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Consumer Policy Inquiry
Productivity Commission
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Review of Australia's consumer policy framework: Productivity Commission Issues Paper, January 2007

AGL Energy Limited (AGL) welcomes the opportunity to respond to the Productivity Commission's (the Commission) review of Australia's consumer policy framework.

AGL is one of Australia's largest integrated energy companies, focused on power generation, gas production and energy retailing. AGL has significant electricity and gas customer bases across Australia, with about 4 million customer accounts¹.

Significant opportunities exist to enhance consumer protection by simplifying the complexity of regulations and at the same time reducing costs to business. AGL supports the Commission's review of the current consumer policy framework that will consider:

- ways to improve it so as to assist and empower consumers, including disadvantaged and vulnerable consumers, to operate effectively in increasingly complex markets;
- ways to better harmonise and coordinate consumer policy across jurisdictions, including by reducing reliance on industry-specific regulation and making greater use of general consumer regulation;
- any areas of consumer regulation that are unlikely to provide net benefits and which could be revised or repealed; and
- the extent to which more effective use could be made of self-regulatory, co-regulatory, consumer education and consumer information approaches and principles-based regulation.

AGL makes the comments on consumer protection generally and those specific to energy regulation.

General Comments

AGL notes that consumer policy is a shared responsibility between the Commonwealth and the jurisdictional governments. This has resulted in consumer protection arrangements both at the national level through instruments such as the Trade Practices Act and the Privacy Act, and at jurisdictional level through instruments such as the Fair Trading Acts, Electronics Transactions Acts and numerous industry specific regulations and codes. Jurisdictional arrangements are not always consistent which has led to unnecessary higher costs to

¹ Includes ActewAGL and AlintaAGL customers (Joint Ventures)

businesses operating nationally. Further, the processes for developing, administering and reviewing regulation also differ and may not always conform to best practice principles.

It is important that there is a clear separation of roles and responsibilities with respect to policy, rule making and compliance and enforcement of regulation. All regulation (Commonwealth or jurisdictional) need to be developed in accordance with the principles of best practice regulation² and in accordance with the rigour as outlined in the Best Practice Regulation Handbook prepared by the Office of Best Practice Regulation, including the preparation of regulatory impact statements. Given the national character of markets for most products and services, regulation and administration should be on a national basis with provisions, as proposed, for periodic review of specific regulatory provisions, especially industry specific regulation to reflect changing circumstances.

Energy Specific Comments

The Ministerial Council on Energy (MCE) is currently consulting on the development of a national framework for energy distribution and retail regulation which provides a unique opportunity to reform and improve the efficiency, innovation and competitiveness of the Australian energy industry.

As mentioned, AGL is a national energy market participant operating in many jurisdictions. The complexity and differences in current regulatory requirements arising from generic and energy specific regulation across the various jurisdictions impose significant operational and compliance costs upon participants in the energy market.

Some examples of additional operating costs incurred by energy retailers relate to:

- Maintenance of multiple systems to deal with different billing and debt collection obligations;
- Multiple processes required to deal with business to business information exchange;
- Multiple training for call centre representatives to handle different jurisdictional requirements; and
- Training of marketing personnel on the different rules applying in different jurisdictions.

In addition to jurisdictional differences, there are sometimes inconsistencies between industry specific and generic regulation such as, differences in contact hours in the energy codes and the Fair Trading Acts of the same jurisdiction that also add complexity. AGL, together with other energy retailers has provided input to the MCE as part of its consultations to improve the efficiency and effectiveness of energy market regulation.

AGL, in its submissions to the MCE has proposed that an effective national regulatory framework for energy must have the following characteristics:

- The regulatory framework must be based on a clear separation between rule making, and rule enforcement and monitoring. Under the national regulatory framework for energy the Australian Energy Market Commission (AEMC) is the body responsible for making the rules, and the Australian Energy Regulator (AER) is the body responsible for enforcing the rules;
- The regulatory framework must be premised on clear objectives that reflect principles of best practice regulation³, and be directed at addressing circumstances only where:
 - there is clear and demonstrable market failure. Competition is to be preferred to regulation, and where competition is effective, there should be reliance on those competitive forces rather than regulation; and
 - existing consumer protection laws and regulation, such as the Trade Practices Act, Fair Trading Acts, etc. do not adequately address issues of market failure.

² refer to appendix 1.

³ See Appendix 1, which outlines principles of best practice regulation as established by various regulatory bodies.

- Rulemakers must look to achieve an appropriate balance between the rights and responsibilities of all participants in the energy market, including customers;
- Regulation must be nationally consistent, and consistent across gas and electricity in so far as possible (subject to the objective of reducing the level of regulation);
- The costs of regulation under a national framework must not outweigh the benefits. In making the rules, the rule maker must establish if the regulatory burden placed on participants is necessary to achieve the articulated objectives;
- The regulatory framework must be sufficiently flexible to encourage innovation and efficiency from market participants, and be adaptable to change through accountable, transparent and consultative change management processes;
- The regulatory framework must ensure that decision-making bodies are accountable to all parties through fair and transparent procedures. Key regulatory decisions should be subject to a merits based review; and
- The regulatory framework must be focussed on fostering investment certainty in all sectors of the energy market.

AGL believes that generic and/or industry specific regulation, where necessary, should be designed for the protection of customers generally, and not be unduly influenced by the specific needs of disadvantaged and vulnerable customers. Instead, as recommended by the Productivity Commission in 2005⁴, we believe that the protection of disadvantaged and vulnerable customers will be best achieved through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness.

AGL looks forward to contributing to the next round of this review. For any enquiries in relation to this submission please contact Kam Khelawan, Manager Policy, Strategy & Sustainability on (02) 9921 2611 or khelawan@agl.com.au.

Yours sincerely,

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General Manager, Energy Regulation

⁴ The Productivity Commission, Review of National Competition Policy, April 2005, at page 302:

In retail infrastructure markets, once effective competition has been established, regulatory constraints on prices should be removed. Ensuring that disadvantaged groups continue to have adequate access to services at affordable prices should be pursued through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness

APPENDIX 1

PRINCIPLES OF BEST PRACTICE REGULATION

In 2006, the Australian Government adopted a whole-of-government policy on consultation, which sets out best practice principles⁵ that need to be followed by all agencies when developing regulation.

Continuity — Consultation should be a continuous process that starts early in the policy development process.

Targeting — Consultation should be widely based to ensure it captures the diversity of stakeholders affected by the proposed changes. This includes State, Territory and local governments, as appropriate, and relevant Commonwealth departments and agencies.

Appropriate timeliness — Consultation should start when policy objectives and options are being identified. Throughout the consultation process stakeholders should be given sufficient time to provide considered responses.

Accessibility — Stakeholder groups should be informed of proposed consultation, and be provided with information about proposals, via a range of means appropriate to those groups.

Transparency — Policy agencies need to explain clearly the objectives of the consultation process, the regulation policy framework within which consultations will take place and provide feedback on how they have taken consultation responses into consideration.

Consistency and flexibility — Consistent consultation procedures can make it easier for stakeholders to participate. However, this must be balanced with the need for consultation arrangements to be designed to suit the circumstances of the particular proposal under consideration.

Evaluation and review — Policy agencies should evaluate consultation processes and continue to examine ways of making them more effective.

The Office of Water Regulation⁶ identified nine main principles of best practice regulation: These are:

1. Communication – all stakeholders to understand regulatory initiatives and needs;
2. Consultation – effective and early consultation assists regulators understand the implication of their regulation and offers stakeholders the opportunity to suggest alternatives;
3. Consistency – consistency across sectors, over time and across jurisdictions provides confidence in the regime;
4. Predictability – helps utilities plan for the future;
5. Flexibility – ability to evolve and amend regulatory approach as the external environment changes;
6. Independence – free from undue influence that could compromise regulation helps build trust in the regulator;
7. Effectiveness and efficiency – assessment of cost effectiveness and efficiency includes time taken to make decisions and having staff with appropriate technical knowledge;
8. Accountability – regulator taking responsibility for their regulatory actions; and
9. Transparency – open about objectives, processes, data and decision.

The principle of proportionality has also been recognised as being of prime importance in devising, implementing, enforcing and reviewing regulations. This principle requires that remedies be appropriate to the risk posed, with costs identified and minimised.⁷

⁵ Office of Best Practice Regulation (Operating Unit of Productivity Commission), *Best Practice Handbook*, November 2006 p. 1-4

⁶ The Office of Water Regulation (1999), *Best practice utility regulation*, Utility Regulators Forum discussion paper, July 1999.

⁷ Better Regulation Task Force (2003), *Principles of Good Regulation*, www.bruf.gov.uk, 2003, page 4

The Better Regulation Task Force UK⁸ also identified a number of tests of good regulation that build on the aforementioned principles and recommended they be applied to the full range of policy tools, not just prescriptive regulation. They require regulations to:

1. Be balanced and avoid knee-jerk reactions – it can lead to ineffective or disproportionate regulation being introduced;
2. Seek to reconcile contradictory policy objectives – clear assessments of likely impacts of regulations are essential for identifying and reconciling contradictory objectives;
3. Balance risks, costs and benefits – trade-offs between the costs and benefits of regulation need to be assessed;
4. Avoid unintended consequences – by regulating in one area regulators may unintentionally create problems elsewhere;
5. Be easy to understand – the complexity of some regulations can undermine their effectiveness;
6. Have broad public support – it is a good indicator that the public sees it as necessary
7. Be enforceable – it must be practical to enforce;
8. Identify accountability – there must be clear accountability without resorting to unfair retribution;
9. Be relevant to current conditions - regulations should be reviewed on a regular basis to ensure they remain necessary and relevant;
10. Proportionality - remedies should be appropriate to risk posed and costs identified and minimised; and
11. Targeting - regulation should be focused on the problem and minimise side effects.

The development and review of regulatory framework should take into account these principles and related tests in order to ensure a net benefit to the market.

⁸ *ibid*, page 7; The Better Regulation Task Force was established in September 1997. It is an independent body that advises United Kingdom Government on action to ensure that regulation and its enforcement accord with the Principles of Good Regulation/