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Mr Paul Baxter
Senior Commissioner
The Independent Competition and Regulatory Commission
Level 7 Eclipse House
197 London Circuit
CIVIC ACT

Dear Mr Baxter

Issues paper on Retail Prices for Non-Contestable Electricity Customers

AGL¹ welcomes the opportunity to provide comments on the 'Issues Paper on Retail Prices for Non-Contestable Electricity Customers' by the Independent Competition and Regulatory Commission ("Commission").

AGL believes that competition in the ACT electricity market is sufficiently effective to enable the removal of price controls from July 2006. The Minister has the capacity at any time to issue a reference for the Commission to review prices should it be necessary in the future.

AGL strongly supports market based retail energy pricing and seeks the removal of retail price regulation at the end of the current price paths. Competition is the best mechanism for producing efficient prices, providing the price signals for new investment and providing incentives for the most efficient use of energy.

Issues of financial hardship are not effectively addressed by regulating energy prices. Price regulation and assistance to customers in financial hardship should be managed as two separate issues. Effective and efficient assistance to customers in financial hardship requires adequate, well targeted and transparent community service obligations.

AGL is of the view that the removal of retail price regulation will:

- Ensure cost reflective prices that will:
 - Promote private sector investment in new generation and retail supply;
 - Promote appropriate demand management and energy efficiency measures which will assist in reducing the need for new investment, and reducing greenhouse gas emissions;

¹ AGL represents the retail businesses of AGL.

- Limit the possibility for future significant price increases for customers to facilitate the required investment or participation in the energy market;
- Reduce significant regulatory costs of price reviews arising from the complexity and analysis required under current arrangements; and
- Enable the government and industry to provide targeted assistance to customers in financial hardship.

Our view is consistent with assessments leading to Recommendation 10.5 of the Productivity Commission's Final Report on the Review of National Competition Policy Reforms:

"In retail infrastructure markets, once effective competition has been established, regulatory constraints on prices should be removed. Ensuring that disadvantaged groups continue to have adequate access to services at affordable prices should be pursued through adequate, well targeted and transparent community service obligations (or other appropriate mechanisms), that are monitored regularly for effectiveness."

AGL believes that the current retail price paths in jurisdictions that have introduced full retail contestability should expire at the end of the price path period, as effective competition will have been achieved. AGL believes that by July 2006, 3 years since the introduction of full retail contestability, the ACT market will have achieved workable competition that provides the necessary pricing discipline required to facilitate the removal of regulation. AGL notes the recognition by the Commonwealth and the jurisdictions that retail energy prices should not be regulated in markets where effective competition exists. The Ministerial Council of Energy ("MCE") is understood to be considering a process for the assessment of the effectiveness of competition in the different jurisdictions and facilitating the removal of retail price controls.

We support this energy market reform initiative and urge the Commission to ensure that its decisions are adaptable to any framework established as part of the development of the national regulatory framework for distribution and retail.

AGL is of the view that the following considerations are important in the assessment of effectiveness of competition in jurisdictions that have introduced full retail contestability:

- Identification of market failures or barriers to competition (as opposed to proving that competition is effective);
- Establishment of a program to correct or remove the impediments to effective competition or causes of market failures;
- Implementation of a light-handed pricing regime that achieves price stability but allows an expeditious transition to market based prices; and
- Implementation of targeted programs to assist customers in financial hardship that reflects a shared responsibility between the industry, the customers, governments and welfare and community groups, consistent with recommendation of the Productivity Commission.

However, should the Commission determine that competition is not yet effective to facilitate the removal of price controls then we believe that the Commission should give consideration to:

- Identifying the barriers to effective competition (market failures), and consider programs to address those failures; and

- Adopting a light-handed approach to regulation to expedite the subsequent transition to market based prices and the removal of the regulation of prices.

AGL's detailed comments are contained in the following attachment. Please contact Carol Lydford, Manager Regulatory Development on 02-9921 2511 if you wish to discuss any aspect of our submission or require any additional information.

Yours Sincerely,

Sean Kelly

General Manager Retail Regulation

AGL Submission on Retail Prices for Non-Contestable Electricity Customers

Terms of Reference for the Review

With reference to our comments above, we are pleased that under the terms the reference issued by the Treasurer, the Commission will undertake the following:

- consider the competitive state of the market for the supply of electricity to franchise customer as the basis for determining the continuing need for a price direction;
- if, after considering these and other issues raised in submissions to the Commission, it is found that there is sufficient competition in the electricity retail market in the ACT, it may be concluded that there is no need for the continued existence of a regulated franchise tariff; and
- if it is concluded that the market is not sufficiently competitive, the Commission shall:
 - determine the form of regulation to be adopted; and
 - provide a price direction and recommend the duration of any price direction to operate from 1 July 2006.

Assessing the effectiveness of competition in ACT

The Commission has identified a number of measures² in its considerations for assessing the effectiveness of competition in the ACT market. The metrics of the assessment of effectiveness of competition can be imprecise and somewhat arbitrary, therefore we urge the Commission to exercise caution in interpreting those measures.

AGL's view of the necessary features to assess that a market exhibits effective or workable competition is consistent with those identified by KPMG, in its report on the Effectiveness of Competition and Retail Energy Price Regulation, which are³:

- Customers are aware that they have a choice;
- Customers know how to exercise choice and it is easy to do; and
- Choices (ie. offers) are being made available to them.

Full retail contestability was introduced in the ACT market in July 2003 followed by significant communication campaigns by the local retailer and the Commission. Information on competition in the ACT energy market is available on retailer, ACT government and the Commission's websites.

We understand that three retailers are very active in the small customer market with vigorous marketing activity increasing the awareness and the ease of choice for customers. In addition there are 11 other licensed retailers obviously contemplating entering the ACT electricity market and two other licence applications are pending.

The ACT electricity market has no apparent barriers to entry, and in our assessment, customer awareness on choice and ease with which they can change retailers or accept the incumbent

² *ibid*, p. 4

³ KPMG "*The Effectiveness of Competition and Retail Energy Price Regulation*", A discussion paper prepared by KPMG for the Energy Retailers Association of Australia, December 2003, p.4

retailers product offers is high. Therefore, we believe that the ACT market has reached a workable level of competition and that there should be no further regulation of retail prices. Under Section 15 of the Independent Competition and Regulatory Commission Act 2000, the Minister can at any time provide reference to the Commission for a review of ActewAGL prices should it consider it to be in the public interest to do so.

Transitional Arrangements if deemed necessary

In the event that the Commission determines that effective competition has not been achieved and that transitional price regulation is necessary, then AGL strongly believes that a light handed approach should be adopted to facilitate the transition to market based prices.

AGL is of the view that where transitional price regulation is maintained, a Voluntary Transitional Pricing Agreement ("VTPA") such as that implemented in the NSW gas market, should be considered an appropriate tool to effectively and efficiently allow for light handed regulation, and that an agreed timetable is established to undertake periodic reviews to assess the competitive state of the market to allow for the removal or retail price regulation in a timely manner.

In addition, if competition is deemed not to be effective, it is critical that the Commission identify the market failures that have led to its conclusion, so that those market failures may be corrected to achieve effective competition. Consideration should also be given to establishing a program to address the market failures to expedite the achievement of effective or workable competition.

Customer safety net issues

The Commission has raised a number of issues with respect to customer protection in the absence of regulated retail prices. In the consideration of customer protection it is important that "price protection" is separated from the general customer protection matters, such as obligation to supply, procedures during payment default, customers in hardship etc.

Removal of price controls will not impact on a customers rights and obligations (customer protection provisions) under the Consumer Protection Code and voluntary measures such as retailers hardship policies adopted by the incumbent and new entrant retailers.

AGL notes that retail prices for gas have not been regulated since July 2004. ActewAGL, the incumbent retailer, has maintained a competitive unregulated default price for customers who choose not to participate in the competitive market or are between market contracts. AGL is not aware of any customer protection issues arising for gas customers and will strongly support the adoption of the same approach for electricity.

As outlined above the protection of customers in financial hardship will be more effectively achieved through adequate, well targeted, and transparent community service obligations that currently being administered under the Consumer Protection Code by retailers and the Essential Services Consumer Council.