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Energy Reform Division

Essential Services Commission

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Submitted via email: energyreform@esc.vic.gov.au

Energy Consumer Reforms – Discussion Paper

AGL Energy (AGL) thanks the Essential Services Commission (the Commission) for the opportunity to comment on the Energy Consumer Reforms Discussion Paper, dated 24 October 2024.

AGL supports the intent of the Consumer Energy Reforms to promote strong outcomes for consumers and ensure that the Victorian energy consumer safeguards remain fit-for-purpose and relevant. In progressing this suite of reforms, the Commission should ensure that the measures we take today are meaningful, sustainable and do not transfer a major costs burden onto consumers in the future. Victoria has a progressive energy regulations framework; therefore, any further changes should be forward-thinking and proportionate to the problem they seek to address.

AGL's feedback to this Consultation is based on our longstanding history as one of Australia's largest providers of essential services, our extensive experience in supporting consumers experiencing vulnerable circumstances and AGL's participation in the Australian Energy Regulator's (AER) Game Changer Design and Leadership Groups to develop the initiatives proposed in the Energy and Climate Ministerial Council's consumer reform package.

AGL's response to the Discussion Paper is that:

- AGL broadly supports the policy intent behind the five (5) initiatives contemplated in the Discussion Paper and, where appropriate, has provided its detailed feedback on preferred, alternative and/or undesirable solutions (appended to this letter).
- The '**automated better offer**' proposal is the most complex of the five initiatives. All three options to operationalise it will incur significant challenges, complexities and costs. Industry will need at least 18 months to successfully implement the automated best offer requirements.
- AGL has already taken proactive, positive action in the areas of **legacy contracts** and **ombudsman contact details** on bills.
- Customer **uptake of the best offer** and **access to concessions** are arguably not failings of the Energy Retail Code of Practice (ERCoP) and, as such, could be addressed through responses other than regulatory intervention.

For AGL, supporting customers through the cost-of-living crisis, particularly those who may be experiencing vulnerable circumstances, is an enduring priority. We continue to deliver on our strong commitment of providing effective and meaningful support measures to customers when they need it most. AGL's $90 million Customer Support Package is helping customers get back on track through debt relief, payment matching, no cost solar installation for eligible hardship customers, and proactive outreach initiatives to customers showing early signs of hardship. To date, AGL has delivered $63 million to assist customers who need it most and installed 189 no-cost solar systems through our innovation solar fund for eligible customers providing them long-term sustainable energy solutions.

AGL's Customer Council Letter 2024 outlines our vision for an equitable energy system.[1] The AGL Customer Council has endorsed a suite of immediate and longer-term reforms that can facilitate a consumer-centric and fair energy transition. Many of these recommendations are topical to the Commission's ongoing Review of the ERCoP, including reforms to the concessions frameworks and relief grants, guaranteed business supports and better communication in the industry. AGL welcomes an opportunity to work with governments, the Commission and other policymakers, and consumer advocacy groups on how we can better navigate the energy transition while keeping the consumer at the heart of it.

Consolidating Reforms

Several matters raised as part of the Commission's Review of the ERCoP Issues Paper (now referred to as Stage 2) overlap with the themes in this Energy Consumer Reforms consultation. For example, the Commission is exploring changes to clarify best offer obligations as well as potential amendments to the bill content requirements. AGL recommends that where there is an opportunity to consolidate reforms between the first and second stages of the ERCoP Review it should do so by bundling related changes together. This will allow retailers to consolidate the best offer uplift program into a single stream allowing efficient allocation of resources and avoiding duplicated change management effort.

Implementation Timeframe

The energy retail industry welcomes clear communication from the Commission on the timeframe in which it intends to progress these reforms. As part of Stage 2 of the ERCoP Review, the Commission indicated that changes are expected to be implemented by September 2025. However, these expectations have not been revised since the Commission initiated this Energy Consumer Reforms consultation.

With concurrent rule changes ongoing in the NECF jurisdiction and the vast volume of regulatory reform programs in the industry, it is important that the Commissions sets the industry and consumers up for success with a reasonable, and pragmatic implementation timeframe. The Commission may wish to consider a phased implementation for changes to the ERCoP. AGL proposes 12 months for the reforms proposed in the Stage 2 Consultation, and 18-24 months from the time the Final Decision is released for the Energy Consumer Reforms proposed in this Discussion Paper.

If you would like to discuss any aspect of AGL's submission, please contact Valeriya Kalpakidis at [redacted]

Yours sincerely,

[redacted]

Liam Jones

Senior Manager Policy and Market Regulation

AGL Energy

[1] The AGL Energy Customer Council has run continuously for 24 years with a membership panel that includes some of Australia's most experienced consumer advocates and industry representatives who work to advance the interests of a broad range of energy consumers in Australia.

1. Appendix A

1.1. Automatic best offer for customers experiencing payment difficulty

Summary of AGL Position

a. AGL is supportive of efforts to ensure that customers experiencing payment difficulties are offered low-cost energy plans from their retailer.

b. This obligation already exists under the Payment Difficulty Framework (PDF) for Tailored Assistance customers who cannot afford ongoing usage (Tailored Assistance 2) with analysis showing this mechanism is largely effective. Consideration should be given to investigating whether any exceptions are better addressed through targeted compliance programs rather than broad reaching regulatory reform.

c. Notwithstanding, there are potential benefits in considering an automated best offer framework for some Tailored Assistance customers. Of the approaches presented by the Commission, AGL's preferred option is '*automated switching to the best offer'*. However, there are several critical considerations that need to be adequately defined in choosing this approach.

d. There is a risk that highly onerous and prescriptive best offer regulations will require significant upfront funding and ongoing operational costs. These costs will ultimately be socialised to consumers which may have the contrary outcome by driving up energy prices

e. A viable alternative may be to expand the practical assistance obligation relating to the tariff/energy offer review to apply to both Tailored Assistance 1 and 2 customers.

AGL supports the intent of the reforms to enable customers experiencing financial hardship and vulnerable circumstances to easily access the lowest cost energy offers available. As part of the AER's Game Changer initiatives, AGL has previously supported the need for retailers to be able to unilaterally swap disengaged customers onto the best offer where it is in their best interest to do so.

At the time of release of the AER's Final Report, limited detail on the characteristics and technical elements of the automated best switching had been explored. AGL made clear our reservations that the automated best offer concept must be subject to further clarification and analysis before it can be considered as a viable solution. No such clarification or analysis has been undertaken since that time; however, the imminent implementation of an automated best offer mechanism now looms over industry with limited options on how to trial and test the idea before it becomes regulation.

Before progressing these reforms, the Commission should work with industry to explore how various models or different characteristics of the automatic best offer options could be designed and implemented. For example, the Commission may wish to undertake an industry-wide pilot under the Regulatory Sandboxing Arrangements, particularly as that the proposed changes present a significant departure from the status quo. AGL understands that the AER is currently undertaking a program of work to improve the uptake of its trial waiver arrangements to test innovative, forward-thinking ideas in the energy industry. AGL considers that the proposed automated best offer reform package might be an opportunity to utilise the Commission's Regulatory Sandboxing Trials to develop a viable solution, consider all intended and unintended consequences and mitigate adverse customer outcomes before it becomes regulation.

The Case for Change

The ERCoP already requires retailers to provide Tailored Assistance 2 customers with practical assistance to help lower their energy costs. This includes a review by the retailer of the "*the tariff that is most likely to* *minimise the residential customer's energy costs*"[2]. Accordingly, consideration of best offer should already be occurring for eligible customers under the PDF. This is consistent with the Commission's observation in the Discussion Paper that, on average, "*customers receiving payment difficultly assistance pay lower effective prices than customers not receiving assistance*"[3]. Only a "*small minority*" of customers are thought to be paying higher and this figure is based on estimates only.

The Discussion Paper also relies on anecdotal feedback from community sector stakeholders suggesting potential non-compliance by some retailers. If this is the case, rather than pursuing broad-reaching regulatory reform with significant costs and customer impacts, AGL suggests the Commission consider targeted compliance investigations and/or action against offending retailers as this may be more effective at solving the purported 'need to act'.

Notwithstanding the above, of the three options to give effect to the automated best offer, AGL's preference is *Automated best offer switching,* and within that option, the *General consent for automated switching in future* method. AGL considers that the options to credit the difference or reduce tariffs provides only temporary relief to the customer for the duration of the hardship arrangement whereas the automated switching allows customers to retain the benefits in the longer-term.

AGL's detailed feedback on each of the options proposed is as follows:

Option 1 - Crediting the difference between the current plan and the best offer

AGL considers this is the *least* desirable of the three options presented as it involves significant complexity for retailers to implement and administer and carries the highest likelihood of poor customer outcomes. As such, it is AGL's recommendation not to pursue this option further.

AGL acknowledges that crediting the difference between the current plan and the best offer will not require the Commission to make substantive changes to the underlying EIC framework in Victoria and it may appear as a simple and straightforward solution. However, this option will involve substantial operational challenges and costs for retailers to execute. AGL's concerns are that:

a. ***Complexity*** - retailers will need to develop and implement new system capabilities to dynamically calculate the difference between a customer's actual bill versus the best offer and then apply corresponding bill credits for the delta. This will involve a sophisticated algorithm that can recalculate concessions rebates, backdated charges, non-energy charges and other complex components of the customer's billing calculation at scale. We envisage that despite retailers' best efforts this complexity will inevitably result in compliance challenges.

b. ***Limited duration*** - credits would only be applied for the duration of time the customer is enrolled in the hardship program, meaning that the customer will cease receiving the benefits of the credits once they exit the hardship program. This may result in poor customer outcomes by perpetuating the cycle of payment difficulties and providing only temporary relief. These customers would truly benefit if they moved onto and stayed on the lower pricing beyond their time on the hardship program.

c. ***Bill accuracy*** – The application of credits could adversely impact bill accuracy with respect to the application and validation of concessions, the calculation of solar exports, treatment of product swaps and transfers and the processing of meter data adjustments from the market. This complexity

[2] Under Clause 128(1)(f)(i) in the Energy Retail Code of Practice, retailers are required to consider the tariff or energy product that is most likely to minimise the customer's energy cost based on *the retailer's knowledge of the residential customer's pattern of energy use and payment history.*

[3] Essential Services Commission, Energy Consumer Reforms: Discussion paper, 24 October 2024, page 6.

would invariably extend to consumers potentially leading to confusion, complaints and decreased consumer comprehension of their bills.

d. ***Perverse outcomes*** – under this proposal, consumers will have the option to remain on higher-priced offers which may include additional perks or benefits (for example, streaming service subscriptions) whilst still being credited the difference for the best offer. This could occur through a conscious decision or through disengagement and may lead to a situation where customers continue to receive these added benefits that are subsidised by retailers (and by extension, other consumers). In circumstances where customers are not able to afford their ongoing energy usage, it is AGL's position that it is not appropriate to remain on these higher-priced offers with added benefits that are subsidised by other consumers. Ultimately, the Commission will need to take a firm position and clearly define what constitutes "best" in the context of customers who cannot afford their ongoing energy usage.

Option 2 - Reducing tariffs to match the best offer

While the above solution could create serious implications for retailers' billing calculation processes, the proposal to reduce tariffs to match the best offer may adversely impact the structure of retailers' product portfolios. For example, AGL's energy products (i.e. the customer's energy plan such as the Value Saver) are structured such that the tariffs or usage prices are inherently linked to the terms and conditions of that product itself. From a technical and operational perspective, AGL would need change the underlying structure of its entire product portfolio, including current and legacy products and make significant upfront investment to develop this functionality within our enterprise billing and customer management system.

In its current form, AGL would not be able operationalise this proposed option and accordingly, does not support it.

Option 3 - Automated switching to the best offer

Of the three options proposed by the Commission to give effect to the automatic best offer requirements, this is AGL's preferred approach.

As part of the AER's Game Changers initiative, AGL expressed its support for the concept of automated switching to the best offer. While this option carries some fundamental design and process complexities (discussed further below), we consider that a well-implemented solution could benefit disengaged customers. Unlike the previous options, this approach would allow customers to receive the long-term benefits of switching to the best-priced offer and would be the easiest approach for customers to understand.

Characteristics and parameters for 'automated switching to best offer' that will need to be considered:

a. ***Eligibility -*** This mechanism should only apply to customers enrolled in their retailers' Tailored Assistance 2/hardship program, i.e. where the customer has arrears and cannot afford ongoing energy usage. This is consistent with the AER's Game Changer Final Report recommendation.

b. ***Frequency -*** as outlined above, the obligation to consider alternative tariffs already exists at the time of enrolling into their retailers' hardship program. This obligation could be changed so that rather than going through the lengthy plan comparison and switching process, the retailer simply advises the customer that they will make the change for them. If a customer enters multiple hardship arrangements during a certain period, the automated switching obligation should be limited to a certain number of automated swaps. To the extent that the deemed best offer changes over time, retailers should be limited to automatically swapping the customer no more than *once per year.*

c. ***Opt-out*** – The Commission will need to provide appropriate guidance to retailers on how to treat customers who seek to opt-out of or reverse the automated switch beyond the cooling off-period. Retailers should not be penalised for the customer's failure to opt-out or reverse the switch within the prescribed period, even when their previous product is no longer available, and they lose the benefits of that plan. There are also important policy considerations if the customer wants to revert to a higher-priced offer when they cannot afford their ongoing energy usage – for example, the retailer should have the option to decline offering that product or service to a customer (whilst still retaining the option to access the retailer's standing offer).

d. ***Definition of best offer –*** it will be critical to define what constitutes a 'best offer' in the context of the automated switching mechanism. This may be the same definition that already applies today, or it may need to be altered to consider other factors such as tariff structure and product features. The more factors that need to be considered, the more complex process becomes for retailers to follow. It will be paramount that retailers have clear, consistent guidelines to follow.

If this is the chosen option, AGL urges the Commission to work closely with industry to establish a detailed plan and work through each potential scenario that could come up. AGL implores the Commission to allow for sufficient time to design, build and implement this change as it will be one of the biggest changes to IT systems architecture since the best offer framework came into effect in 2019.

AGL understands that the NECF has a different underlying EIC framework and, therefore, may not contemplate Option 3 as potential solution for automated best offer when the AEMC commences the corresponding rule change consultation. While this is AGL's preferred, option we understand that it will create further fragmentation between the NECF and Victorian jurisdictions.

Alternative Automatic Best Offer Options

The Commission may be able to avoid or overcome the barriers described above. The current practical assistance mechanism relating to tariffs is limited to customers who cannot pay the full cost of their ongoing energy use[4]. An alternative approach may be to consider extending this requirement to apply to customers who can afford to pay for ongoing energy usage (Tailored Assistance 1). This would ensure a larger cohort of customers are captured by this protection and would avoid the need for automated switching mechanisms or variations to explicit, informed consent provisions.

1.2. Improving the ability to switch to the best offer

While AGL notes the proportion of customers not on their retailers' best offer, the Discussion Paper does not identify any failings in the regulatory framework contributing to this. On the contrary, the Commission notes consumer 'perception' as a potential barrier. The research from Energy Consumers Australia points to low savings as the predominant barrier for all households. Careful consideration needs to be given to the reasons why consumers often do not access better offers before the Commission pursues further regulatory intervention. AGL notes the existence of other mechanisms and initiatives to stimulate customer switching. The mandatory best offer message obligations and the Victorian Energy Saving Bonus are examples of actions taken to promote the best offer with limited evidence of increased consumer uptake.

AGL maintains that the low uptake of the best offer is indicative of an underlying consumer behavioural issue rather than a failure on the part of the retail industry or regulatory framework. The industry would benefit from an information and awareness uplift to stress the importance of consumers remaining engaged with their energy retailer and the competitive markets. AGL considers a more effective approach to address customer disengagement could be a concerted campaign between the Commission and the Department of Energy, Environment and Climate Action to keep raising awareness on how to engage with and access the best offer.

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[4] Essential Services Commission, Energy Retail Code of Practice, 2022, Clause 128(3).

The Commission could improve the customer experience for switching to the better offer by addressing the lengthy, highly scripted and disengaging EIC requirements associated with changing energy products. The perceived mental overload and time constraints for customers can be addressed and overcome by enabling retailers to provide key energy plan information through alternative methods of communication. This could be through Apps, mobile push notifications, emails, landing pages, automated recordings, or any other way that allows the customer to review and absorb information at a time and in the format that suits them. Some customers may have a limited ability to understand and retain volumes of information and identify the aspects that are important to them at the time of contacting the retailer. By changing the way customers engage with retailers, swapping energy deals can become a seamless, quick experience for customers and improve the uptake of the best offer.

The Commission will also be aware that the Federal Government is progressing its own solution to foster increased competition and allow customers to directly reap the benefits of it by expanding the Consumer Data Right (CDR) framework to include action initiation.[5] These reforms will allow consumers to direct accredited persons to take actions on their behalf, such as making a payment, opening and closing an account and switching electricity retailers. AGL anticipates that CDR action initiation reforms will have a significant role to play in enabling customers to seamlessly switch to the best offer, not only with their current retailer, but the best available offer in the market. AGL encourages the Commission to look for opportunities to support consumer uptake and understanding of the CDR regime, rather than requiring retailers to invest in additional system upgrades and customer collateral changes when there is limited evidence these measures will further improve consumer engagement and switching rates.

Ban on Acquisition-only Offers

AGL does not support the Commission's proposal to ban acquisition-only offers. AGL understands that the Commission is looking to the energy markets in Britain where Ofgem has placed a temporary Ban on Acquisition-only Tariffs (BAT) on 14 April 2022. The BAT was introduced alongside the Market Stabilisation Charge (MSC)[6] to help protect consumers from the risk to market stability posed by recent pressures on European energy supply markets.[7] The primary purpose of these measures was to provide resilience for the GB domestic energy market against large wholesale price movements and reduce the likelihood that deals would be offered that might increase the risks of financial stress and supplier exit and the resulting costs and disruption for consumers. [8]Furthermore, the use of acquisition pricing (or by extension new customer sign-on benefits) has the effect of incentivising and promoting competition in the Victorian energy market for the benefit of consumers.

The BAT was always intended as a temporary measure and Ofgem is continuing to consult with industry on the long-term impacts of this mechanism. AGL does not consider that a ban on Acquisition-only offers, and by extension, bill credits or other monetary benefits for new customers, is appropriate or suitable to the Victorian energy markets and conditions. Customer switching ensures competitive pressures are placed on retailers to provide lowest cost market offers. To remove incentives for customers to switch retailers will undermine these competitive pressures and lead to poor market pricing outcomes. The Commission has not put forward any compelling evidence and analysis to justify significantly disrupting market competition, and disincentivising the development of new and innovative tariff and product offerings. Instead, there may be a need to undertake a more fulsome review addressing the issue of price dispersion in the energy markets.

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[5] Consumer Data Right Action Initiation Reforms were passed through Parliament in August 2024 and will enable consumers to permit an accredited party to make payments, transfer between providers and open and close accounts on their behalf.

[6] The Market Stabilisation Charge required any supplier who gained a customer to compensate the 'losing' supplier (from whom the customer was switching) for a proportion of their future hedging costs for that customer.

[7] Ofgem, Letter to Suppliers, Third Party Intermediaries, Consumer Representatives and Other Interested Parties, *Decision to extend the existing Market-wide derogation from SLC 22B for Fixed Retention Tariffs*, February 2023.

[8] Ibid.

1.3. Improving the application of concessions to bills

AGL believes that genuine reform and improvement in the concessions space can only be achieved by addressing the root cause of the problem – lack of harmonised, consistent concession eligibility/validation processes and streamlined information-sharing systems. Without addressing these fundamental aspects, the Commission and governments are unlikely to achieve meaningful improvements to the uptake of energy concessions for eligible customers. AGL notes that numerous regulatory reform processes relating to concessions have acknowledged the long-term opportunities to address this challenge before ultimately choosing not to pursue term. While this is not a criticism of the Commission's approach, it highlights the need for State and Federal Governments to work together to solve this problem once and for all.

One such longer-term solution that will significantly reduce the number of customers still not claiming an energy concession, would require Services Australia to explore the feasibility of collecting NMI and MIRN information from concession card holders and store this information in a central database of all eligible concession card holders. Energy retailers could cross check their own NMI/MIRN databases to identify customers who have a card but have not notified their retailer. This would also decrease the number of instances of rejected eligibility and concessions validation outcomes, for example, caused by minor name differences between customer details provided to Services Australia and those provided to AGL.

Retailers have an incentive to accurately capture customer concession details and apply the customer's entitlements to their bill, so retailers will generally take the steps necessary to ensure that this information is captured and validated. Accordingly, the volume of concession information already available to customers is vast. There are multiple instances in the AGL customer journey where we ask or remind customers about adding their concession information, including:

- At onboarding/sign-up or moving address
- When changing energy plans
- Upon enrolling into AGL's payment hardship program.
- When registering life support equipment; and
- Establishing a payment arrangement (Tailored Assistance 1).

Further, AGL's energy bills include multiple references to concessions, including a hyperlink directly to AGL's concessions landing page for further information on eligibility and how to apply. Energy retailers are also required to contact and notify customers who ordinarily receive a concession entitlement but who have recently failed validation to ensure they have an opportunity to correct any potential issues affecting their eligibility.

With respect to retailers undertaking proactive campaigns as proposed by the Commission, AGL has run various proactive mail-out campaigns reminding customers to add their concession details. In AGL's experience, this type of broad reaching communication to customers at large has a low uptake and is not effective in engaging the desired customer cohort.

AGL notes the mismatch between the number of eligible Victorian customers not receiving a concession on their electricity bill (7%) versus the number of customers who are not receiving a concession on their gas bill (12%). This number should, in theory, be aligned as customers who have gas and electricity at their property are eligible receive concession entitlements for both. Currently, if a retailer identifies missing concession details on either fuel (e.g. is the concession is only registered and validated on the electricity account but not gas), retailers cannot unilaterally apply the customer's concession details to the missing fuel without the customer's EIC. This can significantly slow down the process for customers to receive their entitlements, especially when the customer is disengaged from their energy retailer or is experiencing vulnerable circumstances. The Commission should explore opportunities with Services Australia to exempt retailers from the requirement to capture the customer's EIC to apply concession details to the missing fuel.

1.4. Extending protections for customers on legacy contracts

AGL agrees that customers on legacy contracts should not be exposed to higher prices from conditional discounts or risk their benefits ending before their contract. AGL is undertaking proactive work to move any remaining Victorian customers on legacy pre-July 2020 contracts to new contracts.

With respect to the options proposed by the Commission, AGL would be supportive of the removal of grandfathering arrangements with impacted customers on legacy contracts being transitioned contracts. Given this will involve customer engagement campaigns, it will be critical to allow retailers appropriate and sufficient timeframes to contact and transfer customers. It may be necessary to create a temporary transitional arrangement for retailers to transfer customers off legacy contracts without explicit informed consent, akin to the mechanism considered for Tailored Assistance customers.

1.5. Improving awareness of independent dispute resolution services

AGL already includes the Energy and Water Ombudsman Victoria's telephone contact details on the front page of its electricity and gas bills, consistent with the requirements under the AER's Better Bills Guideline in the NECF jurisdiction. In AGL's experience, customers who desire to access dispute resolution services can readily access information on it through various methods including on bills, through customer contact centres and on the web.

In response to the specific options considered by the Commission:

a. ***Phone number*** – AGL is supportive of this option, especially as it promotes consistency with the NECF.

b. ***Website*** – AGL does not believe this is necessary. Customers wishing to access the Ombudsman's website will be able to readily find this information using search engine capability. It also takes up important space on the bill layout. The Commission should avoid mandating different bill layout regulations to the AER's Better Bills Guidelines.

c. ***Additional information*** – While we see value in communicating with customers about the complaints process and the need to contact retailers in the first instance, this does not need to be specifically regulated for. Retailers should be able to include this information at their discretion.

d. ***Additional collateral*** – We do not consider that further regulatory intervention in relation to digital bill communications or summaries will materially improve customer outcomes. This type of communication is intended to be succinct, easy-to-digest and straight to the point. AGL's digital bill summary, which accompanies the full PDF bill attachment, is designed with customer preferences and behaviours in mind and prioritises the information that customers find most valuable and desirable.