



AGL Energy Limited

T 02 9921 2999

F 02 9921 2552

agl.com.au

ABN: 74 115 061 375

Level 24, 200 George St

Sydney NSW 2000

Locked Bag 1837

St Leonards NSW 2065

To Energy Policy WA (EPWA)
By email energytransformation@energy.wa.gov.au
Date 1 November 2021
From Sarah Silbert, Regulatory Strategy Manager
Subject Energy and Governance Legislation Reform – Project Eagle

AGL Energy (**AGL**) welcomes the opportunity to provide a response to the consultation on the Energy and Governance Legislation Reform – Project Eagle as set out in Energy Policy WA's consultation paper dated 15 October 2021 (**Consultation**). AGL is a leading integrated essential service provider, with a proud 184-year history of innovation and a passionate belief in progress – human and technological. We deliver 4.2 million gas, electricity, and telecommunications services to our residential, small and large business, and wholesale customers across Australia.

As an overarching comment, we support the review of the energy framework as proposed by the Consultation as a next and necessary step in ensuring that the Energy Transformation Strategy meets its intended outcomes. With significant change occurring within the energy industry over the past decade and expected to continue into the next decade, an end-to-end review of regulatory frameworks is timely and appropriate.

We look forward to further engagement over the coming year on the proposed legislative reforms and request that adequate time be allowed for industry responses to ensure proper review and a 'no regrets' regulatory framework is established.

AGL proposes the following high-level comments on certain aspects of the reforms:

Foundational policy principles

The Consultation considers the complexity of the current regulatory arrangements which have been amended in the past on a piecemeal basis and the potential barriers moving forward of an electricity framework which is no longer fit for purpose. These challenges are compounded by the multiple energy reforms underway within the Wholesale Electricity Market (**WEM**), such as security dispatch, 5-minute market, demand response and consumer protection reviews.

Whilst we support a holistic review of the legislative and regulatory regime in WA, it appears the Consultation is not only considering a consolidation of these instruments to a centralised regulatory framework with certain enhancements and modifications but is also undertaking energy policy review. As previously addressed by AGL in other EPWA consultations, we recommend separate industry consultation on fundamental policy matters and principles which underpin the WA energy market and in turn will guide and form the basis of the regulatory reforms. For example, AGL advocates for a policy supporting competitive markets to drive innovation, low-cost solutions, resulting in the best outcomes for consumers. In support of this, we have commented on the impact of the linear relationship in the WEM between the network, retailer, and customer on programs such as Demand Response and other



Behind the Meter initiatives. We have also raised this in the context of how the outcomes of programs such as Project Symphony can be expanded more fully to the competitive market.

We believe that determining policy principles is the first step before regulatory instruments can be drafted as this will drive the design of the regulatory frameworks, including consumer protections, the technical specifications and AEMO registration, and we seek clarification from EPWA on how policy matters will be consulted on and determined in Project Eagle.

Scope of the Energy Rules – Western Australia (ER-WA) and consultation timing

AGL looks forward to clarification on how the proposed ER-WA will be drafted due to the considerable regulatory requirements which are proposed to sit under this framework. With the aim to consolidate and simplify the current numerous regulatory arrangements, there is potential with such an ambitious reform across multiple regulatory areas that a behemoth is created that does not meet its intended purpose. This issue is raised in the Consultation, and we recommend consideration be given that the proposed ER-WA are further streamed into separate regulatory instruments for simplicity and clarity, such as customer facing obligations, participant obligations/processes and technical specifications.

We also note that many of the proposed streams, such as Demand Response, customer protections, and security and reliability, are running parallel development processes. As set out above, AGL suggests that establishing foundational policy positions initially would greatly assist in ensuring that these work streams all have a consistent goal.

As this is a vast reform, we recommend that EPWA provide greater granularity to Appendix A of the Consultation and:

- publish a mapped schedule of consultation timelines so industry participants can plan for and allocate resourcing to the reform program;
- clearly identify which parts of each of the work streams will be reviewed and consulted on and which will be rolled into the proposed drafting – some of the areas have been already reviewed during the WEM Reform project and we assume that these will not be subject to further review but seek clarity on this; and
- we request that EPWA allow for longer response timeframes than two weeks to enable considered engagement and appropriate analysis by industry participants to these consultations.

Distributed Energy Resources

We note the intention that the proposed ER-WA will deal with challenges of DER and the network as addressed in Part 2.3.2 and Appendix B. It is important to clearly distinguish between policy matters and legislative drafting. If an issue such as a barrier to DER participation is to be addressed within the proposed ER-WA, we recommend that any consultation be separately considered before any regulatory requirements are drafted.

AGL, like other industry stakeholders, has considerable experience in DER participation in the National Electricity Market. As this is an emerging industry it is important policy principles facilitate a level



playing field to enable effective competition, so market entrants are not disadvantaged nor new market players disincentivised to enter the market, allowing experience to be leveraged and for innovation to follow. Further, we strongly advocate those functions such as Demand Response and other Behind the Meter programs, for example battery orchestration, be an integral part of the operation of the energy market as a whole to ensure that the market can optimally dispatch generation and demand to maintain a secure system.

Customer Protections

In line with our previous advocacy on this point, we support the proposal to consolidate the *Code of Conduct for the Supply of Electricity to Small Use Customers*, the *Gas Marketing Code of Conduct* and the *Compendium of Gas Customer Licence Obligations* under a central framework as set out in Part 2.3.4 of the Consultation. We look forward to further detail on this proposal and understand that this review will continue the work currently undertaken by the Economic Regulation Authority in their review of aligning the various Codes.

We understand that any review will aim to ensure consistent consumer protections and provisions for energy consumers, however, we note that the gas market in Western Australia is fully contestable unlike the electricity market. The impact of contestability is that most retailers operating in WA also operate at a national level, bringing another perspective to the discussion as these retailers are complying with multiple legal and regulatory frameworks.

As a general comment, AGL advocates for regulatory consistency across the jurisdictional areas it operates in. Consistency both promotes competition due to less barriers to market entry and reduces the cost to serve the customer by eliminating the need to create and implement bespoke system and operational changes for each jurisdiction. As a result, we recommend where possible alignment with National Energy Retail Rules.

Contestability

We note the proposed enhancement raised in Part 3.7 of the Consultation relating to contestability at supply points which currently sits with the customer, as opposed to the supply point. We do not understand the need for this review and recommend that any review only be justified based on negative consumer feedback. As it stands, the current arrangement allows for customers with multiple connections to seek a consolidated competitive offer in the electricity market, whereas they will not be able to do so if reverted to a supply point decision. We do not believe the proposed change will lead to consumer benefits.

Further, the Consultation does not address a broader review of the contestability threshold for small use customers, and we believe this is an opportune time to undertake such a review. Increased competition in the WA gas market has resulted in consumers accessing better gas deals, saving money, and access to a range of complementary benefits. Whilst a lowering of the contestability threshold has been hinted, we recommend that if policy matters are going to be considered within Project Eagle, then this be added to the list of considerations.



Focus of Energy Regulatory Instruments

We note that the Consultation proposes the development of an overarching objective in Part 3.1 to include the concepts of consumer protections, energy systems which are secure, reliable and efficient, and includes matters such as being, "...fair... while also accounting for environmental considerations¹". AGL has concerns that the inclusion of policy provisions of fairness and environmental matters within energy regulation will lead to unexpected and perverse outcomes.

Policy matters, such as fairness, are the purview of government and should be addressed through government processes and services, such as rebates, allowing better consideration of the 'user-pays' principle. Similarly, matters of environmental concern, should be addressed specifically through environmental legislation, allowing energy market activities to be technologically neutral.

Enforcement provisions

We note that the review will consider enhancements to the powers of the ERA, including greater flexibility in the setting of penalties, such as imposing a penalty on a person found to be in contravention that is determined by reference to that person's turnover or revenue². We look forward to further engagement and consultation over the expanded powers and compliance framework being fit for purpose in the West Australian market and recommend any such change be subject to a Regulatory Impact Statement to ensure the consumer benefits outweigh any additional regulatory costs associated with new powers.

As always, we are happy to discuss further if you have any questions in relation to AGL's response, please feel free to contact me at SSilbert@agl.com.au.

Kind regards,

(Submitted by email)

Sarah Silbert

Regulatory Strategy Manager

¹ Consultation, page 17

² Consultation, Appendix B B.2, page 2