



Ref: AC:HP20240418

19 April 2024

Rowena Park
General Manager, Compliance and Enforcement
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Email: aercompliance@aer.gov.au

Dear Rowena

Submission on Draft Compliance Procedures and Guidelines

Essential Energy is pleased to provide a submission on the AER's Draft Compliance Procedures and Guidelines (Draft Guidelines). Essential Energy is supportive of the majority of the proposed changes. We do believe the introduction of Material Breach reporting for all obligations in the *National Energy Retail Law* (NERL) and *National Energy Retail Rules* (NERR) will be overly burdensome on regulated entities without a specific need or benefit identified by the AER.

Essential Energy proposes targeted Material Breach reporting on selected obligations which are high-risk or have a high potential for harm, for example obligations which are civil penalty provisions. Essential Energy suggests the AER could also use compliance audits to examine areas of interest or delve deeper into suspected areas of non-compliance. A targeted approach to compliance reporting ensures that resources are focussed on the most important areas, benefitting regulated entities, the AER, and ultimately energy consumers.

The Appendix to this letter addresses the questions asked in the AER's Explanatory Statement. If you or your officers have any questions in relation to this submission, please contact me on [REDACTED] or [REDACTED], or alternatively our Compliance Manager, David Mattson on [REDACTED].

Yours sincerely

[REDACTED]
Hilary Priest
Head of Regulatory Affairs

Appendix: Questions in the AER’s Explanatory Statement

Question 1: What are your views on the proposed implementation time frame of 6 months and commencement date of 1 January 2025?

The timeframe for implementation is reasonable and achievable, with the exception of the introduction of Material Breach reporting. As Essential Energy does not have systems in place to monitor and report breaches of all obligations in the NERL and NERR, this would require significant work to update compliance and IT systems and train staff on the wide-reaching reporting obligations. Essential Energy proposes a more targeted approach to the Material Breach reporting requirements detailed in our responses below, which would also allow for implementation by 1 January 2025.

Question 2: What further steps can the AER take to minimise the costs of reporting under the revised Guidelines?

The proposed requirement to report any breach that has a material adverse effect on consumers or the NEM as soon as reasonably practicable will significantly increase costs of reporting, through both the implementation of these obligations into Essential Energy’s Compliance Reporting framework and ongoing monitoring of the vast number of obligations. To minimise these costs, the AER could focus the Material Breach reporting requirement on obligations with a severe impact as reflected in the 3-tier civil penalty provision structure. Alternatively, if the AER has a particular area of concern, they could direct a compliance audit to examine that area in closer detail.

Question 3: What are your views on the proposed introduction of:

- **family violence – rules 76G(1) and 76D of the NERR as immediate retailer reportable obligations, and rule 76A of the NERR as a half-yearly retailer reportable obligation**
- **presentation of standing offer prices – section 24 of the NERL as a half-yearly retailer reportable obligation**
- **energisation on request for sale of energy – rule 19(2)(b) of the NERR as a half-yearly retailer reportable obligation**
- **re-energisation – rules 106 and 106A(1)-(3) of the NERR as half yearly retailer reportable obligations and rules 106 and 106A(4)-(6) of the NERR as half yearly distributor reportable obligations?**

The first three obligations are reportable by Retailers and do not impact Essential Energy. Essential Energy supports the introduction of the half yearly reportable obligation on re-energisation.

Question 4: What are your views on the proposed introduction of the reporting of Material Breaches to the AER as soon as reasonably practicable?

Essential Energy does not support the introduction of Material Breaches as proposed in the Draft Guidelines. Part of the scope of the AER’s review is to “assess the current reportable obligations to ensure that high-risk and/or high potential harm obligations are reportable to the AER under the Guidelines”. Expanding reportable obligations to all NERL and NERR obligations is creating a larger regulatory burden than just focussing on high-risk and/or high potential harm obligations.

One of the AER’s principles in assessing the self-reporting framework is to “ensure regulated entities are aware of and reporting non-compliance of key consumer protection provisions and are providing complete and adequate information to the AER to allow us to effectively measure compliance levels”. The AER could focus the Material Breach reporting on the key consumer protection provisions they reference.

Another of the AER's principles is to "recognise that compliance with certain obligations can be affectively monitored via other mechanisms without imposing additional reporting obligations on regulated entities". One of these mechanisms is compliance audits, which the AER could use to examine regulated entities compliance with key areas the AER is targeting.

Question 5: Is there any further information that will assist in understanding the AER expectations, and if so, what would you find helpful?

The AER could provide examples of Material Breaches of obligations which are not already reportable. This would be helpful to understand the obligations the AER considers to be high-risk and/or represent high potential harm and the key consumer protection provisions.

Question 6: What are your views on the proposed reduction in the reporting of current quarterly reporting obligation to half-yearly reporting?

Essential Energy supports the reduction in frequency from quarterly to half-yearly reporting, noting Essential Energy has not reported a breach of the quarterly reportable obligations since September 2020. Essential Energy also requests the AER notify the outcome of their investigation into breaches, which will allow closure of breaches and notification to our Board.

Question 7: What are your views on the proposed changes to improve the inconsistencies observed by the AER in the reporting on de-energisations?

Essential Energy supports the clarification of reporting requirements for de-energisation breaches.

Question 8: What are your views on the proposed reporting amendment of the following obligations:

- **billing – rules 26, 28 and 29 of the NERR**
- **retail contracts – rules 47-50 of the NERR**
- **EIC – rule 46A of the NERR**
- **distributor interruption to supply – rules 88-89 of the NERR**
- **energy marketing activities – section 53(2) of the NERL and rules 60-68 of the NERR**
- **deployment of new electricity meters – rule 59A (1)-(3) and (7) of the NERR?**

Most of these obligations are reportable by Retailers and do not impact Essential Energy. Essential Energy supports the removal of distributor interruption to supply rules 88-89 as these are not obligations that Distributors can breach.

Question 9: What are your views on the proposed implementation of a portal to submit compliance reports?

Essential Energy supports the use of a portal to submit compliance reports.

Question 10: What are your views on the proposed changes to section 4 of the Guidelines relating to compliance audits?

Essential Energy supports the proposed changes relating to compliance audits.