



AGL Energy Limited
T 02 9921 2999 Level 24, 200 George St
F 02 9921 2552 Sydney NSW 2000
agl.com.au Locked Bag 1837
ABN: 74 115 061 375 St Leonards NSW 2065

Naomi Wynn
Manager, Energy Rebates
Division of Energy, Water and Portfolio Strategy
Department of Planning and Environment
NSW Government

Submitted by email to: naomi.wynn@planning.nsw.gov.au

14 September 2018

Dear Naomi

NSW Social Programs for Energy Code proposed amendments

AGL Energy (**AGL**) welcomes the opportunity to respond to the NSW Government's proposed amendments to the NSW Social Programs for Energy Code (**NSW Social Code**).

AGL recognises that energy prices and affordability present a material issue to our customers and the long-term sustainability of our business. Accordingly, we are focusing our attention to provide affordable energy solutions for all our customers, and in doing so, minimise bill stress arising from energy prices.

We support a shared-responsibility approach to addressing energy affordability issues across the community, which takes into account the responsibilities and strengths of customers, industry, government and the community sector.

In this context, the NSW Social Code plays an important role in facilitating the delivery of a range of social programs for energy, that can help to alleviate financial stress to concession customers facing cost of living pressures.

While we agree with the overarching rationale for the proposed changes to the NSW Social Code, we are concerned that some of the proposed amendments engage with policy questions that would be more appropriately addressed through rule changes to the National Energy Rules.

AGL supports the finding of the recent ACCC Retail Pricing Inquiry Final Report that jurisdictional derogations from the National Energy Customer Framework (**NECF**) are not in the best interests of energy consumers, unless there is a specific geographical reason for implementing them.

At a high level, the NSW Social Code is an administrative code established under clear regulatory parameters set out in the *Electricity Supply (General) Regulation 2014 (NSW)* to facilitate the delivery of the Government's social programs for electricity.

We note that the proposed amendment under A6 would require retailers to determine whether eligible customers are on the most appropriate contract within 10 business days of receipt of an application for a rebate which complies with the requirements of the Code and once every financial year for customers already receiving a rebate.

In our view, this requirement reaches beyond the Minister's regulatory authority under clause 21(1) of the *Electricity Supply (General) Regulation 2014 (NSW)*, which provides that the purpose of any Code provisions is to facilitate the delivery of the Government's social programs for electricity. While



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placing customers on the most appropriate contract is an important policy reform, it is not a prerequisite to the delivery of government rebates to concession customers.

Effecting rule changes to the National Energy Rules would ensure more consistent outcomes for customers across the National Electricity Market. It would also reduce the compliance costs that are borne by energy consumers due to varied regulatory requirements in each jurisdiction. We note that there are reforms currently underway at the national level to ensure that customers are placed on the most appropriate offer. To facilitate a nationally consistent approach to this matter, we would therefore urge the NSW Government to abstain from making any proposed amendments on this issue until such time as the national reforms to the NECF are settled.

We have also identified a range of operational issues in relation to the proposed amendments to the NSW Social Code that are detailed in the Attachment to this submission. To enable the efficient implementation of the amendments, we would encourage the Department to carefully consider these concerns and would welcome the opportunity to meet with the Department to discuss these matters further.

In particular, AGL would urge the Department to review the Code to ensure that the clauses do not contradict one another. We have concerns that A5.7 may contradict A1.17(b) and section B1.3 of the Code.

The proposed amendments to the NSW Social Code represent the second tranche of amendments proposed within in the past 12 months. While we acknowledge the importance of some of these changes to facilitate the delivery of the Government's social programs for electricity, continued regulatory change involves substantial operational costs that are incurred by our customers. In accordance with clause 22 (g) of the *Electricity Supply (General) Regulation 2014*, we would urge the Department to assess the costs associated with retailers' compliance with the proposed amendments to the NSW Social Code and specify the way in which retailers would be reimbursed for these additional costs incurred.

More broadly, the continued divergence of jurisdictional regulatory arrangements from national arrangements and a lack of coordination between jurisdictions are increasing operating and compliance costs for retailers that operate on a national level.

We also note the tight timeframes for the implementation of these reforms which will require substantial operational changes to our business. We would therefore urge the Department to elaborate appropriate transitional arrangements for the proposed amendments.

Should you have any questions in relation to this submission, please contact Kurt Winter on 03 8633 7204 or KWinter@agl.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Hristodoulidis'.

Con Hristodoulidis

Senior Regulatory Strategy Manager



ATTACHMENT – AGL VIEW OF NSW SOCIAL CODE AMENDMENTS

Section	Current obligations – v5	Future obligations – v6	AGL view
Preamble	Social code applies pursuant to the Electricity Supply Regulation	Social code applies to both Electricity Supply Regulation and Gas Supply Regulation	Accept
Definitions	n/a	<p>Added definition of Customer Retail Contract – includes market contracts and standard retail contracts</p> <p>Added definition of energy to include both electricity and gas.</p> <p>Added definition of gross amount of the bill</p> <p>Added definition of hardship customer to mean a residential customer of AGL who is identified as experiencing hardship according to our hardship policy.</p> <p>Added definitions of market offer and market contract (same as NERL)</p> <p>Added definition of payment error to mean a rebate (concession) that was not calculated in accordance with the requirements set out in the Social Code or was paid to a customer who was not eligible.</p> <p>Added definition of standard retail contract (same as NERL)</p>	Accept
A2.3	Reference to Part E included	Reference to Part E deleted	Accept
A2.4	Reference to Part E included	Reference to Part E deleted	Accept
A2.5	Reference to Part E included	Reference to Part E deleted	Accept
A2.6	Reference to Part E included	Reference to Part E deleted	Accept
A3.9	Reference to Part E included	Section deleted.	Accept
A5.1.2	Obligation to have systems and processes in place		AGL would urge some consideration of transitional arrangements regarding the implementation of these changes.
A5.7	If retailer error causes rebate payments not to be paid, the	Addition:	AGL would urge the Department to review the Code to ensure that the clauses do not



	retailer must reimburse the customer. The retailer can make this calculation and repayment without prior agreement with the Department	A5.7.3 and A5.7.4 If the retailer makes a payment error, the retailer must reimburse the Department for any amounts that were paid but that the customer was not entitled to receive along with any administration fee that the retailer received for administering the rebate. The retailer must bear the cost of any payment error from the customer, and not reverse any credit to a customer that was applied incorrectly.	contradict one another. In particular, AGL has concerns that A5.7 may contradict A1.17(b) and section B1.3 of the Code.
A5.7	Retailer error and rebates		Accept
A5.7.4	Payment error		Accept. The drafting of this clause should give consideration to account for circumstance where a payment error results from customer action/ inaction.
A5.8.1	n/a	Addition of the word 'clause'. No change to meaning.	Accept
A5.8.4(b)	Retailer must submit documentation to the Department by the 10 th business day of each subsequent month, including 'a tax invoice for the retailer payment'.	The tax invoice for the retailer payment needs to comply with the invoicing procedures provided by the Department to retailers or otherwise published on the Department's website.	Accept
A5.8.7	A retailer payment will not be paid where any of the rebate payments the subject of the invoice for that retailer payment were made more than 18 months prior to the invoice being received by the Department.	A retailer payment also will not be paid where: The invoice for that retailer payment is received by the Department more than three months after the due date specified in clause A5.8.4 (see above row).	Accept
A5.9.1	Credit Balance		Accept



A5.12	n/a	Formatting change, for calculation of rebates. And application of the new definition of 'gross amount of the bill'.	Accept
A5.13	Retailers are required to protect the confidentiality of eligible customers to ensure that their records are not used for any purpose other than the delivery of the rebate or as stipulated in this Code for audit purposes.	Retailers are required to protect the confidentiality of eligible customers to ensure that their records are not used for any purpose other than the delivery of a social program for energy.	Accept
A5.14.1	Reporting in relation to Part E	Deleted and A5.14.2 becomes A5.14.1	Accept. AGL would request that the Department clarify the energy units (kW or MJ)
New A5.14.1 (a) and (b) Reporting	By 30 January and 31 July each year, the <i>retailer</i> must provide for the immediately preceding <i>reporting period</i> , the following information to the <i>Department</i> in accordance with the <i>supporting documentation template</i> : (a)the postcode for each <i>residential customer</i> who received a <i>rebate</i> from the <i>retailer</i> ; (b)in relation to a bill of a <i>residential customer</i> who received a <i>rebate</i> :	Addition of amount of electricity that was exported. Removal of the requirement to report on the amount of the rebate for the relevant financial year. Addition of the amount of any other payments made to the customer in relation to their energy usage Addition of the amount of any discounts paid to the customer.	AGL is concerned that this clause does not clarify the amount of any other payments made to the customer' refers to and whether it encompasses credits retailers have applied to customer accounts, for example goodwill gestures.



	<ul style="list-style-type: none"> - amount of electricity and gas consumed - total amount payable before the rebate was applied - the total amount of the rebate paid to the customer and the total rebate paid to the customer for the relevant financial year 		
A5.14.1 (c)	<p>In relation to a residential customer who received the EAPA :</p> <ul style="list-style-type: none"> - amount of electricity and gas consumed - total amount payable before the rebate was applied - the total amount of any assistance provided to the customer and the total rebate paid to the customer for the relevant financial year 	<p>Addition of amount of electricity that was exported.</p> <p>Removal of the requirement to report on the amount of the assistance for the relevant financial year.</p>	
A5.14.1 (d) and (e)	New requirement	<p>in relation to a <i>residential customer</i> who received a <i>rebate</i> or <i>EAPA</i> and whose service was disconnected during the <i>reporting period</i>:</p> <p>(i) whether the customer was a <i>hardship customer</i> in the 12 months prior to the disconnection;</p>	AGL would request that the Department clarify how often the supporting documentation template be updated.



		<p>(ii) whether the customer had been on a payment plan in the 12 months prior to the disconnection;</p> <p>(iii) the amount owed by the customer at the time of the disconnection, including any additional costs and penalties;</p> <p>(iv) the date the service was disconnected; and</p> <p>(v) if the service was reconnected, the date the service was reconnected;</p> <p>(e) any other information relating to the delivery or improvement of a <i>social program for energy</i> required by the <i>supporting documentation template</i>.</p>	
A5.14.2	New requirement	<p>The reporting requirement for Part E that was contained in A5.14.1 previously, is now required for clause A6 of the code, though once yearly by 31 July instead of 6-monthly.</p> <p>(a) the number of <i>residential customers</i> receiving a <i>rebate</i> who are being supplied electricity and/or gas from that <i>retailer</i> under a <i>standard retail contract</i>;</p> <p>(b) the steps taken by the retailer to inform the <i>residential customer</i> of the <i>market offers</i> available to that customer;</p> <p>(c) the number of <i>residential customers</i> who changed from being supplied electricity and/or gas under the <i>retailer's standard retail contract</i> to the <i>retailer's market retail contract</i>; and</p> <p>(d) in relation to the customers identified under subparagraph (c), the estimated yearly monetary savings to the customer from changing contracts.</p> <p>New requirement</p>	AGL would request that the Department provides guidance on the standard that would be reasonably acceptable to the Department.



		A5.14.2A The quality and accuracy of information provided under this clause A5.14 must be of a standard which is reasonably acceptable to the <i>Department</i> .	
A5.14.5	The Department may request further information or details in relation to any matter the subject of a report under A5.14 and the retailer must provide the information promptly	The retailer must provide the information requested by the Department within 10 business days of receipt of the request.	AGL has previously encountered issues with responses being delayed due to the Department sending requests directly to our CEO. We would request that a contact list be established and adhered to, especially in circumstances where Department is seeking to impose such a tight timeframe. Further, the Code requires the data to be provided within 10 business days. Depending on the nature of the request it may not be possible to provide the data in that time (due to processing and data cleansing) AGL would request that the clause be extended to 10 business days or to an agreed date.
A6	New requirement	<p>General information – all rebates</p> <p>Retailer must determine whether a customer is on the most appropriate contract (MKT or MUT)</p> <ul style="list-style-type: none"> - Within 10 business days of receipt of an application for a rebate which complies with the requirements of the code - Once every financial year for customers already receiving a rebate. <p>Retailer must make this determination having regard to:</p> <ul style="list-style-type: none"> - Consumption profile - Objective of reducing the customer’s costs of buying elec or gas - Estimated yearly monetary savings for the customer 	As we have elaborated in our submission, AGL considers this reform to be beyond the scope of the Minister’s regulatory power and would suggest these reforms would be better implemented through rule changes to the National Energy Rules.



		<p>- Price and non-price T&C of AGL’s market offers.</p> <p>If the retailer determines that the customer is not on the most appropriate offer, the retailer must use all reasonable endeavours to assist the customer to change before paying any rebate to the customer. This requirement does not apply if we determine that there is no market offer that would be more appropriate than their current contract (MKT or MUT).</p>	
A6.1.2	Processing requirement	Use of customer profile	AGL understands that the Department was open to using the methods that are available. As such, we would request that the Department word the amendment as “the customer’s consumption profile if available”.
A6.1.3	Change contracts before paying rebate		AGL considers that this clause contradicts other clauses about paying rebates expeditiously. The process to assess and then change a customer can take a period of time, with some potential delay due to customer inaction. AGL would also seek clarify from the Department on what is meant by “reasonable endeavours” in terms of mode of communication and applicable time period.
B1.2.6 – Low income rebate B2.2.6 – NSW Gas rebate B3.2.11 – Life Support rebate	New requirement	If retailer becomes aware of an error in the customer’s application for the rebate we must notify the customer as soon as practicable and assist the customer to rectify the error as far as possible.	While AGL accepts this change, the cost of compliance should be borne by the Department consistent with the Regulation.



<p>B4.2.8 – Medical energy rebate C1.2.3 – Family energy rebate</p>			
<p>B1.2.7 – Low income rebate B2.2.7 – NSW Gas rebate B3.2.12 – Life support rebate B4.2.9 – Medical energy rebate C1.2.4 – Family energy rebate</p>	<p>New requirement</p>	<p>Low income rebate If retailer becomes aware of any error in the assessment of a customer’s application (including where they have been incorrectly assessed as eligible), we must:</p> <ul style="list-style-type: none"> - Cease payments immediately - Notify the customer of the reasons for the error as soon as practicable - Where possible assist the customer to rectify the error and submit a new application. 	<p>While AGL accept the new requirement, AGL has concerns about the Code’s definition of Payment Error and how this relates to the verification guidelines specified in the Code</p>
<p>B1.2.8 – Low income rebate B2.2.8 – NSW Gas rebate B3.2.13 – Life support rebate B4.2.10 – Medical energy rebate C1.2.5 – Family energy rebate</p>	<p>New requirement</p>	<p>Retailer must bear the cost of any error in assessing a customer’s eligibility for the rebate.</p>	<p>AGL should be reimbursed for the cost of compliance in accordance with the Regulation.</p>



C1.3A	New requirement	The Family Energy rebate must be offset against the gross amount of the bill before GST is applied.	Accept
D1.3.4	Voucher		Accept
Part E	Added in December 2017, contained the obligation to write to NSW concession MUT customers (marketing opt-out excluded) at 6-monthly intervals. The purpose was to inform and assist customers to identify the most appropriate market offer for them having regard to: <ul style="list-style-type: none"> - Consumption profile - Objective of reducing the cost of their electricity and/or gas - Estimated yearly monetary savings for the customer - Price and non-price T&C of AGL's market offers. 	Part E has been removed	Accept