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16 April 2025

Dear ESCOSA,

Review of Retailer Energy Productivity Scheme (REPS) Code – Draft Decision

AGL Energy (AGL) welcomes the opportunity to provide feedback to the South Australian Essential Services Commission's (Commission's) Review of the Retailer Energy Productivity Scheme Code DRAFT Decision (the Paper).

At AGL, we believe energy makes life better and are passionate about powering the way Australians live, move, and work. Proudly Australian for more than 185 years, AGL supplies around 4.5 [1] million energy, telecommunications, and Netflix customer services. AGL is committed to providing our customers simple, fair, and accessible essential services as they decarbonise and electrify the way they live, work, and move.

AGL operates Australia's largest private electricity generation portfolio within the National Electricity Market, comprising coal and gas-fired generation, renewable energy sources such as wind, hydro and solar, batteries and other firming technology, and storage assets. We are building on our history as one of Australia's leading private investors in renewable energy to now lead the business of transition to a lower emissions, affordable and smart energy future in line with the goals of our Climate Transition Action Plan. We'll continue to innovate in energy and other essential services to enhance the way Australians live, and to help preserve the world around us for future generations.

As the largest energy retailer in South Australia, AGL remains supportive of the important role that the Retailer Energy Productivity Scheme (REPS) plays in optimising the energy usage of South Australian energy consumers.

AGL broadly supports a number of ESCOSA's draft decisions outlined in the Paper, particularly those that minimise unnecessary regulation and improve customer access to REPS information – such as enhancements to the government website, introducing a Consumer Rights Fact Sheet, and clearer communication of activity deadlines. However, we also advocate for balanced and proportional changes to the REPS code, particularly as they relate to:

- Compliance and audit expectations: AGL supports streamlined compliance planning but seeks clarification on what constitutes 5% annual audit threshold – specifically whether it refers to the number of activities or nominal gigajoules within a REPS calendar year. We also question the feasibility of appointing an independent expert to audit the REPS in the South Australian context.
- Information security: We note that additional obligations around the confidential handling of customer information may duplicate existing requirements under the Commonwealth Privacy Act and energy

[1] Australian Energy Regulator (2025), Retail energy market performance update for Quarter 2, 2024–25.

sector specific obligations under the NERL and NERR. We also request further guidance on what is expected in relation to evidence collection for Priority Group qualifiers outside of concession card holders, particularly to ensure privacy is upheld and fraud is prevented.

- Deposit-taking restrictions: AGL objects the proposed restriction on accepting deposits late in the calendar year, as we believe it would disrupt legitimate commercial arrangements, and impose unnecessary administrative burden on retailers and Activity Providers.

Our detailed responses to the draft decisions in the Paper are set out within **Appendix A**.

As always, AGL remains committed to working collaboratively and constructively with DEM in relation to this proposal and welcomes any further opportunities for ongoing consultation and/or solution co-design.

If you have any questions in relation to this submission, please Jenny Kim, Manager Policy and Market Regulation at jkim2@agl.com.au.

Yours sincerely,

Liam Jones
Senior Manager Policy and Market Regulation

Appendix A – AGL's Responses draft decisions

3.1 Marketing and lead generation

The Commission's draft decision is to continue to monitor marketing activities for REPS and not make any regulatory changes at this point. The Commission reminds retailers and activity providers of their obligations under the *Spam Act 2003*, including:

- obtaining consent from the person who will receive the marketing email
- ensuring the email identifies the business as the sender and includes the businesses contact details, and
- ensuring there is an easy way for consumers to unsubscribe.

AGL welcomes the Commission's draft decision to not make any regulatory changes to marketing and lead generation practices within the REPS, and instead to continue monitoring marketing activities as needed.

More specifically, we agree with the Commission's determination that the very low prevalence of complaints relating to sales and marketing practices since the program's commencement (two complaints about door knocking, seven complaints about misleading sales practices and two complaints about high-pressure selling)[2] substantiates the decision not to introduce any further regulatory interventions at this point.

3.2 General information for consumers

The Commission has commenced work to redesign the REPS information on its website. Feedback received through this review will be considered as part of this website design. The Commission will pass on feedback to DEM regarding potential improvements to the REPS information on the government's website as well as suggestions for building general awareness of the scheme.

The Commission has made a draft decision not to require retailers to provide information to customers about REPS through websites, bills and information to customers experiencing financial hardship due to the potential costs involved and challenges for retailers working across different jurisdictions. Retailers may however wish to consider these opportunities as part of their marketing strategies for REPS.

Redesigning information on the REPS website

AGL commends the Commission's decision to redesign the REPS information on its website and welcomes its commitment to incorporating stakeholder feedback into this process. We also support the Commission's intention to share feedback with DEM to improve the government's REPS communications and help build broader awareness to the scheme. As outlined in our previous submission, we consider the current low awareness of the REPS scheme to be attributable to the limited availability of online information and the difficulty consumers face in navigating it. A good example of effective information design can be seen on the ACT Government's Climate Choices website, where energy efficiency content is clearly segmented into 'home', 'businesses, and 'school' categories. This structure helps different user groups easily find information relevant to their needs, while the use of Plain English and adherence to web accessibility standards ensures the content remains clear and accessible without overwhelming the reader.

[2] Review of Retailer Energy Productivity Scheme (REPS) Code – Draft Decision p 15

Not mandating REPS information sharing from obliged retailers

AGL also welcomes the Commission's draft decision not to mandate retailers to provide REPS information through websites, bills, or targeted communications to customers experiencing financial hardship, given the potential cost impacts and practical challenges for retailers operating across multiple jurisdictions. Though, AGL already does have information on the REPS available on our website, under the section dedicated to financial support. In adherence to the Hardship Policy obligations under the National Energy Retail Law (NERL), information is already provided to our hardship customers about payment assistance options, available support services that may assist with broader financial challenges, and practical tips on how to reduce energy use and lower future bills such as through state energy efficiency programs. However, in the context of ongoing cost-of-living pressures, AGL recognises the reduced financial capacity of hardship and priority group households in being able to afford and prioritise participation in REPS activities, particularly for upgrades that require significant upfront investment such as retrofits.

In our preceding submission, we highlighted that marketing for the REPS program is primarily undertaken by Activity Providers who are not directly regulated under the scheme, which differs from other jurisdictional schemes such as Victorian Energy Upgrades (VEU) or the NSW Energy Saving Scheme (ESS). We noted that this can at times lead to problems like misleading sales tactics, or misrepresenting REPS as a government-run program. Our views align with stakeholder recommendations for government-led public awareness campaigns to build trust and increase uptake of the scheme. We consider government sponsored marketing to be better placed in building trust amongst customers due to their impartial position and branding compared to industry. We also agree with suggestions from the EEC, Red and Lumo, and EWOSA that retailers should link to the Commission's website to provide customers with clearer information and reinforce the government's role, which is currently not well understood.

3.3 Information for consumers – scheme incentives

The Commission's draft decision is to amend clause 6.1 of the Code which addresses information provision to include a requirement that a consumer rights factsheet, developed by the Commission, must be provided to customer on or prior to the date of commencement of the REPS activity.

AGL supports this initiative and will ensure its implementation by our Activity Providers once the REPS Consumer Rights Fact Sheet and the amendment to Clause 6.1 of the REPS Code are published. To facilitate a smooth transition, AGL requests that ESCOSA release the new Fact Sheet ahead of the Code changes and provide at least 20 working days' notice of the commencement date for the new requirements. We also recommend that the amended clause not be applied retrospectively, to avoid inadvertently rendering previously completed activities non-compliant.

3.4 Information for consumers – incentives no longer being available

The Commission's draft decision is to amend the Code to:

a) require consumers to be provided with clear and accessible information about any deadlines for undertaking activities under the scheme
b) only allow deposits to be taken if the activity will be undertaken in that calendar year or, in the case of activities undertaken in November or December, within 30 business days of receipt of the deposit, at the price quoted.

Actions: review website material and Activity Provider materials to ensure clear communication to customers that REPS have cut-off deadline. Introduce restriction on deposit taking - only take deposits for jobs that can be delivered within the CY, or in the case of Nov & Dec sales, within 30 business days of receipt of deposit.

Provision of clear deadline Information

AGL supports the Commission's draft decision to require that consumers be provided with clear and accessible information regarding any deadlines for undertaking activities under the scheme. We agree this will improve transparency and help customers make informed decisions.

Restrictions on deposit taking

AGL does not support the proposed restriction on deposit taking. While we acknowledge the intent to align customer expectations with scheme delivery timeframes, we hold concerns about the practical implications of this rule. Restricting Activity Providers from accepting deposits in November or December for jobs scheduled in the following calendar year may significantly impact their working capital – especially during a traditionally constrained period.

There are legitimate and lawful circumstances in which a customer and an Activity Provider may agree to carry out a job in the new year. For example, if a customer books for an upgrade in early December and pays a deposit which covers the pre-install site assessment visit, and then after the assessment, requests the install to take place in late January, this would technically be in breach of this proposed change. Prohibiting deposit-taking in such cases may disrupt commercial operations and could reduce consumer access to services. AGL acknowledges the importance of compliance with Australian Consumer Law and supports fair trading practices. However, we request that the Commission provide further guidance on how it intends to monitor or enforce deposit-taking restriction, as it remains unclear whether this obligation falls to the Commission, Obliged Retailers, or both.

From a practical compliance standpoint, if an activity cannot be delivered within the calendar year, it is unlikely to be submitted to an Obliged Retailer for validation. Retailers are only able to verify the timing of an activity after documentation is provided through REPS-R. Given that Activity Providers often contract with multiple retailers and do not share sales pipelines in advance, Obliged Retailers have limited visibility into the deposit date or planned delivery timeline prior to a submission.

AGL therefore recommends that enforcement efforts focus on post-submission verification. Retailers can confirm, via REPS-R, whether the activity occurred within the calendar year (or, for November–December deposits, within 30 business days), and that the deposit aligns with the quoted price. Alternatively, the paper notes that there may be circumstances where the taking of deposits close to the end of the calendar year may be appropriate, provided the activity will be delivered within a reasonable timeframe in the following year, and that the Commission could incorporate an allowance for a reasonable time period. While out primary preference is for this proposal not to proceed, we consider a 45-day timeframe for installation following payment of a deposit to be more reasonable time frame.

Extended timeframes for EPTs

AGL thanks the Commission for providing DEM with access to stakeholder submissions regarding potential flexibility in Extended Priority Target (EPT) carryovers. We acknowledge that extending activity creation periods could delay final determinations of a REPS year. However, we do not agree that this should prevent or delay the apportionment of EPTs for the subsequent year. If a shortfall is identified from the prior year, we believe this could reasonably be applied to the following year's EPT obligation without delaying scheme implementation or compliance planning.

3.5 Dispute Resolution

The Commission's draft decision is to amend the Code to:

a) require customers to be informed of their ability to contact EWOSA where a complaint remains unresolved
b) require that retailers ensure that any persons directly contracted to deliver REPS activities on its behalf are a member of the Ombudsman scheme

EWOSA Complaints handling

AGL welcomes this decision to require customers to be informed of their ability to contact EWOSA where a complaint remains unresolved. Dispute resolution mechanisms are integral parts of every retailer's compliance plan, which extends to the Activity Providers.

EWOSA membership

AGL welcomes the draft decision to require that retailers ensure that any persons directly contracted to deliver REPS activities on its behalf are a member of the Ombudsman scheme. However, we seek further information and discussion with ESCOSA, EWOSA and Activity Providers on how this decision will impact Activity Providers and the cost of delivering products and services to SA households and businesses. We would also benefit from further clarity on whether this requirement extends to third-party providers engaged by our Activity Providers, and how compliance would be monitored in such cases.

3.6 Inappropriate activity provision

The Commission considers that there would be merit in the Government reviewing its approach to REPS activity RDC1 (refrigerated display cabinets). The Commission notes that while it is possible to introduce changes to the Code to address concerns in the Code, this approach is unlikely to be the most effective option. The Commission will provide formal advice to DEM regarding concerns about the RDC1 REPS activity and will pass on other feedback about REPS activities received through submissions.

AGL welcomes this draft decision and supports the Commission's intention to formally raise concerns about the RDC1 (refrigerated display cabinets) activity with DEM, as this approach is likely to be more effective than amending the Code directly. In our previous submission, we highlighted that the RDC1 activity may be better suited to specific business types – such as supermarkets or cafés – where energy efficiency gains are more likely to be realised. We also suggested that activity specifications could be refined by introducing sub-classifications to ensure that installations are targeted to use cases where genuine load reduction occurs.

In addition to our feedback on RDC1, we also noted concerns with activities APP1A and APP1B, which relate to the purchase of high-efficiency refrigerators and freezers. These activities currently do not require the decommissioning of existing appliances, creating a risk that new units are being added rather than replacing inefficient ones. AGL considers that introducing a decommissioning requirement would strengthen the emissions reduction impact and ensure these activities are delivering genuine energy savings. We encourage the Commission to include these suggestions to DEM.

3.7 Compliance and Assurance

The Commission's draft decision is to update the Code to:

a) clarify requirements for retailers to have effective control over any party who is delivering activities on their behalf
b) remove the requirement to submit an annual compliance plan and replace it with a requirement to submit a governance and compliance plan that will remain in place between 2026 and 2030, unless amended. Retailers will be required to provide a delivery plan to the Commission each year that outlines the activities that they plan to deliver and the details of any party undertaking REPS activities on their behalf, and
c) for each REPS year, obliged retailers must ensure that a minimum of 5 per cent of activities have been audited to check compliance with regulatory requirements. Obliged retailers are required to notify the Commission of the auditor that will be used as part of its governance and compliance plan and a copy of the audit report/s must be provided to the Commission.

With regards to the minimum audit requirements, ideally retailers will engage an independent expert. In some cases, an internal auditor may be considered appropriate, provided that they are sufficiently separate and independent from the day-to-day operation of REPS. The Commission also expects retailers to use a risk-based approach to identifying which activities should be audited.

In addition to audit requirements for retailers, the Commission will continue its risk-based approach to auditing retailers compliance with the requirements of the scheme and increase its communication with obliged retailers on its expectations. The Commission also intends to increase communication with obliged retailers on the Commission's expectations regarding its oversight of activity providers and other third parties.

Retailers having 'effective control' over any party who is delivering activities

Whilst we understand the intent behind requiring retailers to have 'effective control' over their third-party vendors, we note that many Activity Providers operate across multiple retailers. Imposing control by one party may create conflicts of interest and operational inefficiencies across vendors. To ensure fair and consistent oversight, we recommend that responsibility for monitoring vendor compliance – particularly for activities like marketing practices – rests with an independent body such as ESCOSA. This would better preserve market neutrality and support transparent regulation. AGL will await the Commission's guidance supporting this proposed requirement for retailers to have "effective control" over any party delivering activities on their behalf.

Compliance planning and auditing requirements

AGL welcomes the streamlining of compliance obligations through the introduction of a single governance and compliance plan for the 2026–2030 period and supports the annual delivery plan approach. To ensure consistency and ease of assessment, we request that ESCOSA provide further guidance on the expected content and format of the annual delivery plans – ideally in the form of a standard template or a reporting guide.

Regarding the proposed 5% annual audit requirement, AGL seeks clarification on whether the 5 per cent minimum refers to the number of activities, or the volume of nominal gigajoules in a REPS calendar year. We also request further detail on the types of audits considered acceptable, for example, whether a desktop review, phone audit, or site inspection would suffice, and when the use of internal auditors would be considered appropriate. Furthermore, while we acknowledge the intent behind asking retailers to engage an 'independent expert' to conduct minimum audit requirements, we question whether this is a practical or realistic expectation. Given the limited pool of suitably qualified candidates in South Australia, it may be challenging to identify individuals who can genuinely undertake

this work with full independence. To support consistency and credibility, we recommend that ESCOSA consider establishing a panel of approved auditors, similar to the model used by IPART in NSW.

As noted in our response the REPS information request, AGL's current audit and compliance regime of our Activity Providers is robust and comprehensive and would exceed the proposed minimum requirements. Specifically, our Integrated Risk and Compliance Program includes auditing a minimum of 30% of commercial lighting documentation and 20% desktop audit of retrofit activities and hot water replacements. We also regularly exceed these minimum targets and achieve the following audit sample sizes:

- 100% desktop audit of commercial lighting and refrigerated display cabinet activities,
- 5% site audit of commercial lighting activities,
- Approximately 75% desktop audit of Priority Group and Household activities.

3.8 Administrative efficiencies

The Commission's draft decision is to amend the Code to require retailers to provide details in their governance and compliance plan of how personal information collected in association with a REPS activity will be managed to ensure the privacy of personal information

AGL does not support the proposed requirement to include details on personal information management within the governance and compliance plan, as retailers are already subject to robust privacy and cyber security obligations under existing legal frameworks.

Retailers must comply with the Commonwealth *Privacy Act 1988*, including the Australian Privacy Principles (APPs), which set clear requirements for the collection, use, storage, and disclosure of customer's personal information. In addition, energy retailers are required to implement appropriate cyber security and data protection measures under the Commonwealth's *Security of Critical Infrastructure Act 2018*. Within the energy sector specifically energy retailers must also meet strict record keeping and customer information protection obligations under the National Energy Retail Rules (NERR) and National Energy Retail Law (NERL). These existing obligations already provide strong protections for customer data. We believe making further requirements within the REPS governance framework is unnecessary and duplicative.

3.9 Information security for customers

The Commission's draft decision is to amend the Code to:

a) require obliged retailers to specify arrangements for confidential handling of customer information for customers as part of their governance and compliance plan
b) require that customers affected by family violence are provided with the option to use a pseudonym or not identify themselves
c) change Schedule 1 to the Code which sets out the information that is required for activity records. Amend requirement for 'name' to 'name (unless name suppression or pseudonym is requested by a customer affected by family violence),' and
d) establish a requirement for customers to be advised that their information may be shared with the obliged retailer, ESCOSA and DEM for the purposes of checking compliance with the REPS regulatory requirements.

With regards to evidence of priority group status, the Commission expects that obliged retailers and their activity providers will cite evidence, record the customer's CRN and retailers will confirm the validity of the customers concession status via Centrelink Confirmation eservices. Photographic evidence for concession cards and other forms of customer identification should not be taken or stored. The Commission will communicate further with obliged retailers with regards to its expectations in this area.

Confidential handling of customer information

AGL acknowledges the Commission's intent to strengthen protections for customer privacy and vulnerable groups, including those affected by family and domestic violence (FDV). However, as mentioned in the Paper, customer information is already protected under the Commonwealth *Privacy Act 1988*, which applies to retailers and other entities with an annual turnover exceeding $3 million.

Further, energy retailers are also bound by requirements under the NERL and NERR which include a dedicated set of obligations to protect customers experiencing family and domestic violence. For example, Rule 76A in the NERR requires retailers to develop and implement a FDV policy that includes measures to protect the personal information of affected customers, and rule 76D requires retailers to protect the confidentiality of personal information of customers affected by FDV.[3]

The Commission's draft position appears to respond to concerns that some smaller Activity Providers may fall outside the scope of the Privacy Act, however, it is unclear whether this justifies duplicating or extending privacy obligations through the REPS Code for parties already covered by Commonwealth law and energy regulations. We would consider it more appropriate if Activity Providers that fell out of the scope of the $3 million turnover were subject to regulatory requirements in relation to confidential handling of customer information. Further guidance would also be valuable to clarify whether this requirement is intended to supplement, extend, or simply formalise existing obligations.

Protecting the identity of Family Domestic Violence (FDV) cases

In relation to customers affected by FDV, AGL supports the intent behind the pseudonyms and non-identification methods to safeguard privacy of FDV victims. However, we seek clarification on how obliged retailers are expected to validate and verify a customer's Priority Group status under these conditions. For example, if a customer chooses

[3] National Energy Retail Rules (https://energy-rules.aemc.gov.au/nerr/603/486344#3A)

to withhold their name or use a pseudonym, it is unclear how retailers can lawfully confirm concession status or Centrelink Reference Numbers (CRNs) via the Centrelink eServices system without inadvertently contravening privacy or data matching protocols. We do however support the proposed requirement for FDV customers to be advised that their information may be shared with the obliged retailer, ESCOSA and DEM for the purposes of checking compliance with the REPS regulatory requirements, but note that this will reduce delivery flexibility by Activity Providers.

We also support the Commission's position that photographic evidence of customer identity or concession cards should not be taken or stored, but request that further guidance be issued to ensure that customer privacy protections can be upheld without creating uncertainty around scheme eligibility verification or retailer compliance obligations.

Evidence for priority group status

The Commission notes that they will communicate further with obliged retailers with regards to its expectations in relation to photographic evidence for concession cards and validation and storage of other forms of customer identification. AGL would like to emphasise the need for clear and detailed guidance on what is expected for other qualifiers of priority status – namely rent under $500 a week, SA Financial Counsellor referral, retail hardship program, Retailer Payment Plan – particularly to ensure consistency across Activity Providers and support compliance with privacy obligations. It is important that any requirements strike an appropriate balance between protecting customer privacy and ensuring sufficient evidence is collected to prevent fraudulent claims and maintain the integrity of the scheme.

3.10 Minor amendments

The Commission proposes to make one other minor amendment to the Code to remove reference to the Energy and Water Ombudsman in section 1.3 (Definitions) and section 4.2 (Record keeping obligations). The Ombudsman has advised that it is able to request information from energy retailers as part of complaint handling processes and this would also apply to any complaints received about REPS. Therefore, reference to the Ombudsman in sections 1.3 and 4.2 is not needed.

No further comments from AGL.