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Submitted online via: <https://www.aemc.gov.au/contact-us/lodge-submission>

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RRC0036 – Bill contents and billing requirements – Draft Determination

We welcome the opportunity to comment on the draft determination for billing simplification released by the Australian Energy Market Commission (**AEMC**) in December 2020.¹

The AEMC has proposed a more preferable rule change, to give the AER the power to develop a mandatory guideline for how retailers prepare and deliver bills and sought to provide some measure of certainty for retailers by inserting billing guideline principles and other matters for the AER to consider, such as costs.

Assessment associated with AEMC preferred Rule

We do not believe the AEMC has adequately evaluated the full costs and benefits and various options on simplifying current billing regulations to improve consumer experience and comprehension of their energy bills. In particular, we are concerned that the more preferable rule proposed will result in significant costs -to retailers due to the broad drafting of the AER guideline making powers and there has been a lack of assessment of these costs against the benefits of the preferred rule. As such, the AEMC has failed to sufficiently consider the scope of the National Energy Retail Objective (**NERO**) and whether alternative rules may provide a similar market outcome at a lower cost. At a minimum, the AEMC should consider a range of scenarios available to the AER in developing the guidelines that may occur under the proposed billing guideline scope to understand the potential costs and benefits.

We also encourage further consideration of the expected outcomes. The draft determination contains two competing and distinct outcomes; that the AER guideline will represent a minimum floor of protection achieved through more prescriptive requirements on certain billing matters, but also that the guideline will better promote competition and enable innovation.¹ As we detail in our submission below, the current scope of the AER guideline making power would cover nearly all elements of the current National Energy Retail Rule (**NERR**) 25(1), and therefore could allow the AER at any point to implement prescriptive requirements to prevent or undo retailer investment and innovation.

Implementation

We are also concerned by the proposed implementation timeframe. Given the potential for an AER guideline to require a complete restructure of current customer bills, we believe that there should be at

¹ AEMC Rule Change consultation, draft decision (DD) December 2020, <https://www.aemc.gov.au/rule-changes/bill-contents-and-billing-requirements>



least a 12-month implementation period. Retailers will be unable to implement even smaller changes within a three-month period. Retailers will not begin building a solution until a final guideline is issued, due to the potential for changes between draft and final decisions. As we detail below, the potential for system and process impacts are significantly wide, and can impact a range of functional areas including third party vendor relationships, SAP/system changes, customer complaints/call agents, digital billing and digital app, communications, marketing, and customer experience designs (e.g. if there is still scope to innovate).

Alternative approach

Billing objective, principles and outcomes that have proper consideration of evidence and research available now,² should not require continuous amendments to the NERR, but help set the parameters for ensuring clear information for consumers and remain future proof to industry innovation. We do not agree that allowing for quicker changes through an AER guideline will deliver better outcomes for customers or industry, rather it is likely to stifle innovation due to the threat of continuous change raising regulatory risk.

We continue to encourage a principles-based, outcomes focused approach to regulation and believe that this can be best achieved through applying the billing principles, accompanied with a clear billing objective, directly into the NERR.³ A principles-based approach done in this way will help future proof the NERR as new energy providers become a more prominent source of energy access for customers.²

We welcome the opportunity to discuss our comments further or if you have any questions regarding our feedback, please contact Kat Burela on 0498001328 or kburela@agl.com.au.

Regards

Elizabeth Molyneux
General Manager Policy & Markets Regulation

² This issue is discussed in more detail in AGL's submission to the AEMC Consumer Protection review <https://thehub.agl.com.au/articles/2020/02/agl-encourage-outcomes-focused-regulation-for-consumer-protections>



Overview

AGL's submission on the AEMC's Draft Determination on Billing Simplification discusses four key themes:

1. Feedback on the AEMC analysis to meet the National Energy Retail Objective (**NERO**).
2. Matters relating to the assessment of the proposed approach.
3. Matters relating to the increased use of Australian Energy Regulator (**AER**) Guidelines.
4. Matters relating to the specific drafting of the Australian Energy Market Commission's (**AEMC**) draft rule.

In particular, we note:

- The AEMC must undertake an appropriate cost-benefit analysis, considering alternative options as proposed and evidenced by stakeholders during the discussion paper consultation. This includes, but not limited to, determining whether the desired outcomes can be achieved more efficiently and cost-effectively through inserting the proposed billing principles directly into the National Energy Retail Rules (**NERR**) for retailer compliance.³
- The AEMC's expected outcomes from an AER guideline conflict with one another. Specifically, the AEMC states that an AER guideline will represent a minimum floor of protection achieved by more prescriptive requirements for certain billing matters⁴, but also expect this will better promote competition and enable innovation⁵.
- That the scope of the billing principles for an AER guideline are so broad that it covers nearly all of the current billing obligations under the existing NERR 25(1) and could result in a complete restructure or requirement for additional information representing a risk of significant costs.
- That the proposed drafting and implementation is currently not fit-for-purpose:
 - as the guideline is not linked to a billing purpose, and
 - as retailers are unable to implement changes within a 3-month period unless they are significantly minor changes.
- The proposed governance on the AER should be applied in a more structured and holistic way to all AER guidelines by amending section 173 of the NERR and providing clear obligations regarding cost-benefit analysis, and methods for industry to challenge any potential AER Guideline decision that does not apply the governance arrangements or exceeds the powers vested to them to make a Guideline.

Through our assessment of the draft determination and based on the above points, we recommend the AEMC:

1. Modify the billing objectives and insert them directly into 25(1) of the NERR to apply to retailers.
2. Include a reference to retailer obligations to the Retail Pricing Information Guideline (RPIG) language requirements table (to provide for consistency in language)
3. Recommend the AER develop a guidance note (non-binding) or better practice guide (as is currently the practice of the Essential Services Commission Victoria),
4. Include a review period of 24 months to assess the impacts of the changes to customer experience with billing

³ See AEMC DD p.10. AGL consider that one of the key concerns relating to standardisation of language and terms can be achieved through NERR amendments without requiring a guideline.

⁴ See AEMC DD p.27

⁵ See AEMC DD, p.ii and p.25



5. Develop a clear purpose for billing requirements that can serve as the overall objective of the new Retail Rules with the aim of bill simplification, access to additional information and consistency with language (see point 1 above).

However, should the AEMC proceed with the AER guideline proposal, we encourage:

- Further consideration of the scope of the billing objectives to provide greater clarity to the AER, consumer groups and market participants on the need of billing regulations, the role of the AER and breadth of the Guideline.
- A reasonable consideration of the potential impacts to retailers and provide a suitable timeframe for implementation (noting that 3 months is not practical and depending on the nature of the scope of the changes, may require up to 12 months from the time the AER issues a final guideline).

AEMC analysis for the draft determination

As the Rules maker under the intergovernmental agreement, the AEMC is responsible for giving serious and detailed consideration to all possible regulatory responses, including no changes, to ensure any decision is well analysed and the decision offers the best long-term outcome for energy consumers. In this Draft Determination, the AEMC has not evaluated any other possible solution and therefore cannot categorically recommend that a guideline is the most appropriate approach for simplifying customer bills.

In reviewing the draft determination, we believe it falls short of an effective and evidenced based analysis. The only assessment of costs is that the AEMC acknowledge a guideline would *introduce costs*⁶. The draft determination states that “the Commission has considered the regulatory and administrative benefits and costs associated with the rule change proposal”. However, there is no information on the potential scope of the guideline, the impacts to retailers, scenarios for costing, or assessment of other possible policy approaches.

The AEMC has a responsibility to undertake an assessment of the costs and benefits of all feasible solutions, noting that understanding the potential for improved consumer comprehension must be proportional to the risks of costs to industry. Assessments based on consumer benefits/detriments, against the costs of industry are the basis of the Regulatory Impact Statements (RIS) across the public sector. Under a RIS, the rule maker must provide an appropriate assessment of both the preferred, and other options (both policy and non-policy).

The AEMC state in the draft determination, that due to a range of stakeholder views, more research is needed⁷ and that the AER is best placed to do this. Significant volumes of data and evidence have been provided to the AEMC but appear not to have been considered. Under Energy Rules, it is the role of the AEMC, not the AER, to carry out this work.

While the AEMC’s draft determination attempts to do some assessment under the analysis section of the draft determination, the main rationale for pursuing a guideline is that they ‘consider a guideline process

⁶ See AEMC DD p.27

⁷ See AEMC DD p.16



may be more responsive and adaptable to changes in the market and consumer preferences”, than a rules-based approach.⁸ The value and importance of such flexibility (perhaps in relation to a matter of months difference between AEMC and AER timing) is not then compared to the potential costs and risks to retailers.

In addition to the above, we note that the AEMC has not:

- 1) tested the broad scope of the proposed billing guideline objectives (e.g. they cover nearly all the current obligations under 25(1) of the NERR),
- 2) addressed concerns raised by retailers and some consumer groups, such as the billing principles approach undertaken by OFGEM. The approach by OFGEM is noted by the AEMC but not addressed in the analysis or to state why this is not appropriate in the Australian context. We note that UK customer sentiment survey testing results show quarterly satisfaction since Q4 2018 has remained consistent at around 74% for ease of understanding a bill under the new regulations⁹;
- 3) explained why other evidence, such as AGL’s consumer research referenced in our previous submission regarding customer preference for billing key information,¹⁰ is insufficient for the purposes of applying billing principles directly on to retailers in lieu of a guideline.
- 4) considered the potential costs for retailers where there could be complete restructures and iterative billing adjustments (less regulatory certainty) and reduced cost efficiencies if retailers can do it themselves, or impacts for requiring continued responsiveness to ‘AER guideline flexibility’;
- 5) addressed concerns regarding reduction of innovation or retailer flexibility and choice (due to the broad scope of the AEMC drafting) and impacts to current retailer investment (e.g. AGL’s e-bill).

We therefore do not consider the AEMC can accurately state that their draft determination to provide the AER Guideline making power meets the NERO.

Matters relating to increased use of AER mandatory guidelines

In this section we discuss five key matters relating to the increased reliance on AER mandatory guidelines to impose obligations on the industry:

1. The role of energy market bodies is becoming increasingly blurred as the AEMC defers obligation making powers on to the AER (discussed further below).
2. The lack of formal, consistent, and cost-benefit analysis under AER guidelines can create unnecessary regulatory burden, costs, and risks on retailers (discussed further below).
3. That the AER guidelines have become increasingly prescriptive and present risks of scope creep and stifling innovation.
4. The AER guidelines do not require review, include a sunset clause or provide for any recourse for industry participants where scope creep or unreasonable decisions have been made.
5. That AER behavioural insights research should not replace retailer insights and customer research.

⁸ See AEMC DD p.26-27

⁹ <https://www.ofgem.gov.uk/data-portal/customer-satisfaction-billing-gb>

¹⁰ AGL has previously provided this information to the AEMC

1. The role of the AEMC as rules maker

In 2005 the current tripartite system of National Energy Market (**NEM**) governance was created, which was explicitly intended to separate rule making (via the AEMC) from enforcement (through the AER) and the market operator (now AEMO).¹¹

Market body roles



Australian Energy Market Commission

Rule maker, market developer and expert adviser to governments

Protects consumers and achieves the right trade-off between cost, reliability and security.



Australian Energy Regulator

Economic regulation and rules compliance

Polices the system and monitors the market.



Australian Energy Market Operator

Electricity and gas systems and market operator

Works with industry to keep the lights on.

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Over time, and with the delegation of powers through the use of mandatory guidelines, these roles are increasingly blurred. A recent Auditor General report on the Regulation of the NEM¹³ (**NEM report**) stated that there is ongoing community, political and media interest in energy supply and that decisions made by the AER can affect energy prices, security and reliability.

The NEM report notes that promoting competition, reliability and security is shared with other energy market institutions, and the AER has not clearly established its purpose, priorities and contributions to these objectives aligned to its roles in the energy market. In particular, the NEM report notes that in relation to governance and risk management, where multiple institutions operate in an industry (such as energy) regulators need clarity about the extent of their roles and influence on market outcomes, and to reflect those in governance, risk management and performance reporting frameworks.¹⁴

This view is supported by the Productivity Commission, which concluded:

¹¹ See <https://www.aemc.gov.au/regulation/regulation-1>

¹² Image from AEMC website <https://www.aemc.gov.au/regulation/regulation-1>

¹³ See Auditor-General's Report No.5 (2020-21) <https://www.anao.gov.au/work/performance-audit/regulation-the-national-energy-market>

¹⁴ Auditor-General's Report No.5 (2020-21), Regulation of the National Energy Market, p.17.



The fundamental objective of the National Electricity Market (NEM) — the need for efficient investment in, and operation of, electricity networks in the long-term interests of consumers — has been frustrated by flaws in its (ever more) complex regulatory and institutional arrangements.¹⁵

The Energy Security Board (ESB) noted that there are overlapping functions of government and regulatory bodies which is creating burdensome reporting obligations on market participants.¹⁶

It is AGL's position that the role of the AER as well as other market bodies require greater clarity and limitation to reduce duplication and inefficiencies. These views are consistent with a range of other reviews, such as the final report of the Review of Governance Arrangements for Australian Energy Markets¹⁷ which found that there was a strategic policy deficit, which led to diminished clarity and focus in roles, fragmentation and a diminished sense of common purpose.

The AEMC was clearly established first and foremost to be the rule maker and to protect consumers and any additional research or evidence that is required should be obtained and considered firstly by the AEMC. As we note above, we believe ample information has been provided to the AEMC to allow for billing principles to be applied directly on to retailers through amendments to the NERR.

The draft determination does not appear to consider implementing billing principles that are outcomes focused, despite this being the proposed direction under the 2020 Retail Energy Competition Review. We note that the AEMC states that requirements for billing and notices should keep pace with technology changes, and that this is most likely achieved through a principles-based approach to regulation.¹⁸ The AEMC also noted that:

The requirements under the rules are prescriptive in nature, outlining specific elements that a bill requires, rather than specifying what the rule seeks with each requirement... The Commission considers that the bill contents provisions would benefit consumers more through adopting more principles-based regulation so that billing methods could respond to more diverse consumer preferences as they emerge".¹⁹

We do not believe that principles for AER guidelines that impose prescription are the best way to give effect to the AEMC's principles-based approach to regulation. Further, we request that the AEMC in the final determination provide further analysis and commentary as to why the previous position on a principles-based approach is no longer relevant or appropriate.

Case study – UK approach to billing principles

Submissions to the AEMC's initial consultation for the billing simplification rule change raised the UK example of a principles-based approach to billing simplification. The

¹⁵ Productivity Commission, Electricity Network Regulatory Frameworks, Report No 62 (2013), p.4

¹⁶ See ESB Data Strategy: <http://www.coagenergycouncil.gov.au/publications/energy-security-board-data-strategy-submissions-consultation-paper-published>

¹⁷ Review of Governance Arrangements for Australian Energy Markets (Vertigan report) October 2015.

¹⁸ [AEMC Final Report 2020 Retail Energy Competition Review](#), p.44

¹⁹ Ibid, p.226



extensive work and consultation by OFGEM can be used by the AEMC as a basis for assessing alternative approaches in Australia that do not require a mandatory guideline.

In particular, OFGEM noted that for relevant billing information, it is essential for consumers to know how much they have paid, or will need to pay for their energy so that they can manage their costs and consumption, and budget effectively.²⁰

OFGEM also stating “In the spirit of enabling shorter, more engaging communications we are not requiring suppliers to include all Relevant Billing Information on all communications – the focus again should be on the outcome that is being delivered by the total package of information consumers receive.”

A proper assessment of the UK experience is appropriate in these circumstances.

2. Broader guideline obligations

The AEMC draft rule include a requirement for the AER to consider a range of matters, including costs to retailers. While we welcome the AEMC’s inclusion of considerations for AER guidelines, we do not believe that applying such a rule to a single guideline is the most appropriate way forward.

Increasingly more obligations are being placed on retailers through the development and amendment of AER guidelines under both the National Energy Retail Law (NERL) and the NERR.²¹ As noted above, this is blurring the lines between rules maker and rules enforcer. The AEMC has proposed that in addition to introducing objectives the AER are bound by, there should also be considerations (such as costs to industry) that must also be taken into account when developing and updating the billing guideline. While this is the right intention, applying this into individual guidelines is neither efficient nor promoting consistency of practice.

At present, the obligations on the AER for creating guidelines are significantly high level and do no relate to tests that the AER must apply or what outcome the AER should seek in making and amending guidelines. There is no obligation for broader economic considerations, impacts to investment, competition, or the market or how these balance with any proposed benefits to be delivered to consumers. There is no requirement to ensure the effectiveness of the guidelines or to undertake any review.

Given the growth of guidelines and their proposed scope, it is appropriate to now ensure that the AER formalise their consultation processes and relevant tests applied to ensure that the market experiences consistent, measurable and proportionate regulatory obligations imposed through such guidelines.

Notwithstanding the above, AGL believes the best outcome for energy consumers and industry participants is that the AEMC first consider whether to insert a billing objective and principles through amendments to

²⁰ See OFGEM website for more information: https://www.ofgem.gov.uk/system/files/docs/2018/09/statutory_consultation_-_domestic_supplier-customer_communications_rulebook_reforms.pdf p.44

²¹ See, Benefit Change Notice Guidelines (NERR, 48B), Retail Pricing Information Guideline (NERL, s61), Compliance and Reporting Guideline (NERL, s281), Performance Reporting Guideline (NERL, s286), Hardship Guidelines (NERR, 75A), Retailer of Last Resort (ROLR) Guideline (NERL, Division 4). For example, the [Benefit Change Notice Guideline](#) is highly prescriptive, specifying the information that must be provided, how the information should be presented including the creation of zones and specific headline statements.



the NERR. This will ensure clarity of market bodies and remove any perceived conflict for the AER as a rule maker through Guidelines and enforcement of those Guidelines. Further, introducing a billing objective and principles in the NERR also provides scope for the AER to work with their Consumer Advisory Panel and Industry and issue general industry guidance on meeting the NERR billing objective and principles.

We intend to submit a rule change to the AEMC proposing amendments to rule 173 to provide greater rigour and process into AER consultation processes. This would replace the need for the proposed drafting of 25(4) and would provide consistency across all AER guideline changes.

Matters relating to the specific drafting proposed by the AEMC

It is our position that a guideline will not deliver the best outcomes under the NERO. In particular we note several issues that the AEMC has not considered in the draft decision and support our position, namely:

1. The AEMC drafting does not limit the AER powers by providing a clear billing purpose (e.g. to inform a customer how much, when to pay and how to access more information).
2. The proposed billing principles covers 90% of what is already on a customer bill and provisions currently under NERR 25(1)
3. Are so broad as to risk going beyond current obligations and expose retailers to more costs and consumers potentially more information (thereby not simplifying bills).

<p>(1) The AER must, in accordance with the retail consultation procedure, make guidelines (billing guidelines) in relation to how retailers prepare and issue bills to small customers.</p>	<p>In relation to how retailers issue bills could also impact bill summaries (see previous information provided by AGL regarding our e-bill design.</p> <p>The following covers most of the current 25(1) and therefore could result in a complete restructure of current bills.</p>		
<p>(2) The objectives of the billing guidelines are to enable small customers to easily understand:</p>			
<p>(a) payment amounts, dates and methods for their bill;</p>	<table border="1"> <tr> <td data-bbox="587 1451 703 2076"> <p>25(1)(d) 25(1)(e) 25(1)(f) 25(1)(r)</p> </td> <td data-bbox="703 1451 1362 2076"> <p>“Methods for their bill” could be interpreted as -</p> <ul style="list-style-type: none"> - How the bill is delivered (e.g. email, mail, SMS, summary with link), or - What type of form the bill must take e.g. mandating bills must take a certain form e.g. paper, or - It could indicate frequency, e.g. monthly, quarterly, or - Payment plans, bill smoothing (see information regarding payment method under s32(3) of the NERR), or - Method for paying bill e.g. BPAY, direct debit etc <p>Dates could mean –</p> <ul style="list-style-type: none"> - Due date, or - Issue date, or - both <p>The vagueness of this could result in very broad guidelines or guidelines that do not cover the intent of the rule as that is not clear.</p> </td> </tr> </table>	<p>25(1)(d) 25(1)(e) 25(1)(f) 25(1)(r)</p>	<p>“Methods for their bill” could be interpreted as -</p> <ul style="list-style-type: none"> - How the bill is delivered (e.g. email, mail, SMS, summary with link), or - What type of form the bill must take e.g. mandating bills must take a certain form e.g. paper, or - It could indicate frequency, e.g. monthly, quarterly, or - Payment plans, bill smoothing (see information regarding payment method under s32(3) of the NERR), or - Method for paying bill e.g. BPAY, direct debit etc <p>Dates could mean –</p> <ul style="list-style-type: none"> - Due date, or - Issue date, or - both <p>The vagueness of this could result in very broad guidelines or guidelines that do not cover the intent of the rule as that is not clear.</p>
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<p>(b) how their bill is calculated and whether it conforms to their customer retail contract</p>	<p>25(1)(g) 25(1)(h) 25(1)(i) 25(1)(j) 25(1)(p) 25(1)(q)</p>	<p><i>How the bill is calculated</i> - could require retailers to include an infographic of cost-stack (tailored or generic) relating to wholesale, network and retail components. While such a requirement would be subject to consultation by the AER, we have concerns such an approach would not be clear for consumers and may result in more complaints, confusion and potentially mislead customers (e.g. if it is a generic cost-stack, similar to the bill benchmarking obligations).</p>
<p>(c) their energy consumption and production, and related costs and revenue, to assist with:</p> <p>(i) using energy efficiently;</p> <p>(ii) comparing their customer retail contract with other energy offers available to them;</p> <p>(iii) considering options for energy supply other than through the interconnected national electricity system;</p>	<p>25(1)(k) 25(1)(l) 25(1)(n)</p>	<p>This section is particularly concerning and appears significantly broad.</p> <p>Under c(i) the AER could make requirements for retailers that may relate to providing generic energy usage tips (such as a message about recommended air conditioning levels) or tailored energy efficiency detail (such as a version of AGL’s Energy Insights tool).</p> <p>Under c(ii) and combined with (b) the AER could require an EnergyMadeEasy comparison table (as currently prescribed under the End Benefit Guideline) as this information relates to billing calculations (e.g. billing period, usage amount etc).</p> <p>Under c(ii) the AER could require “Best Offer” message (note further comments on best offer below).</p> <p>Under c(iii) the AER may have the scope to require retailers to promote solar and/or batteries or plans such as AGL’s Virtual Power Plant (VPP), which could result in a conflict for marketing to customers who have not provided marketing consent.</p>
<p>D) how to dispute or raise a query in relation to their bill</p>	<p>25(1)(t) 25(1)(u)</p>	<p>May require detailed steps to be present on bill</p>
<p>E) how to access interpreter services and seek financial assistance</p>	<p>25(1)(s) 25(1)(w)</p>	<p>May require detailed steps to be present on bill</p>

In fact, very few of the obligations are not currently covered by the proposed objectives, we note that:

- 25(1)(a)-(c) would likely continue to appear on a customer’s bill as it is information to help identify the customer.
- 25(m) estimated billing requirements is covered under self-service meter read obligations
- 25(o) obligations are under Part 11 of the NERR
- 25(v) fault enquiries and emergencies is important information for consumers to continue to receive but there are a range of ways for consumers to access this information.

As we note above, the AER has shown through other mandatory guidelines increased prescription on retailers. The AEMC consultation process has also highlighted that different stakeholders value different elements of current 25(1), so there is little comfort for industry under the draft determination that obligations across any of the existing matters will not be changed and placed upon retailers.



Not only do these examples vary substantially in terms of complexity and cost, they also risk creating further complexity and length for consumer bills. Further, if retailers are required to restructure 50% of the bills based on new AER guideline requirements, they would then need to invest in FX, display, prototypes, customer testing etc for the remainder of the bill.

Times and costs

The above demonstrates the serious need for an appropriate assessment by the AEMC of the costs and benefits of the proposed draft decision to introduce a power for the AER to issue a billing guideline. AGL believes best practice assessment is for the AEMC to consider costs and lead times based on three possible scenarios being, small-moderate/medium/extreme changes compared to existing arrangements. To assist the AEMC with this assessment, we discuss both implementation and costs further below.

Implementation timeframe

The draft determination proposed a 12-month period of developing the AER billing guideline, yet only a 3-month period for retailer to implement.

It is impossible to say how long would be required to implement any changes as it is totally unknown what changes the AER will require from a guideline, especially when the proposed principles provide such a wide scope but we note that no less than 6 months should be provided for small-moderate changes. 12 months should be allowed, at a minimum, for implementation. In particular, we note that the recent changes to the National Energy Retail Regulations for strong penalties will mean that a breach of 25(1) and 25(2) of the NERR will result in up to \$170,000, plus \$14,400 per day for continuing breaches. If retailers are not provided appropriate time to make changes, retailers may not be able to be compliant in time and face significant fines.²²

We also encourage the AEMC to be cognisant of ongoing regulatory change pressures faced by the energy industry, including five-minute settlements, faster transfers, and the Consumer Data Right.

Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

²² <https://www.legislation.sa.gov.au/LZ/C/R/NATIONAL%20ENERGY%20RETAIL%20REGULATIONS/CURRENT/2012.169.AUTH.PDF>



Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

As we continue to raise with policy/rule-makers, retailers cannot begin planning and building until a final decision is issued, noting that as part of a truly consultative process the nature and scope of requirements can change substantially between draft and final decisions.

While retailers can have an idea of the general policy direction, the actual detail and specific requirements cannot be scoped until the final is issued. The AEMC must take this into consideration when determining an appropriate timeframe.



We note however, if the AEMC implement our recommended rule change for placing the billing principles directly on to retailers, the commencement date could be effective within a 4-month period (to allow for RPIG language adjustments), as current bills would be considered compliant with the proposed billing principles. We note that a 4-month implementation period is only achievable if current bills were still classified as compliant with only current RPIG language obligations required in this period. Any deviation from current RPIG language requirements (e.g. changes to RPIG, or additional language requirements outside of RPIG) may have additional impacts to a range of other AGL communications and processes that must be considered and factored into a reasonable implementation period.

Costs

The draft determination represents the potential for significant risks and costs for retailers and may result in requiring retailers to operate two separate billing systems based on jurisdictional differences for Victoria and NECF. There are a range of costs that should be taken into consideration by the AEMC, including:

- 1) System and process investments for potential restructure of bill. **Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law.**
- 2) Management of display and communication requirements for any elements of the bill not prescribed under the AER guideline (for example, current NERR provisions 25(1)(a)-(c) or information about self-service meter reads etc).
- 3) Ongoing costs related to iterative amendments to the guideline requiring continuous investment in resources and system changes (noting there is no limit on how frequently the AER can make amendments to guidelines).
- 4) Risks to current and future investments, such as AGL's e-bill (for which we provided extensive information to the AEMC on). We note that **Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law**
- 5) Costs for differences in jurisdictional obligations. For example, retailers are currently required to include a "Best Offer" message in Victoria, as well as a similar obligation under the NSW Social Code for concession customers. There is also the South East QLD pledge for vulnerable QLD customers that requires those retailers who have voluntarily signed the Pledge to take steps to encourage and assist customers to access more competitive offers.
- 6) The cost of an additional page for postal bills (e.g. if substantial additional information is required and pushes the bill over 2 pages).
- 7) Other associated costs, such as impacts to website amendments (e.g. current bill explainers will need to be redeveloped, tested and deployed), training development and new scripting for customer service agents to manage any customer queries/complaints regarding the new billing structure/content etc.

The risk in not fully assessing these types of costs is that retailers are required to implement untested regulatory obligations that may result in no demonstrable benefit for the customer and may only cause greater confusion (high cost, high risk, customer detriment). For example, the Victorian 'best offer' message which is required on customer bills is yet to be reviewed by the Essential Services Commission Victoria as to whether it is effective in delivering better consumer outcomes. We note that submissions to



the AEMC's draft determination, including those by Ombudsman, that it has increased customer confusion and distrust of their energy retailers.²³

For the avoidance of doubt, we wish to emphasise that 'best offer' messages are not just a matter of costs for retailers, they can also create complexities for systems development and management. For example:

- Differences in jurisdictional requirements create compliance, management and system complexities. Requiring a different calculation, wording requirements etc, may only lead to further customer confusion, and unnecessary complicate retailer processes.
- If collective/aggregated bills and some multisite (mls) customers are incorporated due to their usage levels, the requirements for 'small customers' may not be suited. This creates complexities with builds, requiring bespoke/manual solutions (as it may remove a mls customer from a parent contract). All these matters must be taken into consideration when developing the relevant rules.

Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law

²³ See AEMC DD p.23, reference Joint Submission EWON, EWOV, EWOSA, EWQQ, p. 7.



Different approaches for the rule change

For all of the proposals below, we recommend that elements in subclause (4) be applied to all guidelines in a consistent and effective way to establish clear governance obligations on the AER, as we raise above regarding a rule change for AER guideline consultation obligations.

Preferred rule change – NERR obligations on retailers

To assist the AEMC analysis, we propose an alternative approach that represents a minimum floor while still truly representing an opportunity for innovation and better consumer outcomes. The assumption should not be one of distrust of retailers to do the right thing, retailers have a range of reasons to want to deliver clear and effective bills to customers, including ensuring consumers know how much and when to pay for energy they have used and retailers have already incurred costs in sourcing and delivering the energy.

We encourage the AEMC to introduce the billing principles directly into the NERR replacing section 25. If the AEMC introduces an objective in to the NERR to support the billing principles, retailers will be able to continue to innovate and create a positive consumer experience while ensuring consistency in line with billing expectations.

In addition to the above:

- The AEMC could introduce a 24-month review process to determine the effectiveness of these changes.
- The rule change could include a reference to the language requirements under RPIG.
- The AER could develop a guidance note on compliance with 25(1) and issue better practice information to help improve retailer communications.
- The AEMC should consider amendments to Part 11 of the NERR relating to bill benchmarking obligations. This information currently takes up 1/5 of bill front page real estate but as we have shown there are a portion of the community that are confused by the bill benchmarking information which can drive complaints and customer dissatisfaction.²⁴ There is no evidence of thorough consumer testing as to whether this is helping or hindering consumer comprehension of billing and usage, and we have previously raised our experience with customers experiencing confusion or concerns as a result of bill benchmarking.²⁵

²⁴ We refer the AEMC again to research from OFGEM regarding how customers review billing information. We note also a study in 2005 by DocuCorp that found 60% of consumers do not regularly read their mortgage, pension or bank statements and that many noted that the potentially important information was lost in a surrounding mass of less-important information (see <https://www.ofgem.gov.uk/ofgem-publications/39652/laweslanguageport.pdf>). We therefore continue to encourage a review of whether the bill benchmarking obligations on bills remain fit for purpose.

²⁵ See AGL submission <https://thehub.agl.com.au/articles/2020/02/agl-encourage-outcomes-focused-regulation-for-consumer-protections>



Alternative rule change – clearer restrictions on AER scope

While we do not agree that a guideline is necessary, should the AEMC proceed with their draft determination direction we recommend 25A introduces a clear purpose of a customer bill that is tied to the AER objective (e.g. that the bill is intended to inform customers of payments, calculations and how to access additional information). For example:

- (1) The AER must, in accordance with the retail consultation procedure, make guidelines (billing guidelines) in relation to how retailers prepare and issue bills to small customers. The scope of the billing guidelines is limited by the purpose in 25A(2) and must seek to simplify energy bill information for small customers while allowing for continued retail market innovation.
- (2) The purpose of a small customer bill is to provide the customer with information about:
 - (a) payment amount, issue and due dates and payment methods.
 - (b) how the bill is calculated in relation to the tariffs and charges applicable to the customer retail contract (including related costs).
 - (c) How to access additional information related to the customers energy service, complaints, disputes, access interpreter services and other financial assistance.
- (3) The AER may, from time to time, amend the billing guidelines in accordance with the retail consultation procedure.

Or alternatively:

- (1) The AER must, in accordance with the retail consultation procedure, make guidelines (billing guidelines) in relation to how retailers prepare and issue bills to small customers.
- (2) The objectives of the billing guidelines are to enable small customers to easily understand:
 - (a) payment amounts, issue and due dates and payment methods for their bill;
 - (b) how their bill is calculated and the tariffs and charges applicable to the customer retail contract;
 - (c) their energy consumption and any applicable feed in tariffs to assist with:
 - (i) using energy efficiently;
 - (ii) comparing their customer retail contract with other energy offers available to them;
 - (iii) considering options for energy supply other than through the interconnected national electricity system;
 - (d) how to dispute or raise a query in relation to their bill;
 - (e) how to access interpreter services and seek financial assistance, (billing objectives).
- (3) The AER may, from time to time, amend the billing guidelines in accordance with the retail consultation procedure.

For both alternative drafting approaches, while awaiting a formal process for AGL's rule change request regarding AER consultation requirements, we recommend that subsection (4)(b) be amended as below:

25(4) (b).... may take into account any other matters that the AER, in its reasonable opinion, gives effect to the billing objectives.

However, our expectation would be that should AGL's rule change request proceed, that it would replace the specific obligation under 25(4)(b).



Other matters

Civil penalty provision

As we note above, we are concerned about the potential and inherent risks associated with increasing power of the AER to be both the rules maker and rules enforcer. It is an important principle of governance and the rule of law to comply with the concept of separation of powers to ensure appropriate checks and balances are in place. The rule should be drafted in a manner that is clear that non-compliance with the rule and any relevant section of the NERL and not the guideline, are subject to a civil penalty provision.

Correction

As a point of correction, the draft determination states that AGL recommended *removing EIC requirements for electronic documents as it makes it difficult and expensive for retailers with existing customers.*²⁶ While we continue to encourage the AEMC to consider the ongoing role and application of EIC obligations²⁷, our statement in the submission to the billing rule change was not flatly that these obligations should be removed, rather we pointed out that such obligations currently exist (but that they can cause inefficiency) and therefore negate the proponents suggestion that new rules of this nature are required. As strong advocates for consumers right to be informed and autonomous, we would not suggest removing EIC obligations without first undergoing proper governmental reviews and discussions.

²⁶ See AEMC DD, p.18 quoting AGL submission (p4).

²⁷ As per our submission to the Consumer Protections Review 2019 - <https://thehub.agl.com.au/articles/2020/02/agl-encourage-outcomes-focused-regulation-for-consumer-protections>