



1 April 2014

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Reference: RRC0001



Retailer Price Variations in Market Retail Contracts, Consultation Paper

Dear Sir/Madam,

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

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 notes the key concerns raised by Consumer Action Law Centre (**CALC**) and Consumer Utilities Advocacy Centre (**CUAC**) relate 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. The retail energy market is a complex industry, and AGL is happy to engage in a process whereby industry, consumer groups and regulators consider better ways to engage with customers so as to ensure they comprehend the terms and conditions of retail contracts. AGL supports the broader intent of the proposal in relation to customers gaining access to greater certainty and transparency in relation to their energy contracts.

However, the proposal put forward by CALC and CUAC to restrict the pass-through or changes associated to network or Government policy charges to market retail contracts of a 'fixed period'¹ (the **Rule Change Proposal**) does not address the issue of customer understanding, but goes to the heart of how costs and risks of this uncertainty impact consumers. Further, the potential re-distribution of these risks and costs could have wide-ranging implications for consumer welfare.

Clearly, many of the factors which constitute the energy price stack are outside of retailer control – such as changes in distribution tariffs and Government policy changes. As pointed out in the Consultation Paper, this makes up well over 60% of the average Australian residential bill. It is also important to note that in relation to Government policy changes, significant policy uncertainty has impacted the energy industry for several years in relation to a range of areas, examples include: the introduction and removal of a carbon price, the Renewable Energy Target and small-scale renewable policies at both a State and Federal level.

AGL has gathered detailed information and data that supports its submission in respect of the risks the Rule Change Proposal would bring, and the potential costs it would incur, and invites the AEMC to meet and discuss this information. In particular, AGL can illustrate the

¹ As defined by the AEMC Rule Change Consultation paper – fixed period refers to fixed term and fixed benefit period contracts.



levels of risk premiums that would be incorporated into energy prices as a result of the Rule Change Proposal. AGL would welcome an opportunity to work further with CALC and CUAC to achieve their objectives in a way which supports all customers and the operation of a competitive and innovative energy market.

A detailed response to the Rule Change Proposal is contained within the attached appendix.

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

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Beth Griggs', is positioned below the text 'Yours sincerely,'.

Beth Griggs

Head of Energy Market Regulation

APPENDIX

CALC and CUAC's concerns with the current rules

AGL notes the key concerns raised by Consumer Action Law Centre (CALC) and Consumer Utilities Advocacy Centre (CUAC) relating 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. The retail energy market is a complex industry, and AGL is happy to engage in a process whereby industry, consumer groups and regulators consider better ways to engage with customers so as to ensure they comprehend the terms and conditions of retail contracts.

Current consumer protections

AGL believes that retailers already operate under extensive requirements to ensure that comprehensive information is provided to customers advising them of the terms and conditions of the contracts prior to entering into contracts.

When entering into a market contract with a customer, retailers are already subject to a strict regime of marketing requirements that are prescribed by the consumer law framework and energy regulations. The NERR includes a requirement to clearly inform customers of all applicable prices under the contract and how they may be varied².

Additionally, retailers are required to obtain explicit informed consent (**EIC**) from the customer to enter into a market retail contract with the retailer³. Given the nature of EIC in the context of creating a contractual relationship with a customer, AGL obtains the customer's EIC to the fact that fees and charges may vary from time to time in accordance with the terms and conditions of the contract. This consent is also voice recorded when it is received via telephone. It is clear AGL supports transparency of information when entering into market contracts with its customers.

Further, there is a prohibition on misleading and deceptive conduct provided by the Australian Consumer Law (**ACL**).

However, this is not to say that there may not be better ways to engage with customers to enhance their level of understanding of the terms and conditions of the contract, and AGL is happy to discuss proposals to improve engagement with customers.

Application of the NERO and consumer tests

As stipulated within the National Energy Retail Law, the AEMC must have regard to two key tests in considering the Rule Change Proposal:

- **The National Energy Retail Objective (NERO) test** – where the rule must be consistent with the NERO to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy; and,
- **The Consumer Protections test** – the AEMC satisfy itself that the rule is "compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers".

In relation to the application of the NERO, AGL has two main areas of comment: limitations of products within the market and additional uncertainty and the impact on price. AGL further argues that these issues adversely impact small customers, in particular customers

² NERR r 64(1)(a).

³ NERL, s 38(b).

currently receiving heavily discounted products and therefore the Rule Change Proposal does not meet the Consumer Protections test.

The NERO Test

Limitations of products in the market

As currently drafted, the Rule Change Proposal seemingly would not allow for any retail products of a defined period to be allowed to have the prices varied during the contract term. The AEMC notes in the Consultation Paper that around 48% of retail contracts within the NSW market could be considered 'fixed period'⁴.

Variety of competitive products available in the market clearly allows for customers to choose products which best suit them. Any limitation on differentiation of the management of risks (and therefore extent of price variability) in relation to market retail offers, does not facilitate customer choice in taking up the most suitable product for them. This would in essence, impede the ability of a retailer to design a product which may for example be of a lower rate, but allow flexibility for price pass-through as opposed to a two year contract on a higher rate, applicable for the entirety of the contract term. This ultimately would have a negative impact on the availability of different types of offers available to consumers in the market, resulting in a decrease in innovation and driving market inefficiencies, due to the lack of ability for consumers to find products which match their preferences.

The proposal, if adopted would also potentially result in a decrease in competition and innovation between retailers in product development.

AGL does not believe that broad-based regulatory changes are required to assist customers have more confidence in the offers within the market.

AGL is encouraging of a market with a variety of products which match the risk appetite and preferences of the consumer. Retailers should be free to develop a range of market offers that meet consumer preferences, ranging from having all components of the price stack variable, through to having reasonable components fixed (i.e. allowing for unforeseen Government policy changes).

Any mandatory regulation in relation to limitations on the way products could be designed for fixed periods would significantly impede such a strategy, which would ultimately support customers choose the right products for their risk preference.

Additional uncertainty and the impact on price

The Rule Change Proposal proposes to shift the management of price risk to retailers, however fails to consider the broader impacts of this.

Retailers are required to manage a range of different risks and costs in providing energy contracts to consumers. A significant portion of the components attributable to consumers' energy bills are components which are driven by factors outside of retailer control or anticipation.

Should price variation for such components, such as network and Government policy changes, be prohibited for any market contracts of a fixed period, retailers will then need to re-allocate the costs of managing these risks. Should this apply for all customers on fixed period contracts, this would result in significant cost re-allocation as risk premiums are priced into these products.

It should also be made clear that this proposal, if implemented would not only apply to price rises, but also limit the ability of retailers to pass through reductions in price to

⁴ Consultation Paper, p 35

consumers. Governments have rightly placed a high value in these reductions being passed through to customers, in particular we refer to the current discussions in relation in the repeal of the carbon price and associated pass-through. Should the Rule Change Proposal be in place today, retailers would potentially soon be faced with conflicting legislative requirements, namely an obligation to pass on price reductions stemming from the carbon price repeal, in conflict with a NERL prohibition on varying prices for any fixed period contract.

The Consumer Protections Test

In relation to the application of the Consumer Protections test, AGL has noted that the likely outcome of the Rule Change Proposal is a reduction in the variety of products in the market, with those products carrying a higher price factoring in risk premiums. AGL argues that such a result is certainly not in the interests of small customers, in particular hardship customers.

AGL is collating some information to provide to the AEMC which will assist the AEMC in this analysis. This information will make clear that there is a high risk that the Rule Change Proposal risks limiting the breadth and affordability of energy offers available to customer, and thereby risks exacerbating any affordability issues. AGL does not consider that the Rule Change Proposal, as drafted, meets the requirements of the Consumer Protections test.

Retrospectivity

AGL in no way supports these sorts of policy change being applied retrospectively, given customers have signed up to existing contract terms and conditions, and the retrospective application of such changes could seriously interfere with those arrangements, potentially to the detriment of customers as well as suppliers.

Alternative Approaches

AGL would be happy to work with the AEMC and customer advocacy groups to consider means of improving engagement with customers to ensure there is comprehension of terms and conditions of contracts. AGL further notes that PIAC has suggested some alternative regulatory amendments for consideration to the AEMC. While AGL is not endorsing these suggested amendments per se, AGL does agree that there may be merit in consulting further on such measures.