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Retailer Authorisation and Exemption Review

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator's (AER) Retailer Authorisation and Exemption Review Issues Paper, dated 22 April 2022.

AGL is one of Australia's largest energy-led multi-service retailers, providing over 4.2 million electricity, gas and telco services to residential, small, and large businesses, and wholesale customers. Our diverse power generation portfolio includes base, peaking, and intermediate generation plants, spread across traditional thermal generation and renewable sources. AGL is market leader in the development of innovative products and services that enable consumers to make informed decisions on how and when to use their consumer (or distributed) energy resources (CER) to optimise their energy load profile and better manage their energy costs.

The retail energy sector in the NEM has evolved substantively since the introduction of the National Energy Customer Framework (NECF) and this transformation will continue at pace, synchronous with the broader energy transformation in Australia. Aspects of the NECF retail authorisation and exemption frameworks, which were established on the traditional one-way flow of energy model, no longer support the modern, innovative energy products, services, and business models which are available and will become available to consumers. While the design of future reforms is in its formative stages, we generally support the AER's review of the authorisation and exemption frameworks, acknowledging the need to ensure the regulatory landscape remains agile, fit-for-purpose and ready to embrace emerging technologies and concepts.

AGL is a strong believer in an efficient and equitable energy transition where all consumers have the opportunity to participate in and benefit from CER, digitisation, decentralised renewable energy, green technologies, and the decarbonisation journey. We encourage the AER to consider the synergies between this review, the AER's Consumer Vulnerability Strategy and the AER's broader work on 'game changing' solutions to energy affordability, which could maximise long-term consumer outcomes while promoting strong and fair competition in the market.

One of the challenges with conceptualising regulatory frameworks that will remain fit-for-purpose in the future, particularly in dynamic and complex industries such as energy, is that we do not have clear visibility of what the future energy experience will look like for different customer cohorts and to what extent CER



assets, digitisation and smart technologies will integrate into the day-to-day lives of Australians. The impact that factors such as the level of technological engagement across various customer segments, pace of digitisation and the integration of new technologies, will have on the market end state is still materialising. Therefore, any prospective reforms to the NECF authorisation and exemption regime should not only solve for the problems identified in the market today but be adaptable and durable to accommodate for future energy models and systems. Without a long-term, flexible approach the industry will likely find itself revisiting this very same issue in 10 to 15 years' time when the market may look profoundly different than it does today.

A key consideration for the AER in developing future authorisation framework designs should be the role of entities which have already been authorised under the current framework. Any changes to the authorisation arrangements should focus on delivering outcomes that maximise consumer protections and access to energy products and services without undoing established systems, processes, and retailer investment. Reforms which do not carefully contemplate the role of the traditional energy retailer could increase costs-to-serve for consumers while generating uncertainty or volatility in the energy retail space at time when increasing energy prices are already a sensitive issue for consumers. This will be particularly topical to the upcoming 'Flexible trading arrangements for distributed energy resources' rule change which will further challenge the conventional consumer-retailer relationship by introducing a private metering arrangement through a separate financially responsible Market Participant.

AGL supports a principles-based framework for the future that seeks to avoid the granular, prescriptive, and process-driven approach of the existing authorisation regime. The current regime risks creating outcomes which are contrary to the principle of competitive neutrality for different business models and may inhibit the ability of traditional energy players to innovate based on a more restrictive regulatory authorisation regime. This, in turn, may limit consumer access to solutions they desire or unnecessarily increase costs to serve. As the AER begins to consider the next stages of framework design, AGL's view is that the following factors should drive any proposed changes to the authorisation and exemption frameworks:

Essentiality: The current authorisation and exemption regime was established on the premise that energy is a universal, non-discretionary service and that irrespective of the volume or purpose, energy is essential to life. Emerging multi-party energy models, products, services, and concepts of passive versus active energy are challenging conventional thinking around what energy really is essential to the day-to-day lives of consumers. The NECF framework has created a perception that energy is essential only when it is sold and supplied by an energy retailer to the consumer's premises while other non-retailer energy players are able to navigate around the current definitions. Despite the evolving debate on the 'essentiality of energy', access to energy at affordable prices and on fair terms is essential to a healthy and functioning society. Any reform to the frameworks should ensure that consumers retain this basic right to access energy and that the costs of providing an essential service to consumers are fairly distributed across the entire energy value chain.

Consumer Protection: The current consumer protection NECF regime is lagging behind the speed of developments in the energy sector. As part of this authorisation review, the AER will need to assess the different consumer use-cases on how different customer cohorts want to use energy in the home in order to develop a modern consumer protections framework, focusing on the principles



that consumers need to know what they are buying and how this will impact their energy usage and costs. Consumers should have access to low-cost dispute resolution mechanisms regardless of how they receive their energy services. AGL's view is that the new framework should apply to the new definition of essentiality and complement the existing Australian Consumer Law which already provides protection for consumers when buying distributed energy resources hardware such as solar, EV's, batteries.

Competitive Neutrality: We believe that any party that wants to sell, purchase, or manage the energy in the customer's home or business should be authorised regardless of their business model in delivering these services. When contemplating similar issues in the UK energy retail market, suppliers argued that "Any market should, irrespective of the regulatory mechanism, ensure that market participants performing comparable functions face comparable levels of accountability and regulatory oversight".¹ AGL supports this view.

Retail Authorisation Framework: Over time, the static nature of the authorisation and exemption processes will become even less suitable and relevant to the evolving energy markets. There is significant scope for the AER to modernise the existing authorisation framework to better reflect the needs of new and existing participants, and AGL supports:

- Periodic or 'upon request' review and amendment mechanisms for granted retailer authorisations through AER discretionary powers or by application from an authorised entity where either party believes or has reason to believe that the business model, financial viability, or market conditions will substantively impact the operation of the retailer or other authorised entity; and
- Extended powers to issue conditional authorisations (including review, variation and revocation powers) with a view to gradually phase out exemptions from holding an authorisation where a conditional authorisation would be more suitable for the entity or function performed

Pace of reforms: As AER considers what the authorisation framework should look like to support future energy markets, it should also begin to consider how the industry should get there. The question of pace of subsequent reforms is pertinent to the review, particularly as to whether incremental changes (first to the authorisation, then exemption frameworks and then to the broader NECF) or whether substantial and concurrent reforms would be most appropriate to address the adequacy of the frameworks.

¹ UK Department for Business, Energy & Industrial Strategy, *Flexible and Responsive Energy Retail Markets, Summary of Consultation Responses*, July 2021, p 8.



If you would like to discuss any aspect of AGL's submission, please contact Valeriya Kalpakidis at vkalpakidis@agl.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux'.

Elizabeth Molyneux

General Manager, Policy and Market Regulation

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