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**Ministerial Council on Energy Standing Committee of Officials: National Energy
Customer Framework – Second Exposure Draft**

AGL welcomes the opportunity to comment on the second exposure draft of the National Energy Customer Framework (*NECF*), released by the Ministerial Council on Energy Standing Committee of Officials (*SCO*) in November 2009.

AGL has always advocated for the nationalisation of energy law to reduce regulatory inconsistencies across jurisdictions which impose additional compliance costs on retailers with no commensurate benefit to consumers. In previous submissions, AGL has raised concerns regarding a number of policy positions of the SCO (which are still relevant and addressed in Attachment A), however, the latest draft of the NECF has raised further concerns in relation to:

- progressive implementation, derogations and transitional arrangements;
- distributor obligations;
- the retailer of last resort scheme (*ROLR*);
- the national consumer protection objective;
- varying standing offer prices; and
- AER approval of customer hardship policies.

A summary of these issues is set-out below with further detailed commentary provided in Attachment A.

Implementation, Derogations and Transitional Arrangements

In order to ensure national consistency of energy regulation the signatories to the Australian Energy Market Agreement agreed that the initial rules for the National Framework for Distribution and Retail would provide common regulatory arrangements, provide an appropriate level of regulatory certainty and minimise the regulatory compliance burden and associated costs. AGL believes that the initial rules will not achieve these objectives if the NECF is implemented progressively until July 2013 and is subject to jurisdictional derogations that may provide for the framework to be introduced in tranches as suggested in the Ministerial Council on Energy Communiqué of 4 December 2009.

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If applicable jurisdictions introduce the NECF progressively then not only are the efficiencies of national rules delayed until the final jurisdiction implements the NECF but the costs to retailers will also increase exponentially. Rather than changing business processes and systems just once, retailers will be required to make changes, which may require the introduction of manual processes, with each jurisdiction's introduction of the NECF.

Similarly, if a jurisdiction staggers the implementation of the NECF this would impose additional administrative and compliance costs on retailers without any corresponding benefit to consumers. Furthermore, each obligation does not exist in isolation. Stakeholders have considered and provided comments on the basis that the whole NECF package would be implemented at the same time across all jurisdictions. The NECF is a balance of competing rights and obligations. To implement some obligations before others could have unintended consequences on the energy market.

AGL, therefore, does not support a staggered implementation of the NECF, nor the inclusion of jurisdictional derogations, as these inefficiencies will ultimately impact the competitiveness of energy prices for small customers. For this reason, once the NECF is implemented in South Australia, AGL believes that if a retailer can demonstrate compliance with the NECF in another jurisdiction that has not yet implemented the NECF, enforcement action under that jurisdiction's regime should not be taken. If compliance with the national regime could be formally recognised as a defence to an alleged breach of a jurisdictional provision then this would provide greater certainty for retailers.

Distributor Obligations and the Retail Support Arrangement

Current retail support arrangements, whether they are called Use of System Agreements, Access Arrangements or Co-ordination Agreements, offer guidance as to the type of obligations that need to be addressed in the retail support arrangements. However, as monopoly service providers have generally drafted these agreements, they do not contain all the necessary obligations needed for an efficient market to operate. Experience from past disputes (with both customers and distributors) dictates that the following distributor obligations should either be included or revised in the retail support arrangement:

- where distributors are the responsible party, a requirement to read a meter as frequently as required as retailers are subject to a civil penalty provision to issue a bill at least once every three months;
- a non-discrimination clause, which requires distributors to treat retailers equally, for example, in relation to payment terms;
- distributors should only be able to charge AER approved charges and provide retailers with, at a minimum, 6 months prior notice before the introduction or amendment of any charges, which would allow for retailers to complete any system changes required to pass through a distributor charge to a customer;
- where a retailer is unable to recover energy charges from a customer due to a distributor's acts or omissions (such as transposed metering or failure to disconnect) the distributor should be required to waive the distribution charges and compensate the retailer for the retail component of the energy charge;
- a requirement on distributors to assign the same network tariff to residential customers regardless of consumption level as consumption levels will become irrelevant to residential customers under the NECF;
- where a meter and/or metering data proves to be faulty or incorrect, an obligation on the distributor to reimburse a customer for the cost of the check or test;
- distributors should be expressly prohibited from charging for distributor initiated service orders, unless the service and amount was previously approved by the retailer;

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- each statement of distribution charges must contain sufficient information to enable the retailer to either: (a) include that information in the retailers next bill to a particular shared customer; or (b) reconcile the statement of distribution charges with the amounts included in a retailer's bill to a particular shared customer;
- the format of the statement of charges should not be 'as reasonably determined by the distributor' as this can lead to some charges being invoiced regularly through use of system invoices and others submitted as ad hoc hard copy invoices that involve manual processing;
- in a smart meter environment, with the potential for monthly invoices for all customer sites, distributors should only be allowed to invoice a third of sites in any one statement, with 5 business days between the issuing of each statement
- where a customer is new to a premises, distributors should not be able to refuse to reassign a network tariff because that premises had a network tariff reassignment in the previous 12 months by the previous customer;
- where customers are not providing access, a requirement to offer appointment times outside business hours and to advise if they are going to be late or are unable to meet appointment times.

The redesign of the retail support arrangement from contractual terms and conditions to direct obligations means that retailers have lost the ability to enforce their retail support rights in contract law. Therefore, AGL considers that the following provisions should be identified as conduct provisions (for the purposes of s104(2)(b) of the Law) to enable retailers and customers to enforce their rights without involving the regulator:

- the distributor obligations listed above;
- the obligations contained in Part 5 of the Law;
- the obligations contained in the Retail Support Arrangement;
- the obligations in the National Retail Connection Rules for both electricity and gas;
- Rule 413(3) - a distributor's obligation to use best endeavours to restore the customer's supply as quickly as possible should be identified as either a civil penalty or conduct provision.

Retailer of Last Resort Scheme

While AGL prefers the South Australian ROLR model where the distributor is responsible for organising energy supply to customers impacted by a ROLR event, the NECF's proposed market-based ROLR model is an acceptable alternative to AGL. However, the current framework is overly prescriptive, intrusive and could be substantially simplified to achieve the same policy objectives.

The main areas for concern include:

- AER's extremely broad information gathering powers;
- AER's ability to limit cost recovery;
- Annual EOIS, annual exercises and annual requests for information; and
- the regulation of large customer ROLR contracts and prices.

National Objective

The NECF2 introduced a new section 113(2) of the Law that qualifies the long term efficiency objective currently applying in the national energy law so that the development and application of consumer protections and other small customers are not restricted or prevented.

AGL supports the original SCO recommendations that were contained in the *MCE SCO Table of Recommendations – National Energy Customer Framework* that stated that the “current statutory objectives in the [National Electricity Law] and [the National Gas Law] are adequate to accommodate the transfer to the new national customer framework” and that no supplementary objectives would be introduced.

The Explanatory Material suggests that the purpose of extending the national objective to include references to hardship and ‘other small customers’ was to ensure that the proposed consumer protection and hardship policies that are being transferred to the NECF are not interpreted as conflicting with the long term efficiency of the energy markets. This explanation was confirmed by members of the Retail Policy Working Group at the NECF2 briefing on 3 February 2010.

However, the current drafting of the provision, coupled with section 1002(2) of the Law, could easily be interpreted as allowing the AEMC to give greater weight to consumer protection issues than the original long term efficiency objective when making rules. Such an interpretation would be a significant reversal of a fundamental policy position that has occurred without consultation. AGL is supportive of the policy position outlined in clause 14.11 of the Australian Energy Market Agreement, which states that “social welfare and equity objectives will be met through clearly specified and transparently funded State or Territory community service obligations that do not materially impede competition”. It is not appropriate for governments’ social policies to be pursued through national energy regulation.

If the intention of the proposed new clause 113(2) is purely interpretative then AGL believes it would be more appropriate to address this issue in the Explanatory Memorandum and/or second reading speech.

Varying Standing Offer Prices

AGL does not support restricting price variations to once every six months. If a significant wholesale price increase occurred shortly after a retailer published new standing offer prices, the retailer’s prices would have to remain below cost for the remainder of the six month period. This effectively means that retailers are unable to respond to market events, which could ultimately lead to a ROLR event or price shocks – both outcomes are likely to have a disproportionate impact on low-income and vulnerable customers.

Currently retailers are able to increase market contract prices at any time and by any amount. AGL is not aware of any retailer that has used this right in a way to suggest to the SCO that a six-month restriction is necessary for standard contract customers. A price increase event is generally not a simple task for retailers; it is time consuming and requires extensive IT system changes. For this reason, and also due to the level of competition in the market, retailers are not inclined to vary prices more frequently than necessary. However, retailers do need the flexibility to be able to vary their tariffs as necessary.

However, if a timeframe is considered necessary retailers’ obligations should be linked with, and be contingent on, when a distributor actually publishes its network prices. There should, at a minimum, be a provision whereby the AER may permit price variations within the six-month period, in response to any changes to any distributor fees or charges, a significant wholesale market event or other event such as the introduction of a tax/government charge.

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AER Approval of Customer Hardship Policies

AGL does not support AER approval of retailer hardship policies. Such an approach would fundamentally alter the underlying framework from a performance based regime to command and comply regime. Sufficient powers and penalties are available to the AER within the framework to ensure compliance with the minimum requirements.

Should you wish to discuss any aspect of this submission please do not hesitate to contact Angela Gregory, Manager Regulatory Advice & Policy on (03) 8633 6817.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Cruickshank'.

Alex Cruickshank
Head of Energy Regulation

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AGL’s Comments on the Second Exposure Draft of the National Energy Customer Framework

Section	Subject Matter	Comments
Part 1	Preliminary	
102	Definition: Public Holiday	For certainty the definition of ‘public holiday’ should link with the definition of ‘business day’ in the NEL: ‘business day: A <i>day</i> other than a Saturday, Sunday or a <i>day</i> which is lawfully observed as a national public holiday on the same <i>day</i> in each of the <i>participating jurisdictions</i> ’.
103	Large customers	For new newly connected premises a customer’s threshold needs to be estimated, therefore the large customer definition should include ‘is likely to consume energy’ above the threshold.
113	National Energy Retail Objective: small customers & hardship	<p>The original SCO recommendation was that there was “no need to amend the statutory objectives to be included in the NEL and NGL to accommodate the transfer of the non-economic distribution and retail regulatory functions to the national framework.” Current drafting suggests a significant reversal of a fundamental policy has occurred without consultation.</p> <p>If the MCE is concerned that some of the proposed consumer protection or hardship policies may be interpreted as conflicting with the economic efficiency of the energy markets AGL believes it would be more appropriate to address this as an interpretation issue in the Explanatory Memorandum and/or Second Reading Speech rather than extending the national energy law objective.</p>
Part 2 - Relationship between retailers and small customers		
205	Standing offer prices – limitation of variation	<p>AGL considers that only allowing price variations to occur every 6 months effectively means that retailers are unable to respond to market events, which could ultimately lead to a ROLR event or price shocks – both outcomes are likely to have a disproportionate impact on low-income and vulnerable customers.</p> <p>Currently retailers are able to increase market contract prices at any time and by any amount. AGL is not aware of any retailer that has used this right in a way to suggest to the SCO that a 6-month restriction is necessary for standard contract customers. A price increase event is generally not a simple task for retailers; it is time consuming and requires extensive IT system changes. For this reason, and also due to the level of competition in the market, retailers are not inclined to vary prices more frequently than necessary. However, retailers do need the flexibility to be able to vary their tariffs as necessary.</p>

		However, if a timeframe is considered necessary retailers' obligations should be linked with, and be contingent on, when a distributor actually publishes its network prices. There should, at a minimum, be a provision whereby the AER may permit price variations within the 6 month period, in response to any changes to any distributor fees or charges, a significant wholesale market event or other event such as the introduction of a tax/government charge.
207(5)(a) 210(4)(a) 216(4)	Required alterations and specific jurisdictions	These sections allow specific jurisdictional regimes to apply. This does not assist with an overall <i>National Energy Customer Framework</i> . At best, it means that there is a consistent minimum of treatment but beyond that, each jurisdiction prevails. It greatly dilutes the benefits that can be achieved through the nationalisation of the customer contracting regime. These sections are not consistent with the objectives set out in section 113 of the National Energy Retail Law.
223(5)(b)	No or defective EIC	The fact that the original retailer would not be charged network and wholesale costs while it was not the FRMP needs to be taken into consideration when drafting this clause. Also, thought needs to be given to the situations where a customer cannot be returned to the original retailer.
225	Customer hardship policies – AER approval	AGL does not support AER approval of retailer hardship policies. Sufficient powers and penalties are available to the AER within the framework to ensure compliance with the minimum requirements.
231(1)(b)	Payment plans	As not all customers who receive reminder or warning notices are experiencing financial difficulty this section should be limited to where customers identify themselves as experiencing financial hardship.
236(2)	Prices for deemed customers	Retailers face greater costs and risks supplying customers on deemed contracts compared to other customers and should be able to provide incentives for such customers to enter into a standard or market contract. Accordingly, AGL believes that the tariff applicable to deemed supply arrangements should only be the standing offer tariff where the retailer/regulator (whichever applicable) has not published a specific deemed supply tariff.

Part 4 Small customer complaints and dispute resolution

405	Customers right to refer a dispute to the Ombudsman	Under the Ombudsman schemes, consumers are obliged to provide retailers with the opportunity to resolve a dispute before they refer a dispute to the Ombudsman. AGL believes it is appropriate that this obligation should be expressly provided for in this clause.
406(3)	Ombudsman discretion to refer dispute back to retailer	In the interests of best practice dispute resolution, retailers should be given the opportunity to consider a complaint before an Ombudsman begins to investigate. Clause 6.2(b) of the Charter of Energy Industry Ombudsman (SA) Limited appears to address both consumer and retailer concerns – it prohibits the Ombudsman investigating a complaint until a member has had an opportunity to consider a complaint but is subject to reasonable time frames.

Part 5 Authorisations

520(2)(b)	Power to revoke	The revocation of an authorisation is a serious action and should only be undertaken as a last resort – only after all other enforcement measures have been exhausted. In addition, a ‘reasonable expectation’ is a more appropriate test than ‘reasonable apprehension’.
529	Exempt seller factors	AGL queries the policy rationale of subsections (1)(e) and (f).

Part 6 of Law & Part 11 of Rules – Retailer of Last Resort

605(7)	Default ROLR to implement adequate systems	The criteria for ROLR registration in clause 604(2)(a) refers to the retailers capacity to ‘be able to implement adequate systems’, however, in conflict, clause 605(7) (a civil penalty provision) obligates a default retailer to implement systems regardless of whether there is an apprehended ROLR or not. A default retailer should not be required to implement systems unless they can recover the full costs of the implementation.
606(1), 643(4)	Annual EOI, regular exercises	Annual EOI’s and regular participation in ROLR exercises is costly and imposes a great administrative burden on both the AER and retailers.
614	Transfer of customers	This section appears to preclude pending transfers from completing once a ROLR event has occurred. Such an outcome would be inconsistent with industry practices and not in the best interest of the customer.
622, 624 & R115	Regulation of large customers	AGL believes it is inappropriate and unnecessary to regulate the relationship between retailers and large customers. Large customers have the capacity to negotiate contingency arrangements both before and/or after a ROLR event. In the same way that general law (or <i>quantum meruit</i>) governs large default customer arrangements general law should also govern ROLR large customer arrangements.
627	General regulatory information order	AGL queries the policy intention of GRIOs for the purposes of ROLR. In the event of an apprehended ROLR a specific and targeted information order to the failing retailer may be necessary, however, general orders to any retailer are unnecessary and inappropriate. The current jurisdictional arrangements do not require such an extensive role of the regulators and AGL is of the view that such powers are unnecessary.
629(3)	‘solely for the purpose of’	Given the AER’s general information gathering powers under the NEL and NGL, a ROLR information notice should only be served ‘solely for the purpose of’ a ROLR or apprehended ROLR event rather than not ‘solely for the purpose’ to investigate possible breaches.
634	ROLR regulatory information statement	Requesting financial information, hedging contracts, etc from a retailer in the event of a ROLR will not assist the transfer of customers. Given the commercial sensitivity of such information (and the potential for it to trigger another ROLR if misinterpreted) this extremely broad power is not justified.
635	Further provision of information – annual basis	If the AER requires information on an on-going basis then it should use AER’s general information gathering powers.

648(3) & R1122	ROLR cost recovery	<p>A registered ROLR should be able to recover the costs of providing the ROLR service. During a ROLR event 'efficient' costs and 'reasonable' costs could be very different.</p> <p>Furthermore, if system changes are required to be implemented before a ROLR event then a retailer should be able to recoup those costs when they incurred regardless of whether a ROLR event occurs or not.</p>
652 & R1124	Information to be included in customer retail contracts	<p>AGL queries the policy rationale behind this provision. National contracts will not be able to refer to specific default ROLRS, who may change every year. If more information than what is currently included in the standard retail contract is necessary then it should be included in that contract rather than regulated in separate AER guidelines.</p> <p>In the event of a ROLR, a customer is unlikely to refer to their contract. Usually, the first time a customer becomes aware of a ROLR event may be when they get a bill from their new retailer.</p>

Part 8 - Functions and Powers of the AER

812	Disclosure of confidential information	AER's power to obtain information and/or disclose confidential information should replicate the confidentiality provisions in the NEL.
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Part 9 – Functions and Powers of the AEMC

909(e)	MCE directed review –not limited by national objective	AGL queries the policy rationale behind MCE directed reviews that need not be limited by the national energy retail objective. The whole premise of the NEL of NGL stems from the national objective and AGL believes that the AEMC's functions and powers in any review should also be restricted by the national objective, particularly given the power of the AEMC to charge fees (s913).
914(b)	Confidentiality of information	The paragraph should be amended to read 'the AEMC reasonably decides that the information is confidential information'

Part 10 – National Energy Retail Rules

1002(2)	Application of national energy retail objective – rule making test	This clause (coupled with the expanded national objective) has greatly shifted the balance between protecting consumers and minimising the cost and burden of regulation. As identified in the comments to s113, AGL is concerned that such a significant reversal of a fundamental policy has occurred without consultation.
1003(3)	Subject matters - Ombudsman	This section states the Rules may confer additional functions and powers on an Ombudsman. Most existing energy ombudsman have their powers and functions conferred by their relevant constitution. As the policy intent is not to amend existing functions and powers this reference should be deleted.
1003(4)	Contract variation	This provision requires the Rules to specify a date on which an amendment to the model terms must

		apply, however, when nominating such a date consideration must be given to the impact that such changes may have on retailers, for example whether the changes require system changes or republishing.
1015	Initial consideration of request for Rules	Subsections (2) – (5) do not actually require the AEMC to adhere to any particular timeframes in considering the request. Subsequent sections do place time limits on the AEMC but not for the initial consideration of a request.

Part 12 of Law & Part 10 Rules – Compliance and Performance

1204	Compliance audits	Audit requirements by the AER should only be in response to evidence of systemic and material non-compliance and should take into consideration the compliance record of the retailer.
1206	Carrying out of compliance orders	At the very least, the AER guideline should specify the circumstances in which an audit would be required.
1209(d)	Contents of compliance reports	A report on any additional matters that the AER considers appropriate should be subject to a reasonableness test.
Rule 1002(2) & 1003(3)	Large customer information	Large customers are not currently covered by retail market performance reports, so to provide such information could involve considerable system and administrative changes.
1003(3)(1)(a)	Hardship & other customers experiencing financial difficulties	Most retailers' systems are unable to distinguish between customers in hardship and customers experiencing payment difficulties. The words 'experiencing payment difficulties' should be deleted so that the reference should be to 'hardship customer and other residential customers'.

Part 13 - Enforcement

1320(3)	Costs in review	There does not appear to be a basis for the Tribunal to not have the power to order the AER to pay costs in the same way it can order other parties to pay costs. If costs are appropriate then the Tribunal's power should not be limited by paragraphs (a)-(c) and 1320(2) should apply equally to all parties.
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Draft National Energy Retail Regulations

Section	Subject	Comment
5	Ombudsman	The corresponding obligation in Victoria, South Australia, and New South Wales is for retailers to participate in an approved ombudsmen scheme, whereby the schemes in those jurisdictions are established by industry, not legislation. A consistent approach should be adopted in the national framework whereby a retailer should be required to participate in a scheme approved by the AER.
10	Review of	A five year period before review of the consumption thresholds is too long, particularly at the outset of

	consumption thresholds	a new regulatory regime. A more appropriate timeframe for an initial review period would be two years.
Schedule 1	Civil penalty provisions	Civil penalty provisions should only be attached to sections that have the potential to materially impact the functioning of the market.
Schedule 2	Conduct provisions	The obligations contained in Part 5 of the Law, in the Retail Support Arrangements, in the National Retail Connection Rules for both electricity and in Rule 413(3) should be marked as conduct provisions. The distributor obligations listed in our submission should also be included.

Draft National Energy Retail Rules

Section	Subject	Comment
105(2)(a)	Business premises – aggregation	The Rules should explicitly state that Part 2 (Customer retail contracts), Part 3(customer hardship and payment difficulties), Part 6 (De-energisation), Part 7 (life support) and Part 8 (Pre-payment meters) do not apply to aggregated or large customers consistent with all current jurisdictional arrangements.

Customer Retail Contracts

205(2) Law & Rule 238(c)	Pre-contractual duty of retailers – standing offer	<p>The obligation to advise customers of a standing offer should only apply where the designated retailer for the premises refuses the customer a market contract, or the customer has refused a market offer (i.e. the current Qld regime). In AGL's experience, obligations to offer particular products to customers (in some jurisdictions retailers are also required to offer a 'green' product tends to be counter productive as customers become frustrated and/or confused with the volume of information they are given.</p> <p>Any concerns surrounding customer knowledge of the availability of a standing offer is more appropriately addressed through a government funded awareness campaign.</p>
207(3)	Pre-contractual request – customer information	As some energy services (such as meter replacement) need the consent of the owner of the premises retailers should have the right to request contact details for the owner of the premises from the customer. This is currently allowed in Victoria, South Australia and Queensland.
207(5)	Pre-contractual request – unpaid account	The section refers to 'unpaid accounts in relation to other premises'. However, if the customer has applied for connection at the same premises following disconnection, the unpaid amount may relate to the current premises. The words 'in relation to other premises' should be deleted.
207(6)	Pre-contractual request – unpaid account	The inability of a retailer to refuse to supply a residential customer for an outstanding debt is detrimental to the market, retailers and customers, which ultimately leads to higher prices. In particular, customers facing hardship should be encouraged to manage their debts (at a minimum through a payment plan) to avoid the disconnection / reconnection cycle.
208(1)(c)	Information on	As 'relevant' government funded concession schemes are dependent on the type of concession or

	concessions	pension card held by the customer, and a retailer will not know the type of concession a customer holds prior to the request, and then retailers are only able to give general information of these schemes. The words 'any relevant' should be deleted.
209(2)	Meter reads	This section requires retailers to use best endeavours to read the meter quarterly and in any event at least once every 12 months. As the responsibility for small customer meter reading rests with distributors, so too should the obligation to read the meter. At the very least, a reciprocal requirement for distributors to read the meter as frequently as required to allow the retailer to meet its obligations.
211	Bill smoothing	The requirement for 6 monthly reviews of bill smoothing arrangements currently only applies in Victoria. To introduce this requirement in other states may deter retailers from offering this service. If this clause is retained the reference to '6 months' should be replaced with '7 months' to allow 6 months of data to be used in reconciliation.
212	Frequency of bills	While it is clearly an appropriate objective to bill a small customer at least once every 3 months this obligation should be subject to the availability of accurate metering data from the responsible person and should be for the retailer to 'use best endeavours' to bill at least once every 3 months. As this provision is a civil penalty provision some retailers may be encouraged to bill customers with metering data they suspect is incorrect rather waiting for the outcome of network billing dispute.
217(5)(c)	Billing disputes	The retailer must reimburse the cost of a meter test if the meter proves to be faulty. There does not appear to be a reciprocal obligation on the distributor to reimburse the retailer in those circumstances.
219(6)	Overcharging	The South Australian code has a \$100 overcharging threshold. AGL believes this amount is more reflective of the administrative burden involved in satisfying the undercharging and overcharging provisions.
220	Payment methods	The requirement to accept payment by telephone and EFT may be a barrier to entry for some niche retailers, such as an internet based one. Existing provisions in certain jurisdictions allows for payment methods to be negotiated when entering into a market contract.
222(2)(a)	Shortened collection cycles	This sub-rule prohibits a retailer from placing a small customer on a shortened collection cycle if the customer is experiencing payment difficulties. As such customers are not necessarily easily identifiable it would be more appropriate for this protection to only extend to residential customers participating in a hardship scheme.
223	Request for final bill	The words "(but not de-energisation of)" should be deleted as retailers are prohibited from supplying retail services without a retail contract (202 of Law). A retailer's right to de-energise protects against vacant premises accounts from being generated and ultimately the integrity of the market. The current drafting suggests a customer has a right to a final bill without de-energising the premises.
225	Requirement for security deposit	The current drafting of this clause limits the occasions on which a retailer can require a security deposit to 'the time the customer requests the sale of energy'. It is possible that a retailer may need the confidence of a security deposit from a retail customer at times other than the specific time the

		<p>customer requests the sale. This is particularly the case with small business customers. The words 'only at the time the customer requests the sale of energy under a customer retail contract and' and sub-section (6) should be deleted.</p> <p>The list of circumstances in which a retailer can request a security deposit should also include money owed to the retailer in relation to the sale and supply of energy at the current premises, as the customer may have been disconnected at the current premise, and may be seeking reconnection. Rule 225(1)(a) should be amended to read "the customer owes money to that retailer in relation to the sale and supply of energy; or".</p> <p>Sub-section (2) could be simplified by prohibiting retailers from seeking security deposits from hardship customers. If a new customer is unable to pay a security deposit, it is highly likely that they will fall into a retailer's hardship program. As currently drafted, these obligations place unnecessary administrative burdens on retailers and create a loophole by where once a customer has been identified as a hardship customer they are always a hardship customer. This section also does not take into account that a previous retailer may have different criteria for establishing whether a customer is in hardship or not.</p> <p>Current jurisdictional arrangements do not provide for the payment of security deposits by instalments as per sub-section (3). Such a process would be unworkable, creating uncertainty regarding what form the instalments must take and when the disconnection provisions could be triggered.</p> <p>Under sub-section (7) a retailer is not obliged to reconnect a customer if the customer has refused to provide a security deposit after connection. However it is unclear whether this provision applies if the security deposit remains unpaid 10 business days after disconnection.</p>
228	Interest on security deposit	Consistent with current arrangements in most jurisdictions, NECF1 deducted 1% from the bank bill rate to allow retailers to cover the costs of managing security deposits. This approach should be retained and the words "less one full percentage point" reinstated.
229	Use of security deposit	If a customer has been de-energised for non-payment a retailer should be able to use that customer's security deposit to satisfy that debt. The phrase 'there is no contractual right to re-energisation' should be deleted to reflect the current situation in most states.
230	Obligation to return security deposit	The circumstances under which a security must be returned should be subject to variation under agreement in a market contract, in accordance with NECF1 and all previous RPWG and SCO papers.
234	Termination of standard retail contract	Retailers must have the right to terminate a contract if the customer's circumstances or consumption levels change. For example, when a customer starts consuming over the large customer threshold or the usage of the premises alters from residential to business, etc
235	Termination of	It is not clear why the termination of a market retail contract should be regulated to this extent. A

	market retail contract	market retail contract should terminate in accordance with its terms, and not limited by 235(1)(a) if this list is intended to be exhaustive. Sub-rule (3) and (4) are more restrictive than even the most restrictive regime (i.e. Victoria). These sub-rules should be deleted as the law of penalties should apply to early termination charge and there should be nothing more prescriptive for market retail contracts.
236	Cooling off period	Consistent with clause 17(b) of the model terms and conditions for standard retail contracts, the information required to be provided to customers in accordance with rule 246 should be deemed to have been received within two business days of being posted.
237(4)(a)	Notice of expiry of retail contract	As many retail contracts do not have an end date the reference to the expiry date should only apply 'if applicable'.
247	No contact times	For the sake of certainty, this provision should explicitly refer to 'door-to-door' rather than 'in-person' to ensure that canvassing in shopfronts or public places is not captured.
253	Record keeping	The section refers to retailers maintaining records of visits "conducted" and calls "placed", whereas existing jurisdictional instruments refer to marketing contacts. The NECF2 drafting may be interpreted as requiring unsuccessful contacts to be recorded, significantly increasing record keeping costs, with no identifiable benefit, and inconsistent with current arrangements.
413(3)	Planned interruptions	A distributor's obligation to use its best endeavours to restore the customer's supply as quickly as possible should be identified as a civil penalty or conduct provision.

Part 5 Relationship between distributors and retailers – retail support obligations

Part 5		Provisions that are not already marked as civil penalty provisions should be marked as conduct provisions
		<p>The following obligations should appear in Part 5:</p> <ul style="list-style-type: none"> • where distributors are the responsible party, a requirement to read a meter as frequently as required as retailers are subject to a civil penalty provision to issue a bill at least once every three months; • a non-discrimination clause, which requires distributors to treat customers and retailers equally (e.g. payment terms, collection of cash on disconnection); • a requirement on distributors to assign the same network tariff to residential customers regardless of consumption level as consumption levels will become irrelevant to residential customers under the NECF; • where meter or metering data proves to be faulty or incorrect, an obligation on the distributor

		<p>to reimburse a customer for the cost of the check or test (cf Rule 217); and</p> <ul style="list-style-type: none"> where customers are not providing access, a requirement to offer appointment times outside business hours and to advise if they are going to be late or are unable to meet appointment times.
509(3)	Unplanned interruptions – telephone number	This provision requires retailer to ‘refer’ a customer to the distributor’s fault enquiries or emergency telephone number. To avoid doubt, AGL would prefer the use of the word ‘provide’ to ensure that our call centre staff are not required to transfer the customer, which can result in long delays if the distributor does not have enough fault operators to accept customer calls. At times of unplanned interruptions, calls to a retailer’s call centre escalate so it is important that retailers are able to give a customer their distributor’s number to minimise waiting for other customers.
513	Notification of de-energisation	As distributors do not, or may not be able to, de-energise on the day requested it is important that retailers are notified when the distributor has completed a de-energisation even if the retailer requested the de-energisation. This permits a retailer to finalise the bill to a specific date.
514(1)	Liability of retailer for ongoing charges	<p>A distributor should not only be liable for energy charges where they have failed to de-energise after a lawful request from a retailer but also to charges that a retailer is unable to recover from a customer due to the distributors acts or omissions (such as distributor caused cross metering or incorrect network codes).</p> <p>AGL does not believe that retailers should be required to use ‘all reasonable endeavours’ to recover the charges from a customer before being compensated by the distributor for failing to fulfil their obligations. It is more appropriate (and a greater incentive for a monopoly service provider to perform its duties) for the party who has breached its duties to wear any credit risk.</p> <p>The phrase ‘within the timeframes for de-energisation in accordance with a distributor service standard’ seems to be limiting a distributor’s liability to a few very specific incidences and should be deleted.</p> <p>Sub-section (1)(b) requires distributors to “pay charges for energy consumed.” The Victorian Use of System Agreement (6.3(c)) and the South Australian Co-ordination Agreement (13.2(a) require the distributor to pay to the retailer “the costs incurred by the Retailer payable to NEMMCO [AEMO] in connection with the consumption of energy by the Customer.</p>

Part 6 De-energisation of premises

602	De-energisation	Item 2.26 of MCE SCO Table of Recommendations included the following ground for disconnection: <i>(in the case of a market retail contract) the contract has been terminated in accordance with the terms of</i>
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		<i>the contract, and the customer has not entered into another retail contract.</i> The rules should reflect this decision.
603	Reminder notices	This clause has been amended to require details of the ombudsman on reminder notices, in addition to disconnection warnings. Retailers must be given first opportunity to resolve any issues directly with their customers, and this is consistent with the practice of advising customer of the retailer's internal complaint arrangements in the first instance on reminder notices, and of the ombudsman scheme in the subsequent disconnection warning. It is wrong and misleading to suggest that receipt of reminder notice is related to a potential unresolved dispute. There are also cost implications given that retailers are charged for each related call to the ombudsman, and that a high proportion of customers receive reminder notices.
604(2)(d)	Costs of de-energisation	Retailers are not currently required to inform a customer of the costs of re-energisation (other than that they may apply) as these costs vary by distributor, site conditions and the disconnection type performed. It should be sufficient to inform the customer that reconnection costs may apply.
605(1)(d)	De-energisation – customer contact	A failure to pay is not necessarily linked with financial difficulties, the additional requirement for a retailer to contact a customer by telephone or mail should only be necessary for hardship customers.
606(1)	Non-payment of payment plan	The words 'or failed' should be inserted after the word 'refused' as the act of not paying should be the trigger for de-energisation.
606, 607 & 609	De-energisation notices	These sections require retailers to send 2 notices in the case of not providing security, denying access to the meter and not providing acceptable identification. Given that retailers would have previously attempted to make contact with these customers in pursuit of security, access or identification the obligation for a further contact in addition to the disconnection warning is unnecessary and should be deleted.
610(3)	Non-application of restrictions	Sub-paragraph 3 should be extended to include other non-debt related de-energisations, such as denying access to the meter.

Model Terms and Conditions for Standard Retail Contract

3.2 & 4.1	Application & commencement	These terms do not apply to a deemed contractual arrangement. This should be made explicit.
8.1	Tariffs & charges	A sub-clause should be included to allow the pass-through of taxes and charges in accordance with other instruments. For example, clause 9.1 of the South Australian standard retail contract provides: <i>In some cases we can pass through to you certain taxes and other charges in accordance with applicable regulatory instruments. We can do this by either changing the tariffs and charges, or including the amount as a separate item in your bill.</i>
8.3(b)	Information relating to eligibility for type of tariff	Retailers and/or distributors may need to transfer tariff types retrospectively for a variety of reasons. For example, where a customer's circumstances have changed or where a customer's assumptions were incorrect. A retailer's ability to transfer a customer should not be limited to where a customer

		fails to tell us of a change in circumstances. The phrase “if you fail to tell us of your change in circumstances” should be deleted.
11(b)	Meters	This clause should be prefaced with the following phrase: “Your distributor is likely to be the responsible person for reading your meter but we will use our best endeavours ...”.

Model Terms and Conditions for Deemed Standard Connection Contracts

5.1(e)	Distributor services	A new sub-clause 5.1(e) should be inserted “where we are the responsible party for metering services we will provide meter reading services as frequently as required to allow your retailer to prepare your bill”.
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Draft National Electricity (Retail Support) Amendment Rule 2010 (and corresponding provisions for gas)

All	All	As the parties no longer have the ability to enforce their obligations through contract law these rules should be identified as conduct provisions.
6B.1.2	Definition	The definition of ‘Distribution service charges’ is so broad that it could involve any charge that a distributor wishes to invoice a retailer, regardless whether a retailer has the ability to recover those charges. The definition should explicitly exclude new connection charges. New connection charges (such as augmentations and extensions) are currently excluded from network charges and should not be included as part of the network settlement process. For example, the following phrase (from the South Australian Co-ordination Agreement) could be added to the definition “but excludes any amount payable by that customer to a Distributor on account of new connections, augmentation or extensions”.
6B.2.1	Obligation to pay	If the definition of ‘Distribution service charges’ is not amended then this provision should be amended so that Retailers (and hence customers) are only invoiced for charges that are approved and published by the AER.
6B.2.2(a) & (b)	Direct customer billing	This provision allows distributors to initiate direct billing arrangements with the customer. It is the responsibility of a retailer to provide billing services to its customers. Distributors should not provide direct billing arrangements without the consent of the relevant retailer.
6B.2.4(a)	Statement of charges – 10 th business day	Currently, AGL receives its statement of charges at various intervals over the month. The proposed approach will create excessive workloads for network reconciliation at one period each month. This will mean that network invoice payments will be made before disputes can be identified, which would result in manual reconciliations which are slow and costly. Furthermore, many billing disputes between retailers and distributors evolve around charges that are

		<p>not linked to a particular retailer service request or that do not contain sufficient information to permit the retailer to verify the charges and prove to the shared customer (or a court if necessary). Distributors should be expressly prohibited from charging for distributor initiated service orders, unless the service and amount was previously approved by retailer</p> <p>For drafting purposes, clause 7.8 of the Queensland Electricity Standard Coordination Agreement could be a good starting point:</p> <p>“Each statement of distribution charges issued by the distributor to the retailer must contain sufficient information so that to enable the Retailer to either:</p> <ul style="list-style-type: none"> (a) Include that information in the retailers next bill to a particular shared customer; or (b) Reconcile the statement of distribution charges with the amounts included in a retailer’s bill to a particular shared customer.”
6B.2.4(b)	Statement of charges	The format of the statement of charges should not be ‘as reasonably determined by the distributor’ as this can lead to some charges being invoiced regularly through use of system invoices and others submitted as ad hoc hard copy invoices that involve manual processing.
6B.2.5	Time and manner of payment	<p>Distributors currently have different payment due dates ranging from 10 business days to 30 calendar days. Payment within 10 business days of an invoice is based upon a quarterly billing cycle, with a third of customer sites billed in each invoice.</p> <p>In a smart meter environment, with the potential for monthly invoices for all customer sites, the processing of invoices would become unmanageable. Distributors should only be allowed to invoice a third of sites in any one statement, with 5 business days between the issuing of each statement.</p>
6B.3.3(e)	Payments to be made within 3 business days	The obligation to pay the difference between the dispute amount and the undisputed amount within 3 business days is too onerous, particularly given the potential for significant monetary sums to be involved. A period of 5 business days would be more appropriate.
6B.3.5	Advanced notice	Distributors should only be able to charge AER approved charges and provide retailers with, at a minimum, 6 months prior notice before the introduction or amendment of any charges. This will enable retailers the ability to make the appropriate system changes that will enable them to pass through distribution charges to shared customers.

6B.8.3	Application for credit support	Consistent with the proposed changes to 6B.3.3(e) the notice period for the application of credit support should also be 5 days.
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Retail connection Amendment Rules

All	All	The obligations in this section should be identified as conduct rules.
Part E		Consistent with section 1190 of the draft National Gas (Retail Connection) Amendment Rules a section is required to clarify the circumstances in which the distributor is not permitted to charge the customer via the retailer.

Customer Registration and Transfer

Box 6	Transfer on estimate	This provision suggests that the customer's explicit informed consent is required to allow a transfer on a special meter read. However, in the circumstances where the retailer is paying for the special meter read and not charging the customer for the special read, EIC should only be required for the transfer and not the special meter read.
Box 7	Objections –debt & haulage contract	<p>AGL supports the right of retailers to object on the grounds of debt and the absence of a haulage contract.</p> <p>From October 2009 to January 2010 AGL objected to more than 1700 in situ transfers for debt. The ability to object to transfer for debt provides a valuable debt management tool that helps maintain the integrity of the market and keeps costs down for the benefit of all customers. It can also be the impetus for customers in financial difficulty to seek assistance, rather than transferring from retailer to retailer accumulating more debt.</p> <p>Customers transferring in error to a retailer with no haulage contract requires considerable administrative support including off-market settlement to resolve. Allowing objection would assist in preventing this from occurring.</p>

Future Smart Meter Customer Protection

D2	Historical Billing	Any obligation to provide historical billing information to customers free of charge must consider frequency of request, method of delivery, and costs involved. This is recognised in current jurisdictional arrangements.
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D3	Remote disconnection	AGL recognises that it is important that customers are aware that they may be disconnected remotely. However, we do not support any proposal to introduce an additional contact requirement on remotely disconnected customers, who would have already received several warnings as required under the disconnection rules. Similarly, in terms of reconnection, it would be inappropriate and a costly burden to the industry if a site visit and inspection was required before the power was reconnected.
D4	Undercharging Provisions – 3 billing cycles	<p>AGL has previously submitted that undercharging and overcharging provisions are unnecessary, however, AGL have accepted its inclusion in the NECF in order to minimise the number of contentious issues in the development of the framework. AGL considers that as general law is sufficient for banks and other industries, there is no justification for energy specific regulation in this area.</p> <p>Undercharging relates to complex issues (crossed meters, changed addresses) which require an extended time to investigate and remedy, unrelated to the number of billing cycles. It would not be appropriate for smart meters to be subject to a different undercharging provision.</p>

Drafting Issues

Clause	Subject	Issue
205(5) Law	Variation of standing offer prices	This clause limits when the variation of 'the' standing offer prices can occur. As different standing offer prices can be varied at different times it would be appropriate to clarify that the 6 month limitation only applies where the previous variation was of the same particular class of prices.
215(b)	'any other services'	This section appears to be regulating non-energy services as these contracts also appear to be subject to Division 4.
232	Associate and retail marketer definitions	The definition of 'associate' and the phrase 'or an associate of a retailer' in the retail marketer definition are superfluous as any associates of a retailer would be captured by (b) in the retail marketer definition.
401	Definition – relevant matter	Sub-section (a)(vi) of the definition of 'relevant matter' refers to a decision of a distributor or a retailer under Division 3 of Part 7. However, Division 3 of Part 7 exclusively deals with distributors. Accordingly the reference to 'retailer' should be deleted.
906	AEMC Rule Making Powers	It appears that the reference to Part 8 in this section is incorrect
1007	Rule making	The AER must not make 'or amend' a Rule.

Rule 210(1)(c)	Estimations	The word 'where' is repeated and should be deleted.
Rule 210(4)	Estimations	The reference to 209(2) should be to 210(2)
Rule 225(2)	Requirement for Security Deposits	Sub-section (2) should be simplified to prohibit retailers from requesting security deposits from hardship customers.
Rule 251 (1)(d)	Contact with small customers	The word 'advice' should be replaced with the words 'the reason for'.
Rule 605(2)	De-energisation Non-payment under a payment plan	In sub-rules 605(2)(b) and 605(2)(c) reference is made to 'non-payment' under a payment plan. To avoid any doubt that a part payment should not be regarded as payment, the clause should be redrafted to refer to the customer's 'failure to comply' with a payment plan. This would be consistent with the drafting of clause 11.2(3) of the Victorian Retail Code.