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National Electricity Law and National Gas Law Amendment Package

AGL Energy (**AGL**) welcomes the opportunity to make a submission on the Council of Australian Governments (**COAG**) Energy Council's Energy Working Group (**EWG**) draft Bills relating to amendments to the *National Electricity (South Australia) Act 1996* (**NEL**) and *National Gas (South Australia) Act 2008* (**NGL**).

AGL is a significant retailer of energy with over 3.7 million electricity and gas customers nationally. Accordingly, AGL has a strong interest in the efficient investment in, and operation of, the distribution networks in the long term interests of consumers.

AGL broadly supports both of the amendments as they are consistent with existing powers and functions undertaken by the Australian Energy Regulator (**AER**).

With regard to the removal of barriers for the AER to publish information for the purposes of distributor benchmarking, AGL notes that the AER already has broad powers to collect and publish information from energy market participants relating to performance metrics, and that the amendments would align distributor obligations with those of other energy market participants.

Furthermore, in relation to the establishment of a market monitoring function for the AER, AGL notes that this is very much an extension of the existing short-term monitoring function that the AER undertakes with regard to wholesale market activities. Nevertheless, AGL notes that care would need to be taken to ensure that the regulatory burden on market participants was appropriate to meet the objectives of the monitoring function, and that any recommendations from the report would still need to be subject to rigorous industry consultation.

Removal of barriers for the AER to collect and publish information for the purpose of benchmarking

One of the fundamental aspects of the National Energy Customer Framework (**NECF**) was a transition to a stronger tripartite relationship between distributors, retailers and customers, where each party was responsible for the performance of specific obligations to ensure the efficient operation of the market.

To this end, the AER has developed Performance Reporting Procedures and Guidelines that set out the obligations on regulated entities to provide information to the regulator regarding the performance of their obligations under the NEL, NGL, and National Energy Retail Law (**NERL**).

With regard to retail market performance, under the obligations set out within this guideline, the AER already publishes quarterly information on a range of performance, hardship, and financial indicators relating to electricity and gas retailers. In this regard, retailers are closely monitored and regular reports provide a public record of industry standards for agreed market indicators that are important to the public.

In AGL's view, this level of regular service standard performance reporting should also extend to distributors and network service providers. Currently, there are no direct obligations on distributors to provide information on their performance of regulated obligations. The effective operation of the NEL, NGL, and NERL necessarily relies on regulated entities meeting their obligations under these instruments. For example, as per the AER's Performance Reporting Procedures and Guidelines, retailer performance indicators are published on a quarterly basis to enable a comparison to be made across jurisdictions and between competing retailers. This is directly in the public interest.

Although the framework within which distributors operate is not a competitive environment, it is similarly within the public interest for customers to be able to assess whether or not the local distributor or network service provider is meeting the service standards for which they receive a regulated rate of return through their approved network charges. Similarly, it is useful for regulators to monitor service standards to ensure that regulated participants are meeting their obligations to customers and retailers.

In this respect, the reporting requirements of regulated entities should naturally extend to distributor performance. AGL's recent experience with distributors emphasises the necessity of holding distributors accountable to the performance standards that assess the financial and operational service standards as suggested by the proposed NEL and NGL amendments.

We note that while existing sections of the NEL, NGL, and NERL already provide for circumstances in which the AER may disclose confidential information (i.e. if the detriment does not outweigh the public benefit), the proposed amendments seek to address some identified barriers to the AER's publication of information.

In AGL's view, the proposed amendments are appropriate. In a framework where both retailers and customers rely on reasonable distributor performance with respect to outages, service order performance, and meter reading performance, it seems clearly within the public interest that this information is publically available in order to assess whether or not distributors are meeting relative standards. Efficient performance by distributors facilitates the effective operation of a competitive retail market and is therefore in the long-term interests of energy consumers.

Although AGL does not generally support the broad disclosure of confidential information by regulators, in this instance the proposed amendments appear to strike a reasonable balance between providing useful information to the public regarding the efficiency of their service provider and the restriction of truly confidential information that may adversely affect that provider. Blanket claims of confidentiality by market participants would seem to be untenable to meeting these objectives.

Introduction of an explicit wholesale market monitoring function

AGL has no fundamental objections to the AER performing a regular assessment of the whole market; indeed, the AER already regularly publishes a vast amount of data on the wholesale market including information on significant price variations, movements in the contract market, analysis of spot market outcomes, and rebidding behaviour.

In AGL's view, a longer-term market monitoring function is not inconsistent with the AER's existing functions and obligations, and as such, AGL would broadly support such a regular review of the efficiency of the wholesale market. Nevertheless, the utility of such a review would greatly depend on the methodology that was proposed by the AER in collecting and

analysing data, and the steps that were taken to consult with market participants and provide recommendations to policy makers based on any findings.

Market monitoring functions undertaken by other regulators and government bodies (for example, with regard to price, retail market functions, or the implementation of significant legislative frameworks) have shown to provide little useful information despite often being a significant regulatory overhead for market participants and a large operational overhead for the relevant body that is responsible for providing the report.

In this respect, AGL notes that the publication of a report every two years that purports to determine the effective operation of wholesale electricity market is an ambitious task; the AER would need to take reasonable care to strike a balance between meeting its objectives under the proposed legislative amendments and creating further regulatory overheads for businesses.

Rather than attempt to meet the requirements of such an arduous task every two years, it may be the case that a more discrete set of criteria should be established by the AER that could simply provide information for other participants to undertake more significant and useful comparative analysis relating to the operation of the wholesale market to more adequately inform policy direction.

With this in mind, AGL would support further consultation from the AER on the methodology for a proposed wholesale market if the proposed amendments are indeed enacted in their current form.

If you have any questions regarding this submission or would like to discuss this matter further, please contact Aleks Smits at asmits@agl.com.au or (03) 8633 7146.

Yours sincerely,



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