. In either scenario, the customer will receive an ongoing discount.

The 'continuing offer' letter goes to most customers to inform them of the new discounts and benefits that will apply in the next benefit period. It is not AGL's practice to roll customers onto standing offers or market



offers with no discount, and customers are advised that they have the option of choosing a different plan and are encouraged to contact us.

To complement the proposed end of benefit period Rule, the Prime Minister's commitments contain several other measures to simplify and improve the transparency of information and therefore make it easier for consumers to access and compare energy offers. AGL has already taken the initiative with introducing a simplification program of our retail tariffs to allow our customers to make easier comparison across the AGL suite of products. AGL is also playing an active role in the process of designing and testing solutions with customers on an industry wide Comparator metric. AGL has socialised a proposed price comparator with consumer and community groups and the Australian Energy Regulator (AER) and will continue to work with industry participants to ensure a meaningful and simple industry comparator is developed.

The remainder of the submission provides feedback to the questions raised by the Commission in the Consultation Paper. Our comments are based on obtaining greater clarity on the proposed exemptions, the interaction of the proposed Rule with the Australian Consumer Law obligations and the appropriate implementation of the proposed Rule.

Should you have any questions in relation to this submission please contact Con Hristodoulidis on (03) 8633 6646 or christodoulidis@agl.com.au.

Yours sincerely,

(signed for email)

Elizabeth Molyneux

Head of Energy Market Regulations



AGL comments to the Commission’s specific questions in the Consultation Paper

AEMC question	AGL feedback
<p>To what extent do you consider that lack of information regarding the end of a fixed benefit period has led, or will lead, to a negative effect on the overall competitiveness of the market?</p>	<p>AGL supports clear and timely disclosure of information leads to consumers making more informed decisions, ensuring they obtain the best possible benefits from competition and promotes consumer confidence in the electricity retail market.</p> <p>It is already AGL’s practice to inform customers of the end of their benefit and place them on another benefit if the customer does not act or roll them onto the same benefit.</p>
<p>Should the proposed rule change apply to market retail energy contracts including gas, or only to market retail electricity contracts? Why?</p>	<p>The Prime Minister’s 16 commitments with energy retailers’ CEOs apply to electricity retail market. Therefore, for consistency of application across these commitments, it is AGL’s view the proposed Rule apply to electricity market retail contracts.</p>
<p>Exemptions</p> <p>The proposed rule 48A provides an exemption for non-financial benefits and for where the customer would be financially no worse off than if the benefit period had not expired.</p> <p>a) Are the proposed exemptions clear, appropriate and workable?</p> <p>b) What potential improvements could be made? Why?</p>	<p>AGL supports the exemption for non-financial benefits and for where the customer would be financially no worse off than if the benefit period had not expired.</p> <p><i>Immaterial changes in benefit</i></p> <p>AGL is also unclear how the proposed Rule would apply to circumstances where customers are placed on a new benefit at the end of the initial benefit period and the new benefit is not materially different to the initial benefit. For example:</p> <p><i>Customer would have paid \$1,000 if not for a 12% benefit, customer paid \$880 with benefit, customer is placed on a new 10% benefit if they take no action and therefore is informed if they ‘do nothing’ they will continue to pay \$900.</i></p> <p>In such scenario, the immaterial change (\$20) in the new benefit may be outweighed by the search costs associated with exploring the market that the notification may prompt. AGL would support a ‘materiality’ threshold exemption, for those customers who are placed on a new slightly lower benefit. AGL considers a materiality threshold could be based on percentage variation or proportion of the discount being reduced.</p> <p>AGL believes the proposed Rule is intended to capture recurring financial benefits and for circumstances where customers are offered materially reduced recurring</p>



	<p>financial benefits at the end of the period. Without clearly defining the application of the Rule to such a scenario, AGL is concerned the proposed Rule may stifle product innovation.</p> <p><i>Accuracy of comparison</i></p> <p>Further, it is AGL's view the financial benefit must be 'reasonably predictable', otherwise the disclosure of the 'if you do nothing' dollar value will be based on several assumptions and the end of benefit notification will be complicated with the need to include disclaimers to explain the assumptions.</p> <p>This is more likely to confuse the customer and/or lead to complaints post the end of the following benefit period if the 'but for' dollar value disclosure is significantly different to the dollar value of the 'if you do nothing' disclosure for the current end of benefit period.</p> <p>Given the short time for consultation and the proponents desire to 'fast track' the proposed Rule, AGL is still working through the implications of the proposed Rule. AGL recommends the AEMC conducted an industry workshop to fully examine applicable exemptions to the proposed Rule and wording to ensure the proposed Rule is clear, workable and achieves its stated objective of improving consumer information transparency in a clear and concise manner to provide confidence to consumers to participate in the electricity retail market.</p>
<p>Commencement Date</p> <p>a) Would a 1 January 2018 commencement date result in materially higher costs than a later commencement date?</p> <p>b) If so, what is the soonest practical date for commencement?</p> <p>c) Should commencement be staged? For example, if full implementation on 1 January 2018 is not practical should retailers still be required to send out a standard notice with basic information from that date?</p>	<p>AGL's preference is for the Rule to commence 1 July 2018.</p> <p>The system changes required to give effect to the Rule are particularly complex, and will be a high volume 'transaction'; hundreds of thousands of letters will be sent to AGL's customer base alone. A sufficient duration of time is required to adequately design, build and test this complex and high volume process. Similarly, additional business readiness actions are required, including training of call centre staff.</p> <p>Apart from the logistics of implementing the proposed Rule, the retail sector is currently devoting significant resources to meet two major events, being:</p> <ol style="list-style-type: none"> 1. The introduction of Power of Choice obligations, which commence 1 December 2017; and 2. Preparing to communicate to over two million Standing Offer customers prior to the end of 2017, as per commitment between the Prime Minister and energy retailer CEOs. <p>Therefore, it would be prudent to have a commencement date of July 2018.</p>



	<p>While a stage implementation of retailers being required to send out a standard notice with basic information from January 2018 will make implementation more feasible, AGL notes that such a staged implementation is a second-best approach. Further, staged implementation will increase industry costs as retailers will need to undertake two implementation processes, first for basic information and second for the full proposed Rule obligations. However, if the AEMC decide to proceed with a stage implementation the current Queensland derogation Sec. 48A of the NERR may be an appropriate and lowest cost approach.</p> <p>Once the full proposed Rule is implemented, AGL believes the Queensland derogation would no longer be required. AGL recommends the AEMC work with the Queensland Government to remove the derogation with the commencement of the proposed Rule.</p>
<p>Assessment criteria</p> <p>The Commission intends to use the following criteria to assess whether the proposed rule is likely to promote the NERO:</p> <ul style="list-style-type: none"> • effectiveness of consumer engagement and participation; and • competition between retailers. <p>a) Are there any other matters that the Commission should consider in assessing the proposed rule change against the NERO test?</p> <p>b) Are there any particular factors that the Commission should consider in assessing the proposed rule change against the consumer protection test?</p>	<p>AGL supports the two proposed criteria to assess whether the proposed Rule is likely to promote the NERO.</p> <p>AGL suggests that the AEMC also consider market innovation as a criterion to assess the effectiveness of the proposed Rule. As outlined in our response to question 3, AGL believes the proposed Rule should be designed to improve customer information to promote consumer participation but at the same time not inhibit innovation. Market innovation is a key criterion in promoting dynamic market competition through driving industry efficiencies, which is a key outcome in promoting the NERO.</p>
<p>Information disclosure</p> <p>a) Has the proponent identified the right notice</p>	<p>AGL agrees with the notice period proposed by the proponent, as it aligns with existing similar notice obligations under the NERR.</p>

<p>period and set of information likely to be required by consumers?</p> <p>b) Are the additional quantifications of dollar amounts for past and future benefits as set out in section 5 and 6 of the draft rule clear, appropriate, workable and cost effective to produce?</p>	<p>AGL agrees with the AEMC that lack of appropriate transparency in the market, and in particular a lack of timely and appropriate information could cause consumers to lose confidence in and fail to engage with the market. However, the AEMC must ensure it clearly articulates that the proposed Rule deals with recurring financial benefit and does not attempt to deal with disclosure of other benefits or services offered to customers as part of the market contract.</p> <p>AGL also notes that AEMC Consultation Paper refers to “timely information about premiums that consumers are paying over and above competitive prices” (page 9). However, no evidence is provided that this occurs. Rather, AGL contends price dispersion is a feature of well-functioning competitive markets¹ and different price / service offerings are a sign the market is driving innovative solutions for consumers.</p>
<p>Barriers to competition</p> <p>Would the proposed rule materially increase the likelihood of consumers seeking and obtaining better deals in retail energy markets?</p>	<p>To complement the proposed Rule, the Prime Minister’s commitments contain several other measures to simplify and improve the transparency of information and therefore make it easier for consumers to access and compare energy offers. These commitments include simplification of Energy Price Fact Sheets and the development of an industry wide price comparator. AGL contends it is a combination of these initiatives that will encourage consumers to be more active in their energy plan choice.</p>
<p>Costs and Benefits</p> <p>Will the long-term benefits to consumers of the proposed rule change exceed the additional costs that would pass through to them?</p>	<p>The AEMC states that it will “consider the proposed rule in light of current levels of competition in retail energy markets and the impact that the proposed rule change may have on the future level of competition.”</p> <p>In undertaking this assessment AGL considers the AEMC needs to be clear on the consumer benefits the proposed Rule will achieve or put differently, what market failure is the proposed Rule addressing. The proponent of the proposed Rule suggests the benefit of the proposed Rule is consumer engagement and participation. The proponent anticipates ‘customer switching rates’ to improve (page 6 of Rule proposal) following the implementation of the proposed Rule. AGL contends that the competitive market has already responded to end of benefits periods. For example, and as mentioned previously, AGL already notifies its customers about the end of a benefit period and offers customers to continue to receive financial benefits. Hence, the AEMC must ensure in conducting its analysis it considers how the market is already managing end of benefit periods.</p>

¹ <http://aglblog.com.au/wp-content/uploads/2015/07/No.49-Price-Discrimination.pdf>



	<p>In summary, and consistent with the proponent’s objective, AGL believes the proposed Rule needs to be clear and simple. This will keep retailer compliance costs to a minimum and reduce the need for complex and lengthy disclaimers, which may offset any consumer benefits with respect to engagement, participation and confidence in the retailer electricity market.</p>
<p><i>Drafting and clarity of proposed Rule</i></p>	<p><i>Drafting error</i></p> <p>In the Rule Change Request, AGL considers the word ‘and’ is removed and replaced with ‘or’ in the following part of the proposed Rule:</p> <p>2) <i>Subrule (1) does not apply:</i></p> <p>a) <i>in relation to a non-financial benefit available to a customer during the fixed benefit period; and or</i></p> <p>b) <i>if, on the expiry of the fixed benefit period, the customer would be financially no worse-off than had the period not expired.</i></p> <p><i>Application of other charges with respect to Clause 6(b)</i></p> <p>AGL seeks clarity on the application of the following factors in undertaking the dollar value calculation under clause 6(b). In particular, it is AGL’s view the following factors should not be included in the calculation:</p> <ul style="list-style-type: none"> • Concession payments • Solar feed-in tariffs • Other fees and charges • Customers ‘porting’ benefits across locations • Non-recurring financial benefits (eg. first month free on sign up). <p><i>Application of Australian Consumer Law with respect to clause 5(c)</i></p> <p>The proponents Rule change request note in footnote 5 on page 4 that clause 5(c) will be based on an estimate and may not reflect the actual and that retailers will be required to provide appropriate disclaimers to avoid misleading the customer.</p> <p>AGL supports that the proposed rule may result in retailers falling foul of the misleading and deceptive conduct provisions of the Australian Consumer Law, and more importantly, consumers being misled. The notice requirements stated in subrule 5(c) requires retailers to predict the future cost of a customer’s energy bills. Such statements will be potentially misleading because a prediction of the future cost of customer’s energy bills based on past consumption behaviour is a prediction, with many influential variables.</p>



	<p>This has the potential to impact consumer trust with the industry and is not in line with the National Energy Retail Objective, which requires rules to be in the long-term interests of consumers.</p> <p>If retailers are required to make future predictions, the notice will invariably require a string of terms and conditions or disclaimers in order to comply with the Australian Consumer Law. Using the superannuation industry as an example, the Australian Securities and Investments Commission has issued a 29-page guide on superannuation forecasts². It is imperative the proposed Rule avoids such a cumbersome outcome.</p>
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² <http://download.asic.gov.au/media/2257747/rg229-published-13-november-2014.pdf>