



20 December 2010

Mr Tom Leuner
General Manager
Australian Energy Regulator
Markets Branch
GPO Box 520
Melbourne VIC 3001

Attention: Sonja Eibl

Dear Tom,

AER consultation – Guideline on the imposition of additional or more onerous requirements, procedures or standards

AGL welcomes the opportunity to provide comments on the Draft Guideline on the Imposition of Additional or More Onerous Requirements, Procedures or Standards (**AER Guideline**) published by the Australian Energy Regulator in November 2010.

We note that the original National Electricity Code Administrator (NECA) Guidelines on the imposition of additional reporting requirements and monitoring standards under clause 8.7.2(g) of the National Electricity Code (NECA Guidelines) clearly and concisely sets out the purpose of the Guidelines, the criteria for making a decision and the Registered Participants' safeguards if NECA decides to use its powers.

AGL recommends that a similar approach, or sub-categories, in the AER Guideline be used to more readily assist readers understand the purpose of the AER Guideline and the role of the AER.

Purpose

The AER Guideline and the corresponding consultation paper (Consultation Paper) link the purpose of the guideline to the decision of cost allocation. The title and the content of the AER Guideline, however, appear to set out the matters that the AER is to consider before it imposes additional or more onerous requirements, procedures or standards on Registered Participants.

Given that cost allocation is only a small part of the AER Guideline and the Consultation Paper does not even address cost allocation, we recommend that the purpose of the AER Guidelines should be amended to reflect what the AER Guideline is attempting to achieve – setting the parameters for imposing additional obligations in order to monitor or assess compliance with the National Electricity Rules (Rules).

Decision making criteria

When the AER exercises its powers to impose additional or more onerous requirements, procedures or standards, the AER should, in addition to those already addressed in the AER Guideline, have regard to:

- the content of the written request, not just whether the information has been provided, as suggested in the AER Guideline;

- the target Registered Participant's explanation and reasons not just whether the Registered Participant has had an opportunity to explain, as suggested in the AER Guideline;
- whether the Registered Participants and AEMO are complying with the Rules (Rule 8.7.1(b));
- whether the dispute resolution and Rules enforcement mechanisms are working effectively (Rule 8.7.1(b));
- whether any other registered participants are similarly non-compliant and are subject to a corresponding additional obligation (non-discrimination clause Rule 8.7.1(c)); and
- matters set out in Rule 8.7.1(c). We note that the AER Guidelines require the requesting party to have regard to this Rule. It is, however, more appropriately dealt with in terms of AER's powers.

Safeguards – use of power

The NECA Guidelines states that NECA will:

- restrict the information required to that which is reasonably necessary to monitor compliance with the Code;
- specify the particular information and a reasonable time period of reporting required; and
- consult with the relevant Code participant(s) to determine a reasonable time in which to provide the information.

AGL believes it is appropriate for the same safeguards, coupled with the principle of 'consistency over time', as per Rule 8.7.1(c), should be included in the AER Guidelines.

If you would like to discuss this submission please do not hesitate to contact Angela Gregory, Manager Regulatory Advice & Policy, on (03) 8633 6817.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Cruickshank', is positioned below the text 'Yours sincerely,'.

Alex Cruickshank
Head of Energy Regulation