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**Mr Peter Adams**  
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**Australian Energy Regulator**

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### **Generator Notice of Closure Exemption Guideline – Issues Paper**

AGL Energy (**AGL**) welcomes the opportunity to comment on the Australian Energy Regulator's (**AER**) Generator Notice of Closure Exemption Guideline – Issues Paper (**Issues Paper**).

AGL is one of Australia's leading integrated energy companies and the largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy and provides energy solutions to over 3.5 million customers in New South Wales, Victoria, Queensland, Western Australia and South Australia.

#### **Introduction**

AGL supports the intention of the new Generator three-year notice of closure rule (**new rule**). Ensuring that the market is provided with accurate information on generation capacity and availability is a key element in making the correct investment decisions required during the present transitional period in the NEM. We consider that pricing and reliability impacts following the withdrawal of significant generation capacity are greatly exacerbated where insufficient notice is given to the market. AGL provided 7 years notice of the closure of Liddell Power Station. Additionally, as part of seeking an extension to the relevant mining license for Loy Yang A Power Station, we provided a 5-year notice of closure to the Victorian Government.

Following commencement of the new rule, the AER must develop an exemption guideline for the three year notice requirement. The guideline relates to the process for making and handling an exemption request. It must set out the information to be provided by generators and the process that the AER will follow. The guideline is not required to include the assessment criteria that will be applied by the AER, as it is intended that the AER have sufficient flexibility and discretion to assess the specifics of each exemption request.

AGL agrees with this approach (it would be difficult to identify every possible scenario that might warrant an exemption), and we support the Issues Paper seeking feedback on the situations in which generators might be likely to seek an exemption, and the potential criteria for the AER in assessing exemption requests.

#### **Assessment criteria**

The intention of the new rule is to avoid shocks to the National Electricity Market (NEM) where there is insufficient time to develop new investment and that result in a significant supply and demand imbalance. We note that the NEM is inherently designed such that market prices will increase on closure of any generating unit, until the market adjusts. Therefore, a temporary increase in market prices while the market naturally adjusts should not be of concern to the AER.



However, we do suggest the AER consider whether the closure will have impacts on the market, as well as the generator's reasons for requesting an exemption. If there are no market impacts from the proposed closure, then there is no benefit in requiring the generator to continue its registration. We note the market impacts associated with Hazelwood suddenly retiring were significant compared to Wallerawang, which was already mothballed for a significant period prior to retirement.

With regard to the generator's reasons for requesting an exemption, this may include situations where there are competing or inconsistent obligations. For example:

1. The requirements of project approvals, consents, permits or licences issued by a governmental authority may be conditioned upon the closure of certain generating units. Similarly, changes in legislation and other regulations may mandate early closure of generating units based on operational restrictions. In each case, these requirements take the decision out of the hands of the generator, and the generator may be put in a position where it must either breach the new rule or its other obligations.
2. Under the *Corporations Act 2001* (Cth), company directors have fiduciary obligations to act with care and diligence, and to act in good faith in the best interests of the company (taking into account the interests of shareholders). This may be inconsistent with a decision to continue running an asset that is uneconomic.

In the above situations, AGL considers that a generator would have a valid reason for seeking an exemption request, and the criteria applied by AER should reflect this.

#### **AER's procedure for handling the exemption request**

In deciding whether exemption requests should be made public, AGL suggests that the AER consider the following issues:

- Whether there is a risk that the company making the exemption request is at risk of insider trading, if they are aware of a closure decision but the wider market is not.
- Whether the publication of an exemption request that is then denied by the AER has adverse impacts on the market.

These issues may be mitigated by requiring the AER to make its decision within a quick, specified timeframe.

If the exemption request is to be made public, AGL considers only minimal information should be published (for example the location and capacity of the unit to be closed). The bulk of the application and supporting documentation is likely to be sensitive material.

If you have any queries about this submission, please contact Jenessa Rabone on (02) 9921 2323 or [JRabone@agl.com.au](mailto:JRabone@agl.com.au).

Yours sincerely,

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