



17 March 2014

Erin Dempsey, Legal Policy Officer, National Energy Market Development
Energy Sector Development Division
Department of State Development, Business and Innovation
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Dear Ms Dempsey,

DSSDBI Consultation – Consumer Protection Reforms 2014

AGL Energy Limited (**AGL**) welcomes the opportunity to provide feedback in response to the Department of State Development, Business and Innovation's (Energy Sector Development Division) (**DSSDBI**) *Draft Consultation Paper – Reforms to retail regulation 2014 and planned outages (Draft Consultation Paper)*.

AGL is a significant retailer of energy with over 3.8 million electricity and gas customers nationally, including over 1.3 million electricity and gas customers in Victoria. Accordingly, AGL has a strong interest in the efficient delivery of retail energy services for the long-term interests of consumers. AGL also strongly advocates for uniform consumer protections nationally without imposing inefficient compliance costs.

AGL is of the view that the issues identified in the Draft Consultation Paper would benefit from further analysis as to their nature and magnitude, prior to moving further toward any regulatory amendment. Additionally, in the event that this analysis does support the view that the issues are such that they require address, AGL suggests that there are alternative approaches to manage such issues.

Response to Proposals

- AGL notes that the rate of wrongful disconnections is decreasing, not increasing as suggested by the Draft Consultation Paper. This reduction in the level of wrongful disconnections clearly suggests there is no basis for the policy proposal to amend the Wrongful Disconnection Payment (**WDP**) scheme as articulated in the Draft Consultation Paper.

Further, AGL is of the view that amendments to the scheme, including any increase to the compensation payable, must be considered in combination with measures designed to refocus the application of the WDP legislation as originally intended. AGL notes that the WDP scheme was designed to drive retailer compliance with the disconnections process, particularly as it relates to customers who do not have the capacity to pay their bills. AGL is concerned that the manner in which the Energy and Water Ombudsman of Victoria (**EWOV**) and the Essential Services Commission (**ESC**) have interpreted the WDP scheme has extended its application well beyond its original intent.

- In respect of the concerns raised in relation to marketing of fixed term contracts, AGL maintains that the Australian Consumer Law (**ACL**) framework is an effective instrument in regulating and enforcing standards relating to misleading and deceptive conduct, and is a more appropriate regulatory instrument to govern these issues than jurisdictional energy legislation.
- AGL argues that reducing the limitation on backbilling would result in a significant shift in retailer billing practices to avoid the possibility of unbilled customers and undercharges. The consequences of this change are likely to be an increase in the propensity of estimated bills where actual meter data is unavailable, and continued billing in situations where the retailer is aware of an issue with a customer's metering installation. This is likely negatively affect customer experience and lead to an increased number of customer complaints and Ombudsman inquiries.

Additionally, there is a risk of increased energy prices for all customers as retailers will need to increase their premiums to cover risk associated with the inability to recover undercharged amounts.

- AGL agrees with the premise in the Draft Consultation Paper that the improvement of low-income households' energy efficiency is an effective way of supporting vulnerable households in managing their energy use. However, AGL is concerned that energy efficiency audits by themselves do not necessarily promote such an improvement, and any change within this area requires a broader vision of policy direction to support hardship customers. AGL does not support the blanket application of a Government scheme that would increase costs for its entire customer base in the absence of further analysis to determine the scope and scale of any benefit achieved by the proposal.

Source of Policy Decisions

AGL is a strong advocate for evidence-based policy decisions that consider the complexities of the market and the consequences of changes in policy. Although AGL agrees that customer complaints are a useful source of information from which to inform policy development, analysis of a limited number of complaints is unlikely to indicate systemic regulatory failures. AGL is concerned by the process that led to the policy developments in the Draft Consultation Paper.

AGL requests further information on the process in developing these policies and asks for further consultation time to provide a response for the purpose of measuring the benefits of any proposal and developing alternatives for consideration.

Divergence from a National Framework

The policy proposals in the Draft Consultation Paper are significant changes that diverge from previously agreed national practice, which was subject to robust public scrutiny and consultation. Without evidence-based policy decisions that have been broadly consulted upon, AGL argues that is inadvisable for Victoria to continue to move away from other jurisdictions on matters of consumer protections. It is likely that inefficiencies created by separate policy, implementation costs, unintended consequences as a result of expedited consultation, and compliance overheads will erode any perceived benefit from the proposed change and may in fact create a detriment for consumers.

As such, AGL requests the formulation of a more substantive base of issues, which can be assessed by the industry as a whole in the development of more robust policy. AGL notes that for some of the proposed changes, parallel consultations are already occurring with the ESC and Australian Energy Market Commission (**AEMC**) to investigate similar issues. AGL considers that the results of these parallel consultations should be acknowledged prior to implementing changes that may significantly impact a customer's rights and the cost of their energy.

A detailed response to the proposals is contained within the attached appendix.

Should you have any questions in relation to this submission please contact Aleks Smits, Retail Regulatory Advisor, on (03) 8633 7146 or at ASmits@agl.com.au.

Yours sincerely,



Nicole Wallis
Manager Retail Markets Regulation

APPENDIX

RESPONSE TO POLICY PROPOSALS

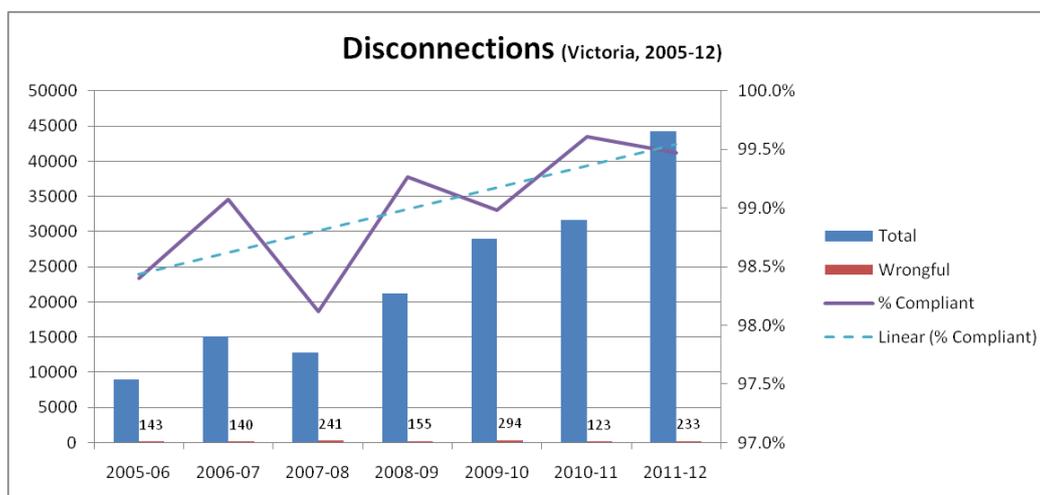
Wrongful Disconnection Payment

The WDP scheme was introduced in 2004 in response to concerns expressed by consumer groups about a rising trend in disconnections of consumers who lacked the capacity to pay their bills on time. The scheme allows for independent assessment of disconnections and allowance for compensation in instances where a disconnection is considered to have occurred in breach of regulatory obligations.

AGL concurs with the general principle that retailers should be held to a high standard of compliance in regard to the disconnection of customers, particularly with respect to those customers who are experiencing difficulties with their capacity to pay. Disconnection of a customer's supply is a last resort that should only be considered after all other attempts to engage and support a customer have been exhausted.

Wrongful disconnections decreasing

However, AGL notes that there appears to be a clear trend of decreasing incidents of wrongful disconnections. According to annual Compliance and Comparative Performance Reports published by the ESC, the absolute numbers of annual wrongful disconnections do not appear to be trending upwards since the scheme was introduced in 2004. Rather, when the number of wrongful disconnections is considered as a percentage of the total number of disconnections, there appears to be a trend in the opposite direction, indicating that the percentage of compliant disconnections is actually increasing.



Source: Essential Services Commission Performance Reports and Compliance Reports (2005-6 to 2011-12)

As such, the current WDP scheme appears to be meeting one of its primary objectives in increasing the level of retailer compliance within the disconnection process. As a result, there would appear to be no compelling basis for the policy proposal as articulated in the Draft Consultation Paper.

Need to refocus on original purpose and design of scheme

Any change to the WDP must be made by reference to the purpose of the scheme and the reason for its introduction. When the Energy Legislation (Amendment) Bill was introduced in 2004, the details of the WDP scheme were heavily debated in Parliament. Concerns regarding the rising rate of disconnections resulted in the implementation of the WDP as a consumer protection mechanism to ensure that retailers were not disconnecting customers

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without reference to their regulatory obligations. AGL notes that this concern was predominantly in respect of customers who did not have the capacity to pay their bills.¹

AGL is of the view that there is no evidence of any need to increase the compensation payable under the WDP scheme. The design of the scheme appears to meeting its original purpose; instances of wrongful disconnection are decreasing, and there is no indication that categorical breaches of the disconnection process are occurring against customers who lack the capacity to pay their bills on time. Rather, the general experience of AGL is that wrongful disconnections occur in individual situations where a unique failure has occurred or there is a lack of positive evidence to satisfy the regulator that that the embedded compliant process were not followed in a particular instance.

Further, in the event that the view remains that a significant amendment is required, any review of the WDP scheme must be conducted with reference to its original stated purpose and the success of the scheme so far in meeting its consumer protection objectives. AGL is concerned that the manner in which the WDP scheme has been interpreted by EWOV and the ESC has already extended its application well beyond its intended purpose and design. As a result, AGL would be very concerned if the compensation payable under the scheme were increased without some commensurate measures taken to ensure the WDP scheme is being applied in the appropriate manner.

Fixed term contracts

AGL contends that the appropriate instrument for regulating misleading conduct should be the ACL framework, and that the monitoring and enforcement mechanisms available to the Australian Competition and Consumer Commission (**ACCC**) are far more appropriate to govern the requirements to not engage in misleading or deceptive behaviour in marketing contracts to customers.

When signing up to a contract with a retailer, retailers are already subject to a strict regime of marketing requirements that are prescribed by the consumer law framework and energy regulations. Due to some of the prescribed requirements under energy legislation, such as the requirement to obtain explicit informed consent (**EIC**) and a cooling off period, this process is more onerous than requirements to enter into comparable contractual relationships in other industries.

As a part of this process of creating a contractual relationship with a customer, AGL already 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. As such, AGL is happy to support the proposal in the Draft Consultation Paper to obtain EIC for terms and conditions that allow for tariff increases as this requirement is already embedded within AGL's processes.

In addition to obtaining EIC under these circumstances, AGL also includes information regarding the possibility of price variations on other marketing collateral and information that is available to potential customers, to further confirm that prices may change during the life of a contract.

Restricting Use of Certain Terms

AGL does not consider that restricting the use of particular terms in marketing contracts is an effective measure to address the issues raised in the Draft Consultation Paper. As the Draft Consultation Paper suggests, AGL agrees that the ACL framework is sufficient in its powers and scope to provide consumer protections in the marketing of contracts without requiring additional policies that subsist within retail energy policy.

The ACL framework is incredibly broad in scope, deliberately so, and is the natural instrument to regulate misleading and deceptive conduct and unfair contractual terms. Additionally, the ACCC has listed energy retailing as a high priority area for 2014 and has already raised concerns with retailers both informally and through formal legal actions on practices within this area. Within the context, it would be inappropriate to proceed with the proposal as suggested by the Draft Consultation Paper and AGL would not support

¹ Victorian Parliamentary Debates, Legislative Assembly, 4 November 2004, Page 1317

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qualifications of the national consumer law framework within jurisdictional energy legislation.

AEMC Rule Change

As the Draft Consultation Report points out, CUAC have released a report on this issue in 2012, and, in 2013, jointly released a Rule Change Proposal² with the Consumer Action Law Centre regarding fixed term contracts that is currently being consulted upon. AGL would support that the outcomes from consultation on the rule change proposal, insofar as they will affect provisions of the NERR that are not currently in force in Victoria, are considered in the development of similar policy within the harmonised version 11 of the ERC.

Backbilling

AGL agrees with the statement in the Draft Consultation Paper that billing delays can be frustrating for customers. AGL endeavours to comply with its requirements under the ERC and ensure that all customers are provided with a bill on a regular basis. AGL has also been instrumental in developing options for customers that allow billing to occur on a more regular basis through its monthly billing initiative, My AGL Monthly Bill.

AGL contends that the existing framework that governs the provision of bills to customers and the recovery of undercharges from customers is appropriate, and a change to the recovery of undercharged amounts could have significant and unintended negative consequences for consumers.

Existing Regulatory Obligations to Bill Customers

The provision of energy bills by retailers to customers is already a requirement under the ERC³. AGL notes that the ESC has broad powers to monitor compliance with these obligations and retailers provide information to the regulator on their performance and any compliance breaches on a regular basis.

AGL has a very low number of unbilled customers. Customers that do not receive a bill are generally unbilled not because of an issue with AGL's billing system, but rather because of one of the following issues:

- There is a natural disaster affecting the customer or other event whereby a bill is unlikely to reach a customer in the prescribed time;
- There is no metering data available from the distributor to bill the customer and the retailer is unable to estimate the consumption; or
- There is an unresolved issue with the customer's meter configuration.

In these instances, AGL makes an active choice not to issue a bill to the customer and instead defer any billing to allow time to resolve any issues affecting a customer's bill. This results in a customer receiving a more accurate bill at a later date, with an option of repaying any undercharged amount over a period of time. If the requirement to issue a bill was strictly construed in these situations, it is likely that retailers would issue a bill on an estimated value that may be unreflective of the customer's true consumption at the site.

Furthermore, if the limitation on recovery of an unbilled amount was reduced to three months, AGL would in some circumstances not be able to bill for consumption at a customer's site because of the requirement to wait for metering data from a distributor, which is occasionally sent to the Retailer outside of the regular meter reading cycles. Furthermore, AGL needs to validate meter data to ensure that it is within accepted parameters for the customer. Significant changes to the strict timings associated with these processes would likely result in a significant shift in billing practices to avoid the possibility of unbilled periods.

To ensure that customers are continued to be billed for consumption, it is possible that retailers would move towards practices of rigorously issuing a bill at least every three months, irrespective of any of the aforementioned issues at a customer's site. This would result in a propensity of estimated bills where actual data was not available.

² Consumer Action Law Centre & Consumer Utilities Advocacy Centre, *Unilateral Price Variation & Market Retail Contracts Rule Change Request for Australian Energy Market Commission* (October 2013)

³ *Energy Retail Code* (Vic), cl. 3.1

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This would likely lead to increased confusion and frustration among customers, leading to a greater volume of customer complaints and Ombudsman enquiries.

Recovery of undercharges generally

In addition to the issue of customer being unbilled for significant periods, AGL is concerned that the proposal may impact the ability for retailers to recover undercharges beyond a period of three months, even if a bill has been issued.

AGL's interpretation of the Draft Consultation Paper is that the proposed limitation on backbilling would only apply to circumstances where the retailer is recovering an undercharge due to an error made by the retailer only. The limitation would not extend to circumstances where a customer was undercharged due to the actions of another party within the market.

This is a crucial distinction, as there are a number of reasons in the market that result in a customer being undercharged or overcharged in relation to their energy account that are not controlled by the retailer. Chief amongst these is the provision of metering data from the relevant distributor or metering service provider.

AGL endeavours to bill a customer based on the best available data available over multiple metering cycles. In the case of smart meters, where AGL has access to metering data in excess of the billing cycle, successfully issuing a bill on actual data is almost certain. However, in the case of gas meters and basic electricity meters, AGL relies on multiple meter reading cycles to understand consumption at a site, and as a result, bills are often based on estimated metering data and adjusted at a later date when actual data is made available.

As such, the ability for retailers to recover undercharges as a result of estimated metering data must remain unaffected by this proposal. Further, in the case of an actual read for an accumulation meter being provided after an estimated read, it is not possible to determine whether the increased consumption occurred only in the most recent billing cycle, or evenly across past billing cycles. Additionally, it would clearly be inequitable if undercharged amounts due to a distributor error or other third-party change could not be recovered from the customer by the retailer.

Benefits of Proposed Change

The proposed change would not benefit AGL customers. Retail businesses are already sufficiently incentivised to bill customers as early and as accurately as possible to reduce debt outstanding. To this end, AGL has an extremely low number of unbilled and undercharged customers, which is consistently decreasing as billing processes continue to be refined. Furthermore, customers that are unbilled are generally not issued a bill for a particular reason that is to their benefit. Forcing retailers to issue a bill to these customers is likely to create greater customer dissatisfaction and an increase in customer complaints, as a customer will receive a bill in circumstances where their estimated consumption, or some other aspect of their account, will be known to be incorrect.

Conditional Limitation of Recovery of Undercharges

The current limitation on recovery of undercharges is appropriate given the effect of market conditions that are based around multiple meter reading cycles.

In the interests of providing an alternative approach as requested by the Draft Consultation Paper, AGL submits that a three month limitation on all recovery of undercharges could only be considered in situations where:

1. A site is equipped with a smart meter and, as a result, retailers have access to regular meter data in excess of the regular billing cycle for basic meters.
2. There is a known customer at the site and access is not an issue. Retailers rely on meter data usage to understand when customers have moved in to a vacant site and have not provided identification. An exemption should be provided for customers who have not provided identification as required under the Code and have been consuming energy at a site, or where access is unavailable and a retailer is not provided with actual metering data.
3. The ability for the retailer to recover undercharges from the customer is matched with the ability for the distributor to recover undercharges from the retailer. This could be either through aligning the exclusions for retailers and distributors, or

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allowing an exclusion for recovery of undercharges where a distributor varies data after the allowed undercharge recovery period has elapsed. If this is not aligned there would be considerable increases in risks and premiums that would need to be passed through to customers. The potential increase is difficult to estimate but seems likely to erode any benefit to the customer suggested by this proposal.

4. The retailer has purposely not issued a customer's bill due to postal service issues, meter data issues, or an issue with the customer's meter configuration that is being resolved. In these instances, a customer would not benefit by receiving a bill.

Given this very narrow range of conditions where limiting recovery would be appropriate, AGL contends that the proposal as a whole would have limited utility.

Alternative Approach

Noting that the provision of a bill is already an obligation under the ERC and NERR, a better approach is for the existing obligations to be reviewed. If necessary, the ESC with its broad powers could closely monitor the number of unbilled customers and address specific issues with individual retailers in a way that does not impact the entire customer base negatively by increasing risk premiums and compliance overheads for retailers. AGL notes that such monitoring is currently occurring with at least one retailer, and endorses the current regime of ESC's broader powers in this regard to investigate specific circumstances rather than making broad assumptions and blanket regulations across the market.

AGL would contend that as a first point of reform, the ESC's *Compliance Reporting Manual* could be reviewed and the ESC tasked with investigating reasons for unbilled customers. AGL does not believe that there are any significant issues with its customer base that would warrant a radical change to the recovery of undercharged amounts; this would lead to an increased cost to customers and the potential for further detriment.

Reasons for unbilled customers will often be different and AGL supports regulators taking an individual approach to circumstances in resolving issues that best benefit customers, taking into account the complexities of the market.

Energy efficiency audits

AGL agrees with the premise in the Draft Consultation Paper that the improvement of low-income households' energy efficiency is an effective way of supporting vulnerable households in managing their energy use. However, AGL contends that energy efficiency audits by themselves do not necessarily promote such an improvement, and any change within this area requires a broader vision of policy direction to support hardship customers. From the Draft Consultation Paper, the economic rationale for committing costs to this scheme, rather than to other proposals that could help customers to manage bills, is not clear.

AGL supports the role of energy efficiency in assisting households to manage energy usage and costs. Energy affordability for a household is influenced by a range of factors including the price of energy (network, wholesale, retail, and Government program costs), concessions and income support available to the household, and the level of energy consumption by the household. Of these factors, the main component that can be directly influenced by a consumer is the level of energy consumption. However, for a number of households there is a limited ability to significantly change energy usage, which considerably erodes the utility of any findings from an energy efficiency audit.

A number of hardship customers reside in social housing or rental properties. As a result, where energy audits recommend changes to the housing fabric, these often cannot be considered by the resident. Furthermore, most hardship customers are unlikely to be able to action audit recommendations that require significant capital expenditure. Direct Government funding could be used to reduce these barriers, which would in turn deliver material changes in consumption (for example, through the installation of more efficient hot water systems or insulation).

Energy efficiency policies that could directly support vulnerable customers include the prioritisation of the upgrade of public housing properties and policy that targets the removal of the landlord/tenant barriers, which continue to prevent a significant proportion

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of customers participating in meaningful energy efficiency activities. AGL would also not support further policies that would be funded using regressive mechanisms to be recovered through energy bills.

The reasons for customers experiencing hardship are varied, and AGL promotes treatment of hardship customers on an individual and holistic basis, that can encompass a wider range of services that may be required for the customer. This may include offering flexible payment options, information regarding available grants and concessions, reference to a financial counsellor, offering energy efficiency advice, or, indeed, discussing the possibility of conducting an energy efficiency audit in appropriate circumstances.

Details of Proposal

It is difficult to comment in detail on the proposal without sufficient supporting information regarding the application and funding of the scheme. However, AGL does not support a blanket approach to resolving the issues of hardship without an economic rationale to describe actual benefits of the scheme to the proposed category of customers.

AGL considers that it has a role in contributing to programs that help customers pay their bills and manage their energy usage, and, as a result, AGL fully supports a holistic approach to addressing hardship issues, which includes looking at the role of financial and social counsellors, concessions and grants, information dissemination, and other support mechanisms. This should not be an arbitrary application of individual schemes to a specific group of customers. Rather, all customers should be able to access a full range of services with the intention of preventing customers from entering hardship where changes to energy consumption are often not possible.

AGL continues to engage with consumer groups, Government groups, and social service organisations to discuss how the complexities of hardship can be addressed and funding opportunities to address programs that support policy directives.

Alternative Options

AGL has previously noted that reducing bill pressure and addressing energy affordability needs to be addressed in a broad way that considers the range of factors impacting the household.

AGL maintains that the key role Governments can play in addressing energy efficiency barriers are:

- Providing direct investment for energy efficiency activities where low-income customers are experiencing an upfront capital cost hurdle;
- Developing policies which overcome problems associated with a customer's inability to make energy efficiency improvements to a rental property, and achieve upgrades in the energy efficiency ratings of rental, community, or public housing stocks; and
- Where deemed appropriate, providing supporting education and information dissemination.

AGL notes that it is crucial to understand the interaction of all energy efficiency programs in assessing what the most efficient support pathway is for a particular customer, and policy-makers should consider the application of policies to support customers from falling into hardship before it occurs. In addressing policies to support customers already in hardship, AGL supports economically rational funding of a full range of social support mechanisms to help hardship customers in all areas that contribute to hardship, including the reduction of energy usage and payment of energy bills.

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