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Draft Rule Determination – regulating conditional discounting

AGL Energy (**AGL**) welcomes the opportunity to comment on the Australian Energy Market Commission’s (**AEMC**) draft rule determination on regulating conditional discounting practices by energy retailers (**draft rule**).

AGL is committed to ensuring energy information is clear and simple for our customers and are a signatory to the Energy Charter to deliver energy in line with community expectations.¹ We have been offering fixed price products to our customers for several years with a focus on simplicity and comparability for consumers.

Recent reviews and reforms in the energy sector have focused on simplification and comparability of information for customers. Retailers, including AGL, have sought to move the market away from a reliance on high pay-on-time (**POT**) discounts² but have been constrained by the general market proliferation of POT discounts linked to the customer understanding and valuing of POT discounts on market offers.

We do not agree with the AEMC’s proposition that market behaviour prior to the introduction of the Default Market Offer (**DMO**) and other regulatory reforms introduced in 2019 will likely reappear without the AEMC making this rule change.³ The early evidence used by the AEMC suggests that the market is moving away from high POT discounts. While we recognise that this early evidence is insufficient for the AEMC to dismiss the need for a rule change, it is also insufficient to be the basis of the draft rule change.

¹ For information about the Energy Charter visit the [Energy Charter website](#).

² In 2017, 2018 and 2019 AGL provided information to the AEMC’s annual retail competition review survey regarding the desire to move away from POT discounts. This was reflected in the AEMC, 2018 Retail Energy Competition Review—Final Report, June 2018, p. 63

³ Australian Energy Market Commission [draft rule determination – regulating conditional discounts](#), 21 November 2019, p.16.



For example, in determining whether regulation is necessary, decision-makers must have mind to the magnitude of the problem and the costs of not doing anything.⁴ Further, regulations that have already been made may already be addressing the problems that this rule change may be seeking to fix, such as the DMO referencing obligations.

Given this we continue to recommend that the AEMC delay a final decision until enough data is available to support the need of such a change. This could be captured as part of the AEMC's annual retail competition review.

We therefore continue to recommend our primary position that the AEMC's final decision should be deferred for at least a further six months as the market continues to adjust to both government and consumer expectations.

In lieu of this approach, we support an Australian Energy Regulator (**AER**) set regulated cap. We refer the AEMC to the two key objectives of the proponent's rule change request, which is to:

1. remove the excessive penalties on customers who pay after the due date, and
2. improve the comparability of market offers by simplifying and reducing conditional discounts, thereby reducing barriers to effective consumer engagement and enhancing competition.⁵

Further, we note that the Australian Competition and Consumer Commission's (**ACCC**) Retail Electricity Pricing Inquiry (**REPI**) report stated that consumers could more easily engage in the market if they were able to easily compare prices, and readily change their provider based on those prices.⁶

Preferred option – AER regulated cap

Should the AEMC determine that regulation is required, then we believe that an AER regulated cap better meets the proponent's objectives and therefore provides greater transparency and certainty for customers, retailers and the AER in their enforcement role.

Setting the cap

If the AER is given the power through a guideline to set the cap, we encourage the AEMC to set clearly defined parameters for the AER's ability to set this cap. For example, most retailers who charge a late payment fee charge a fixed dollar amount. The chosen methodology would need to account for fixed dollar fees to avoid costly system redesigns in the system.

Assuming the cap is likely to be set as a percentage, then in many cases (e.g. monthly bills with low usage), the fixed dollar late payment fee could never be charged as it would always be above the % cap. Therefore, it would be reasonable to allow late payment / dishonour fee dollar amounts to be capped at the value that is equivalent to x% for average consumption.

⁴ [The Australian Government Guide to Regulation](#) 2014

⁵ Improving consumer outcomes and competition by regulating conditional discounts, [rule change request](#), p.3.

⁶ Australian Competition and Consumer Commission [Retail Electricity Pricing Inquiry – Final report](#), p.264



Other

We would also appreciate clarity from the AEMC on the application of the conditional fee. The draft rule defines this as a fee payable under a customer retail contract due to a failure to comply with a payment condition. While direct debit and cheque dishonour fees are listed as examples of this, it is unclear whether these fees are only considered to be a conditional fee where it is a condition of the customer's contract that they pay by this particular method. For example, is it only intended to capture direct debit fees if direct debit is a condition of the customer's contract? This would be a product such as digital only product that was only available for customers who agreed to pay with direct debit and were charged a direct debit dishonour fee for a failure to comply with this contract term.

Implementation

We support a 1 July 2020 commencement date, but we believe that, should an AER set cap be pursued, that a later start date may be required to allow sufficient time for the AER to develop the appropriate methodology. An AER regulated cap would need to be finalised well ahead of the planned implementation date of 1 July 2020, as retailers will begin communication for recontracting between 4 – 6 weeks prior (which would be around May 2020). It therefore may be appropriate to alter the start date to allow the AER time to develop the appropriate methodology.

We also recommend that the AEMC consider allowing for an exception post 1 July 2020 for customers that have been lost in error that may wish to return to the same plan they were on when they had been incorrectly transferred out.

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

Yours sincerely

[Signed]

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