

15 March 2022

Licensing Division  
Essential Services Commission  
8/570 Bourke Street  
**MELBOURNE VIC 3000**

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### **Retail Licence Review – Variation of energy licences – AGL Entities**

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AGL Energy (AGL) thanks the Essential Services Commission (the Commission) for the opportunity to review and comment on the proposed variations to the Standard Electricity and Gas Retail Licence Conditions and Templates.

As AGL understands, the proposed amendments to the licencing Conditions and Templates are largely administrative in nature and seek to:

- Address recent changes to the regulation of energy in Victoria, including the passing of the Commission's (Compliance and Enforcement Powers) Amendment Bill.
- Improve consistency by removing variations that have arisen in licence conditions over time which have not been applied to existing licensees.
- Remove licence conditions that are no longer required or to promote consistency.<sup>1</sup>

AGL has carefully considered the suite of documents released by the Commission and our feedback is based on the Commission's objective that the review be administrative and that it would not result in any substantive changes in regulatory arrangements between the Commission and licensees. We offer the following:

**Clause 4.2 of the 'Template Electricity Retail Licence' and 'Template Gas Retail Licence (the Template Documents)'**: Clause 4.2 in the Template Documents is a newly proposed clause that does not currently exist and provides the Commission with additional power to unilaterally vary any licence condition held by a licenced entity where the proposed variation is "administrative or trivial" in nature or "required urgently". Importantly, the proposed clause removes the licensee's right under Clause 29(2)(c) and Clause 38(2)(b) of the Electricity and the Gas Industry Acts to "make representations on the matter" by way of consultation prior to the variation being made.

This represents a significant departure from the Commission's intention that the proposed review of the Gas and Electricity Licence Conditions and Templates be "predominantly administrative in nature". The inclusion of Clause 4.2 is a substantive change which changes the balance of power by curtailing the rights of licensees to bring matters before the Commission which could materially impact the

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<sup>1</sup> Essential Services Commission, [Energy Retail Licensing Review](#), 31 January 2022.

outcome of the variation and provides additional decision-making power to the Commission without any checks or balances.

Further, the proposed clause provides the Commission with authority to take a discretionary approach to determine the circumstances it considers are “administrative”, “trivial” or “urgent”. Under Clause 4.3 of the Template Documents, the Commission need only to provide “confirmation” in its notice to licensees that the Commission is of the “opinion that a proposed variation to the Licence is consistent with its Objectives and satisfies the criteria in subclauses 4.2.i. or ii”. This suggests the Commission will have no obligation to provide a rationale as to why the matters that give rise to the proposed variation are of “an administrative or trivial nature”; or “required urgently”<sup>2</sup>, and therefore, the Commission can deny the licenced entity’s right to due process.

AGL does not support the proposed amendments to Clause 4 of the Template Documents to limit the right of licenced entities to actively participate in the outcome of a licence variation. Without due process and proper regard to all matters relevant to the variation, the Commission can substantively and adversely impact the operations and obligations of the licenced entity. This increases regulatory uncertainty and risks for licensees, which ultimately could lead to higher energy costs for Victorian consumers.

AGL recommends that the Commission revert to the original wording of the Clause whereby “*This licence may be varied in accordance with Section 29 of the [Electricity Industry] Act*” or “...*Section 38 of the [Gas Industry] Act*”.

As the proposed variation to Clause 4 leads to a significant change to the current regulatory arrangements between the Commission and licensees, AGL believes the Commission should conduct a fulsome analysis of the proposed change against the Commission’s legislative objectives. The review should not only consider the consumer, industry, and market impacts of the proposed change, but also clearly review and define what circumstances the Commission consider are “administrative”, “trivial” or “urgent”.

**Clause 6.2(vi) of the ‘Template Electricity Retail Licence’ and ‘Template Gas Retail Licence’:**  
*The Commission may revoke this [the licenced entity’s] Licence if the Licensee fails to comply with a decision, direction, determination or arrangement (including any arrangement concerning load sheeting [sic]) (as the case may be) made by or agreed with the Commission, AEMO or the Minister.*

Clause 6.2(vi) is a newly proposed clause that duplicates other industry practices. Market operations and system security of the National Energy Market (NEM) are the functions of the Australian Energy Market Operator (AEMO), rather than a jurisdictional economic regulator such as the Commission. The purpose of a Retail Licence is to provide for the responsible sale of gas and electricity and strengthen consumer protections, not to determine market and system security, therefore, it would be

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<sup>2</sup> Clause 4.2 of the Template Gas Retail Licence: Where the Commission is of the opinion that a proposed variation to the Licence is consistent with its Objectives and is (i) is of an administrative or trivial nature; or (ii) required urgently; the Commission may issue a notice to the Licensee varying this Licence accordingly.

inappropriate for the Commission to duplicate this arrangement by introducing licence revocation powers as proposed under Clause 6.2(vi).

AEMO already has mechanisms in place for the revocation of a participant's registration to undertake electricity and gas activities in the NEM. Revocation of a participant's registration by AEMO will necessarily mean that the participant is no longer able to operate as an electricity or gas retailer, thereby triggering a Retailer of Last Resort (RoLR) event. Where a RoLR event is triggered, it would be appropriate for the Commission to revoke the licence if it is still active at the time that AEMO revokes the participant's registration.

AGL recommends the Commission remove Clause 6.2(vi) from the Template Documents.

**Typographical error:** Clause 6.2(vi) in the Template Documents refers to "load sheeting". We believe the Commission may be referring "load shedding".

**Clause 3.3. of the Standard Electricity Licence Conditions for Electricity Retail and Standard Gas Conditions for Gas Retail:** *"All relevant staff are provided with appropriate training in all Victoria specific obligations including the conditions of its Licence and the Energy Retail Code of Practice (if applicable to the activities authorised by this Licence.)"*

AGL notes this is a new provision and is not replicated from, nor does a similar provision appear in, previous iterations of the Standard Licence Condition documents. Again, this represents a substantial departure from the intention that the review of Gas and Electricity Licence Conditions and Templates be administrative in nature. AGL does not believe it is appropriate for the Commission to outline how licensees need to satisfy their regulatory obligations.

It is implicit to operation of an energy retailer that its staff are appropriately trained in processes, obligations, and requirements of the markets in which the retailer operates, including obligations under the Energy Retail Code of Practice, Electricity Industry and Gas Industry Acts. The current licence obligations require retailers to meet their compliance obligations and retailers have the flexibility to use a number of tools to do so, including appropriate risk management and compliance frameworks. This approach provides retailers with flexibility to use the most suitable and fit-for-purpose tools to match their business models in delivering energy to Victorian consumers in line with their obligations.

Further, this inclusion is unnecessary and AGL recommends its removal. AGL also believes the proposed clause has unintended and negative consequences for Victorian energy consumers, including:

- potentially increasing regulatory and energy costs without any discernible additional benefits;
- creating unnecessary barriers to entry; and
- stifling market innovation by potentially requiring retailers to divert finite resources to unnecessary regulatory obligations and away from product and service innovation.

If you would like to discuss any aspect of AGL's submission, please contact [REDACTED] at [REDACTED]@agl.com.au.

Yours sincerely,

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**AGL Energy**