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**Dr. John Tamblyn,
Chairman,
Australian Energy Market Commission
Level 5, 201 Elizabeth Street
SYDNEY NSW 2000**



7 November 2008

By email to submissions@aemc.gov.au

Dear Dr. Tamblyn,

AGL Energy Limited (**AGL**) welcomes the opportunity to comment on the "Victorian Derogation – Advanced Metering Infrastructure Rollout, Draft Rule Determination, 25 September 2008" (**Draft Determination**) issued by the Australian Energy Market Commission (**the Commission**) on 25 September 2008.

AGL acknowledges that the mandated rollout of smart meters by distributors is a policy decision taken by the Victorian government and the Ministerial Council of Energy (**MCE**). However, AGL reiterates that in its view, a market driven approach to introducing smart meters in the mass market through open retail and metering competition is preferable. While AGL supports the Commission's proposal that regulatory measures be provided to facilitate a transition from a monopoly to a contestable metering market post-derogation, AGL has a number of concerns regarding the grounds on which the derogation is determined. These include:

- the validity of the Commission's interpretation of clause 89 in National Electricity Law (**NEL**);
- the need for a derogation to rollout a modified smart meter project; and
- a regulatory arrangement for transition to contestable metering services.

Proposed derogation is inconsistent with the considerations outlined in sections 88 and 89 of the NEL

Section 89 of the NEL requires the Commission to have regard to identified factors in making a jurisdictional derogation. The Draft Determination provides at paragraph 3.3.1 that the Commission does not agree with the Victorian government that the proposed derogation is consistent with those factors outlined in sections 89(a) and 89(b).

The Draft Determination at paragraph 3.3.1 further provides that in the Commission's view, the Commission may make a jurisdictional derogation even if the Commission determines that the factors to which the Commission must have regard as set out in section 89 are not met.

AGL respectfully disagrees with this interpretation of the NEL. Judicial consideration of legislative terms such as "have regard to" suggests that the decision maker must give fundamental or due weight to the listed factors. AGL submits that to consider the listed

factors, find that they have not been met and then disregard them, does not meet the requirement set out in section 89 of having regard to those factors.

A derogation should not be required for a Type 5 rollout

In the letter to the Commission dated 6 September 2008, the Victorian Energy and Resources Minister outlines a decision to modify the AMI Project to minimise delivery risk and allow time for the anticipated national framework to be developed and finalised. Under the revised AMI Project, smart meters will be rolled out under Type 5 meter classification from 2009 with remote reading and daily delivery of data mandated from 2012¹. Regulatory obligations for all other smart meter functionality will be determined when the national regulatory instruments are enforced².

AGL questions if a derogation for distributors to be the responsible persons is necessary given that the existing National Electricity Rules (**Rules**) has already provided for the distributors to be the responsible person for Type 5 meters. Rolling out smart meters under the existing Rules is consistent with the Victorian government's revised approach of utilising more fully the existing regulatory and procedural arrangement³.

Further, the existing Rules provides for customer choice of a Type 4 meter. This approach has the benefit of allowing the industry to market-test the expected efficiency benefits that underpin the decision for an accelerated monopoly mass market rollout. It also facilitates the transition of a Victorian rollout to a national regulatory framework that recognises the benefits of a contestable metering market.

AGL urges the Commission to consider whether making a jurisdictional derogation rule change for a significantly modified AMI project would still meet the test of rule change in section 88(1) of NEL.

Transition to contestable metering market

The Commission acknowledges that contestable metering is an integral part of Chapter 7 and suggests that regulatory arrangement should provide for contestability. Similarly, the MCE supports a national rollout framework that facilitates the development of a contestable market from a monopoly arrangement.

AGL welcomes the commitment by MCE and the Commission for a contestable approach to the provision of metering beyond the rollout period. To achieve this in a meaningful and timely way, AGL believes much work and time is required to allow the industry to identify and examine all factors thoroughly through the National Stakeholder Steering Committee (NSSC). This work has just commenced and AGL would like to highlight the factors it considers to be relevant to the Victorian rollout.

¹ While remote energisation and re-energisation are included in the initial functions, there is no mandated timeframe to deliver these services.

² A recommendation for a national regulatory framework to MCE is due in December 2008 with changes to legislation and enforceable regulatory instruments expected from 2009 or later.

³ Works are currently underway to remedy procedural anomalies to allow for remote reading and daily delivery of data from 1 January 2012.

Timing of Victorian Rollout of a modified AMI Project

AGL is concerned that the rolling out of smart meters ahead of an industry-agreed market and regulatory design would jeopardise the opportunity to create an optimal national system that supports the long term development of a contestable metering and retail services. The complexity, scale and capital intensive nature of the smart meter infrastructure makes any system re-dressing potentially uneconomical for a considerable period of time.

AGL urges the Commission to consider carefully the feasibility of achieving investment and operation efficiency for a derogation decision that allows the rollout of smart meters with full functionality well ahead of its actual utilisation without an industry designed national framework.

Regulatory instruments should mandate an open access regime

AGL strongly supports the Commission's suggestion that "...arrangements should be implemented through the relevant regulatory instruments to reduce or eliminate any obstacles to contestability of metering services."

Without an industry-agreed national access arrangement for the smart meter infrastructure, AGL is concerned that contestability in the provision of metering services would be severely compromised. Open access would incentivise the retailers to offer the basic monopoly services and other value-adding services that are portable across all jurisdictions and distribution areas. It would also provide the flexibility for the retailer to configure cost effective delivery mechanism that may utilise part or all of the monopoly services, particularly as technology and consumer behaviour change.

AGL considers it essential that such an open access regime be developed and agreed by the industry that is supported by a regulatory framework that promotes contestability of retail and metering services.

Other specific measures that support contestability of metering

- Disclosure of appropriate details of cost structure of smart metering provides transparency to the market and encourages competition by comparisons. It improves the retailer's efficiency in evaluating alternative arrangements and options.
- AGL supports the Commission's suggestion to adopt an accelerated regulatory depreciation. It encourages competition and new investment in technology and services.
- AGL supports the Commission's suggestion to limit the exit and restoration fees to directly incurred unrecovered cost. It reduces barrier of entry and facilitates innovation of products and services.

Please contact me or Kong Min Yep on 0402 060 759 if you have any queries.

Yours sincerely,



Elizabeth Molyneux

General Manager Energy Regulation

