

**12 July 2013**

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

**By email: [energy.submissions@esc.vic.gov.au](mailto:energy.submissions@esc.vic.gov.au)**

Attention: Kerri Heron

Dear Ms Heron,

**Draft decision – Proposed changes to regulatory instruments relating to flexible pricing of electricity**

AGL Energy Limited (**AGL**) welcomes the opportunity to comment on the Draft decision – Proposed changes to regulatory instruments relating to flexible pricing of electricity (**Draft Decision**) published by the Essential Services Commission of Victoria (**the Commission**).

AGL understands that the Commission has been instructed to draft regulations to align with Advanced Metering Infrastructure (AMI Tariff) Order in Council 2013 (**the Order**) and appreciates the time pressures placed on the Commission. However we find it concerning that:

- the consultation period being provided to industry for such a regulatory change is so limited; and
- whilst the Commission notes that extensive consultation has already occurred on the implementation of flexible pricing, the components of these amendments have not been previously discussed.

In general, AGL supports the amendments outlined in the Draft Decision. We seek clarification in relation to the proposed amendments to the Retail Licence, mainly with regard to the purpose of the amendment and how the amendment should be interpreted.

We have also identified additional amendments and request the Commission considers these amendments which, in our view, align with the Government policy to deliver consumer benefits from smart meters.

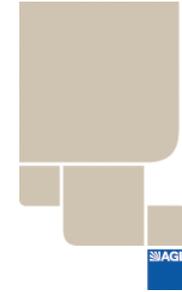
We request that the Commission considers reviewing existing consent requirements when amending a customer's billing frequency. AGL is introducing flexible billing arrangements to allow Victorian customers to receive monthly bills. Monthly billing is highly complementary to the introduction of flexible pricing. It enables a customer who takes up a flexible pricing arrangement to more quickly observe the impact this has on their electricity bills. The customer is then able to monitor this on an ongoing monthly, rather than quarterly, basis.

Comments in response to specific issues raised by the amendments are provided in Attachment A. Should you have any questions or wish to discuss matters in relation to this submission, please contact Sallie Proctor on (03) 8633 7871

Yours sincerely

**Alex Cruickshank**  
**Manager Metering and Market Interactions**

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## ATTACHMENT A

Clause or Schedule	Details of Amendment	Comments
<b>Energy Retail Code and Guideline 19</b>		
Definitions	<p><b>AMI retail tariff</b> means an AMI tariff within the meaning of paragraph (b) of the definition of <b>AMI tariff</b> in section 46B of the Act where the electricity supplied and sold is metered by means of advanced metering infrastructure.</p> <p><b>Common form distribution tariff structure</b> is as defined in the Order schedule A where;            Peak time: 3pm to 9pm weekdays            Shoulder times: 7am to 3pm weekdays            9pm to 10pm weekdays            7am to 10pm weekends            Off peak time: 10pm to 7am all days</p> <p><b>Energy Price Fact Sheet</b> means a statement prepared by a <b>specified retailer</b> that contains information on its standing offer contracts and market offer contracts in the form set out by this draft decision. This can be used as an alternative to the price and product information statements.</p> <p><b>Flat AMI retail tariff</b> means an AMI tariff where the component rates of that tariff do not vary by reference to:</p>	<p>AGL acknowledges that the proposed definitions align to the definitions within the Order. On this basis AGL supports the insertion of the proposed definitions into the Energy Retail Code and Guideline 19.</p>

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	<p>a) the time of day;  b) the amount of electricity supplied or sold during the day;  c) temperature, whether actual or forecast; or  d) other characteristics that vary during the day.  Notes: 1. Paragraph (b) does not exclude block tariffs from being flat AMI tariffs;  2. The definition does not exclude from being flat AMI retail tariffs, tariffs that vary seasonally.</p> <p><b>Flexible AMI tariff</b> means an AMI retail tariff that is not a flat AMI retail tariff and that was or is first made available from 24 June 2013.  <b>Reversion period</b> means the period from the date of the commencement of the Order to 31 March 2015.</p>	
<p><b>Energy Retail Code</b></p>		
<p>Clause 24.1(b)</p>	<p>include the following words (underlined) to the end of section 24.1(b):  <i>"...the <b>customer</b> must give the <b>retailer</b> 28 days notice <u>unless the termination is necessary for, or a direct consequence of, the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013.</u>"</i></p>	<p>AGL acknowledges that the proposed amendments align to the drafting of the Order. On this basis AGL supports the amendment to clause 24.1(b).</p>
<p>Clause 31(c)</p>	<p>insert the following words (underlined) to section 31(c)(ii):  <i>"(ii) <u>unless the early termination was a direct consequence of the customer exercising the customer's right to opt-out of a flexible AMI retail tariff in accordance with clause 8 of the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013, \$20;</u>"</i></p>	<p>AGL acknowledges that the proposed amendments align to the drafting of the Order. On this basis AGL supports the amendment to clause 31(c).</p>

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<p>New Amendment Definition of Explicit Informed Consent</p>	<p>Proposed drafting amendment to the definition of explicit informed consent:</p> <p>explicit informed consent means consent given:</p> <p>(a) by the customer directly to the retailer or the retailer's marketing representative:</p> <p>(i) in writing or by electronic communication signed by the customer; or</p> <p>(ii) except for the purposes of clause 5.1 <b>and 10.1</b> of this Code, orally;</p> <p>(b) only after the retailer or the retailer's marketing representative has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the customer, including each specific purpose and use of the consent; and</p> <p>(c) by a person competent to do so.</p>	<p>AGL is introducing flexible billing arrangements to allow Victorian customers to receive monthly bills. This initiative is being introduced in response to consumer demand and to align with Government policy to deliver consumer benefits from smart meters.</p> <p>Monthly billing is highly complementary to the introduction of flexible pricing. It enables a customer who takes up a new tariff structure to more quickly observe the impact this has on their electricity bills. The customer is then able to monitor this on an ongoing monthly, rather than quarterly, basis.</p> <p>AGL has begun to offer monthly billing on a fully opt-in basis. In accordance with clause 10.1 of the ERC, the arrangement is only activated with the customer's explicit informed consent (<b>EIC</b>). However, unlike most matters with respect to which the ERC requires that a customer's EIC be obtained, EIC to a change in billing cycle cannot be given orally.</p> <p>The practical consequence is that a Victorian customer wanting to alter their billing cycle cannot do this over the phone, but must email or write to their retailer or otherwise process the change online. Having to redirect customers in this way, rather than actioning a request over the phone, is a cumbersome process that seems likely to deter customers who might otherwise be keen to take-up, and benefit from, a monthly billing arrangement.</p> <p>Further, monthly billing represents a primary response to the ever increasing issue of bill shock. The initial interaction for an issue of bill shock takes place over the phone and it is therefore of some importance that we are able to respond to the customer's issue immediately and effectively. Due to the existing limitation around providing EIC orally, we are unable to address a household (including low income and vulnerable</p>
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		<p>households) issue in a timely manner to their satisfaction.</p> <p>We note that the National Energy Customer Framework, to which it is intended that all states will eventually transition, does not distinguish between clauses in the manner in which EIC may be given. We note further that permitting consent to be provided orally does not change the quality of the consent that must be given, in particular that it is given by a competent person after all matters relevant to the consent have been clearly, fully and adequately disclosed in plain English.</p> <p>Accordingly, we suggest that an additional amendment to the ERC which would further smooth the introduction of flexible pricing would be to amend the definition of EIC to remove the special treatment of clause 10.1. Providing retailers a framework in which they can quickly respond to customer requests to a change of billing cycle seems to AGL to be in the long term interests of Victorian customers.</p>
<p>New Amendment Clause 20</p>	<p>20. VARIATIONS REQUIRE CUSTOMER’S AGREEMENT</p> <p>(a) The structure and nature of tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement <b>in writing</b> between the customer and the retailer.</p> <p>(b) If the structure or nature of the tariff changes in accordance with a term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required between the retailer and the customer to effect such tariff change, provided that, where the contract is a market contract, the customer had given its explicit informed consent to the inclusion of the relevant term or condition in the energy contract.</p> <p>(c) Also for the avoidance of doubt, if the tariff and terms and conditions of a dual fuel contract vary on disconnection</p>	<p>This clause requires retailers to obtain written agreement for customer requests to change to flexible pricing, or to revert from flexible pricing, where they have not agreed the right to vary the tariff by agreement initially in the contract terms. As historically the impetus for changes to tariff structure have been primarily based on:</p> <ul style="list-style-type: none"> <li>• continued availability of the tariff from the distributor;</li> <li>• continued fulfilment of the criteria for the tariff; and</li> <li>• changes in use or metering;</li> </ul> <p>the retailer’s terms may not have anticipated this requirement.</p>

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	<p>by a retailer of a domestic customer's gas in accordance with and as contemplated by a disconnection warning, no further agreement is required.</p>	<p>The aim of regulation of flexible pricing is to:</p> <ul style="list-style-type: none"> <li>• provide residential customers with smart meters with choice of pricing;</li> <li>• to utilise the benefits of smart metering by facilitating residential take up of flexible pricing;</li> <li>• to provide adequate consumer protections to:             <ul style="list-style-type: none"> <li>○ ensure residential customers are not locked into pricing arrangements which are to their detriment (due to their lack of knowledge); and</li> <li>○ provide residential customers security to try this type of pricing.</li> </ul> </li> </ul> <p>The requirement to gain written agreement will create an unnecessarily unwieldy process for take up of, and reversion from, flexible pricing and is at odds with the aims of the regulation of flexible pricing. Whilst agreement fulfilling this provision can be gained via online processes, agreement via recorded consent over the phone will be stymied. A high proportion of our customers like to use the phone for their interactions and this is particularly true of customers with special needs and/or who are elderly. The Order already requires explicit informed consent to change to, and from, the relevant pricing option. This, in combination with the associated record keeping requirements, provides a high level of protection for the customer.</p> <p>It is AGL's understanding that one of the primary motivations for insertion of this requirement was to protect against mandatory re-assignment of the customer's tariff by the distributor. This protection is no longer required as this is not permitted by the Order. As such updating this provision will be consistent with the Order, the aims of flexible pricing regulation and the customer's interests.</p>
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<p>New Amendment Clause 26.4(b)</p>	<p>Deletion of the smart meter component of clause 26.4(b) (b) A <b>retailer</b> must give notice to a <b>customer</b> of any variation to the amount and/or structure <b>retailer's tariffs</b> that affects the <b>customer</b>. The notice must be given as soon as practicable and in any event:</p> <ul style="list-style-type: none"> <li>in the case of <b>customers</b> with <b>smart meters</b>, <b>20 business days</b> prior to the variation; and</li> <li>otherwise, no later than the <b>customer's</b> next bill</li> </ul>	<p>Clause 26.4(b) of the ERC was amended in 2011 to require retailers to notify the customer of any variation to the retailer's tariffs at least 20 business days prior to the date of effect. This notification must be separate to the customer's bill. The notification applies to existing tariffs and any new smart meter or flexible pricing tariffs.</p> <p>Whilst in 2011 the Commission considered that customers should be advised of pending tariff variations at least 20 business days prior to the date of effect it is our view that this is now in conflict with the requirement to amend a customer's tariff within 2 business days to fulfil the requirement of the Order.</p>
<p><b>Guideline 19 Energy Price and Product Disclosure</b></p>		
<p>Section 3.3(a)</p>	<p>"(a) <u>present a <b>price and product information statement</b> for one of the potentially applicable tariffs which must be a flat AMI retail tariff; or</u></p>	<p>AGL seeks clarification on the requirement to publish a price and product information statement for only a flat AMI retail tariff. If a retailer chooses to publish only one EPFS, which per the amendments must be for flat pricing only, that we are relieved of the obligation to publish an alternative EPFS with Flexible Pricing on YourChoice and the Department of State and Development, business and Innovation website?</p>
<p>Section 3.4(ba)</p>	<p>(ba) without limiting paragraph (c), if the tariff is a flexible AMI retail tariff,</p> <ul style="list-style-type: none"> <li>a clear and simple explanation of ; <ul style="list-style-type: none"> <li>whether the right to revert exists;</li> <li>the rights of a customer to opt-out of the tariff and revert to the previously applying AMI retail tariff;</li> <li>where the customer can obtain further information about its rights under the Advanced Metering Infrastructure (AMI Tariffs) Order in Council 2013 (made under section 46D of the Electricity Industry Act 2000s; and</li> </ul> </li> </ul>	<p>We consider it sufficient that all generally available offers are available on the retailer and the Department of State and Development, business and Innovation websites.</p> <p>We strongly urge the Commission to review the requirement to publish Price and Price and Product Information Statement on the Commission's YourChoice website in addition to the new obligation to publish generally available offers on the Department of State and Development, business and Innovation website.</p>

	<ul style="list-style-type: none"> <li>include a website address for the relevant part of the Department of State Development, Business and Innovation website;</li> </ul>																																				
Section 4A	<p><b>4A. RELEVANT PUBLISHED OFFERS (ENERGY PRICE FACT SHEETS)</b></p> <p><b>4A.1 Energy Price Fact Sheet as an alternative</b>          In lieu of the requirements in clause 3.4 and paragraph 3.5(a), a <b>energy price fact sheet</b> may be prepared in accordance with the content and format requirements set out in sections 2.2, 2.3 and 2.4 of the Australian Energy Regulator’s “AER Retail Pricing Information Guideline Version 3.0” except that the retailer must omit item 6 in section 2.3.3 and instead include the statement:          “This Energy Price Fact Sheet is presented in accordance with requirements of the Essential Services Commission (ESC) – the independent regulator of the retail energy industry in Victoria. For information about choosing an energy retailer, visit <a href="http://www.esc.vic.gov.au/yourchoice">www.esc.vic.gov.au/yourchoice</a>.” and must nonetheless include the explanations required by clause 3.4(ba) of this guideline.</p> <p><b>4A.2 Energy Price Fact Sheet as publication of standing offer</b>          An Energy Price Fact Sheet complying with the requirements of clause 4A.1 may be published by a <b>retailer</b> on its internet site in satisfaction of the requirement set out in clause 2.1(a).</p>	<p>The intent of the amendment suggests that a retailer has an obligation not to confuse customers with multiple pricing options, and to ensure that we have a flat pricing EPFS available, which means that we have no obligation to provide a flexible pricing EPFS. Please clarify if this is the intent?</p> <p>It is unclear if a retailer will be granted Victorian access to the AER portal for the purpose of generating Energy Price Fact Sheets (<b>EPFS</b>) in lieu of Price and Product information Statement. Please confirm that this access will be granted.</p>																																			
Schedule A	<table border="1"> <thead> <tr> <th>Residential - flexible</th> <th>Tariff</th> <th>Unit</th> <th>Ex GST</th> <th>Inc GST</th> </tr> </thead> <tbody> <tr> <td>Domestic flexible</td> <td>Peak time<sup>a</sup> 3pm to 9pm weekdays</td> <td>c/KWh</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Shoulder time 7am to 3pm weekdays</td> <td>c/KWh</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Shoulder time 9pm to 10pm weekdays</td> <td>c/KWh</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Shoulder time 7am to 10pm weekends</td> <td>c/KWh</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Off peak time 10pm to 7am all days</td> <td>c/KWh</td> <td></td> <td></td> </tr> <tr> <td></td> <td>Supply Charge</td> <td>\$/day</td> <td></td> <td></td> </tr> </tbody> </table>	Residential - flexible	Tariff	Unit	Ex GST	Inc GST	Domestic flexible	Peak time <sup>a</sup> 3pm to 9pm weekdays	c/KWh				Shoulder time 7am to 3pm weekdays	c/KWh				Shoulder time 9pm to 10pm weekdays	c/KWh				Shoulder time 7am to 10pm weekends	c/KWh				Off peak time 10pm to 7am all days	c/KWh				Supply Charge	\$/day			<p>AGL supports the proposed amendments to schedule A for residential customers as it allows retailers to provide information on flexible AMI retail tariffs.</p>
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Retail Licence		
Section 4.2	<p>"The <b>Licensee</b> must not enter into any contract for the sale of electricity with any <b>domestic or small business customer</b> at a tariff which is different from a tariff offered by the <b>Licensee</b> in accordance with its obligation under clause [#standing offer obligation#] unless the terms and conditions of the contract are materially different to the terms and conditions offered with that tariff"</p> <p>The Commission proposes to codify its current interpretation of this licence condition by adding the following sentence at the end of the above clause:  <u>"A difference of terms and conditions, only to the extent necessary to reflect different types of meters, is not a material difference for the purpose of this clause."</u></p>	<p>AGL seeks the justification for the insertion of this new requirement</p> <p>The Commission has stated that two contracts are not materially different simply because one contract involves the measurement of electricity consumption by a manually read meter. The Commission then states that it is seeking to ensure that retailers' only have one standing offer per tariff structure. This is directly at odds with the included amendment.</p> <p>The basis of a tariff structure is the metering type/configuration and connection characteristics. These aspects drive the network tariff code which the retailer then reflects. The purpose of this reflection is to ensure that the retailer is adequately recovering the costs from the network. AGL are concerned that the amendment as drafted would require the retailer to offer an AMI customer and a Non-AMI metered customer the same standing offer price. This would mean that the standing offer from the retailer did not reflect the network tariff code of the distributor or the underlying tariff structure and result in the retailer either covering the cost differential or forecasting consumption and possibly passing through additional cost to the consumer.</p> <p>It should be noted that the Order requires EIC for entry into a flexible pricing arrangement including for a flexible standing offer. As such the customer will always have the choice to access a flat standing offer if they choose. The inclusion of this amendment does not appear to provide any further consumer protections.</p>

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