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Danielle Staltari
Director
Adjudication
Australian Competition and Consumer Commission

Submitted by email to: adjudication@accc.gov.au

16 June 2020

Dear Danielle

Clean Energy Council – application for revocation of authorisations A91495 and A91496 and substitution of AA1000514 – interested party consultation

AGL Energy (**AGL**) welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (**ACCC**) interested party consultation regarding the Clean Energy Council's (**Applicant**) application for revocation of authorisations A91495 and A91496 and substitution of AA1000514 (**reauthorisation**).

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator, and developer of renewable generation. AGL is also a significant retailer of energy, providing energy solutions to around 3.72 million customers throughout eastern Australia. We have delivered multiple trials and projects that draw upon customers' distributed energy resources (**DER**). Our current DER product and service offerings include our Virtual Power Plant¹, our retail offer for electric vehicle owners² and our Peak Energy Rewards Managed for You program.³ AGL is a current signatory to the CEC's Solar Retailer Code of Conduct (**Solar Retailer Code**).

AGL's position

AGL is generally supportive of the ACCC's reauthorisation of the Solar Retailer Code. We agree with the Applicants that the Solar Retailer Code plays an important role in improving consumer protections and promoting consumer trust for the purchase of solar photovoltaic (**PV**) systems. We would therefore support its continued operation and smooth transition towards the New Energy Tech Consumer Code (**NETCC**) over the next three years.

In order to ensure the Solar Retailer Code continues to fulfil its stated aims while providing fair administration for its signatories, we recommend the ACCC consider the potential effect of a range of amendments proposed by the Applicants. We elaborate our views below.

¹ For further information regarding AGL's Virtual Power Plant, please refer to https://www.agl.com.au/solar-renewables/solar-energy/bring-your-own-battery?cde=sem-r&gclid=EAlalQobChMlicjKmKuP5wIVyjUrCh2eXwvVEAAYASAAEgLRPD_BwE&gclsrc=aw.ds.

² See further, AGL EV Plan, available at <https://www.agl.com.au/electric-vehicles>.

³ See further, AGL Peak Energy Rewards Managed for You, available at <https://www.agl.com.au/solar-renewables/projects/peak-energy-rewards-managed-for-you>.



Public benefits arising from the Solar Retailer Code

We believe the Solar Retailer Code complements current consumer protection requirements (i.e. the National Energy Consumer Framework (**NECF**) and Australian Consumer Law (**ACL**)) by reducing information asymmetry for consumers and requiring minimum and consistent standards for sales practices. Accreditation under the Solar Retailer Code has also been incorporated into government subsidy schemes to provide additional reputational assurance with respect to scheme participants.⁴

Applicant's proposed amendments to the Solar Retailer Code

We are supportive of the Applicant's proposed amendments, which aim to provide additional clarity on clauses, enhance the Code Administrator's monitoring and sanctioning capabilities, and update references to outdated terminology, practices, and legislation.

However, we provide the following feedback on certain re-drafted clauses:

1. *Point of contract – site specific full system design and estimated energy yield*

The proposed amendments to clause 2.1.6 (f) further prescribes the obligation to provide a site-specific full system design at point of contract, requiring sketch or diagram *with measurements* and array orientation and tilt *in degrees*.

While we agree that an installation plan should be provided (that considers design issues including safety, position, and impacts to efficiency), we consider that the prescription around measurement may not be practical in many circumstances and may increase operating costs for signatories. In the context of highly technical installations, signatories may be required to consider a range of issues potentially outside of their control, including structural and civil engineering matters. This may complicate the ability of signatories to provide accurate measurements as part of the plan and entail substantial additional cost.

We recommend that clause 2.1.6(f) remain in its current form. This would also align with the draft equivalent provision under the NETCC which requires a signatory's quote include *a site-specific installation design or plan (a sketch or diagram is acceptable) including any configuration or positioning issues and how the New Energy Tech will integrate with other New Energy Tech you may have* (without additional prescription around measurement).

We also note that Clause 2.1.6 does not currently enable signatories to recoup any of the costs associated with developing a site-specific full system design and estimated energy yield, even in circumstances where a customer chooses not to proceed. By contrast, the draft NETCC would enable signatories to recoup a *non-refundable agreed fee* (under clause 17 (b)). We believe it would be appropriate to enable signatories to recoup reasonable costs associated with this work, particularly in the context of highly technical installations. We note that in other industries, such as landscaping, these costs may be recouped even if the customer chooses not to proceed (to reward the service provider for their time, effort and expertise required in preparing the plan).

2. *Signatories must not act in a way that might bring the Code into disrepute – Severe breach rating*

Clause 2.4.23 requires that *signatories must not act in any way that might bring the Code into disrepute*. The proposed amendments to the breach matrix include the addition that *signatories must not act in a way that*

⁴ See for example Government of South Australia, Home Battery Scheme, available at <https://homebatteryscheme.sa.gov.au/become-a-provider>.



might bring the Code into disrepute with a corresponding *severe* breach rating, that would empower the CEC as Code Administrator to require an independent audit at the signatory's cost and enable the CEC to list the breach on its website.

We consider that the Solar Retailer Code should clarify the types of conduct that would contravene Clause 2.4.23, and how that conduct might differ from conduct contravening compliance with the Code General Rules and Standards when selling, designing and installing solar PV systems (provided under clause 2.4.21). The current formulation of Clause 2.4.23 provides broad interpretational discretion to the CEC as Code Administrator that may not be justified. As a voluntary industry code and to ensure appropriate due process in its administration, the Solar Retailer Code should provide appropriate transparency with respect to the requirements signatories are agreeing to. In the absence of further clarity on the types of conduct that would contravene 2.4.23, a *severe* breach rating may not be appropriate.

Transitioning towards the New Energy Tech Consumer Code

We agree with the Applicant that the Solar Retailer Code should be authorised for a period of three years, to enable time to transition towards the establishment of the NETCC and for signatories of the Solar Retailer Code to become signatories of the NETCC. In our view, this would enable a seamless transition whilst ensuring a consistent customer experience in the intervening period.

While the Solar Retailer Code only addresses solar PV, the NETCC will support a consistent customer experience across a much broader market. In line with the COAG EC objectives in requesting the development of the NETCC⁵, the function of the NETCC is primarily to build customer confidence in DER products, systems and services, thereby encouraging greater and faster participation in the emerging DER market. We believe the NETCC strikes the right balance between consumer protections and the promotion of innovation.⁶ We therefore support its eventual replacement of the Solar Retailer Code.

Should you have any questions in relation to this submission, please contact Kurt Winter, Regulatory Strategy Manager, on [REDACTED] or [REDACTED].

Yours sincerely

[REDACTED]

Con Hristodoulidis

Senior Manager, Regulatory Strategy

⁵ See further, COAG EC Energy Market Transformation Bulletin No 05 – Work Program Update (3 August 2017), available at <http://www.coagenergycouncil.gov.au/publications/energy-market-transformation-bulletin-no-05—work-program-update>.

⁶ AGL was nominated by the AEC to represent energy retailers on the BTM Working Group and contributed towards the development of the Consumer Code through formal submissions, technical lead support and ongoing engagement with the BTM Working Group.