



11 September 2014

Australian Energy Market Commission

PO Box A2449

Sydney South NSW 1235

(Submitted online at www.aemc.gov.au)

Reference: RRC0001

Retailer Price Variations in Market Retail Contracts, Draft Rule Determination

Dear Sir/Madam,

AGL Energy Limited (**AGL**) welcomes the opportunity to provide comment on the Australian Energy Commission's (**AEMC**) comprehensive *Retailer Price Variations in Market Retail Contracts, Draft Rule Determination* (**Draft Rule Determination**).

AGL is a significant retailer of energy with over 3.8 million electricity and gas customers nationally. Accordingly, AGL has a strong interest in the efficient delivery of retail energy services for the long-term interests of consumers.

AGL acknowledges the AEMC's primary finding set out in the Draft Rule Determination that the key issue raised by the rule change request is that some consumers may be entering contracts unaware that prices may vary during the term of that contract. AGL supports the AEMC's Draft Rule rather than the proposed rule change put forward by the Consumer Action Law Centre (**CALC**) and the Consumer Utilities Advocacy Centre (**CUAC**) (together, the **proponents**), as the Draft Rule is better placed to address the key concern of transparency of energy contracts and to help ensure consumers have sufficient and appropriate information to make informed decisions without imposing unnecessary costs on retailers and consumers.

As highlighted in AGL's previous submission, not only does the rule change put forth by the proponents fail to address the key issue of consumer understanding of energy contracts, but would also result in negative outcomes for consumers, primarily in the form of risk premiums being incorporated into consumer energy prices and decreased product choice.

The retail energy market is a complex industry, and AGL is happy to participate in a process whereby industry, consumer groups and regulators consider better ways to engage with customers so as to ensure they understand the terms and conditions of retail contracts. AGL supports a review of the Australian Energy Regulator's (**AER**) Energy Made Easy comparison website and Energy Price Fact Sheet requirements as a means of further enhancing transparency and comparability of energy contracts for consumers.

A detailed response to the Draft Rule is contained within the attached Appendix.

Should you have any questions in relation to this submission, please contact Rebecca Bringham, Retail Regulatory Advisor, on (03) 8633 6125 or rbringham@agl.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Beth Griggs'.

Beth Griggs

Head of Energy Market Regulation

Appendix

The CALC/CUAC proposal

The Draft Rule was made in response to a rule change request put forth by CALC and CUAC, which sought to prohibit retailers from varying prices during the period of a fixed term or fixed benefit period market contract. The proponents considered that the current regulatory regime, whereby retailers may vary the prices under a fixed term or fixed benefit period contract, negatively affects consumer confidence and competition, and allows retailers to shift the risk of cost increases from retailers to consumers. CALC and CUAC considered their proposed rule would provide more certainty for consumers around prices, improve consumer confidence and switching, thereby improving competition. The proponents also argued that retailers are better placed to manage the risk of price fluctuation than consumers.

In AGL's submission to the AEMC's Consultation Paper, it was acknowledged that the key concerns raised by the rule change request related to the level of transparency and understanding of consumers as to the ability of retailers to vary the price during fixed periods in market retail contracts. AGL agrees that, in a competitive market, it is important to ensure that consumers have sufficient and appropriate information to enable them to readily understand energy products, and acknowledges that this is challenging in a complex industry.

However, while AGL supported the broader intent of CALC and CUAC's proposal, AGL did not support the proposed rule change as it does not address the issue of consumer understanding and transparency; rather, prohibiting fixed term, variable price contracts would likely result in a reduction of consumer choice of energy products and increased costs for consumers due to additional risk premiums being factored into energy prices. AGL strongly believes that such a prohibition would negatively affect competition and is not in the long term interests of consumers.

AGL is encouraging of a market with a variety of products which match the preferences of the consumer. Retailers should be free to develop a range of market offers that meet consumer preferences, and any regulatory-imposed limitation on the way products could be designed significantly impedes such a strategy, and discourages competition in the energy market.

The Draft Rule

The Draft Rule Determination identified that the key issue raised by the rule change request is that some consumers may be entering contracts unaware that prices may vary. AGL agrees that prohibiting price variations in fixed term contracts is not an appropriate regulatory response to this issue; rather a more appropriate response is to provide greater transparency for consumers in relation to how prices may vary when they sign up to a new contract.

The AEMC has proposed an alternative rule, to amend the National Energy Retail Law (**NERL**) and the National Energy Retail Rules (**NERR**) such that retailers are required to:

- Disclose to consumers any term or condition that provides for the variation of tariffs, charges and benefits as part of the existing requirement to obtain explicit informed consent from consumers when entering into a market retail contract; and
- Provide clear information about when they will notify consumers of variations to prices, charges and benefits in market retail contracts, either shortly before or following contract entry as part of existing product disclosure requirements.

AGL's experience with consumers, confirmed by the findings of the Newgate research commissioned by the AEMC, indicates that consumers have varying risk appetites and choice of products is important. The Draft Rule preserves the ability for consumers to choose an energy contract that suits their needs and appetite for risk, while enhancing consumer decision-making by helping to ensure consumers are fully aware that prices may be varied. To that end, AGL supports the Draft Rule in favour of the rule proposed by CALC and CUAC.

AGL processes

As stated in its previous submission, AGL considers that retailers already operate under extensive requirements to ensure that comprehensive information is provided to customers both prior to and shortly after entering into market contracts. These requirements exist under the NERL, NERR and Australian Consumer Law. Nonetheless, AGL acknowledges that improved customer understanding of the terms and conditions of their contract would be beneficial and agrees that the Draft Rule assists in this regard.

Explicit informed consent

AGL advocates transparency of information when entering into market contracts with its customers, over and above minimum regulatory requirements. The first part of the Draft Rule would require all retailers to disclose the ability of the retailer to vary prices, as part of the existing requirement to obtain explicit informed consent from the customer prior to entry into the contract. As stated in AGL's previous submission, AGL's current processes largely align with this proposed requirement; AGL obtains the customer's explicit informed consent to the fact that fees and charges may vary from time to time (in accordance with the terms and conditions of the contract) and that customers will be notified of any variation.

Disclosure of price variations

The second part of the Draft Rule would require retailers to disclose to customers, prior to or shortly after contract entry, information about when it will notify consumers of price variations. AGL acknowledges that this information may be useful to consumers in decision making, however a balance needs to be struck with a retailers' ability to provide *accurate* information to consumers.

Retailers cannot predict the precise timing of price variations during the life of a customer's contract, which may be three years in length, for example. Even approximate timings are difficult to predict; the recent price variation required to give effect to the carbon tax repeal legislation could not have been predicted at the commencement of some customer's energy contracts.

As such, disclosing a precise timeframe for price changes is impractical and carries a real risk of providing inaccurate information to consumers. Even if a precise timeframe could be determined well in advance, retailers would be unlikely to disclose such information for commercial confidentiality reasons, and doing so may constrain retailers as to future price variations.

While the minimum standards of the NERR require retailers to notify consumers of any price changes as soon as practicable, and in any event no later than the consumer's next bill, AGL always endeavours to provide its customers with prior written notice of any price variations. AGL has consistently applied this practice, despite not being required to, in the interests of transparency, disclosure and good customer service. AGL will continue this process, and will seek to ensure this is disclosed as part of existing disclosure requirements.

AGL also currently has a program of work underway to enhance consumers' understanding of energy contracts. AGL recognises that more informed and empowered customers are beneficial to the industry and community. AGL considers that continued practices that align with the Draft Rule, as mentioned above, combined with other improvements underway at AGL will help consumers actively engage with the energy market and enhance competition.

Retail Pricing Information Guideline

AGL supports the AER's enthusiasm for continuous improvement of the Energy Made Easy website as a tool for consumers to access information about and compare energy offers, as set out in the AER's submission to the rule change request and AER Chairman Andrew Reeves' presentation at the public forum on 19 May 2014.



AGL strongly supports a consultative review of the AER's Retail Pricing Information Guideline as a means of further addressing transparency of energy contracts and comparability of prices for consumers, by enhancing the Energy Made Easy website and Energy Price Fact Sheet requirements.

AGL considers that such developments can operate alongside the Draft Rule to enhance informed decision making, and AGL is happy to continue to provide input to the AER on these developments, as AGL has done so previously.

Commencement

AGL is comfortable with a period of six months to implement changes to comply with the new requirements, as suggested by the AEMC.