Tel: 03 8633 6000
Fax: 03 8633 6002

AGL Energy Limited
ABN 74 115 061 375

Melbourne
Level 22, 120 Spencer Street
Melbourne VIC 3000

Locked Bag 14120 MCMC
Melbourne VIC 8001
www.agl.com.au

Review of regulatory Instruments
Essential Services Commission of Victoria
35 Spring Street
Melbourne Victoria 3000

By email: EnergyRegulatoryReview@esc.vic.gov.au

12 September 2008

Review of Energy Regulatory Instruments – Stage 1

AGL Energy Limited (**AGL**) welcomes the opportunity to provide feedback to the Essential Services Commission (the **Commission**) on its draft decision relating to the Review of Regulatory Instruments – Stage 1.

By way of a brief introductory comment, while AGL is strongly supportive of efforts to streamline regulation and remove uncessary duplication, moving exisiting obligations from one regulatory instrument to another will not of itself achieve a reduction in the regulatory burden faced by energy retailers in the Victorian market. The Commission notes that the draft decision represents a gross reduction of 81 pages of regulation, however, this does not necessarily translate to a similar sized reduction of regulatory requirements. Of additional concern to AGL is the fact that although the Commission has been mindful of developments relating to the national regulatory framework, it has been somewhat selective in terms of those issues on which it has sought to achieve national consistency. This may lead to the unsatisfactory situation whereby the Victorian regulatory framework is amended, only to be amended relatively soon afterwards as a result of the National Energy Customer Rules coming into force.

For ease of reference, AGL has provided its comments on the draft decision as it relates to the Energy Retail Code (the **Retail Code**) using a modified form of the table contained in Appendix B of the Commission's draft decision paper. AGL has not provided substantive comment where it has no strong opinion either way on the Commission's decision, and has instead focussed its comments on those issues of most significance.

With respect to the Code of Conduct for Marketing Retail Energy in Victoria (the **Marketing Code**), as AGL stated in its previous submission to the Review in March 2008, AGL considers the Marketing Code to be largely redundant. Given the Commission is clearly of the view that the Marketing Code should be retained, AGL has not commented in any detail on the Commission's draft decision relating to the Marketing Code. Having said this, AGL obviously supports the Commission's view that various parts of the Marketing Code should be repealed (for reasons of duplication) and simplified.

AGL strongly supports the repeal of the Operating Procedure: Compensation for Wrongful Disconnection for the reasons provided by the Commission in its draft

decision. While AGL understands that relevant parts of the Operating Procedure will be placed in the Compliance Policy Statement, AGL submits the need for there to be a degree of flexibility in the way in which the information contained in the Compliance Statement is interepreted and used by relevant stakeholders.

With regard to the other regulatory instruments reviewed for Stage 1, AGL notes its support for the repeal of Guidelines relating to confidentiality and explicit informed consent, credit assessment and bulk hot water charging, largely for reasons of duplication and streamlining. Furthermore, AGL supports the Commission's reasons for repealling the Electricity Customer Metering Code.

Finally, AGL looks forward to participating in Stage 2 of the Commission's review.

If you would like to discuss any of the points raised in this submission in greater detail please contact Anna Stewart, Manager Retail Markets Regulation on (03) 8633 6830 or Angela Gregory, Manager Regulatory Advice and Policy on (03) 8633 6817.

Yours sincerely,

Elizabeth Molyneux

General Manager Energy Regulation

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Existing Obligations		Draft decision	AGL submission on draft decision
2. Retailer's obligation to connect	A retailer must connect a customer at the customer's supply address as soon as practicable after the customer applies for connection in accordance with clause 1. Without limiting clause 36.1, by no later than the next business day after the application is made or their energy contract commences to be effective (whichever occurs last), the retailer must make a request to the relevant distributor to connect the customer's supply address to the distributor's distribution system.	**Retain with minor redrafting**. The Commission clarify that the obligation to connect only applies if the retailer has agreed to offer a market contract or the obligation to supply applies. That is "If a retailer has an obligation to connect…'.	No comment
3.1 Retailer to issue bills 3.2 Billing cycles	A retailer must issue bills to a customer for energy consumed at the customer's supply address. .A retailer must issue a bill to a customer:* (a) in the case of an electricity contract, at least every three months; * (b) in the case of a gas contract, at least every two months; and(c) in the case of a dual fuel contract, at least as often as the retailer and the customer have agreed. That agreement is not effective unless the	**Collapse clauses 3.1 and 3.2.** That is, "A retailer must issue a bill to a customer for energy consumed at the customer's supply address…"	No comment

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Existing Obligations	Draft decision	AGL submission on draft decision
customer gives explicit informed consent.		
3.3 Bulk Hot Water charging	**Retain and redraft to reflect repeal of Guideline No.20.**	No comment
4.2 Information A retailer must include at least the following information in a customer's bill: ▪ the customer's name and account number, each relevant supply address and any relevant mailing address; ▪ each relevant assigned meter identifier and checksum or, if any case there is no assigned meter identifier, the customer's meter number or another unique identifying mark assigned to the customer's metering installation; ▪ the period covered by the bill; ▪ the relevant tariff or tariffs	**Retain and amend clause 4.2(o). Refer consideration of clause 4.2(h) to stage 2 of the Review.** All the existing Victorian obligations for information on the bill (with the exception of 4.2(h)) are included in the proposed draft national framework. Therefore, no changes will be made to the existing obligations, with the following exceptions: 4.2(h) – this obligation applies to customers with interval meters. This will be addressed in stage 2 of the Review. 4.2(o) -The Commission proposes to amend clause 4.2(o) to require retailers to include the distributors' names on bills	AGL does not support the proposed requirement to include distributor's details on bills. Retailers are already required to place large amounts of information on customer's bills and the system changes required to include further information will result in increased costs for retailers. In AGL's view the Commission has provided no robust justification for this requirement and there is no evidence to suggest that customers will cease making incorrect calls to fault lines – generally, customers will call whatever number they can get through on. The appearance of a distributor/'s name on a bill will not necessarily lead to greater familiarity with distributors in the minds of consumers. Furthermore, in the event of a distributor changing its name, this will necessitate additional change in a retailer's billing system.

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Existing Obligations	Draft decision	AGL submission on draft decision
applicable to the customer; ▪ whether the bill is based on a meter reading or is wholly an estimated bill; ▪ whether the bill is based on any substituted data (consistent with the retailer's obligations under clauses 17.2 and 23.2 of the Electricity Customer Metering Code); ▪ the total amount of electricity (in kWh) or of gas (in MJ) or of both consumed in each period or class of period in respect of which a relevant tariff applies to the customer and, if a customer's meter measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current meter readings, estimates or substitutes;		

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
▪ if the retailer elects to include meter readings or accumulated energy usage from an interval meter on the bill, the meter readings or accumulated energy usage based on quantities read or collected from the corresponding meter accumulation register(s); ▪ if the retailer directly passes through a network charge to the customer, the separate amount of the network charge; ▪ for an electricity contract the amount payable for electricity and for a gas contract the amount payable for gas; ▪ the pay by date; ▪ the amount of arrears or credit and the amount of any refundable advance provided by the customer;		

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Existing Obligations		**Draft decision**	**AGL submission on draft decision**
	▪ *a summary of payment methods and payment arrangement options; ▪ if the customer is a domestic customer, details of the availability of concessions; ▪ a telephone number for billing and payment enquiries and a 24 hour contact telephone number for faults and emergencies; ▪ if the customer is a domestic customer, in relevant languages, details of interpreter services; and ▪ if the bill is a reminder notice, contact details for the retailer's complaint handling processes.		
4.3 Bundled charges	On request, a retailer must provide a customer with reasonable information on network charges, retail charges	**Retain.** The Commission will retain this obligation in light of	No comment

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Existing Obligations		Draft decision	AGL submission on draft decision
	and any other charges relating to the sale or supply of energy comprised in the amount payable under the customer's bill.	proposed national framework.	
4.5 Payments for electricity and gas	A retailer must apply a payment received from a customer to charges for the supply or sale of electricity and charges for the supply or sale of gas respectively as directed by the customer. If the customer gives no direction, the retailer must apply the payment in proportion to the relative value of those charges	**Repeal for small business customers.**	AGL supports the draft decision on the basis that small businesses do not require this level of industry specific consumer protection.
4.6 Payments for other goods or services	If beyond the supply or sale of energy, a retailer supplies other goods or services to a customer, the retailer may bill for those other goods or services separately. If the retailer chooses not to bill separately, the retailer must: (a) include the charge for the other goods or services as a separate item in its bill, together with a description of the other goods or services supplied; and	**Repeal for small business customers.**	As above. Furthermore, this type of issue need not be regulated between two commercial entities that should be able to negotiate their own arrangements.

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	(b) apply payments received from the customer as directed by the customer or, if the customer gives no direction, apply the payment to the charges for the supply or sale of energy before applying any part of it to the other goods or services.		
5.3 Bill smoothing	Despite clause 5.1, in respect of any 12 month period a retailer may provide a customer with estimated bills under a bill smoothing arrangement if and only if: (a) the following requirements are met: • the amount payable under each bill is initially the same and is set on the basis of the retailer's initial estimate of the amount of energy the customer will consume over the 12 month period; • that initial estimate is based	**Retain and simplify and enable variations for market contracts (*).** The reconciliation period will be 9 months to be consistent with the existing obligation for retailers only be able to recover up to 9 months if undercharging is due to a retailer's error (refer to clause 6.2).	AGL agrees that variations should be allowed with respect to market contracts. AGL does not support a reconciliation period of 9 months. There seems to be no clear reason to align the period for a bill smoothing reconciliation with the undercharging provision. AGL would support a reconciliation every 12 months as this would reduce complexity and would also take into consideration seasonal variations (which should mitigate the risk of significant undercharging). AGL notes that the SCO advocates a reconciliation after 6 months. As such, the Commission's view that the reconciliation should occur at 9 months, is not consistent

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
on the customer's historical billing data or, where the retailer does not have that data, average consumption at the relevant tariff calculated over the 12 month period; • in the sixth month: o the retailer re-estimates the amount of energy the customer will consume over the 12 month period, taking into account any meter readings and relevant seasonal factors; and o if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be re-set to reflect		with the draft national framework.

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Existing Obligations	Draft decision	AGL submission on draft decision
	that difference; and • at the end of the 12 month period, the meter is read and any undercharging or overcharging is adjusted for under clause 6.2 or 6.3; and (b) the retailer has obtained the customer's explicit informed consent to the retailer billing on that basis.		
5.6 Unmetered supplies for electricity	Despite clause 5.1, if there is no electricity meter in respect of the customer's supply address, the retailer must base the customer's bill on energy data which is calculated in accordance with applicable regulatory instruments.	**Retain and amend in accordance with the proposed amendments to the ECMC.**	No comment
6.2 Undercharging	If a retailer has undercharged or not charged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer may recover the amount undercharged from the customer but, in doing so, the retailer must:	**Retain and redraft to reflect more directly the proposed national approach.** • retain the 9 months obligation if the reason for the undercharging is directly related to the retailers' billing problems	AGL submits that the Commission should reflect the draft national regulatory framework, which applies a 12 month recovery period for undercharging, regardless of whether the fault is related to billing system problems. Both SA and QLD currently have a 12 month recovery period for undercharging and AGL is of the view that

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	(a) limit the amount to be recovered as follows: • if the undercharging results from a failure of the retailer's billing systems, the retailer may recover no more than the amount undercharged in the 9 months prior to the date on which the retailer notifies	• apply a 12 month limitation for all other reasons • provide that no limitation applies, if the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.	there is no justification for Victoria to retain the 9 month limitation.

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	the customer that undercharging has occurred. To avoid doubt, a retailer's billing system fails if the retailer does not receive relevant billing data from a distributor, no matter whether it is the retailer or the distributor at fault in respect of that	

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
failure; and • otherwise, the retailer may recover no more than the amount undercharged in the 12 months prior to that date. To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the customer's meter has been read; o list the amount to be		

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Existing Obligations	Draft decision	AGL submission on draft decision
recovered as a separate item in a special bill or in the customer's next bill together with an explanation of the amount; o not charge the customer interest on the amount undercharged; and o offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.		
6.3 Overcharging Where a retailer has overcharged a customer, whether this becomes evident as a result of a	**Retain and redraft to reflect more directly the proposed national approach.** "A retailer must promptly inform the customer within 10	As retailers usually only become aware of overcharging at billing time, AGL believes that it would be more appropriate for a retailer to credit and notify the customer of

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Existing Obligations		**Draft decision**	**AGL submission on draft decision**
	review under clause 6.1 or otherwise, the retailer must inform the customer within 10 business days of the retailer becoming aware of the error and repay the amount in accordance with the customer's reasonable instructions or, if no reasonable instructions are given, by crediting the amount on the customer's next bill.	business days of becoming aware of an overcharge that exceeds the relevant threshold amount and must repay any amount overcharged. If the amount overcharged is less than the threshold amount, the retailer must credit that amount to the next bill. If the amount overcharged exceeds the relevant threshold, the retailer must credit the customer's next bill unless otherwise directed by the customer." The proposed threshold amount is $50.	the overcharge on their next bill. For those customers whose credit is over the threshold amount they could still be given the right to contact their retailer to ask for the credit to be reimbursed.
7.2 (b) Payment methods (Direct Debit)	Clause 7.2 (b) prescribes key terms which the customer and retailer must agree on in writing before a direct debit arrangement is established.	**Repeal the regulation to require direct debit arrangements in writing.** The obligation will be amended to enable direct debit arrangements by phone, rather than just in writing, which provides considerably more flexibility to the retailers. The obligations which are consistent with the proposed national framework will be retained.	AGL supports the draft decision. While enabling direct debits arrangements to be made over the phone provides greater flexibility for retailers, it is also of benefit to customers.
7.4 Late Payment Fees	Clause 7.4 details when a retailer may charge or	**Repeal redundant regulation**	AGL supports the draft decision.

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Existing Obligations		Draft decision	AGL submission on draft decision
	waive a late payment fee for a customer.	Clauses 7.4(b) – (d) proscribe the imposition of late payment fees by retailers under certain circumstances. The Victorian Government legislated that late payment fees cannot be imposed on small retail customers, which are the customers the regulation was intended to protect. Therefore, the regulation is largely redundant. However, where late payment fees are allowed to be imposed, the requirement for fair and reasonable fees will be retained. Retain obligation that: 7.4. The amount of any late payment fee must be fair and reasonable having regard to related costs incurred by the retailer	
7.5 Fees and charges for dishonoured payments and merchant service fees	(a) If a customer pays the retailer's bill and through fault of the customer the payment is dishonoured or reversed, resulting in the retailer incurring a fee, the retailer may recover the fee from the customer. An amount may also be payable by the customer under an agreed damages term. (b) If a customer pays the	**Repeal for small business customers.**	AGL supports the draft decision given the commercial nature of the arrangement between retailers and small businesses.

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Existing Obligations		Draft decision	AGL submission on draft decision
	retailer's bill using a method which results in the retailer incurring a merchant service fee, the retailer may only recover the amount of that fee from the customer if their energy contract is a market contract.		
7.6 Vacating a supply address	Clause 7.6 requires customers to notify their retailer of the date of their departure from their supply address. This clause seeks to ensure customers are not held liable for energy they did not consume.	**Retain and simplify** The Commission considers the drafting of the obligation is cumbersome and therefore intends to simplify the regulation.	AGL supports the need to simplify clause 7.6 and suggests that the Commission refer to the wording used in the SA Energy Retail Code in relation to this issue.
8.1 Refundable advances – Domestic customers	(a) A retailer may only require a domestic customer to provide a refundable advance if: • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer or former retailer more than an amount the Commission nominates in any	**Include relevant regulation from Guideline Nos 1 and 4, which are to be repealed.** Include the following obligations: A retailer may only require a domestic customer to provide a refundable advance if: • the customer has left a previous supply address or has transferred to the retailer and still owes the retailer	AGL does not support the draft decision and considers the Commission's drafting to be overly prescriptive and inconsistent with the approach taken in the draft national regulatory framework.

[1] The period is expressed in calendar days so as to accord with section 18(b)(vi) of the *Privacy Act 1988*.

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Existing Obligations	Draft decision	AGL submission on draft decision
relevant guideline; • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes; • the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer.	or former retailer more than $120. • within the previous two years the customer has used energy otherwise than in accordance with applicable laws and codes; • the customer is a new customer and has refused to provide acceptable identification; or • the retailer decides the customer has an unsatisfactory credit rating, but only if the retailer has first offered the customer an instalment plan and the customer has not accepted the offer. Despite clause xxx, a retailer must not require a domestic customer to provide a refundable advance if the retailer's decision that that customer's credit rating is unsatisfactory is based on a relevant default: (a) where the domestic customer has made a complaint in good faith about the relevant default and the complaint has not been resolved; (b) relating to that portion of an electricity bill which the domestic customer has requested the relevant retailer to review; or (c) relating to an electricity bill where: • the retailer has not undertaken an assessment	

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	of, or provided assistance to, the domestic customer as contemplated by clause 11.2 of the Code; or • in respect of the electricity bill, the domestic customer has formally applied for a Utility Relief Grant and a decision on the application has not been made. Unsatisfactory credit rating will be defined in the ERC and will include the following: Where a domestic customer 1. Has failed within the past five years to pay a bill for the domestic customer's water, electricity or gas consumption, where: (i) the amount outstanding is or is more than $120 (ii) the payment is at least 60 calendar days[1] overdue; and (iii) the water, electricity or gas provider has taken steps to recover the whole or any part of the amount of credit outstanding. 2. has had a court judgment within the past five years in relation to a debt 3. where a bankruptcy order against the domestic	

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Existing Obligations		Draft decision	AGL submission on draft decision
		customer has not been discharged Amount outstanding will be defined as: An amount is not overdue in respect of an electricity or gas bill on the pay by date included in the bill if the retailer offers, or the domestic customer and the retailer enter into an arrangement, for the domestic customer to pay the amount or an instalment on a new date later than the pay by date. If the amount or the instalment is not paid by the new date then whether the amount or the instalment is overdue is to be determined from the new date.	
8.2 Business customers	A retailer may only require a business customer to provide a refundable advance if the business customer does not have a satisfactory energy account payment record or the retailer decides the customer has an unsatisfactory credit rating.	**Redraft obligation to allow more flexibility for retailers, but that advances must be fair and reasonable**	AGL does not consider that this issue should be the subject of regulation given the commercial nature of the relationship.

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Existing Obligations	Draft decision	AGL submission on draft decision
8.3 Credit management guideline In making decisions about a customer's credit rating and in dealing with credit management issues generally, a retailer must comply with any relevant guideline.	**Repeal.**	AGL supports the repeal of the Credit Management Guideline given that the requirements of the Guideline are duplicated in other regulatory and legislative instruments.
9.3 Transitional provision for gas For gas, references to reminder notices and disconnection warnings in clause 9.1 are to reminder notices and disconnection warnings given to a customer both: (a) after the FRC date (as defined in the Retail Rules); and (b) after notice of an intention to invoke shortened collection cycles for applicable customers has been given generally on bills for all customers in three consecutive billing cycles and in customer charters distributed during and after those cycles by the retailer.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.	Agreed

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Existing Obligations		Draft decision	AGL submission on draft decision
10.2 Former franchise customers	(a) An electricity customer who was a franchise customer on 31 December 2000 and on a monthly billing cycle continues on and from that date with the same billing cycle terms until such time as the deemed contract between the customer and a retailer which commenced on 1 January 2001 terminates. (b) A gas customer who was a franchise customer on 31 August 2001 and on a monthly or two month billing cycle continues on and from that date with the same billing cycle terms until such time as the deemed contract between the customer and a retailer which commenced on 1 September 2001 terminates.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.	Agreed
12.2 Requirements for instalment plans	A retailer offering an instalment plan must (amongst other obligations):… (d) provide the customer with	**Repeal.** There are other obligations in the ERC which require retailers to provide relevant customers with this advice. It is agreed that the obligation in this clause is	Agreed

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Existing Obligations		Draft decision	AGL submission on draft decision
	energy efficiency advice and advice on the availability of an independent financial counsellor.	unnecessary.	
12.3 Business customers (Instalment Plans)	A retailer must consider any reasonable request from a business customer for, and may impose an additional retail charge on the business customer if they enter into, an instalment plan.	**Retain.** The current Victorian approach is consistent with the proposed national approach (that is, that the obligation is discretionary). Therefore, retaining the clause for the present is proposed, particularly as it allows for retailers to charge a small business customer for such an arrangement on a default contract.	AGL does not consider that the obligation is currently discretionary, given that the wording in the Code is that a retailer must consider a request for an instalment plan. Again, this is an issue that should be left to a commercial negotiation between the parties, rather than being subject to a regulation.
13.3 Denying access to the meter	A retailer may disconnect a customer if, due to acts or omissions on the part of the customer, the customer's meter is not accessible for the purpose of a reading for three consecutive bills in the customer's billing cycle but only if: (a) the retailer or the relevant meter reader has:	**Retain.** Current time period is consistent with draft national framework.	Agreed, based on consistency with the timeframe articulated in the draft national framework.

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
used its best endeavours, including by way of contacting the customer in person or by telephone, to give the customer an opportunity to offer reasonable access arrangements; each time the customer's meter is not accessible, given or ensured the retailer's representative has given the customer a notice requesting access to the customer's meter; and		

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Existing Obligations	Draft decision	AGL submission on draft decision
given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than seven business days after the date of receipt of the notice; and (b) due to acts or omissions on the part of the customer, the customer's meter continues not to be accessible.		
13.4 Refusal to provide acceptable ID or refundable advance A retailer may disconnect a customer if the customer refuses when required to provide acceptable identification (if the customer is a new customer of the retailer) or a refundable advance but only if:	**Retain.** The proposed national approach is that the retailers do not have to connect a customer if they do not provide acceptable identification. This is significantly different to the current Victorian regulation, which requires retailers to connect and then disconnect if acceptable identification is not provided. In light of this, it is proposed to retain the obligation in the Victorian	AGL strongly disagrees with the Commission's draft decision. It is clearly inconsistent with the national approach and fails to take into consideration the risks incurred by retailers when they have to connect customers who have not provided verifiable personal details.

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	(a) the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and (b) the customer has continued not to provide the acceptable identification or the refundable advance.	jurisdiction.	
14 (a). No disconnection	Despite clause 13, a retailer must not disconnect a customer: (a) for non-payment of a bill: i. where the	**Partially repeal for small business customers**. It is agreed that (a)(i) should not apply to small business customers as the relevant amount is likely to be much less than their account, and that (a)(iii) would not apply in any event. However, (a) (ii) must be retained as this is a broader right for consumers. It is understood that a(iv) is intended to be retained in the national framework. The obligations therefore will be	Agreed

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	amount payable is less than any amount approved by the Commission for this purpose in a relevant guideline; ii. if the customer has made a complaint directly related to the non-payment of the bill, to the Energy and Water Ombudsman Victoria or another external dispute resolution body and the complaint remains	redrafted to apply differently to residential and small business customers.	

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	unresolved; iii. if the customer has formally applied for a Utility Relief Grant and a decision on the application has not been made; or iv. if the only charge the customer has not paid is a charge not for the supply or sale of energy;		
16 (b). No limitation of liability	(b) Clause 16(a) does not prevent the inclusion of a term or condition in an energy contract: of the sort contemplated by	**Editorial** Delete 'S97 of the Goods Act 1958' no longer applies.	No comment

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
section 68A of the Trade Practices Act 1974 (Cth) or section 97 of the Goods Act 1958 or any other similar statutory provision;		
19.1 No inconsistency with the Code If a retailer and a customer agree to: (a) a term or condition to be included in a new energy contract; or (b) a new term or condition in addition to the terms and conditions of their existing energy contract or instead of one of those terms and conditions,	**Repeal from ERC and include in Marketing Code.** This obligation is more appropriately placed in the Marketing Code as it applies to pre-contractual arrangements	As noted in its previous submission relating to this review, AGL is of the view that the Marketing Code of Conduct is now largely redundant, on the basis that there is nothing inherently unique in the marketing process of energy products that warrants an industry specific marketing code. While this opinion remains unchanged, given that the Commission is clearly of the view that the Marketing Code is to be retained, AGL does not object per se to the transfer of this obligation from the Retail Code to the Marketing Code.

[2] A list of asterisked (*) terms and conditions appears in appendix 1.

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Existing Obligations	Draft decision	AGL submission on draft decision
	and the agreed term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*), their agreement is effective, and is deemed to result in a term or condition which is not inconsistent with this Code, only if and from when the customer has given explicit informed consent.[2]		
19.2 Creation of a new market contract	If a retailer and a customer have: (a) an existing deemed contract; or (b) an existing energy contract which resulted from the acceptance by the customer of the retailer's relevant standing offer,	**Repeal (explicit informed consent) from ERC and refer in Marketing Code.** Elements which deal with explicit informed consent are pre-contractual and will be placed in the Marketing Code. **Retain elements which deal with the inclusion of a varied provision in an existing deemed and standing offer contracts.**	As above

ENERGY RETAIL CODE		
Existing Obligations	**Draft decision**	**AGL submission on draft decision**
and: (1) they agree to a new term or condition in addition to the terms and conditions of their existing energy contract or instead of one of those terms and conditions; and (2) the new term or condition is inconsistent with a term or condition set out in this Code marked with an asterisk (*) and the customer has given explicit informed consent, their existing energy contract terminates and they enter into a		

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Existing Obligations	Draft decision	AGL submission on draft decision
	new market contract on new terms and conditions including the inconsistent term or condition.		
19.3 Quarterly billing cycles for gas contracts	Despite clauses 3.2(b) and 19.2, if in the case of a gas contract a retailer and a customer agree that the retailer must issue a bill to the customer at least every three months, rather than at least every two months, their existing gas contract does not terminate and they do not enter into a new market contract.	**Repeal.** This obligation was intended as a transitional provision to full retail competition and is now redundant.	Agreed
20. Variation requirements customer's agreement	(a) The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.[3] (b) For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or	**Redraft to increase clarity of obligation.**	AGL is of the view that this issue should be referred to stage 2 of the Review, given that it relates to price disclosure and the Commission may need to consider forthcoming amendments to Victoria's Electricity and Gas Industry Acts.

[3] In the case of the variation of some terms and conditions of an ***energy contract***, the ***customer's explicit informed consent*** may also be required if an agreement between the ***customer*** and the ***retailer*** to vary the term or condition is to be effective. See clauses 5.1 and 10.1 and the list of asterisked (*) terms and conditions in appendix 1.

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Existing Obligations		Draft decision	AGL submission on draft decision
	condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.		
21.1 Gazetted tariffs and gazetted terms and conditions	This clause provides that customer agreement is not required for the variation of terms and conditions under a standing offer contract that are contemplated by legislation.	**Review in Stage 2.** The obligations will be impacted by amendments to the EIA & GIA (late 2008) – review in Stage 2 of the review.	Agreed
22.1Commencement	(a) A retailer and a customer may agree on a date when their energy contract commences to be effective. (b) Despite clause 22.1(a): • before the customer has given explicit informed consent.if the energy contract is to include a term or condition which is inconsistent with a term or condition set out in this Code marked with an asterisk (*);	**Repeal.** Provisions appear to imply a customer can vary a standard contract by explicit informed consent. This is not intended.	Agreed

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Existing Obligations	Draft decision	AGL submission on draft decision
• the energy contract is a market contract; or • if the customer is transferring from another retailer (with whom the customer had an energy contract for the relevant supply address) to the retailer, the energy contract is not made and therefore cannot commence to be effective before the customer has given explicit informed consent.		
23.1 Customer's right to cancel an energy contract (a) Beyond any right a customer may have to cancel an energy contract under the FT Act, the customer may cancel the energy contract if the energy contract is a market contract or arises from the acceptance of a	**Repeal from ERC and refer to Marketing Code.** The *Fair Trading Act 1999* does not provide coverage for all contracts.	No comment, although AGL requests that the Commission clarify in its final decision which energy contracts are not provided coverage under the FTA.

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	standing offer. (b) Unless the customer has a longer cancellation period under the FT Act, to cancel an energy contract a customer must give a cancellation notice to the retailer within: • if the energy contract is for electricity and it is an energisation contract or it is for gas and is in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, 5 business days from and including the relevant date; and	

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	• otherwise, 10 business days from and including the relevant date.		
23.2 No right to cancel deemed contract	No right to cancel deemed contracts A customer has no right under this Code to cancel a deemed contract.	**Repeal** Repeal of this clause would not impact customers as clause 23.2 does not confer any rights on customers.	Agreed
23.3 Effect of cancellation	Effect of cancellation Appendix 2 applies in respect of the cancellation of an energy contract which is neither a door-to-door agreement nor a non-contact sales agreement.	**Repeal from ERC and refer to Marketing Code.** This clause will be consolidated as part of the cooling-off provisions in the Marketing Code.	Agreed (subject to AGL's earlier comments with regard to the Marketing Code)
23. 4 Documenting energy	On or before the second	**Repeal from ERC and refer to Marketing Code.**	As above

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Existing Obligations		**Draft decision**	**AGL submission on draft decision**
contracts and customers' cancellation rights	business day after the relevant date in respect of their energy contract, a retailer must give a customer: • a copy of the energy contract or other document evidencing the energy contract which sets out the tariff and all of the terms and conditions of the energy contract including: • the total consideration to be paid or provided by the customer under the energy contract or, if the total consideration is not ascertainable at the time the energy contract is entered into, the manner in which it is to be calculated; and • any additional retail charges or other charges or fees to be paid by the customer or which the customer may become liable to pay, including any payable on cancellation.	The Fair Trading Act 1999 does not provide coverage for all contracts.	

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	The retailer must comply with any relevant guideline in preparing this document; and • if the customer has a right to cancel the energy contract, a notice advising the customer of the customer's right to cancel the energy contract, accompanied by a further form of notice which sets out the name and address of the retailer and the date and details of the energy contract which may be used by the customer to cancel the energy contract. A retailer will be taken to have given the document and notices required by clause 23.4(a) on the second business day after the relevant date if by then the retailer has posted the document and notices to the energy customer.		
26.2 Retailer's charter	This clause requires retailers to provide its customers with a copy	**Retain.**	No comment

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Existing Obligations		**Draft decision**	**AGL submission on draft decision**
	of its charter, which is to include details of the customer's rights, entitlements and obligations.	This clause addresses a necessary obligation regarding information of the rights and entitlements of customers.	
26.6 Energy efficiency advice	On request, a retailer must provide energy efficiency advice to a customer.	**Repeal for small business customers.**	Agreed
28.1 Complaint handling	A retailer must handle a complaint by a customer in accordance with the relevant Australian Standard on Complaints Handling or the 'Benchmark for Industry Based Customer Dispute Resolution Schemes' published by the Department of Industry, Tourism and Resources (Cth). The retailer must include information on its complain handling processes in the retailer's charter.	**Editorial.** References in clause to be updated.	No comment
29. Privacy and Confidentiality	A retailer must comply with any condition of its retail licence, and	**Repeal.**	Agreed

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Existing Obligations	**Draft decision**	**AGL submission on draft decision**
	with any relevant guideline, concerning the use or disclosure of personal information about a customer.	This is not a contractual matter and therefore will be repealed from the ERC.	