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22 September 2011

Joint Select Committee on Australia's Clean Energy Future Legislation
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

By email to jscacefl@aph.gov.au

Dear Committee Members,

Clean Energy Future Legislation

AGL Energy welcomes the opportunity to comment on the Clean Energy Future Legislation (CEFL) as introduced to the House of Representatives on 13 September 2011. AGL supports the introduction of a least-cost market mechanism with an effective long-term emissions reduction target as its objective.

AGL Energy (AGL) is the leading investor in renewable energy in Australia. AGL operates across the supply chain and has investments in coal-fired, gas-fired, renewable and embedded electricity generation and energy retailing. AGL is the largest private owner, operator and developer of renewable generation in Australia with 1,205 MW of renewable capacity (at 30 June 2011). AGL is also a significant retailer of energy with over 3 million electricity and gas customers.

Resolving climate change policy uncertainty is critical for the energy supply sector. Investors will face great difficulty in proceeding with new intermediate and baseload power station projects until the details of a carbon pricing framework are finalised. As these projects have significant development timeframes (several years from concept to operation), it is paramount that the legislative framework underpinning the price be finalised to allow companies like AGL to work towards providing a secure and stable energy supply for our customers.

AGL supports the Government’s intent to legislate for a carbon price to commence on 1 July 2012. The CEFL puts forward an approach to price carbon via a market-based trading scheme, which is widely considered to be the preferred approach to delivering reductions in emissions at lowest cost.[1] AGL supports the introduction of a price on carbon emissions as soon as possible to provide investment certainty for the energy industry as Australia begins the transition to a low carbon economy. In the near-term, the bi-partisan supported target of a 5% reduction on 2000 levels by 2020 is less than a decade away and requires immediate policy certainty.

With respect to this submission on the CEFL, Attachment One provides a tabulated commentary on key provisions of the Bills, and Attachment Two is a copy of AGL’s submission to the Multi-Party Committee on Climate Change (May 2011), which details a

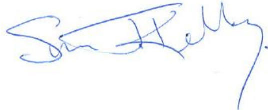
[1] Including the Shergold Report, the Grattan Institute, the Productivity Commission, the Wilkins Review and the National Emissions Trading Task Force.

broad range of policy work and research on the importance of resolving uncertainty on managing the risks of climate change.

The progress towards the commencement of a carbon price on 1 July 2012 is welcome. AGL considers it would create significant regulatory uncertainty if a carbon price is not introduced in the near-term as the primary policy mechanism to deliver the bi-partisan 5% emission reduction goal for 2020. As a long-term necessary reform, AGL urges Government to maintain its legislative timeline for 2011, and legislate for a carbon price by November.

Should you have any questions regarding this submission, please contact me on email skelley@agl.com.au or telephone 03 8633 7152.

Yours sincerely,



Simon Kelley
Head of Carbon Price Implementation

Attachments:
1. Tabulated commentary on Clean Energy Future Legislation
2. AGL's May 2011 submission to the Multi-Party Climate Change Committee

Attachment One - Clean Energy Legislative Package
AGL Energy detailed comments with reference to the exposure drafts of July 2011
22 September 2011

Clean Energy Bill 2011			
Part/s	**Divisions**	**Sections**	**Comment on Draft**
1		3	The improved clarity on the objects of this Bill, including putting a price on carbon emissions, are a welcome improvement to the exposure draft.
1		3(c)(ii)	A key aspect of objects is to take action towards meeting various targets in “a flexible and cost-effective way”. This umbrella statement is not defined in the Act, but should be an important consideration in reviewing the performance and achievements of the Clean Energy Bill. It is recommended that this statement is defined, and reflected in Part 22 – Reviews by the Climate Change Authority.
1		6	The provisions for defining when a supply of natural gas occurs are largely left to regulations. This definition will be crucial to business seeking to understand their liability and how to best manage that liability. It is requested that drafting of the regulations and consultation on the definitions commences as earlier as possible, so as to expedite their finalisation.
2		16(1)	The approach in the Act setting out a process for setting carbon pollution caps by May 2014, nearly 2 years after the scheme has commenced, gives little notice as to the cap that will be in place. Given the long lead times in the energy sector and the need for businesses to plan ahead to make investments under carbon pricing, it is important that the initial carbon pollution caps are known as soon as practicable. The proposed scheme cap tenure of 5 years is concerning for investors in long-lived assets. To reduce the potential uncertainty, an alternative approach to the default carbon pollution caps is proposed, whereby s17 and s18 provide an “upper limit” on any future caps set by regulation.
2		17, 18	The provisions for the default carbon pollution cap for 2015-16 are a reduction in emissions of 38 million units compared to emissions from liable entities for 2012-13. For each subsequent year that the default is in place, the cap is reduced by a fixed amount of 12 million units each year. This approach is insufficiently flexible and could lead to perverse outcomes. For example, if the default was in place continuously it could lead to a scheme cap of zero. Optimally, the default pollution cap provisions should operate as an “upper bound” for any caps set by regulation. In this way, the default pollution caps would serve to provide valuable information to the market.
3	2	20	The definition of liability as a person who has operational control is a welcome improvement from the Carbon Pollution Reduction Scheme (CPRS) proposal. Operational control is a definition that has been applied for a number of years now under NGERS and increases the likelihood of a holder of a contract to supply triggering a change of law clause to adjust prices for emissions costs.
3	3	33	AGL commends the streamlining of the rules for determining liability within the natural gas supply chain since the CPRS proposal. However, there is no threshold for liability relating to emissions from natural gas combustion, by virtue of a gas supplier being the initial point of liability for supply. Whilst this approach simplifies the coverage of natural gas combustion emissions, AGL is concerned about a potential disincentive for smaller emitters. For example, under the Bill, a coal-fired boiler would not incur a liability, provided the facility is below the 25ktCO2e per annum threshold. However, all gas-fired boilers will incur a carbon price impact, even where the onsite emissions are below 25ktCO2e, as the natural gas retailer will seek to cost recover for embodied emissions. This differential treatment of boiler fuels could act

Clean Energy Bill 2011			
Part/s	Division/s	Section/s	Comment on Draft
			as a disincentive for an emitter to consider upgrading from a higher-intensity coal-fired boiler to a lower-intensity gas-fired boiler. Such an outcome would appear to be in direct conflict with the intent of the CELP.
3	3	35	AGL welcomes the improved consistency by the substitution of "retailer" in the exposure draft for "supplier" in the Bill. Simplification on natural gas supply pipeline is also noted.
3	4	45	States that if an OTN is surrendered or cancelled the Regulator must remove the OTN entry from the OTN Register. A natural gas retailer becomes liable for supplies that occur 28 days after the surrender or cancellation of an OTN (refer ss54-55). AGL welcomes improved obligations on the Regulator with respect to surrender or cancellation of an OTN in the introduced Bill. However, AGL recommends that the 28 day period is extended to the next meter read (to a maximum of four months) to ensure that the liability can be taken over based on meter data and adequate notice.
3	4	51	This provision should be amended to obligate the OTN holder to inform the retailer that they are no longer permitted to quote an OTN. The section as drafted appears to imply that the OTN holder who ceases to be permitted to quote the OTN does not have to inform the retailer. This would put an unreasonable obligation on the retailer.
3	4	59(3)	The notice should also specify the date from which the acceptance of the OTN quotation commences, to ensure clarity as to the timing of obligation transfer between the retailer and the OTN holder.
3	4	64(3)	Amend to ensure that suppliers are able to engage in supply having been satisfied that the OTN quoted is legitimate. Liability should remain with the person quoting the OTN in circumstances it becomes ineligible and has failed to give at least 90 days notice to the supplier. Currently as drafted the section places the onus on the supplier to ensure that customers quoting OTNs retain these for the duration of the supply. It will be administratively burdensome to require continual checking to ensure OTNs are valid and unreasonable expectation of retailers.
3	5	65	AGL welcomes the removal of an apparent inflexibility in the exposure draft for the point of liability in circumstances where one of the joint venturers is also the operator of the facility. The amendment in the introduced Bill not dissimilar to the application of other liabilities (such as petroleum resource rent tax) to the economic beneficiaries of a JV, regardless of who has operational control.
3	5	66	The section outlining notification of new facilities should provide clarification regarding the 'date a facility becomes a facility' with regards to construction projects to ensure that it is clear when the 30 days for notification is triggered.
3	5	67	Per section 65, AGL welcomes the removal of an apparent inflexibility in the exposure draft for the point of liability in circumstances where one of the joint venturers is also the operator of the facility.
3	5	70	Outlines criteria that the Regulator must consider when making the declaration re: section 68 Application. One of the criteria is that the participant has the financial resources to comply with the obligations. It is recommended that regulations are provided to describe what would be required / sufficient in this instance.

Clean Energy Bill 2011			
Part/s	Division/s	Section/s	Comment on Draft
3	5	71	AGL welcomes the removal of the restriction on the start date for a declaration of a Joint Venture in the exposure draft to the same financial year.
3	5	75	This section should specify a minimum period of 28 days that can be stipulated in the notice of the Regulator asking for more information in respect to applications under section 74 for a participating percentage determination.
3	5	77	This Section as drafted, does not make it clear under what circumstances the Regulator would determine participating percentage on its own initiative.
3	6	88	AGL welcomes the removal of the restriction on the start date of a liability transfer certificate in the exposure draft to the same financial year.
3	7	92A-G	AGL welcomes the potential increased coverage of the carbon price mechanism provided for by the new opt in provisions.
4	2	101	Prescription of a limit on the auction of future vintage units in the legislation is not supported. AGL notes the Government's desire to retain flexibility in setting carbon pollution caps. However, the specified future vintage auction limit (which comes into effect when there are no regulations in place setting the cap) is unnecessary. It is also low given the size of the energy sectors emissions and the established practice of contracting a number of years in advance. It is suggested that this upfront restriction be removed from the legislation, and the volumes of future vintages auctioned instead be determined in consultation with industry during the establishment of the policies, procedures and rules for auction carbon units as per section 113.
4	4	111(2)	To remove unnecessary working capital costs and remove barriers to auction participation, the legislation should enshrine the principle of delayed settlement arrangements for units bought at auction. That is, there should be the option for credible auction participants to strike a price for units at auctions conducted by the Regulator but then take delivery and settle those units at a subsequent time, such as at surrender.
4	4	111(5)	The way that this floor price will work in relation to the eligible international emissions units has not been described in the legislation and detail will be in the regulations. It will be important that the proposed approach does not apply a 'one size fits all' approach that could disadvantage entities which purchased international units in good faith. AGL would welcome the opportunity to engage with the government on its proposed implementation arrangements of the price floor as soon as possible.
4	4	113	It is important that the energy industry has an opportunity to engage closely with the Government in the formulation of the legislative instrument (or the Regulator if any power is conferred as per subsection 5) on the policies, procedures and rules for auctioning carbon units. The involvement of the energy industry is particularly important given that auctioned units are likely to primarily relate to energy businesses given: - the restricted coverage of the carbon pricing mechanism (around 60 per cent of Australia's emissions); - the large share of energy sector emissions in the covered sectors; and - the fact that other covered sectors will receive significant administrative allocations through the Jobs and Competitiveness

Clean Energy Bill 2011			
Part/s	**Divisions**	**Sections**	**Comment on Draft**
			Program.
6	2	123	The provision that regulations prohibiting the surrender of specified eligible international units take effect from the following year after the regulations are registered is not supported. This does not provide sufficient notice to businesses of a change of law and is an inappropriate allocation of risk. Furthermore, it discourages the development of international emissions markets as it creates risks for businesses in establishing contractual arrangements for supplies of international permits. While noting the need to ensure the environmental integrity of the scheme, it is suggested that there be no retrospective application of any changes in eligible international units (noting that the Government has the option of purchasing additional abatement to redress any environmental concerns). Alternatively compensation (in the form of Australian carbon units) could be paid to the holders of prohibited international units adversely affected by the change of eligibility.
7			AGL welcomes the early release of draft regulations relating to the Jobs and Competitiveness Program as much of the operation of Part 7 is delegated to regulations.
8			*Payment for Closure* The Government's Clean Energy Future includes a payment for closure option. This is largely addressed outside of the Bill, although it is noted s303A acknowledges the potential entering of such a contract. To support a smoothly functioning energy sector it is important that the industry – including potential closing generators, other existing generators that will continue to operate in the market and potential investors – have clear and timely information on how this payment for closure will operate. Key matters include the timelines for expressions of interest, contract negotiations, announcements, execution and any role and responsibilities of the market operator/other bodies (such as the Energy Security Council). Also of importance is what provision there is for decisions on agreed closures to be cancelled/delayed and how any such decisions will be made. AGL would welcome the opportunity to engage with the Government in establishing the details of this process and recommends that heads of power to conduct the payment for closure are enshrined in the Act. *The Energy Security Fund* The Energy Security Fund in the Government's Clean Energy Future policy includes an upfront $1 billion cash component paid in the 2011-12 financial year ahead of the scheme start. This cash component is not specified in the Act. In order to provide certainty and confidence to industry regarding this cash component and its allocation methodology, it is suggested that these matters be identified in the Act. In addition, provision should be made in the Act that, should the $1 billion not be allocated as currently proposed, an allocation of Australian carbon units of equivalent value will be made (including an adjustment for the time value of money). *Loans for refinancing and auction purchases* The Government's Clean Energy Future policy includes loans for refinancing and for the purchase of units at auctions. These measures are now acknowledged in s303B of the Bill. However, the Government's proposed Energy Security Council is not addressed. It is important that the loan arrangements are well designed to meet the needs of industry and the energy market and that the details of these measures, including the nature and role of the Energy Security Council, are known to the market as soon as practicable. AGL would welcome the opportunity to engage with the Government on the development of these arrangements.

Clean Energy Bill 2011			
Part/s	**Division/s**	**Section/s**	**Comment on Draft**
8	3	162 & 165	AGL welcomes the improvements in the Bill on the exposure draft regarding timing for applications of transitional assistance and the timing available to the Regulator to make a response. Furthermore, the timely release of draft regulations pertaining to the application are noted.
8	4	170	AGL supports the improvements made to the Power System Reliability Test compared to the CPRS, including inserting a timeframe for the market operator to make a statement and clarity that no statement is taken to be the passing of the test. However, there is still uncertainty as to how the Power System Reliability Test will operate, for instance, what criteria will guide the manner in which the energy market operator will determine whether there is likely to be a breach of relevant power system reliability standards or how multiple applications for capacity withdrawal received simultaneously are to be assessed. The energy industry would welcome the opportunity provide comments and feedback on appropriate regulations/other instruments to help develop this test. It is also noted that the decision of the appropriate energy market operator as to power system reliability is not presently a reviewable decision under Part 21. Given the importance of such a decision, it is considered that this decision should be included as a reviewable decision.
8	4	171	An important feature of the CPRS low emission transition incentive, that is, the treatment of replacement capacity, was the flexibility provided for market participants. In effect, the operator of an eligible coal-fired generator, could withdraw capacity, and commercially negotiate for another party to nominate their new capacity as replacement. There are two key benefits of such flexibility. Firstly, it doesn't bind an incumbent market participant to reinvesting in new low emission capacity, and secondly, owing to this flexibility, would likely encourage the earlier entry of new low emission capacity. AGL considers the current drafting does not provide this flexibility, and recommends provisions are altered to facilitate such commercial outcomes.
8	4	172 (1)(f)	The emissions intensity threshold for replacement capacity under the Power System Reliability Test of 0.8 tCO_2-e/MWh is supported to ensure new capacity is consistent with the trajectory of emissions reductions established by the CELP. Finally, as per the issue raised above in s171, replacement capacity should not have to be operated by the same entity. A third party should be able to operate the replacement capacity for the purposes of the Power System Reliability Test, through commercial negotiations establishing this new capacity to be rightfully nominated.
9	2	184	This section requires the Regulator to make an entry in the Liable Entities Public Information Database if it has reasonable grounds to believe that a person is, or is likely to be, a liable entity for an eligible financial year. It is not clear on what grounds a Regulator could form this opinion, for instance, with respect to new facilities that could become operational in the upcoming financial year. From a market disclosure point of view, it would be disappointing if the Regulator formed a view about a new facility before the owner had finalised arrangements and advised the ASX, etc.
9	2	187	This section requires the Regulator to make an entry in the Information Database if it is of the opinion that the person has a unit shortfall charge for the eligible financial year. It is not clear that any information published under this section could only reasonably be published when the deadline for surrendering units has passed for an eligible financial year. It may cause reputation harm if the Regulator were publishing 'expected' shortfalls before participants were required to surrender units. It is assumed that the section would only operate after 15 June and 1 February (in fixed charge years) and 1 February in floating charge years but this should be made clear in the wording.
9	2	189	The requirement of the Regulator to publish in the Information Database, at the individual liable entity level, the breakdown of surrendered units by type - carbon units; eligible international emissions units; Australian carbon credit units – is considered excessive. Only aggregate information regarding the breakdown of unit types should be made public as this is sufficient to meet the objective of transparency while balancing the need to protect commercial sensitivity.

Clean Energy Bill 2011			
Part/s	**Divisio n/s**	**Sectio n/s**	**Comment on Draft**
13		221	AGL does not support empowerment of the Regulator to require information or documents, simply in relation to the operation of the Act or associated provisions. Legal advice obtained with respect to the CPRS advised that similar to s28(1) of the *National Electricity Law*, the powers conferred should be more exact and confined. It is proposed that the powers are confined to information or documents that are required by the Regulator for the performance or exercise of its powers and functions, only in circumstances where the Regulator has reasonable belief that breach has occurred. With respect to compliance (subsection 4), it is noted that the previous CPRS drafting has been modified slightly to include "to the extent that the person is capable of doing so". It is suggested that this improvement be built upon by adding 'practically capable', or 'reasonably capable' of complying.
13 (and 15)		225 (and 236)	It is noted that the provisions regarding *self-incrimination* prevent evidence generally from being admissible against an individual in civil and criminal proceedings except under certain aspects of the Act. These provisions significantly stray from those under s155(7)(b) of the *Competition and Consumer Act* 2010, which offers the same protection to a body corporate. These sections of the Act should be amended to adopt the provisions of the CCA with respect to self-incrimination.
15	6	245	The drafting for *Monitoring warrants* is based on it being "reasonably necessary" for purposes of establishing compliance or substantiating information. There is no explicit requirement for a reasonable belief of breach or non-compliance. This section should be amended to refine the scope and ensure appropriate use of the monitoring powers.
20		278	It is recommended that the Regulator's ability to cancel an undertaking should be subject to the consent of the relevant party(s).
22	2	290	AGL notes the Bill improves on the exposure draft by stipulating that the Climate Change Authority must make provision for public consultation for reviews under Section 290 as it does for review under Sections 288, 289, 291.

Consequential Amendments Bill 2011			
Part/s	**Divisio n/s**	**Sectio n/s**	**Comment**
Schedu le 1, Part 1 2		213	The amendment to the *Renewable Energy (Electricity) Act 2000* to empower the Climate Change Authority to undertake the review does not make it clear that there will be an opportunity for public consultation. It should be made clear that there will be opportunity for public consultation.

Clean Energy (International Unit Surrender Charge) Bill 2011			
Part/s	**Divisio n/s**	**Sectio n/s**	**Comment**
		8	The proposed approach of a surrender charge on international permits in order to enforce a domestic floor price raises a number of concerns. Most significantly, it could result in a floor price that is different for each participant who surrenders international units. Every entity will likely have incurred a different price for CERs, and a single "top up" amount would result in a differing floor price enforced on each

			participant. AGL urges the Government to consult early on regulations to set the operation of the floor price, and suggests that if there is to be a singular charge, it is published as a forward curve by 1 July 2012, to allow market participants to contract in international permits with full information.