



26 April 2013

Essential Services Commission of Victoria
Level 37
2 Lonsdale Street
Melbourne, VIC, 3000

E-mail: customerprotection@esc.vic.gov.au

Attention: Michele McAuliffe

Dear Ms McAuliffe,

Guideline Number 22, Regulatory Audits of Energy Businesses

AGL Energy Limited (AGL) welcomes the opportunity to comment on the Review of Guideline 22, Regulatory Audits of Energy Businesses, dated March 2013, and provides the following preliminary views.

In connection with the operation of 2.1.3 of the Draft Guideline -

The Commission requires that any regulatory audits of energy licensees must be based on the general principles stated in *Standard on Assurance Engagements ASAE 3100 Compliance Engagements*. It is also expected that, where appropriate, auditors will apply the principles and guidelines recommended by relevant standards including: *AS 3806-2006 Compliance programs*; *AS/NZS ISO 31000:2009 Risk management – Principles and guidelines*; and *COSO Enterprise Risk Management –Integrated Framework*.

The Draft Guideline expressly directs auditors to meet specific AS compliance standards in their obligations on auditors. Given the auditors themselves would assess the extent to which a licensee is complying with its regulatory and legal requirements, this new requirement seems at once limiting and redundant. The specific matters with which the regulator has not had confidence in the audit method of past audits is not provided in the Draft Decision, and AGL is concerned that the auditors ability and knowledge to conduct audits and apply audit principles will be potentially limited by this new criteria. AGL doubts this approach will cause any change in measurable outcomes, and notes the absence of any *ex post* evaluation proposal by the Commission.

In connection with the operation of 4.2, the Empanelment of auditors -

Suitably qualified and experienced Auditors will be empanelled by the Commission.

This seems an unnecessary prerequisite for either a suspected breach of compliance or a general compliance strategy. Its is common practice for any corporation to appoint an auditor of its own choice provided that it meets the regulators (in this case the Commissions) approval. Provided that a licensee obtain the Commissions approval of the Auditor having regard to 4.4.1, 4.4.2 & 4.4.3, and subject to any conditions imposed by the regulator, the requirement for empanelment is an unnecessary cost of doing business. AGL doubts this approach will cause any change in measurable outcomes, and notes the absence of any *ex post* evaluation proposal by the Commission.

In connection with 7.12.1(h)

- > Being selected as a member of the Dow Jones Sustainability Index
- > Gaining accreditation under the National GreenPower Accreditation Program for AGL Green Energy®, AGL Green Living® and AGL Green Spirit
- > Being selected as a constituent of the FTSE4Good Index Series



Acknowledgement that the audit report may be published at the Commission's discretion, in summary or as a whole on the Commission's website

AGL acknowledges that the Commission wishes to improve audit quality and understands the simplistic appeal of the approach outlined in 7.12.1(h). However whilst the audits are prepared by the auditor for the Commission, they do contain proprietary and confidential information relating to the licensee, the release of which may breach confidentiality provisions concerning the licensee. The federal government's *Corporations Legislation Amendment (Audit Enhancement) Act 2012* requires, amongst other things:

- Audit firms to publish an annual transparency report if they conduct audits of 10 or more significant entities such as listed companies, and;
- Allowing ASIC to publish audit deficiency reports where ASIC believes an audit firm has not taken appropriate remedial action in a failure to comply with auditing standards, codes of conduct, or requirements under the Corporations Act 2001.

AGL regards these published reports as an important indicator to auditor performance, and where they exist, encourages the Commission to make use of them rather than duplicate the effort as the Commissions current proposal requires.

In further connection with 7.12.1(h), if the Commission is seeking to encourage increased compliance through comparison of retailer performance, a more appropriate mechanism would be to deliver this through a review of performance indicators to provide relevant and meaningful comparisons.

AGL notes the additional draft obligations in the tripartite deed that only allow for 3 months from the engagement date to the time of a final report, whereby the internal timeline will require that the auditor lodge its draft final report with the ESC some 45 (15 days before a review meeting and then 30 days to produce final report) days prior to the Final Report date, with no material changes permitted in that period. Depending on the scope or complexity of the audit, this truncates the available time for any retailer to provide material and advice to an auditor to less than 8 weeks of the three months allowed. In our view this will cause operational issues as staff are redirected to deal with auditor requests or, as is more likely in audits with broad scope and complexity, delays to this proposed time frame as retailers allocate necessary staff to quite reasonably address operational and customer requirements as a priority. AGL encourages the Commission to take a more measured and proportional approach to audit timelines, reflecting properly both the audit scope as is the broad case in audit practice, and that timelines can be determined by agreement.

Should you have any questions or wish to discuss matters in relation to this submission, please contact myself on (03) 8633 7440 or David Markham, Senior Regulatory Adviser on (03) 8633 6510 or at david.markham@agl.com.au.

Yours sincerely,

A handwritten signature in blue ink that reads 'N Wallis'.

Nicole Wallis
Manager Retail Markets Regulation

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