



**15 June 2012**

**Mr Phil Waren**  
**Victorian Essential Services Commission**  
**Level 2, 35 Spring Street**  
**Melbourne VIC 3000**

By email to: [phil.waren@esc.vic.gov.au](mailto:phil.waren@esc.vic.gov.au)

Dear Mr Waren,

**Smart Meter Privacy Impact Assessment Draft Report**

AGL Energy Limited (**AGL**) welcomes the opportunity to comment on the Smart Meter Privacy Impact Assessment Draft Report (**the Report**) released by the Essential Services Commission (**Commission**) on 18<sup>th</sup> May 2012.

It is our view that the increased volume of interval metering data from smart meters does not necessitate the introduction of measures that are additional to the National Privacy Principles (**NPP's**), National Electricity Rules (**NER**) or existing compliance or auditing requirements. We do not believe that the increased metering data volumes require a change to the rationale or effectiveness of existing compliance or auditing measures.

AGL does not agree that the Commission has established the existence of deficiencies<sup>1</sup> in existing regulations that justify the establishment of new regulations and the development of a Privacy Code in Recommendation 2.

AGL's response to the Recommendations released by the Commission is contained in Attachment A.

Please contact Sallie Proctor on (03) 8633 7871 or at [sproctor@agl.com.au](mailto:sproctor@agl.com.au) if you wish to discuss any aspects of the comments further.

Yours sincerely,

**Alex Cruickshank**  
**Head of Energy Regulation**

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<sup>1</sup>Section 3.2 Australian Government Best Practice Regulation Handbook June 2010

## Recommendation 1

Retailers and Distributors should be required to conduct an independent audit of their compliance with NPPs before the roll out of smart meters is completed or as soon as possible thereafter. The audit should follow principles laid down by the Office of the Australian Privacy Commissioner and should include:

- Security systems (including data storage and quarantining, online portals)
- Staff training
- Staff access to systems and information
- The systems and processes of third party providers contracted by Retailers and Distributors, where customer metering data is accessed or stored by these.

In the short term all industry participants should be audited, and then, as compliance is assured, audits should be limited to those participants who generate complaints.

Audit results should be published in their annual report/on the company website and provided to the Australian Energy Regulator through regulatory performance or compliance reporting,

To promote industry readiness and consumer confidence, Retailers and Distributors should also:

- Conduct induction and on-going training for their staff in Privacy principles, and
- Satisfy themselves as to the scope, completeness and regularity of the training provided by third party providers to their staff, as part of initial and ongoing contractual arrangements with third party providers engaged by them.
- Ensure that they can identify and react to systemic non-compliance.

**See also ESC Recommendation 7 below**

The Commission has noted in the Report that to date, as reported in the media, consumer privacy concern seem to be mainly about whether the operation of smart meters (e.g. the flashing light) might reveal to others the activity of a household. We believe that it is imperative to provide an education program. The program could be targeted towards explaining the functions of a smart meter, including the relevance of the flashing light and the benefits of smart meters which include interval metering data, flexible pricing and energy efficiency schemes which will enable consumers to better manage their energy use.

It is our view that the increased volume of interval metering data from smart meters does not necessitate the introduction of measures that are additional to the NPP, National Electricity Rules (NER) or existing compliance or auditing requirements. We do not believe that the increased metering data volumes require a change to the rationale or effectiveness of existing compliance or auditing measures.

We consider that the NPPs provide sufficient protection for consumers, and therefore do not support the introduction of any additional auditing requirements specifically to smart meter data.

Principle 2<sup>2</sup> of Best Practice Regulation states:

A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs considered. Once the problem has been examined and a case for government intervention has

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<sup>2</sup> COUNCIL OF AUSTRALIAN GOVERNMENTS BEST PRACTICE REGULATION 2007

been established, then government should identify the objectives for any intervention and consider all feasible options, of both a regulatory and non-regulatory nature, that could wholly or partly achieve these objectives. Working from an initial presumption against new or increased regulation, the overall goal is the effective and efficient achievement of the stated objectives. The 'status quo' and effectiveness of existing regulations should be considered as an option for meeting the objectives.

If the basis for Recommendation 1 is to alleviate the consumer privacy concerns reported in the media, then it is our view that a reason for intervention has not been established and 'status quo' should be considered.

## Recommendation 2

Industry should develop a common layered Privacy Notice that can be used as the basis for all organisations involved in AMI; and consider developing an industry-wide Privacy Policy (perhaps as an Industry Code to be approved by the Privacy Commissioner). The Notice, and the Policy or Code should include:

- Plain English wording and provision for customers of non-English speaking background
- An agreed definition and explanation of secondary uses of personal information (within the meaning of section 2.1 of the NPPs) developed by the National Smart Meter Program in conjunction with Industry.
- A list of examples of secondary uses according to the current practice of each business, and provision to expand as new uses are introduced.
- An explanation of why smart metering data is collected, how it is used, under what circumstances is it disclosed, and the range of regulatory and operational safeguards that protect it.
- Contact details for the business, the OAIC and EWOV or its equivalent, to facilitate complaint handling.

All Privacy Codes should be easy to locate on Industry websites.

Third Party providers that voluntarily opt in to the NPPs would be subject to the requirements of the Privacy Act.

As stated in our response to Recommendation 1, we believe that an education program on the benefits of smart meters is imperative. The program could explain why interval metering data is collected, how it is used, under what circumstances is it disclosed, and the range of regulatory and operational safeguards that protect it.

AGL supports the development of a specific paragraph detailing the industry's regulatory protections, the reasons and uses for smart meter collection and the controls that consumers have over how interval meter data is used to be incorporated into each organisations existing Privacy Policy.

It is our view that the Commission has not established the existence of deficiencies<sup>3</sup> in existing regulations that justify the establishment of new regulations with the development of a Privacy Code.

An industry wide position on what is secondary purpose would assist in ensuring the correct and consistent application and interpretation of what constitutes primary and secondary purpose for interval metering data.

<sup>3</sup>Section 3.2 Australian Government Best Practice Regulation Handbook June 2010



### Recommendation 3

The Commission recommends that consumers who seek it be given access to their smart metering data to the extent this is possible under existing National Electricity Rules.

AGL agrees with Recommendation 3.

### Recommendation 4

We support the Opt-In process for customers consenting to the secondary use of metering data. We recommend that the process used by Industry for obtaining customers' consent to the use of their 'Personal Information', including metering data from smart meters, should be structured to permit consent to separate secondary data uses over time as new products and capabilities are developed for the market.

Further, we consider that a customer's express consent should not be required for secondary purposes exempted by the AMI Policy Committee and uses stipulated and required by legislation.

AGL sees benefit in the establishment of examples of secondary use of raw interval metering data. However it is unclear from the information provided in the Report if retailers and distributors will be required to gain consent from existing customers for the secondary use of metering data.

It is our view that a customer's consent may not be required to be obtained if the customer's raw interval metering data is aggregated with other customers' data and de-identified. Under this circumstance, individual customers remain anonymous.

We agree that should not be necessary to obtain customer's express consent should not be required for secondary purposes exempted by the AMI Policy Committee and uses stipulated and required by legislation.

- > Being selected as a member of the Dow Jones Sustainability Index 2006/07
- > Gaining accreditation under the National GreenPower Accreditation Program for AGL Green Energy®, AGL Green Living® and AGL Green Spirit
- > Being selected as a constituent of the FTSE4Good Index Series

## Recommendation 5

This aspect of data security should be subject to internal and external audit processes as outlined in ESC Recommendation 1 above.

As stated in our response to Recommendation 1, it is our view that the increased volume of interval metering data from smart meters does not necessitate the introduction of measures that are additional to the NPP, NER or existing compliance or auditing requirements. We do not believe that the increased metering data volumes require a change to the rationale or effectiveness of existing compliance or auditing measures.

Whilst smart meters in Victoria may introduce an increase in the volume of interval metering data received, all metering data is currently treated within AGL's systems in accordance with the NER and NPP's. AGL has existing protocols in place to ensure that interval metering data, including metering data from smart meters, is safeguarded against potential abuse.

## Recommendation 6

We recommend that any regulatory obligation to provide data to the market should be clarified by the AER in terms of who bears this responsibility, time frame and detail having regard to the new paradigm presented by smart meters.

Staff access to retained interval data should be monitored and audited (as per the Commission's Recommendation 1 above) to ensure it remains appropriate and required for defined business purposes.

External access to aged interval data should only be permitted with a customer's consent if it is their data, and otherwise, only where it is aggregated or otherwise unable to identify individual customer's usage.

AGL agrees with the approach in Recommendation 6. Any regulatory obligation to provide, aggregate or restrict access to aged interval metering data should be clarified by the AER. The treatment of the interval metering data should also be consistent with the NER and the Metrology Procedures.

## Recommendation 7

All unregulated third party providers that access or store 'Personal Information', including metering data of electricity customers from customers themselves via their HAN should be encouraged to abide by the NPPs in their business.

This could be in the form of encouragement to Opt-In to coverage under the Privacy Act 1988 as allowed for by the Office of the Australian Information Commissioner. We also recommend that the AER consider publicising the names of third party providers who agree to abide by NPPs as a form of 'tick' or

approval of such action.

The ESC should monitor compliance of Accredited Persons (VEET accredited installers of IHDs) with privacy obligations. In the event any APs expand their business model to provide other services involving accessing and storing data from IHDs (such as for energy efficiency analysis) the ESC should:

- Further specify Privacy obligations as part of the process for seeking accreditation
- Amend or develop regulation to be able to suspend or remove accreditation for breaches of privacy.

Small electricity retailers should be under the same obligation to protect customer data as other Retailers. Accordingly they should be made subject to the NPPs as a condition of their authorisation by the AER.

As stated in a recent submission<sup>4</sup>, AGL supports the introduction of new entrants into the market as it promotes competition; however and in line with the agreed National Smart Meter Principles access and contestability principles, for effective competition to exist, new entrants and/or existing participants that seek to provide offerings direct with customers, must be subject to the same regulatory obligations that currently exist for retailers, thus ensuring a level playing field for all participants in the market, including consumers.

Therefore, AGL believes that the issues raised in this section of the Report can only be addressed through a clear policy framework. On this basis AGL believes that the NPPs should be extended to third parties as it does for retailers and distributors.

We anticipate that there may be significant consumer confusion if this does not happen, particularly as third parties will have different and complex business models and no consistency in how they communicate with the consumer or manage the customer's personal information.

AGL reiterates that we support the introduction of new entrants into the market as it promotes competition. It is our view that the exiting National Energy Customer Framework (**NECF**), Australian Consumer Law (**ACL**), NPP's and retail licensing obligations are adequate and provide sufficient regulation and customer protection mechanisms to support the new smart meter services. However, AGL believes that to ensure competitive neutrality, any new or existing participant must be bound by these same rules and regulations.

For this reason we oppose recommendation 7 which states that third parties should be merely encouraged to abide by the NPPs in their business.

## Recommendation 8

We recommend the development of a minimum industry standard for data provision with respect to smart meter interval data; and separate information materials to inform consumers of the value of metering data information and to clarify industry terms.

Customers can currently request to receive their interval metering data and can be provided to the customer in various structures. It is our view that retailers are in the best position to provide usage information to their customers to assist with tariff choice decisions. Retailers are able to confirm the requestor's identity to ensure that the information is only disclosed to the appropriate person. Enabling customers to perform

<sup>4</sup> AGL National Smart Meter Consumer Protections and Pricing Draft Policy Paper Two

genuine comparison requires a process to determine the data elements required and then ensuring that this is a consistent requirement across all retailers.

AGL supports the concept of the "Green Button" as it enables electricity customers the ability to securely download their own easy-to-understand energy usage information from their retailer. Customers can use a growing array of new web and Smartphone tools to make more informed energy decisions.

## Recommendation 9

Retailers' and Distributors' online portals should comply with industry best practice standards, including when operational, the conduct of regular security audits. This should also be included as part of an independent audit of data security systems and processes.

Sites not applying recognised industry best practice standards should be subject to an independent threat and risk assessment.

We recommend that DPI work with industry to identify acceptable standards for online portals, monitor online portals and keep industry informed of changes in industry best practice standards.

Further, the Government should clarify what powers would be required to rectify/remedy deficient websites and which agency would be responsible for undertaking this assessment.

We do not believe that the Commission has established a regulatory basis for the development of an industry best practice standards which will require retailers' and distributors' online portals to comply with a yet to be developed industry best practice standards, including when operational, the conduct of regular security audits for online portals.

Whilst we see merit in the suggestion that DPI work with industry, it is our view that if an industry best practice standard is to be developed that it should be limited to the use of raw interval metering data within an online portal.

## Recommendation 10

We support Lockstep's recommendation and consider that a Protocol will be essential to clarify the respective roles of customers, Retailers, Distributors and third party providers to protect customer data (by purging it from an IHD) at the time of unbinding from a HAN. This protocol should consider:

- The present primary communication role of Retailers with customers,
- The possible involvement of other third party providers (other than meter readers and Accredited Person) in accessing data via the HAN in future,
- The requirement to give customers the opportunity to explicitly Opt-In to use of their data for secondary purposes.

We recommend that the unbinding process be an industry managed solution that does not rely on customer knowledge or memory to prevent wrongful access to another customer's data.



AGL believes that the concept of HAN is not specific to smart metering and therefore there is a requirement to make a clear distinction between the HAN enabled by the smart meter and other customer related HAN. In addition AGL believes that customers should be able to register a device on their customer HAN (not the smart meter HAN) without having to enter into a contract with any party. The industry operating model for HAN devices is still maturing.

AGL supports the development of a national protocol in relation to the roles of customers, retailers, distributors and third parties regarding the protocol to unbind the HAN. We recommend that the Commission considers the previous works undertaken by the National Smart Metering Program. We support mandatory unbinding of a HAN device from a smart meter when a customer moves out of a premises. The process of unbinding should be managed by the customer's retailer submitting a request to the distributor. Once the HAN device is unbound, all security certificates to the meter would be terminated and no longer valid. When a new customer moves into the premises, the HAN device may be reconnected, if required, by contacting the retailer.

The industry is currently working with AEMO to review B2B processes to improve the quality of data exchanged, including the notice of a move-out to instigate the unbinding of a HAN device. It is our view that the development of national business processes and protocols in relation to the HAN should occur at the Business to Business and MSATS Reference Group (BMRG).

## Recommendation 11

We recommend that the National Smart Metering Program take into account the following considerations in developing business processes and protocols for HAN activation:

- The need for a clear and common understanding of secondary uses of metering data and a clear delineation of the responsibilities of Retailers, Distributors and/or others for obtaining customer consent are minimum requirements for effective enforcement of customer Opt-In provisions.
- The development of a specific regulatory relationship with unregulated third party businesses, beyond encouraging the adoption of the NPPs, may impose potentially excessive regulatory burden, and that this issue be revisited in the light of future experience with smart meters.

At this stage the Commission sees value in the provision of some structured form of information or support for customers (see also Consumer Information Recommendation 14 below).

As stated within our response to Recommendation 10, AGL supports the development of a national protocol in relation to the roles of customers, retailers, distributors and third parties regarding protocols associated with the HAN

We do not agree with the suggested approach of only encouraging unregulated third party businesses in adopting the NPP's.

All participants, including third parties, that seek to provide offerings direct with customers, must be subject to the same regulatory obligations that currently exist, on this basis we do not support Recommendation 11.





## Recommendation 12

We don't see an immediate need to introduce regulations in relation to Lockstep's recommendation.

Government and the relevant regulatory agencies would need to consider whether a completely new form of contract would be required given the type of service envisaged and what the complexities, risks and cost benefit of taking the proposed approach could be.

AGL supports the approach in Recommendation 12.

## Recommendation 13

While we agree the recommended wording may have been preferable, we consider that any amendment to previous Commission decisions may be unnecessary and undesirable at this point particularly given the scheduled transfer of retail regulatory functions to the Australian Energy Regulator in July 2012.

As the transfer of retail regulatory functions to the AER is not proceeding in July 2012, AGL requests that the Commission reconsider Recommendation 13 and amend the wording of its decision in relation to "Privacy Principles".