

Mr Lew Owens
Chairman
Essential Services Commission of South Australia
51 Pirie Street
Adelaide SA 5000

Dear Mr Owens,

Draft Price Determination

AGL welcomes the opportunity to provide further comments on the Draft Price Determination released by the Commission on 30 November 2004.

This submission focuses primarily on the structure and process of the Draft Price Determination. AGL will submit a separate response on the merits of the Commission's decisions and reasons for the proposed level of standing contract prices outlined in the Commission's Draft Final Report on the Inquiry into the Standing Contract Prices.

AGL acknowledges the Commission's challenging task of preparing a Price Determination which provides a level of certainty in standing contract prices, which caters for a range of factors which directly impact on those prices and which achieves the objectives placed on the Commission in making such a Price Determination.

AGL provides the following comments to inform the Commission of those aspects that AGL considers can be amended to provide an improved Price Determination, which affords greater certainty to the price path. The attached schedule provides details of proposed changes to the specific clauses of the Draft Price Determination. In summary, the key elements of AGL's comments are that AGL:

- notes the Commission's desire to provide transparency to the price alteration process by disclosing statements lodged. AGL seeks the commission's assurances that commercially sensitive information will be protected from disclosure under such arrangements;
- acknowledges the Commission's desire to provide AGL with additional rights of review pursuant to clause 1.10. These review rights can be improved by expanding the grounds for review and clarifying the Commission's obligation to undertake such review;
- recognises that the derivation of the annual alteration of prices is dependent upon a range of variables including customer numbers, customer consumption and consumption by tariff component. AGL considers that there is merit in defining these variables and the basis for deriving forecasts and estimates of these variables to provide improved clarity of the basis for compliance with schedule 2 of the Price Determination;

- notes the if the Commission does not accept/approve AGL's submission for an annual price change then the Commission may determine prices based on its own forecasts and estimates. The Draft Price Determination places no requirement on the Commission to provide reasons for non-acceptance of AGL's application or to explain the basis of the Commission's substitute estimates. Indeed, the Commission is only required to provide AGL with a schedule of revised standing contract prices. AGL contends that this is inconsistent with the general nature of the Commission's Price Determination powers where the Commission is required to provide reasons for its decisions;
- understands that while it is not the intent of the Commission to preclude an annual price change in accordance with the price path determined, it is possible for the situation to arise that no price change occurs. This situation could arise if the Commission disallowed AGL's application and the Commission did not exercise its discretion to substitute prices. AGL suggests that the substitution provisions of the Draft Price Determination should require the Commission to make a substitution in this situation and publish reasons;
- acknowledges the Commission's recognition that there are a range of costs that AGL has the potential to incur which are beyond the control of AGL and which cannot be determined at this time. The Commission proposes that these costs be treated as passthrough items under the Draft Price Determination. AGL strongly supports the passthrough events included in the Draft Price Determination but considers that there are several additional items which should be treated as passthrough costs:
 - regulatory change event. The definition should be extended to fully cover all situations that may arise;
 - market charges event should be included in the Price Determination. Market charges such as NEMMCo fees are beyond AGL's control and have real prospect of change. Recent industry discussions on future national B2B (business to business) arrangements have raised the likelihood that such costs will be recovered through new or revised NEMMCo market fees charged to market participants including retailers such as AGL;
 - similarly, additional licence fees or levies (in excess of current licence fees paid to ESCOSA) could be imposed on AGL as a result of the commencement of operations of the Australian Energy Regulator (AER) particularly during the transition period; and
 - force majeure (FM) event clause should be included. AGL notes the Commission's decision on wholesale electricity costs excludes AGL's allowance for risks that incorporated costs of FM events up to a value of \$2 million. AGL believes that an appropriate pass through should be provided for FM events. AGL understands that the Commission is considering whether FM related events be treated as special circumstances under the Electricity Act rather than as a pass through event. AGL requests formal advice of the Commission's decision on this matter.

- submits that the process for passthrough events be as follows:
 - AGL submits an application for a passthrough event including the basis for the quantum, timing and application of the passthrough to customers
 - The Commission would assess the application to verify the passthrough event falls within the allowable passthrough events under the Price Determination (without reference to materiality), to satisfy itself that the amount of the passthrough is justified and the appropriateness of the timing and application of the passthrough as proposed by AGL.
- understands that the Commission desires to limit the number of price changes and is concerned that without materiality criteria numerous passthrough changes could be sought. AGL considers that this concern could be addressed by establishing a cumulative threshold for passthrough events (\$500,000) which must be reached before prices may be altered during a regulatory period. Any cumulative passthroughs below this threshold would then be incorporated into the annual alteration of prices. This would also address the Commission's concern regarding materiality.
- notes that the Commission will amend schedule 1 to reflect the current structure of AGL's standing contract prices and assignment principles.

Should you require further clarification of the above matters or of the details in the attached schedule please contact me on (08) 8299 5149.

Yours sincerely,

Sean Kelly
General Manager Retail Regulation

Paragraph No.	Matter for consideration	Comment
General Comments		
1.10.5 2.6.3 3.2.3 3.3.3 4.3.3 5.2.3 5.3.1(e)	Protection of Confidential Information.	AGL seeks assurance within the Determination that confidential and commercially sensitive information included in a statement submitted to the Commission will be protected from disclosure and will not be published.
Chapter 1 – General		
1.10	References to "determination".	As any decisions made by the Commission under the Determination cannot be said to be determinations AGL proposes that references to "determination" throughout this clause can be deleted.
1.10.2	Consistent grounds of review.	AGL proposes that the grounds for review should be consistent with those on which AGL may seek a review under Part 6 of the Essential Services Commission Act which are not limited.
1.10.5	Request for third party submissions.	<p>AGL does not understand the purpose of availing third parties with the opportunity to provide input into a review of a decision made by the Commission particularly given that:</p> <ul style="list-style-type: none"> • the rules governing the making of the decision as set out in the Determination do not permit third parties to submit information to the Commission before the decision the subject of the review is made; and • the information the Commission is to take into account as set out in the body of the Determination does not include material presented to the Commission by third parties. <p>This clause could be amended to delete 1.10.5 (b) and AGL notes that Clause 1.10.10 would also require a consequential amendment to remove the references to submissions by third parties.</p>
1.10.6	Staying the operation of decisions.	AGL brings to the Commission attention that this clause would appear to be inconsistent with section 35A(4) of the Electricity Act and consequently may be required to be deleted.

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Chapter 2 - Standing Contract Price		
2.4	Reference to agency arrangement.	AGL queries whether it is necessary to include the words "as agent for ETSA Utilities", as the basis on which distribution charges are passed through is established elsewhere. If these words are deleted, the clause will not require amendment if a straight-line arrangement is implemented during the period of the price determination.
2.5.3	Basis of assigning tariffs.	AGL submits that "load and connection characteristics" are relevant to the assignment of distribution tariffs but not to the assignment of retail tariffs. Retail tariff assignment is on the basis of the criteria applicable to those tariffs as set out in clauses 2.5.1 and 2.5.2. AGL suggests that sub-paragraph (a) could be deleted.
2.6.2	Revised timeframes	The CPI for March 2005 will be released by the Australian Bureau of Statistics on Wednesday 27 April 2005. This effectively results in AGL having 5 or 6 business days to calculate the new average revenue cap and the standing contract tariffs for the subsequent regulatory period. AGL submits that 40 business days be changed to 30 business days with a consequential adjustment made to the 25 business day timeframe in clauses 2.7.3 and 2.7.4 to enable AGL to meet requirements of clause 1.8 and to have sufficient time to undertake system and information collateral changes.
2.7.1 and 2.7.2	Price path certainty requires this clause to be drafted in the positive.	<p>AGL submits that clauses 2.7.1 and 2.7.2 should be merged and provide that the Commission will approve a statement submitted by AGL if the Commission is satisfied that the statement complies with the matters specified in sub-clauses (a) to (c) of clauses 2.7.1 and 2.7.2.</p> <p>AGL submits that sub-clause 2.7.1(b) would be improved if it included the criteria the Commission will apply when deciding whether or not forecasts or estimates included in a statement submitted by AGL are satisfactory to the Commission. AGL submits that compliance with clause 2.10 should be the criteria for this purpose. AGL suggests that clauses 2.7.1 and 2.7.2 be merged and amended as follows:</p> <p>2.7.1 <i>The Commission will not approve a statement given by AGL SA under clause 2.6.1 if <u>satisfied that</u>:</i></p> <p class="list-item-l1">(a) <i>the statement does not demonstrates compliance of the proposed retailer tariffs or retailer tariff components with this Chapter 2 and the relevant principles and</i></p>

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		<p>(b) formulae in the Price Path Schedule; or a the forecasts or and estimates included in the statement comply with clause 2.10.1 is not satisfactory to the Commission; or</p> <p>(c) a no retailer tariff component exceeds the maximum price which may be set for that retailer tariff component in accordance with this Chapter 2 or the Price Path Schedule;</p> <p>(d) the proposed revenue outcomes are consistent with the price path formula set out in the Price Path Schedule;</p> <p>(e) the individual retailer tariffs are consistent with the tariff rebalancing formula set out in the Price Path Schedule; and</p> <p>(f) the individual retailer tariff components are consistent with the requirements of clause 2.3.2.</p>
2.8.1	Reasons for not approving a statement.	<p>AGL submits that the Determination should require the Commission to provide AGL with a statement of reasons if it does not approve a statement submitted by AGL. This would enable AGL to take the Commission's views into account when preparing a replacement statement.</p> <p>AGL should also be entitled to submit a replacement statement whenever the Commission has not approved AGL's initial statement. This is achieved by replacing "may" with "will" in the second line of this clause.</p>
Chapter 3 – Altering, Introducing and Closing Standing Contract Prices		
3.2.2 and 3.3.2	Revised timeframes.	AGL repeats the comments made on clause 2.6.2 above in relation to the time the relevant CPI data becomes available to AGL. AGL submits that the timeframe of at least 60 days prior to the commencement of the regulatory period be reviewed to allow sufficient time to prepare a statement after the relevant CPI data is published. AGL submits that consequential adjustments should also be made to the timeframes in clauses 3.4.2 and 3.4.3.
3.2.4(c) and 3.3.4(c)	Application of new retailer tariff.	If AGL opens a new tariff or closes an existing tariff, AGL should be able to start billing the new or newly assigned tariff as soon as it is implemented. The change in tariff rates for customers should be dealt with on a pro rata basis in accordance with the terms of the standing contract as is the case

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		<p>with the existing approach to tariff changes.</p> <p>If this obligation were not removed, AGL will incur significant additional compliance costs to implement changes to its billing system.</p>
3.3.2	Delete "new" in the first line.	
3.4.1	Price Path certainty.	<p>AGL submits that the following amendments be made to this clause to provide greater clarity and certainty in relation to the Commission's decisions on the opening and closing of tariffs:</p> <p>3.4.1 <i>The Commission will only approve a statement given under clause 3.2.2 or clause 3.3.2 if:</i></p> <ul style="list-style-type: none"> (a) <i>the statement demonstrates compliance of the proposed retailer tariffs and retailer tariff components with the relevant principles and formulae in the Price Path Schedule; and</i> (b) <i>all the forecasts and estimates included in the statement are satisfactory to the Commission comply with clause 3.5.1; and</i> (c) <i>no retailer tariff component exceeds the maximum price which may be set for that retailer tariff component in accordance with clause 2.3.2 Chapter 2 or the Price Path Schedule; and</i> (d) <i>no retailer tariff exceeds the maximum price which may be set for that retailer tariff in accordance with the principles and formulae set out in the Price Path Schedule.</i>
3.4.4	Reasons for not approving a statement.	<p>AGL submits that the Determination should require the Commission to provide AGL with a statement of reasons if it does not approve a statement submitted by AGL. This would enable AGL to take the Commission's views into account when preparing a replacement statement.</p> <p>AGL should also be entitled to submit a replacement statement whenever the Commission has not approved AGL's initial statement. This is achieved by replacing "may" with "will" in the second line of this clause.</p>
Chapter 5 – Regulated Pass Through		
General	Threshold limit on pass through.	AGL SA submits that it is appropriate to introduce a threshold of \$500,000 before it will pass through pass through amounts. Pass through amounts falling under \$500,000 would not actually be

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		applied to standing contract customers until such time as the amounts in aggregate equal or exceed \$500,000. Any unapplied pass through would be applied at the time of the next annual tariff adjustment.
General	Materiality threshold.	AGL submits that "materially" should be removed from the definition of each pass through event, and that standing contract customers are sufficiently protected by the introduction of a \$500,000 threshold limit on the application of pass throughs as set out above.
5.1.1(a) Chapter 6 - Definition of "change in taxes event".	Definition of "relevant tax".	<p>This definition should not be limited to changes in taxes imposed by any Authority of the Commonwealth of Australia. This definition should include taxes imposed by any State or Territory government or government authority.</p> <p>Sub-paragraph (c) of the definition of "relevant tax" should be deleted.</p>
5.1.1(b) Chapter 6 – Definition of "regulatory reset event".	Definition of "regulatory reset event".	<p>AGL submits that this definition should be amended to read as follows:</p> <p>"regulatory reset event" means:</p> <ul style="list-style-type: none"> (a) <i>a material change in the obligation imposed on AGLSA to offer to retail electricity to small customers under section 36AA of the Electricity Act 1996; or</i> (b) <i>a decision made by the National Electricity Code Administrator Limited, NEMMCO, the Australian Competition and Consumer Commission, the Commission, the Electricity Supply Industry Planning Council, the Australian Energy Market Commission, the Australian Energy Regulator or any government, government authority, or other authority in the electricity industry or any amendment to any law governing or impacting upon the provision of standing contracts that has the effect of:</i> <ul style="list-style-type: none"> (i) <i>imposing a set of minimum standards on AGL SA in respect of the provision of</i>

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		<p><i>standing contracts that are different from the set of minimum standards imposed on AGL SA in respect of the provision of standing contracts at the commencement date;</i></p> <p>(ii) <i>requiring AGL SA to undertake any activity as part of the provision of standing contracts in addition to those activities required to be undertaken as part of the provision of standing contracts as at the commencement date; or</i></p> <p>(iii) <i>substantially varying the manner in which AGL SA is required to undertake any activity forming part of the provision of standing contracts as at the commencement date,</i></p> <p><i>as a result of which AGL SA incurs higher or lower costs in providing standing contracts than it would have incurred but for that event.”</i></p>
5.1.1	Inclusion of "Force Majeure Event".	<p>AGL submits that the following definition should be given to "Force Majeure Event":</p> <p>"force majeure event" means an event beyond the control of a generator registered with NEMMCO and operating in the South Australian region the effect of which is to prevent the generator from generating to the extent that it otherwise could but for the occurrence of that event, as a result of which AGL SA incurs higher or lower costs in providing standing contracts than it would have incurred but for that event.</p>
5.1.1	Inclusion of "Market Charges Event".	<p>AGL submits that the following definition should be given to "Market Charges Event":</p> <p>"market charges event" means a change in any fees or charges paid or payable to any authority or regulatory body in the electricity industry as a result of which AGL SA incurs higher or lower costs in providing standing contracts than it would have incurred but for that event.</p>
5.6.1 Chapter 6 -		AGL does not understand the difference between sub-clauses (a) and (b) of this definition and

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Definition of "positive pass through amount"	Payment by standing contract customers.	submits that sub-clause (a) could be deleted.
5.6.2 Chapter 6 - Definition of "Negative pass through amount"	Payment to standing contract customers.	Under what circumstances would AGL SA be required to pay its customers, as opposed to crediting their accounts? Sub-clause (a) of this definition could be deleted.
Chapter 6 – Definitions and Interpretation		
6.2.5	Specific reference should be made to the proposed new National Electricity Rules as a replacement of the National Electricity Code.	
Schedule 1 – Initial Standing Contract Price Schedule		
1.A	Tariff structure.	AGL has been advised by the Commission's officers that the initial standing contract price schedule will be updated to reflect AGL SA's current tariff structure which uses rates based on c/day and not \$/qtr.
1.B	Tariff assignment principles and Notes.	AGL has been advised by the Commission's officers that the Standing contract price assignment principles and Notes to the tariffs will be updated to reflect AGL's current tariff structure and the Notes to the current tariffs.