

18 April 2024



Ms Rowena Park
General Manager
Compliance and Enforcement Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Via email: aercompliance@aer.gov.au

Dear Ms Park,

Compliance Procedures and Guidelines review

Energy Queensland Limited (Energy Queensland) welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) in response to its *Compliance Procedures and Guidelines (Guidelines)* consultation.

This submission is provided by Energy Queensland on behalf of its related entities:

- distribution network service providers (DNSPs), Energex Limited and Ergon Energy Corporation Limited;
- retailer, Ergon Energy Queensland Pty Ltd (EEQ); and
- affiliated contestable business, Yurika Pty Ltd and its subsidiaries, including Yurika Metering.

Energy Queensland is broadly supportive of the proposed amendments to the Guidelines which are in the interests of energy consumers, and that reduces the regulatory burden for participants. However, there are some aspects we suggest require further refinement and clarification.

Commencement date

Energy Queensland considers the proposed commencement date of 1 January 2025 does not allow retailers or DNSPs sufficient time to test and mitigate against potential risks associated with the proposed changes to the Guidelines. Extending the commencement date to 1 July 2025 will provide market participants with sufficient time to adapt processes and implement a new approach for assessing potential material breaches. In line with feedback provided to the AER in response to the review of the Retail Law Performance Reporting Procedures and Guidelines¹, we encourage the AER to agree on an implementation date that considers the escalating costs retailers and DNSPs are incurring in complying with new reporting obligations.

¹ Ergon Energy Retail submission to AER [Retail performance reporting procedures and guidelines \(2024 update\)](#)

Material breaches reporting timeframe

The AER has proposed that material breaches be reported 'as soon as reasonably practicable'. In our view, this is subjective and has the potential to result in an inconsistent approach towards reporting across the sector. We therefore ask the AER to make explicitly clear its expectations with respect to the term 'as soon as reasonably practicable'.

Determining materiality Due to the significant penalties imposed on retailers and DNSPs for failing to comply with reporting requirements in the Guidelines, Energy Queensland requests further clarification regarding the application of the new material breach reporting obligation. For example, it would be beneficial for the AER to provide examples of material breaches in a manner similar to the guidance provided by the Essential Services Commission's Compliance and Performance Reporting Guideline².

Energy Queensland is concerned that without clear guidance on what is considered 'material', retailers and DNSPs will spend additional time to assess and determine if a matter is a 'material breach'. This may inadvertently increase costs to demonstrate compliance. While we acknowledge the AER's proposal requires retailers and DNSPs to consider the four factors in determining materiality (potential or resulting in harm, the extent of the conduct, the effect of the breach on market participants, and adverse public reaction), we consider each of these factors to be subjective and open to interpretation by each market participant, resulting in a lack of consistent reporting. Therefore, it is even more critical that guidance is provided. The AER could further refine the factors retailers and DNSPs must consider when determining whether a breach is material. This will provide more certainty and minimise the administrative burden on retailers and DNSPs in determining 'materiality'. We believe the AER should focus on the actual harm incurred as opposed to the potential harm. This will narrow the factors and ensure assessments are based on the events that have transpired rather than undertaking an assessment of future risk.

Energy Queensland is also unsure that 'adverse media attention across multiple media channels' is a true indicator of 'materiality' for retailers and DNSPs to consider. We would appreciate additional clarification from the AER with respect to the inclusion of this factor.

Family Violence reporting

Energy Queensland supports the proposed family violence reporting obligations and considers that they accurately reflect the potential customer harm for non-compliance with these provisions. We agree that breaches related to the disclosure of affected customer information should be immediately reportable. However, we consider that the obligation to implement and maintain a family violence policy is easily discoverable by the AER via a retailer's website, and we fail to see what reporting against this metric achieves.

Reporting frequency

Energy Queensland supports the proposed changes to report breaches of the obligations under National Energy Retail Rules (NERR) Rule 106 and 106A as half-yearly (instead of quarterly) as it will reduce the reporting burden on retailers and DNSPs. We also support the clarification that de-energisation breaches of NERR Rule 116(1) or 120(1), for retailers and DNSPs respectively, that have been reported on an immediate basis are not required to also be reported in the half-yearly report.

² Essential Services Commission, [Compliance and Performance Reporting Guideline](#), version 8, May 2023 pg. 7-8

Further to the proposed amendments, Energy Queensland suggests that the AER consider changes to the reporting requirements of the NERR, Rule 120(1)(b)-(e) and 125. Life support breaches under Rule 120(1)(a) and Rule 124 should remain as immediate reports. However, we consider the remaining breaches of Rules 120(1)(b)-(e) and 125 could be reported as half-yearly. These breaches were previously reported as quarterly under version 3 of the Guidelines, and we believe the AER should consider returning to half-yearly reporting consistent with the earlier Guidelines.

Compliance audits

Energy Queensland is supportive of the proposed changes to the audit requirements under the Guidelines to clarify and specify the obligations. Energy Queensland asks that the AER provide information on the triggers it uses to determine when an audit is required.

Should the AER require additional information or wish to discuss any aspect of this submission, please contact either myself, or Tammara Scott on [REDACTED]

Yours sincerely,

[REDACTED]

Alena Christmas
Manager Regulatory Affairs

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