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Submitted: communication@esc.vic.gov.au

AGL Energy (AGL) welcomes the opportunity to comment on the Essential Services Commission of Victoria (the Commission) draft Charter of Consultation and Regulatory Practice (draft Charter).

AGL is one of Australia's leading integrated energy companies and largest ASX listed owner, operator and developer of renewable generation. AGL is also a significant retailer of energy, providing energy solutions to over 3.6 million customers accounts throughout eastern Australia. AGL is a customer-focussed business and we endeavour to provide customers with products and services that best meet their diverse wants and needs.

AGL supports the review of the Charter of Consultation and Regulatory Practice and believe the Review is timely with the Commission's significant energy regulatory reform work program.¹ AGL has invested significant effort and time to improve energy customer outcomes. The cornerstone of our work is our \$300m investment in our Customer Experience Transformation program which is already delivering benefits through new products and services including AGL Energy **Essential, one-minute move**. AGL is also playing a leading role in making it easier for customers to compare energy offers through the development of an industry wide price comparator.

The revised Charter will be a key document on the processes and activities the Commission will follow in collaborating with industry, consumer advocacy groups and other energy stakeholders to improve outcomes for Victorian energy consumers in an important period of energy sector regulatory reform.

AGL's comments and feedback on the draft Charter is based on our recent experiences with dealing with the Commission and best practice regulatory consultation and practices we have experienced and observed through our interactions with other Regulators.

The remainder of the submission provides specific feedback on key aspects of the draft Charter and seeks to:

- provide more detail and clarity on how and when the Commission will consult with stakeholders and approach regulatory options;
- offset clear expectations of a regulator's responsibility and clear commitment to meaningful consultation; and
- strengthening the Commission's principles by including detail on the activities the Commission will undertake, and what behaviours stakeholders should expect to observe from the Commission in line with best practice consultation and regulation principles.

¹ ESC Work Plan 2017-18 <https://www.esc.vic.gov.au/wp-content/uploads/2017/11/Our-work-plan-2017-18-1.pdf>



Setting a measurable standard

AGL supports the draft Charter principle that the Commission will be transparent and accountable.

AGL supports a flexible approach to engagement, but believes this principle can be improved by providing more clarity on what the Commission will be accountable to. Best practice consultation is discussed in greater detail below.

Further, the draft Charter states that the Commission will assess the Charter's effectiveness against the key principles, but the principles currently provide no reference point for what the performance measures are or what stakeholders expect from the Commission. There is a disconnect between the headline principles and the statement that follows throughout the Charter, for example -

We will continue to improve the way we engage with stakeholders.

We understand our work can have an impact on the cost of doing business. Our communication will focus on helping others understand our role.

This principle should explain the way in which the Commission will ensure there is an appropriate feedback loop with stakeholders and strive to meet best practice consultation standards.²

Our recent experience with the Commission highlights the need for clear accountable decision-making that is properly informed and consultative. The recent decision on varying retail licences shows a lack of transparency and problematic consultation. The Commission's engagement was a notification of intention to vary AGL's Victorian retail licences, which AGL requested further information on and outlined the need for additional information in making an informed decision based on the long-term interest of Victorian energy consumers. Our request was not acknowledged, and we received no response or other form of engagement prior to the final decision.

The draft Charter principles should clearly outline what standard of behaviour and engagement industry should expect to see from the Commission in such scenarios. This would provide stakeholders with confidence that such a scenario would not occur again and that the Commission would work collaboratively with industry to ensure decisions are robust and transparent.

In summary, AGL believes the draft Charter principles can be improved with greater focus on the reasons and manner for engaging with stakeholders, including raising awareness, testing designs and assumptions, considering other options, when and how Regulation Impact Statements (RIS) will be complete, and defining engagement concepts.³

Finally, to ensure effective governance, the Charter should also provide information on how stakeholders can provide feedback on the Commission's performance in line with these principles. In 2017 the Commission conducted a survey where stakeholders were invited to provide feedback on the Commission's performance. Unfortunately, the Commission did not produce a report that outlined the key themes and recommendations based on Survey responses. To promote both transparency and accountability, AGL believes the Charter should contain information on how the Commission will collect feedback and detail the processes the Commission will follow in responding to the feedback.

² See for example, the Office of Best Practice Regulation in the Best Practice Regulation Guidance Note - <https://www.pmc.gov.au/resource-centre/regulation/best-practice-consultation-guidance-note>

³ Many of these concepts are considered in detail by the Australian National Audit Office. We refer the Commission to their paper *Successful Implementation of Policy Initiatives: Better Practice Guide 2014* - https://www.anao.gov.au/sites/g/files/net3721/f/2014_ANAO%20-%20BPG%20Policy%20Implementation.pdf



Regulatory Approach

AGL is supportive of the overall objective identified by the Commission being 'to promote efficiency and competition in essential services to achieve the best outcomes for Victorian consumers in the long-term.'⁴

However, we are concerned about the repositioning of the draft Charter away from Best Practice principles. Unlike the 2012 Charter, the draft Charter has no reference to those other matters the Commission must have regard to as required under section 8A of the Essential Services Commission Act. These include having regard to matters that effect the industry including efficiency, incentives to long term investments, financial viability and the degree and scop of competition. These are vital to the development of policy options and regulation and acknowledged widely as best practice regulation requirements.

The Australian Government Guide to Regulation sets the definition for regulation as “*any rule endorsed by government where there is an expectation of compliance*”. Given the potential for substantial impacts to both consumers and business from Commission decisions, we would expect the Charter to reference better regulation practices as is outlined in the current Charter, as a minimum. These references including *being efficient by minimising the cost of our regulatory activities* and *seeking to ensure that the costs of regulation do not exceed the benefits*, as well as having a commitment to *implementing best practice regulatory approaches consistent with the Victorian Guide to Regulation*⁵

AGL believes it is imperative to reference best practice regulation, especially as the draft Charter states the Commission will use regulation to create effective and efficient incentives for businesses to perform. While this is not problematic in isolation, the draft Charter's drafting suggests that regulation will be used to improve outcomes for customers and does not consider or mention other matters of importance, including best practice. This principle needs to be balanced with best practice consultation principles to ensure that alternative policy options are considered that may be more appropriate than regulation for both consumers and retailers. Indeed, there is evidence that behavioural economics is an important consideration when developing policy options and that consultation is essential to identifying the most efficient and effective policy option which is not always regulation.

The Payment Difficulties Framework (PDF) and retail variation decisions highlight the uncertainty for stakeholders in how the Commission consider alternative policy options and when and how the Commission will follow best practice regulation requirements. Both PDF draft decisions showed a lack of consideration in the process mapping of a customer's experience and would have resulted in worse outcomes for some consumers.⁶ These matters could have been addressed before the release of the draft decision if there was greater engagement and behavioural testing of theoretical solutions with consumer groups and industry on the Commission's policy direction.

Both of these recent examples also highlight the need to clearly explain the use of RIS, as many stakeholders expected a RIS to be completed given the wide-ranging impacts on consumers and the expectation of compliance for retailers.

Better Practice Consultation

Public participation is a critical input to regulatory development and effective strategies, programs and projects. The Victorian Auditor-General's Office (VAGO) acknowledges that failing to adequately engage the

⁴ Draft Charter page 1 <https://www.esc.vic.gov.au/wp-content/uploads/2017/12/draft-charter-of-consultation-and-regulatory-practice-20171214.pdf>

⁵ Charter of Consultation and Regulatory Practice – 2012, pp. 25 and 48-49 <https://www.esc.vic.gov.au/wp-content/uploads/esc/d1/d1757189-87ce-4af5-b24e-2e460030d75e.pdf>

⁶ For example, the amount of debt accumulated before Assistance was accessible, or the confusing application of payment plans for arrears and concurrent billing which would also be subject to arrears/collections.



public risks alienating the community and creating negative impacts through poorly informed and implemented decisions.⁷

AGL believes the Commission's Charter should identify how it utilises different types of public engagement and consultation methods to make the best use of the expertise of stakeholders and develop the most appropriate policy solution. The Charter should also identify the importance of cross-government engagement to ensure they are aware of decisions that may also impact the industry, or timelines of large projects.

The revised Charter is an opportunity for the Commission to follow best practice consultation principles endorsed and followed by other government bodies including the Victorian Auditor-General Office, Office of Best Practice Regulation, Essential Services Commission of South Australia and many others. For example, in their stakeholder engagement framework, the AER use the International Association for Public Participation (iap2) Public Participation Spectrum to set a standard of themselves that stakeholders can expect to observe in their engagement activities.⁸

ESCOSA's Charter states that their work exists within a broad context including social, state development and environmental policies but the work is also guided by financial, competition and economic efficiency considerations, as required by the ESC Act.⁹ ESCOSA's Charter also identifies the benefits of a systematic approach to consultation that informs and shapes policy. This is demonstrated in the way that ESCOSA proactively engage and consult with their stakeholders on key matters of importance including the Inquiry into the licensing arrangements for generators in South Australia.¹⁰ All documents relevant to the lifecycle of the policy are publicly available for review and reference making the final decision more accessible and transparent.

The Commission should use the Charter as an opportunity to highlight the importance of two-way consultation. For example, OFGEM acknowledge the value of two-way consultation and how considering stakeholder's views early into the process stimulates debate and helps ensure all policy options are explored.¹¹ OFGEM also consult where there is an explicit statutory requirement to do so as well as where there are legitimate expectations of consultation (e.g. where a radical change is proposed, or many people are likely to be affected) and failure to consult would result in *conspicuous unfairness*.

One practice we have observed by other bodies, such as The Australian Energy Market Operator (AEMO), is publishing a summary of stakeholder views and how these have been considered in the decision-making process. AEMO often develops information for stakeholders, usually in table format, that allows stakeholders to understand the issues raised by various stakeholders and provides information on AEMO's consideration of those matters.¹² We believe that the Commission should include this in future consultation processes to improve the transparency and openness of their decision-making. This would include publishing all

⁷ VAGO – better practice guide 2015 <https://www.audit.vic.gov.au/sites/default/files/20150130-Public-Participation-BPG.pdf>

⁸ Australian Energy Regulator Stakeholder Engagement Framework <https://www.aer.gov.au/publications/corporate-documents/aer-stakeholder-engagement-framework-2017>

⁹ ESCOSA Charter of Consultation and Regulatory Practice 2014 <http://www.escosa.sa.gov.au/ArticleDocuments/567/20140910-Corp-CharterConsultationRegulato.pdf.aspx?Embed=Y>

¹⁰ Inquiry into the licensing arrangements for generators in South Australia - <http://www.escosa.sa.gov.au/projects-and-publications/projects/inquiries/inquiry-into-licensing-arrangements-under-the-electricity-act-1996-for-inverter-connected-generators/inquiry-into-licensing-arrangements-under-the-electricity-act-1996-for-inverter-connected-generators>

¹¹ OFGEM - <https://www.ofgem.gov.uk/consultations/consultations-policy>

¹² Example table of issues raised by participants for Embedded Networks consultation <http://www.aemc.gov.au/Rule-Changes/Embedded-Networks/Initiation/Proposal-documents/Summary-of-stakeholder-issues>



submissions on their website except where information has been submitted as confidential¹³. Reasons for decisions should also be published so that stakeholders have access to the same information that led to the final decision.

AGL looks forward to working with the Commission to develop a Charter of Consultation and Regulatory Practice that provides clear principles, rules of engagement and performance reporting. The Charter will play a critical role ensuring the Commission works closely with stakeholders to implement critical energy regulatory reforms that are relevant and contemporary, which promote an efficient and effective energy sector that promotes long term consumer benefits.

Should you have any questions or comments, please contact Kathryn Burela on (03) 9273 8654 or kburela@agl.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Con Hristodoulidis', with a long horizontal flourish extending to the right.

Con Hristodoulidis

Senior Manager Regulatory Strategy

¹³ See for example the Public Registers – information provided by stakeholders is published on the register unless clearly identified as confidential.