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Revised *Guide to the Electricity Retail Code*

AGL Energy (AGL) welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission's (ACCC) revised *Guide to the Electricity Retail Code* (Guide), released for consultation on the 5 May 2020.

This Guide is intended to help electricity retailers understand their obligations under the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019* (Code). The amendments to the Code in February 2020 were focused on:

- extending the application of the price cap to solar standing offers for residential and small business customers, and Time of Use standing offers for residential customers from 1 July 2020;
- clarifying the requirements for retailers' communications with small customers; and
- the addition of record keeping obligations.

The ACCC has revised the Guide to reflect these Code amendments, however, it has also included further clarification and interpretation of Code obligations that were unchanged in the amendment process. In some instances, these further clarifications were unexpected.

Retailers will make their own assessment on compliance with these obligations but AGL believes the Guide is a useful tool in understanding the ACCC's views given it is responsible for both monitoring and enforcement.

Consequently, this late notice of significant changes in interpretation of the Code is problematic and will result in poor customer outcomes and experiences, even where AGL accepts the draft positions in the Guide. This is because those changes will require fundamental changes to retail products and customer communications to make them compatible with the reference price disclosure requirements (as interpreted by the ACCC) and, as AGL has highlighted previously, retailers rely heavily on third party providers (such as mail houses) and therefore require considerable lead times for any change to customer communication or systems. Retailers may therefore not be able to align their retail products and customer communications with the ACCC's expectations prior to the Code amendments coming into effect on 1 July 2020.

This submission focuses on AGL's practical concerns with some of the draft positions expressed in the Guide and highlights where we believe the ACCC needs to amend its final *Guide to the Electricity Retail Code*. However, we recognise that the Guide will not be finalised until June 2020 for a 1 July 2020 implementation date.

For the reasons set out above, this timing is obviously impractical and AGL encourages the ACCC to continue to work with industry and adopt a monitoring and enforcement approach that takes into account these timing issues.

While AGL understands the current COVID-19 situation has been an impediment to a timely review of the Guide for this year, we would encourage the ACCC to, in future, consult on changes to the Guide much earlier and at least indicate if it is considering changes that will have significant impact on retailers.

AGL's specific concerns with the Guide follows.

Compliance of Standing Offers with the Price Cap

Section 4 of the Guide focuses on how to calculate the unconditional price and highlights its purpose in:

- checking compliance of Standing offer prices being equal to or less than the relevant price cap; and
- determining the comparison percentage which is required to be used for reference price purposes.

The ACCC has inserted additional examples (3A to 6A) illustrating how unconditional offers should be calculated which are generally clear and practical.

However, example 4 shows the calculation of the unconditional price for a customer on a residential flat rate with two controlled loads (CL). Whilst this example may clarify this calculation for reference price purposes, we believe this example is not relevant for checking the compliance of AGL's Standing Offer prices and in fact, conflicts with AER's calculation of price caps for residential customers with CL.

To be clear:

- AGL does not offer a retail product on EnergyMadeEasy or on its website that is priced for providing both CLs;
- there are very few residential customers with two CLs, and they receive the same CL prices as other customers with a single CL;
- the AER's derivation of the price cap for CL customers is calculated based on single network supply charge but for many networks, each CL tariff has its own supply charge; and
- requiring retailers to set CL prices with regard to example 4 in the Guide may require retailers to set CL prices below cost in instances where the CL supply charges are large (e.g., Essential network).

It is important to recognise that AGL's retail prices for residential customers on the Default Market Offer who use both CL tariffs will still be regulated through AER price caps, even without consideration of example 4.

This price control will be consistent with the cost analysis of the AER and this would not be the case if the ACCC required AGL to comply with example 4 in setting its Standing Offer prices for customers with CL.

Conditional Discounts

AGL does have several concerns with the amendments to the Guide regarding conditional discounts. Conditional discounts under the Code were previously considered to be:

- Pay on time discounts;
- Bundling discounts;
- Direct debit discounts; and
- any conditional rebates.

The ACCC has now extended the definition for conditional discounts to explicitly include credits such as:

- anniversary or loyalty credits that a customer receives on condition that they remain on a contract for a specified period;
- sign-up credits that require conditions to be met, such as being a member of a club; and
- “Refer a friend” type credits where an existing small customer receives a credit on their next bill if they refer a friend and their friend signs up.

Firstly, AGL believes the specific definitions of these credits in the Guide¹ need to be amended as:

- The definition of Anniversary or loyalty credits states that if a customer receives a credit over a specified time period then this “*credit would be a conditional discount and would need to be displayed as a percentage of the applicable reference price*”. These credits are often provided as fixed dollar amounts and the Guide² and Code³ indicate that credits that are not percentage based do not have to be converted to a percentage off the reference price; and
- The Refer a friend’ type definition refers to credits received by an existing or new customer if they “*refer a friend to the retailer and their friend signs up*”. AGL understands that providing the credit only if the friend signs up is likely to constitute referral selling and is prohibited under s49 of the Australian Consumer Law. Providing a credit for referring a name is allowed.

Secondly, AGL finds the definitions in the Guide to be too broad and their focus on the provision of credits could be taken to capture other products as conditional discounts, even though they are not specifically related to supplying electricity to the small customer.

For example, AGL does not believe the following products should be considered as conditional discounts (nor unconditional discounts) and be captured under the Code:

- a general “refer a friend” offer that a retailer may make to all its customers to receive a credit on their electricity bill for referring a friend to that retailer; or
- an additional benefit offered to customers, for services such as demand management, that would provide credits off the customer’s electricity bill when they provide the demand management services at the retailer’s request.

¹ ACCC, *Guide to Retail Electricity Code*, page 22

² ACCC, *Guide to Retail Electricity Code*, page 29

³ S12(3)(b) of the *Electricity Retail Code*

AGL would therefore appreciate if the ACCC could amend the Guide to make it clear that the conditional discount requirements:

- only apply to discounts that are an intrinsic part of the customer's contract for the supply of electricity; and
- do not apply for the provision of credits which are part of general offers to all customers or are in return for specific services that are additional to their supply of electricity.

Comparison percentage

AGL note and appreciate that the ACCC has amended the Guide to allow for the comparison percentage to be positive or negative and that if the offer is equal to the AER reference price (price cap) then it should be expressed as "*equal to the reference price*".

However, AGL notes the Guide continues to state that it is a requirement for the comparison to the reference price to be displayed in whole percentages. This is inconsistent with the Code which was recently amended to delete any rounding requirement.

We believe the ACCC should remove this interpretation from the final Guide.

Communication covered under the Code

AGL notes the mass marketing and individual price communications that the ACCC considers are covered under the Code are now clearly defined in the Guide.

Implementation and Enforcement

The ACCC must understand that the Guide includes interpretations of the Code obligations that differ from previous expectations and may require fundamental and broad reaching changes to a retailer's products and customer communications.

As a result, AGL encourages the ACCC to recognise that AGL and other retailers will face severe time constraints to take into account these new interpretations when operationalising the Code requirements. In particular, the ACCC want to consider the appropriateness and timing of any monitoring and enforcement action having regard to these time constraints.

Should you have any questions please contact me on 03 8633 6207 or Patrick Whish-Wilson on 02 9921 2207.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Elizabeth Molyneux'.

Elizabeth Molyneux
GM of Energy Markets Regulation