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**Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000**

**8 November 2017**

Submitted: [paymentdifficulties@esc.vic.gov.au](mailto:paymentdifficulties@esc.vic.gov.au)

AGL Energy (AGL) welcomes the opportunity to respond to the Essential Services Commission of Victoria (the Commission) Draft Guidance note – payment difficulty and disconnection (Guidance note).

AGL is Australia's largest integrated Energy Company, operating across the supply chain with investments in coal-fired, gas-fired, and renewable electricity generation and is a significant retailer of energy, providing energy solutions to over 3.7 million customer accounts in the NEM. AGL is Australia's largest ASX listed owner, operator and developer of renewable generation.

As we have previously outlined to the Commission, AGL has been a leader in developing evidenced based solutions for customers facing payment difficulties.

In our view the Guidance note will hinder innovative solutions for Victorian customers experiencing financial difficulty. Rather, in its current form the Guidance note introduces unnecessary complexity and encourages 'box-ticking' compliance with the Payment Difficulties Framework (PDF). The Guidance note should provide advice through the use of examples on the Commission's expectations on how retailer can apply the framework to achieve the objectives of the PDF being; assist customers avoid energy debt, help customers better manage their energy use and that disconnection for non-payment is a last resort measure.

AGL strongly recommends the Commission shift the Guidance note away from focusing on prescribing the processes or actions that retailers must take and towards defining outcomes that they require retailers to achieve based on the objectives of the framework. Retailers will then have the flexibility to find the most effective way of achieving the outcome required. Overtime, it will also encourage retailers to work with the community sector to identify new solutions. For example, in NSW, AGL has partnered with both the Department and Uniting Care Kildonan to provide solar photovoltaic to 250 properties owned by Community Housing organisations. Through this program, a tangible solution will be delivered to AGL hardship customers that will see both arrears and ongoing costs of energy significantly reduced.

An outcome focused approach to the Guidance note is also consistent with the Commission's shift in the final PDF framework, which the Chairman noted:

*"The new framework was vastly simpler. Rather than rely on a set of rules from the regulator about how to assist customers, retailers would be expected to judge how to deliver meaningful and timely assistance in light of a customer's circumstance<sup>1</sup>."*

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<sup>1</sup> Page iv, Commission Final Decision, Payment difficulty framework.

Outcome focused Guidance notes are also consistent with the Australian Securities and Investments Commission's (ASIC's) use of Regulatory Guides to assist financial service providers interpret financial services regulation. Specifically, ASIC's Guides provide practical guidance through examples of how financial service providers may meet their obligations. For example, ASIC's Regulatory Guide 244<sup>2</sup>, *Giving information, general advice and scaled advice*; is littered with examples to assist providers understand ASIC's interpretation of the customer outcomes they expect:

<p>RG 244.28 If you carry on a business in Australia of giving financial product advice that is a financial service, you <i>do</i> need to hold an AFS licence, unless an exemption applies.</p> <p><b>Example B1: Providing factual information about financial products on a website</b></p> <p><b>Scenario</b> An organisation without an AFS licence includes on its website a list of financial products of a particular class available from third-party product providers, together with some objectively ascertainable factual information about specific product characteristics, with the aim of providing useful information for consumers to assist them to make a decision about the class of financial product.</p> <p><b>Commentary</b> Because the information is factual and does not involve a qualitative judgement about, or an evaluation or assessment of, the features of the products, it is not financial product advice.</p>	<p>RG 244.36 The test is <i>not</i> whether you merely possess information about the client's relevant circumstances.</p> <p><b>Example B2: Providing factual information about an alternative financial product</b></p> <p><b>Scenario</b> A client contacts an insurer's call centre and requests a quote for comprehensive car insurance. Noting the client's car is old and of low value, the call centre operator mentions the possibility of third party property damage cover and explains the difference between it and comprehensive cover. At the client's request, the call centre operator provides a quote for the annual premiums for each product.</p> <p><b>Commentary</b> This is factual information. Although the call centre operator has been provided with some personal information about the client, and has used this information to provide relevant information to the client about an alternative product, the operator has not given an opinion or made a recommendation that is intended to, or that could be reasonably regarded as being intended to, influence a decision about a financial product.</p>
<p><b>Example C1: Using personal information to ensure that the general advice provided is relevant to the client</b></p> <p><b>Scenario</b> A superannuation fund would like to provide a brochure containing general advice about retirement planning issues to some of its members via a mailout. The general advice would be most relevant to members aged 55 and over.</p> <p><b>Commentary</b> The fund can use personal information that they have about their members' age to send the brochure to members who are 55 and over. Using the personal information about fund members in this way does not mean that the fund is providing personal advice. Instead, the fund is using personal information to provide general advice to a particular audience.</p> <p><b>Example C2: General insurance—increasing excess</b></p> <p><b>Scenario</b> A client calls an insurer to seek a quote for comprehensive car insurance for a new vehicle and indicates that they, their spouse and their adult children will all use the vehicle. The insurer provides a quote. The client indicates that the premium is more than they would like to pay and asks for advice on how to reduce the premium. The insurer outlines that it is possible to elect to reduce the premium by increasing the basic excess payable—and that this is a popular way of reducing insurance premiums—and the client decides to take up this option.</p> <p><b>Commentary</b> In this example, the insurer does not inform the client about the option to reduce the premium by restricting the age of drivers for the vehicle—since the client has stated that their adult children, who are under 25 years of age, will be driving the vehicle. The insurer has used personal information about the client to give general advice that is relevant to the client.</p>	<p><b>Example D2: Personal advice on a single issue</b></p> <p><b>Scenario</b> A client sees an adviser because they want to increase their wealth. The adviser recommends an investment strategy. In doing so, the adviser discusses the risk of the client losing their income and assets, which could affect the client's ability to increase their wealth.</p> <p>The adviser is not skilled in the area of risk insurance (e.g. life insurance or income protection insurance), and notifies the client of this fact. Restricting the scope of the advice to exclude consideration of risk insurance products would not meet the best interests duty and related obligations. The adviser refers the client to a specialist risk adviser. The client agrees to seek the specialist risk advice and make a final decision about whether to implement the investment strategy after considering the specialist advice.</p> <p><b>Commentary</b> The adviser has acted in the best interests of the client by giving the client advice on the subject matter they requested and, in addition, identifying another subject matter of advice that it would be in the best interests of the client to receive, and referring the client to a specialist adviser to seek advice on this issue.</p>

<sup>2</sup> <http://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-244-giving-information-general-advice-and-scaled-advice/>



Many of the processes and actions outlined by the Commission in the Guidance note also lack any evidence or facts that they will lead to improved outcomes for customers facing payment difficulties. For example, (these are just two examples of many):

1. The Commission continues to define 'best endeavours' as telephone contact. AGL has provided the Commission with evidence from our own customer experience as well as external and independent research that customers value and more likely to respond to other forms of communication more so than telephone contact<sup>3</sup>.
2. The Commission refers to 'warm transfers' to financial counsellors as best practice. However, the Guidance note does not provide evidence this is appropriate. It is AGL's experience financial counsellors and other community support agencies do not have the resources to manage 'warm transfers'.

The Appendix of the submission contains a number of weaknesses with the Guidance note and contains a list (this is not an exhaustive list) of possible examples AGL considers the Guidance note consider providing guidance and examples on the outcomes the Commission expects based on the objectives of the PDF.

AGL also suggests the Commission use the cases it has collected from previous Wrongful Disconnection Payment cases as well conduct a workshop with retailers, community based groups and EWOV to collect relevant examples.

Finally, AGL has previously offered Commission staff an opportunity to review payment difficulties customer contact and we are disappointed the Commission has not accepted this offer. The Commission has issued a 70 page 'tick box' Guidance note that appears to not be evidence based and therefore unlikely to fulfil the Commission's overarching long term customer interest objective. We would recommend the Commission undertake appropriate research and analysis before finalising the Guidance note.

If you have any questions or would like to discuss AGL's submission please contact Con Hristodoulidis, Senior Manager Regulatory Strategy, on (03) 8633 6646 or [christodoulidis@agl.com.au](mailto:christodoulidis@agl.com.au)

Yours sincerely,

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

Elizabeth Molyneux

Head of Energy Market Regulation

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<sup>3</sup> See AGL submission to the ESC Draft Decision: Safety Net for Victorian Energy Consumers facing payment difficulties, November 2016.

## APPENDIX

<b>Guidance note</b>	<b>AGL Comment</b>
<b>2.5.3 – Application to small business</b>	<p>This clause appears to broaden the application of Part 3 (section 72) to small business customers. The Commission must clearly state the PDF does not apply to small business operators that may operate from residential premises.</p> <p>The Commission should provide an example of such a circumstance.</p>
<b>3.1.1 &amp; 3.1.2 – Application of PDF</b>	<p>3.1.1 states that Standard Assistance applies to ‘all residential customers’ while 3.1.2 refers to providing Standard Assistance to those ‘anticipating payment difficulty’.</p>
<b>3.4 – Standard Assistance and outcome expectation</b>	<p>The Commission outlines the how and modes of how retailers should provide Standard Assistance. This is likely to lead to a ‘tick box’ exercise that Standard Assistance is provided through these modes.</p> <p>AGL believes more useful guidance would be to outline examples of customer circumstances. For example, AGL would consider advice on the following example valuable:</p> <ul style="list-style-type: none"> <li>• Customer A has no overdue debt.</li> <li>• They get in touch with retailer and are advised that they can setup direct debit and pay fortnightly instalments of equal amounts to avoid them from moving into a debt position.</li> <li>• Customer accepts and sets-up the above proposal.</li> <li>• Customer subsequently fails payment arrangement moves into disconnection process due to lack of further contact.</li> <li>• Would retailer be in breach of 3.4.1 as they did not directly offer 2b and 2c, but such offers are generally communicated on retailer’s web-site?</li> </ul>
<b>4.6 – Customer advice entitlements</b>	<p>This section is critical in the relationship between a retailer and customer and the Guidance note would improve its value by outlining examples of the Commission’s expectation of good customer outcomes. The start of this section, 4.6.1, the Commission states the ‘focus of a retailer’s relationship...should on helping the customer manage the cost of their energy use’. Examples, of such outcomes rather than the current Guidance would be valuable.</p> <p>For example, the current Guidance not does not provide clarity in the following scenario:</p> <ul style="list-style-type: none"> <li>• A Customer has \$600 in missed payments with a full 3 months until the next billing cycle.</li> <li>• Through a conversation, the customer offers to pay fortnightly and has agreed to \$100 per fortnight.</li> </ul>

	<ul style="list-style-type: none"> <li>If payment arrangement subsequently fails and customer does not contact retailer, is a retailer in breach of 4.6.7 as they may not have explicitly given a breakdown of other payment options, such as a weekly or monthly schedule?</li> </ul>
<p><b>4.3.4 Transition to PDF</b></p>	<p>The Guidance note provides limited advice on the transition from current payment arrangements to the new PDF. AGL is seeking further guidance on more complex scenarios and the Commission’s intended outcome in such cases. For example, what is the Commission’s expectation of transitioning from current arrangement to the PDF in the scenario were:</p> <ul style="list-style-type: none"> <li>Customer A has \$2,500 overdue payment.</li> <li>Customer has had 3 payment plans over the past 12 months which have all lapsed due to non-payment.</li> <li>Each payment plan had reduced payment amounts to assist the customer, with the second and third plans not covering usage.</li> <li>The customer has been provided with energy efficiency advice, referred to a financial counsellor and provided information on grants and concessions.</li> <li>The customer is progressing toward disconnection and rings retailer for support, at this point the new framework is in place.</li> </ul> <p>Given entitlements with the new framework have already been offered and exhausted, is it the Commission’s expectation the retailer should commence the full suite of PDF entitlements?</p>
<p><b>4.7 &amp; 4.8: Best available tariff and energy efficiency advice</b></p>	<p>The Commission outlines in both sections the inputs that a retailer should consider in finding the most appropriate energy offer and providing practical assistance. This is likely to result in a ‘tick box’ exercise by retailers in meeting these obligations.</p> <p>Both these sections would be more valuable if the Commission provides examples of when assistance under these sections led to positive customer outcomes, especially from the objectives if the customer received assistance under these two sections but did not make any changes and it led to the customer increasing their arrears.</p> <p>In April 2017, AGL announced a Fairer Way package that included a range of measures to support customers in payment difficulties, including Victorian customers on a Standard Retail Contract who receive a government energy concession to automatically receive a 15% discount off their electricity usage charges and customers participating in AGL’s hardship program, Staying Connected – will be offered guaranteed (non-conditional) discounts.</p> <p>In developing this initiative AGL assessed the energy usage and payment patterns of these customer groups and deemed that an unconditional offer would be the best and most appropriate offer for these customers. This was due to our insights showing this group of customers on average are higher users of energy and may not necessarily obtain the benefits of pay on time discounts. AGL is seeking Commission guidance on whether these initiatives would satisfy the Commission’s objective of placing customers on energy plans that assist these customers minimise their energy costs?</p>

<p><b>9.10: Customer entitlement following disconnection or suspension</b></p>	<p>Section 9.10 provides guidance following disconnection or suspension of assistance. The guidance is not clear how retailers can manage the competing objectives of disconnection as a last resort and assisting the customer to reduce their arrears and energy costs. For example, what would the Commission’s view be on a positive customer outcome against the objectives of the PDF in the following scenario:</p> <ul style="list-style-type: none"> <li>• Customer A has \$2,500 worth of arrears and has been on and off a retailer’s hardship program due to inconsistent engagement by the customer</li> <li>• They have already been disconnected and reconnected twice</li> <li>• Customer has had all support provided to them under tailored assistance A and B (ie a payment arrangement of longer than 2.5 years)</li> <li>• Customer continues not to pay or makes minimal payments that do not cover usage, even after all of Tailored Assistance under 79(3) offered.</li> <li>• Customer is disconnected for non-payment for a third occasion.</li> <li>• Customer rings up for reconnection and advises they are only able to pay a minimal amount towards their arrears</li> </ul> <p>What does the Commission propose retailers do in this circumstance, given the customer has exhausted their support, reconnecting the customer is unlikely to have a positive accrual / energy cost outcome for the customer.</p> <p>Clause 9.10.5 appears to also contradict the Commission’s previous advice (eg, section 9.10.3 and 4.6.6) and allows a customer to propose a revised payment arrangement of up to two years following the suspension of previous assistance.</p>
<p><b>9.3: Fair and reasonable (clauses 111A &amp; 89 of PDF) and in other parts of the Guidance note (eg. 3.5.9, 4.12.2 &amp; 3.5.10)</b></p>	<p>The Commission introduces a new concept of ‘fair and reasonable’ in the final PDF as well as providing guidance in certain parts of the Guidance note as a means of considering retailer actions.</p> <p>As this is a new concept without past precedence, AGL believes it is important the Commission provides guidance on the interpretation of this concept, with relevant examples of outcomes that would be considered fair and reasonable, and those that would not.</p> <p>Interestingly, in section 9.3 when referencing fair and reasonable the Commission only refers to one of the three PDF Objective’s, being disconnection as a last resort. The Guidance note does not provide any guidance of the Commission’s expectations of a fair and reasonable outcome in balancing all three objectives, including lowering energy costs and energy usage.</p>
<p><b>9.8: Best endeavours for Tailored Assistance and Disconnection</b></p>	<p>The Commission appears to apply a ‘best endeavours’ obligation on retailers when providing Tailored Assistance as well as in the disconnection process. AGL believes the obligation to contact a customer to inform them of their entitlement to Tailored Assistance should have a lower threshold than the disconnection process and therefore the application of best endeavours should be split between Tailored Assistance and disconnection process.</p>

	<p>Further, it appears the Commission has essentially adopted the current best endeavours guidance as contained in the Operating Procedure for wrongful disconnection compensation. However, the Commission has not attempted to make the best endeavours obligation ‘fit for purpose’. AGL has previously provided evidence<sup>4</sup> to the Commission that new technologies have resulted in new methods of communication between retailers and customers. Further, customers are now self-selecting their preferred method of communication. The evidence previously provided has shown customers are more likely to respond to SMS and email contacts than telephone calls and voicemail.</p> <p>The Commission should re-frame best endeavours from the current prescriptive process obligations to more principle based approach, whereby retailers contact customers through their preferred channels. This approach would also be consistent with the Commission’s view 9.4.2 (c) when taking into account customer circumstances.</p> <p>Under the Commission’s current proposal, if a customer prefers SMS or email contact, their experience and therefore the outcome of the contact is more likely to be undesirable if a retailer is required to also fulfil the telephone and voicemail contact. In fact, ignoring a customer’s preferred option of contact is likely to alienate the customer and therefore the customer is more likely to avoid contact. Based on the Commission’s objective, such an outcome is not appropriate but from a compliance perspective the retailer can ‘tick the box’.</p> <p>Finally, AGL notes the Commission has made a subtle but significant change to the definition of best endeavours between the current requirements in the Operating Procedure compared to the Guidance note. Specifically, the Guidance note states ‘Best endeavours to contact a customer in person or by telephone <b>requires...</b>’ while the Operating Procedure states ‘Best endeavours to contact in person or by telephone <b>could require</b>. It is not clear if this is a drafting error or a deliberate change as the Commission does not provide an explanation for the change. If it is a deliberate change, the Commission does not provide any evidence as to the failure of the current requirement and why therefore the Commission needs to make a change.</p>
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<sup>4</sup> Page 8, AGL Submission to the ESC Draft Decision: Safety Net for Victorian Energy Consumers facing payment difficulties, November 2016