



AGL Energy Limited

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

General Manager
Consumer and Markets Branch
Australian Energy Regulator

By email: RPIGconsultation@aer.gov.au

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Retail Pricing Information Guideline – Version 6

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Regulator's (AER) draft Retail Pricing Information Guidelines (RPIG) consultation.

The AER state that the changes in the draft RPIG are to reflect key changes to retailer responsibilities as a result of the Default Market Offer (DMO) and the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Electricity Code). The AER also states that it has sought to align with the Australian Competition and Consumer Commission's (ACCC) Guide to the Electricity Code (ACCC Guide) through the RPIG changes.

While we agree that the AER must review the RPIG and seek to remove inconsistencies between the RPIG and the Electricity Code, we do not support the approach of mirroring the Electricity Code and ACCC Guide within the RPIG, particularly where the ACCC Guide is only an interpretative tool and not a legislative requirement. By taking the approach it has, the AER is treating ACCC interpretations as new enforceable obligations on retailers through the RPIG which runs counter to good regulatory process and may result in poor consumer experiences.

In the following submission we expand on the above matters and discuss the following points:

1. The AER should seek to remove inconsistencies (such as allowing DMO referencing appear on Basic Product Information Disclosures (BPID)) rather than seeking consistency through copying the obligations set out within the Electricity Code.
2. The AER should not adopt or seek to mirror the interpretation contained within the ACCC Guide, such as the interpretation of the term offer to include variation notices, as the ACCC Guide is not a regulatory or legislative instrument and is not enforceable.
3. The proposed changes to RPIG and the approach taken to implement the proposed changes is in conflict to the consumer-centric approach taken by the AER for the current version of the RPIG and we believe will result in poor customer experiences.
4. We encourage the AER to use formalised regulatory powers and processes to achieve regulatory change, such as lodging a rule change request with the Australian Energy Market Commission



(AEMC) to introduce advanced price variation notice obligations as this will then be subject to a National Energy Objective assessment.

We therefore strongly encourage the AER to work within its current regulatory remit for the RPIG in amending the RPIG to ensure consistency with the Electricity Code obligations.

If you have any questions, please contact Kat Burela at kburela@agl.com.au or 0498001328.

Yours sincerely

Elizabeth Molyneux
GM Energy Markets Regulation



Removing inconsistencies

The AER is seeking to create consistency through mirroring the Electricity Code obligations and the ACCC Guide interpretations within RPIG. AGL believes this approach has:

- created a confusing document; and
- expands the RPIG to cover matter we do not consider is within the intention of the National Energy Retail Law (NERL).
- Creates confusion over enforcement and responsible regulator and potential governance issues should the Electricity Code be amended.

We therefore encourage the AER to review the Electricity Code obligations as they stand (irrespective of the ACCC Guide interpretation), and seek to remove inconsistencies in the RPIG, instead of seeking to create consistency through mirroring. The AER could also consider including a statement in the RPIG that states that should an inconsistency arise between the RPIG and the Electricity Code, retailers must comply with the Electricity Code.

An example of removing inconsistencies would be where the AER uses s61(3)(c) of the NERL to consider matters of *convenience or necessity*, such as:

- Ensuring that retailers can use the prohibited term *unconditional discount* instead of *guaranteed discount*, as required by the Electricity Code, or;
- Allowing the DMO reference to appear on the BPID, by ensuring that retailers provide the necessary information through EnergyMadeEasy (EME).

We do not support the use of s61(3)(c) to ensure adoption of matters contained within the ACCC Guide. The ACCC did not envisage or suggest that the RPIG should mirror its interpretation and the ACCC guide notes only that:

The AER will update the RPIG to work alongside the Code. This will require consequential changes to Energy Made Easy (EME) to provide information on the reference price.

Further, the introduction to the ACCC Guide clearly states that it is not a legal document:

It is important to note that this document is only intended as a guide for electricity retailers about their responsibilities under the Code. It is not a substitute for legal advice, nor is it intended to comprehensively encapsulate [other obligations under the laws and rules].

Based on these comments, we believe the AER has taken an incorrect approach by attempting to ensure that the draft RPIG covers the ACCC interpretation.

Further, we do not consider this an appropriate approach as the ACCC Guide is an interpretation of the Electricity Code but is not in itself an enforceable instrument or regulatory tool.

For example, Section 5.9 of the ACCC Guide includes an interpretation by the ACCC that variation of market contracts constitutes an offer and would need to comply with the advertising obligations. Specifically, the ACCC make reference to the intention of the Retail Electricity Pricing Inquiry (REPI) report recommendation in justifying the interpretation regarding customer notifications.¹ The REPI report is not the source of obligations on retailers, and neither is the ACCC Guide. Such obligations should therefore be expressly

¹ [ACCC Electricity Code Guide, 18 June 2019.](#)



made within the Electricity Code or through utilising the appropriate regulatory amendments (which we discuss below).

AGL does not support the general interpretation under Section 5.9 of the ACCC Guide and believe that whether a contract variation is considered an offer of an electricity price will vary on a case by case basis.

According to the National Energy Retail Rules (NERR), the amendment of prices within a contract is not considered a new offer. Section 46 of the NERR enables retailers to vary prices with an existing energy contract, provided advanced notice is given to the customer and the customers' Explicit Informed Consent (EIC) was provided.

While we have amended our price variation letters to follow the ACCC Guide, we believe that this is not explicitly required under the Electricity Code and makes for a much more confusing experience. Its inclusion in the RPIG is not an appropriate application of the NERL.

Consumer experience

Changes from version 5

Noting the above, we have concerns with how the AER have structured the revised RPIG into Part A and Part B, particularly in relation to how this impacts the consumer experience.

The AER undertook substantial work to develop the final version 5 RPIG, including consumer testing conducted by the Behavioural Economics Team of the Australian Government (BETA) and separate consumer testing facilitated by AGL. It also included consumer research by Deloitte Access Economics, Behavioural Insights Teams and feedback from both the AER Stakeholder Reference Group and stakeholder submissions

Part of this research found that there were issues with consumers' comprehension for certain language used by retailers. For example, the AER determined that the term *unconditional discount* should be a prohibited term, and that *guaranteed discount* must be used. The AER noted that:

...the language requirements aimed to address a persistent theme in our consumer testing and through stakeholder feedback – that the variety of terminology and jargon used to describe energy plans contributes to customers confusion and disengagement with the retail energy market.²

The draft RPIG now requires retailers to use the prohibited term in Part B to be consistent with the Electricity Code. Further, while the current version of the RPIG did not require retailers to use particular language on customer bills or websites, the AER did encourage retailers to consider the potential for customer confusion and make changes to language to ensure consistency. Not only will this be confusing for consumers, particularly those looking across fuel categories, but it will also create unnecessary complexity and difficulty for call agents trying to navigate these conversations with customers.

AGL took the initiative and followed the AER recommendation and have invested time and resources into aligning our language across all relevant NECF materials. This must now be undone to achieve consistency with the Electricity Code, at the cost of consumer comprehension and retailer investment.

Price notifications

² [AER Notice of Final Instrument for RPIG](#), April 2018, p25-26.



The AEMC made a final rule change to the NERR in 2018 to place greater obligations on retailers in relation to advanced notice of price variations to consumers. The AEMC specifically stated that the intention of the final Rule change was to ensure that the notices to consumers were simple and concise:

The final rule will facilitate the delivery of notices that are short, to the point and allow the consumer to decide their next course of action following notification. The notice will be clear and to the point and meet the purpose of the rule without distorting the key message of the notice³.

The ACCC interpretation of the term offer as including notices is therefore counter to the above AEMC position and by including it as an obligation within RPIG is both beyond the intention of the NERL and may induce consumer disengagement due to text heavy information. We have attached a confidential copy of a price variation notice for customers that also incorporates the reference price information.

Energy Made Easy (EME)

EME currently allows residential customers to compare all offers using an annual price which is calculated by EME based on retailer inputs and the three EME consumption benchmarks. The draft RPIG guidelines also require retailers to provide comparative pricing information against the reference price and the 'lowest possible price' for electricity BPID's. This will likely result in confusing customer messages on BPID's because:

- EME consumption benchmarks are unlikely to line up with the reference price model consumption benchmark (e.g. the EME benchmarks change by climate zone and are given across 1, 2/3 and 4/5-person household consumption).
- Retailers calculate the DMO percentage comparisons, but EME calculated the BPID annual costs – it is possible that these calculations will not align in terms of inclusions / exclusions which may confuse the customer and result in disengagement.
- Discount information may be confusing, such as Time of Use (TOU) tariffs. By way of example, AGL's current Smart Saver offer in NSW is 7% guaranteed discount off usage and supply rates. For a single rate customer, this equates to 7% off reference price. For a TOU customer, it equates to 0% off the reference price. With both percentages being visible on the BPID, this could be confusing to TOU customers and is a difficulty we are already experiencing with our website.

We suggest the AER provide appropriate examples of what the expected outputs of EME will be to ensure that they remain consumer friendly and appropriate to help consumers remain engaged in the market. We also recommend the AER consider how the EME developments can ensure that the information is relevant and not misleading for consumers.

Utilising existing regulatory tools

If the AER wishes to enact changes and implement the ACCC interpretation of *offer* to include regulatory notices, we would encourage the AER to utilise existing regulatory processes rather than seeking to rely on a tenuous interpretation of 61(3)(c) of the NERL.

Price variation

³ [AEMC Final Rule Determination Advance Notice of Price Changes](#), 27 September 2018, p20



For example, the AER should consider lodging a rule change request with the AEMC to reconsider the advance notice of price variation changes for 46 of the NERR.

We note that the AEMC's final determination on the prior notice Rule does not consider or comment on the AER's power to place obligations on retailers through the use of 61(3) of the NERL and had this been a viable option it would have been considered during the consultation process. The AER did not make a public submission at the time suggesting that such powers already existed under an interpretation of 61(3) of the NERL, to encourage the AEMC to make a more preferable rule change.

In commenting on the AER's scope under the RPIG, the AEMC stated only that the AER may wish to consider the timeframes for retailers inputting new offer information for the purposes of EnergyMadeEasy.

Benefit change notice

The Benefit Change Guideline details how a retailer must notify a customer when a benefit provided through their market retail contract is expiring or changing. This is impacted by the reference price obligations of the Code and we encourage the AER to consider whether changes to the Benefit Guideline is necessary to meet the Electricity Code obligations.

Implementation

We encourage the AER reconsider the proposed implementation date of 1 October 2019 which would be approximately one month after a final RPIG is released.

The previous EME changes encountered some issues due to the condensed development/testing time and as a result, there were a number of issues that needed urgent attention after the go-live date. These issues created confusion for consumers and difficulty for retailers in managing the changes. We recommend the AER provide timelines and opportunities for retailers to test changes in a sandbox environment well before the go-live date. It would also be useful to have a revised copy of the Offer Fields and Validation Document as soon as possible to help retailers inform the build and process changes.

Given the draft RPIG changes will impact retailers' processes of entering data into EME, we would encourage the AER to consider a transitional period for implementation. For example, the AER could require that the v6 of the RPIG is applicable to all new offers from 1 October 2019, with a grace period to update existing live BPIDs.

Other matters

We welcome further information from the AER on:

- how EME will manage Time of Use (TOU) plans when retailers upload information to ensure that information is conveyed accurately to consumers.
- Whether lowest possible price needs to be prescribed within RPIG or whether retailers can have flexibility on how to refer to this (e.g. lowest annual price, annual estimated cost).

We also recommend the AER consider some improvements including:

- Amending 141/142 of the draft RPIG (which is an existing clause in version 5). There is an existing issue under version 5 of the RPIG which requires disconnections and reconnections to be described on EME in a way that is inconsistent with how EME has been designed and currently presents these fees on the BPID.



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- Amending the obligations on how retailers list the payment processing fee (merchant service fee). EME was built to have both a payment processing fee as well as a credit card fee field. Retailers currently need to input the processing fee twice under 2 fields which is confusing for customers.
 - Ensuring the reference price field is not mandatory on EME as it does not apply to all product scenarios.