



19 April 2024

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

Sent via email to: aercompliance@aer.gov.au

RE: AER Compliance Reporting Procedures and Guidelines – Draft Guidelines for Consultation, April 2024.

About Shell Energy in Australia

Shell Energy is Shell's renewables and energy solutions business in Australia, helping its customers to decarbonise and reduce their environmental footprint.

Shell Energy delivers business energy solutions and innovation across a portfolio of electricity, gas, environmental products and energy productivity for commercial and industrial customers, while our residential energy retailing business Powershop, acquired in 2022, serves households and small business customers in Australia.

As the second largest electricity provider to commercial and industrial businesses in Australia¹, Shell Energy offers integrated solutions and market-leading² customer satisfaction, built on industry expertise and personalised relationships. The company's generation assets include 662MW of gas-fired peaking power stations in Western Australia and Queensland, supporting the transition to renewables, and the 120MW Gangarri solar energy development in Queensland. Shell Energy also operates the 60MW Riverina Storage System 1 in NSW.

Shell Energy Australia Pty Ltd and its subsidiaries trade as Shell Energy, while Powershop Australia Pty Ltd trades as Powershop. Further information about Shell Energy and our operations can be found on our website [here](#).

General Comments

Shell Energy welcomes the opportunity to respond to the Australian Energy Regulator's (AER) draft Compliance Reporting Procedures and Guideline (the Guideline).

Shell Energy recognises and understands the importance of the AER Compliance Procedures and Guidelines to assist in monitoring, investigating, enforcing, and reporting on compliance with the National Energy Retail Law (NERL), National Energy Retail Rules (NERR) and applicable Regulations. Shell Energy supports the AER's approach to ensure that new rules and new key consumer protection provisions are captured under the self-reporting framework. Overall, Shell Energy considers that the 'Approach to the review' criteria have been met.

Shell Energy raises concerns around the proposed implementation date, and the proposed introduction of the reporting of material breaches to the AER as soon as reasonably practicable. An additional change that Shell Energy suggests is the removal of the requirement for a Chief Executive Officer or Managing Director to sign initial, and material breach reports. This would align with the Essential Services Commission of Victoria (ESC) and

¹By load, based on Shell Energy analysis of publicly available data.

² Utility Market Intelligence (UMI) survey of large commercial and industrial electricity customers of major electricity retailers, including ERM Power (now known as Shell Energy) by independent research company NTF Group in 2011-2021.



would reduce regulatory burden on retailers. While Shell Energy acknowledges the importance of reporting potential and material compliance issues to its leadership team as part of compliance governance, it does not consider that requiring its Chief Executive Officer to sign time critical reports should be mandatory. We are concerned that this may impact the timeframe for quality checks and proponents' ability to gather facts relevant to its initial or material breach report and further, would result in an inefficient process as it does not align to the requirements of the ESC.

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

Shell Energy would support an implementation time frame of 12 months and commencement date of 1 July 2025. Shell Energy considers that this would allow retailers sufficient notice to update its reporting systems, internal policies and frameworks. In addition, a commencement date of 1 July 2025 would ensure that there is no overlap within a financial year between the existing guidelines and the new guidelines. Given the importance of compliance with the guidelines, and serious regulatory penalties for failing to do so, ensuring a clean break between the current guidelines and new guidelines would give the industry clarity on its reporting obligations. Shell Energy would support alignment of the new Guidelines with the revised Retail Performance Reporting Procedures & Guidelines (Version 4), with both commencing on 1 July 2025.

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**

Shell Energy agrees that the self-reporting of non-compliances relating to family violence will enable the AER to monitor and investigate any compliance issues in a timely manner. Shell Energy supports the addition of Rule 76G(1) of the NERR as an immediate reporting obligation. Shell Energy considers that Rule 76D of the NERR is somewhat ambiguous in its definition and considers that its selection as a standalone immediate obligation may cause confusion within the industry. Shell Energy supports Rule 76A being added to retailers half-yearly reporting obligations and would support Rules 76A – 76M to be added as half-yearly obligations, reflecting the importance of a retailer's family violence obligations and the vulnerability of these customers.

- **Presentation of standing offer prices – section 24 of the NERL as a half-yearly retailer reportable obligation**

Shell Energy supports the addition of 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**

Shell Energy supports the addition of 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**

Shell Energy supports the addition of rules 106 and 106A(1)-(3) as a half-yearly retailer reportable obligation.



- **Obligations and rules 106 and 106A(4)-(6) of the NERR as half-yearly distributor reportable obligations?**

Shell Energy supports the addition of rules 106 and 106A(1)-(3) as a half-yearly distributor reportable obligation, on the basis that this aligns with retailer reporting obligations..

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

Shell Energy does not support the proposed introduction of reporting material breaches to the AER as soon as reasonably practicable. As the AER recognises, the impact of each potential breach is often unclear, therefore it is possible that retailers may have different interpretations of materiality. While Shell Energy notes the AER including guidance as to how a retailer could determine whether a breach is material, we consider that ambiguity remains in both the reportability of a potential issue, and the timeframe in which it needs to be resolved or reported.

Additionally, the AER's guidance that implies reportability if "the conduct of the reporting entity resulted in another market participant failing to meet a regulatory obligation" is flawed for several reasons. Firstly, one participant is unlikely to have knowledge as to whether another participant has failed to meet a regulatory obligation. Secondly, given an absence of understanding of another participants processes it is impossible to determine how one's actions could impact another. Thirdly, within the example stated it would be likely that the other participant would have their own reporting obligations in relation to the issue, meaning that the issue would be reported separately.

Further, 'as soon as reasonably practicable' is equally ambiguous and appears to be contradictory to the AER's approach to change reporting frequencies of multiple obligations to half-yearly and streamline the reporting process. Shell Energy considers that an approach that would give retailers clarity, and ensure a consistent approach, would be to determine which obligations require self-reporting and the proposed frequency of each obligation.

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

Shell Energy supports the proposed reduction in the current quarterly reporting obligation to half-yearly. Shell Energy understands that the AER's intent is for the de-energisation of premises obligations to be reduced to half-yearly reporting. However, we note that Clause 116(1) of the NERR remains an immediate reportable obligation under the draft new Guidelines. Shell Energy would support retaining Clause 116(1)(a) of the NERR as an immediate reportable obligation due to the potential consumer harm relating to the de-energisation of life support customers but considers Clause 116(1)(b)-(i) should be reclassified as a half-yearly reporting obligation in line with the AER's proposed changes to the Guideline.

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

Shell Energy supports the proposed change to address the inconsistencies observed by the AER in the reporting on de-energisations.



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

Shell Energy supports the proposed streamlining of the reporting obligations and agrees that they are either covered by other reporting obligations or would be considered low risk. However, Shell Energy cautions the AER in that there is still ambiguity around the introduction of reporting material breaches as soon as reasonably practicable, and we consider that this creates an uncertain reporting obligation.

- **Billing – rules 26, 28 and 29 of the NERR**

Shell Energy supports the proposed removal of the three billing rules to ensure reporting is focussed on the higher risk billing obligations.

- **Retail contracts – rules 47-50 of the NERR**

Shell Energy supports the proposed removal of the four retail contracts rules and agrees with the AER's rationale for doing so.

- **EIC – rule 46A of the NERR**

Shell Energy supports the proposed removal of rule 46A of the NERR from retailer half-yearly reporting obligations, to streamline EIC reporting obligations.

- **Energy marketing activities – section 53(2) of the NERL and rules 60-68 of the NERR**

Shell Energy supports the removal energy marketing activities obligations as reportable on a half-yearly basis.

- **Deployment of new electricity meters – rule 59A (1)-(3) and (7) of the NERR?**

Shell Energy supports the AER's decision to remove the four rules relating to the deployment of new electricity meters and we consider that the reasoning is sensible.

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

Shell Energy supports the transition to portal-based compliance reporting and have had a positive experience where this has been used with the Essential Services Commission (Victoria), and performance reports for the AER.

Shell Energy recommends ensuring that a report can be submitted via email as a back-up option, if there are technical issues with the portal, or resourcing means that an immediate report cannot be submitted by a trained portal user in the short timeframe. When developing a portal, Shell Energy encourages the AER to ensure that it has the functionality to allow users to submit reports on behalf of multiple entities. Shell Energy would be happy to assist the AER in the development of the portal, including user testing and feedback.

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

Shell Energy believes that the modifications to section 4 of the Guidelines in relation to compliance audits appear to provide clarity and we have no specific issues with the proposed changes. Shell Energy would



support the AER adoption of a similar approach to the ESC's sharing of learnings from compliance reviews to drive improvements across the industry.

Shell Energy thanks the AER for the opportunity to provide comment on this process and we welcome further engagement. If you would like to discuss any parts of the submission, please contact me at

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Yours sincerely,

Libby Hawker

General Manager - Regulatory Affairs and Compliance