

23 January 2017

## Australian Energy Regulator

Sarah Proudfoot  
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Australian Energy Regulator  
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Melbourne VIC 3001

Via email: [retailcompliance@aer.gov.au](mailto:retailcompliance@aer.gov.au)

### Dear Sarah

Australian Gas Networks Limited (AGN) welcomes the opportunity to make this submission to the Australian Energy Regulator (AER) regarding its "*Draft amendments to AER Compliance Procedures and Guidelines*" (the Guideline).

AGN understands that the AER is seeking feedback on the questions posed throughout the Guideline in order to inform the development of its amended Guideline (to take effect from 1 July 2017). We also understand that the AER is seeking to make amendments to obligations that affect other parties of the electricity and gas supply chains, and that changes to the requirements on distribution businesses are also proposed as a result.

Overall, AGN supports the AER's intent to ensure the Guideline is consistent with the AER's compliance objectives, which include:<sup>1</sup>

- 1 providing guidance on good industry practice;
- 2 promoting a culture of compliance by businesses with effective internal practices;
- 3 applying a risk-based approach that avoids unnecessary regulatory burden; and
- 4 identifying the boundaries of unacceptable conduct and clearly communicating expectations to energy businesses.

More particularly, AGN is supportive of the AER's proposed actions to:

- incorporate new provisions (relating to metering and customer access to information) into the reporting framework; and
- develop guidance material on compliance audits by way of publishing the "*Draft AER Practice Guide for Compliance Audits*".

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<sup>1</sup> AER, *Statement of Intent 2016-17*, 30 June 2016.

The AER is also proposing to increase the reporting frequency for several elements of the compliance guideline. This increase in frequency appears to be inconsistent with the conclusions of the detailed review conducted by the AER in 2014. We do not consider that there has been a material change to the market to require an increase to requirements and as such do not believe these changes are necessary.

We have provided more detailed responses to a number of questions included in the *Notice of draft instrument Amendments to AER Compliance Procedures and Guidelines* in Attachment A.

Please feel free to contact either Vicky Knighton (08 8418 1135) or myself (08 8418 1129) if you would like to discuss this submission further.

Yours sincerely,



**Craig de Laine**

**General Manager - Strategy and Regulation**

## Attachment A

### **9. Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124A(1) of the NERR [National Energy Retail Rules]?**

Our response relates only to the changes applicable to distribution businesses, that is Rule 120(1) only.

The AER is proposing to amend the frequency of reporting obligations under Rule 120(1), from a combination of initial notification and quarterly reporting to immediate notification for all. AGN considers that the current reporting frequency for Rule 120(1)(b), (c) and (e) (i.e. quarterly reporting) and Rule 120(1)(a) and (d) (immediate notification), is appropriate and would encourage the AER to maintain the current arrangements.

Historically, Rule 120 was an immediate reported type 1 obligation. As part of the AER's June 2014 review of the AER Compliance Procedures and Guidelines, the AER amended the reporting frequency of Rules 120(1)(b), (c) and (e) to quarterly while maintaining the type 1 classification frequency. In its review, the AER stated:

*"This reduction in reporting frequency, however, would be subject to a requirement that breaches of those type 1 obligations that afford targeted protection to vulnerable customers be notified to the AER immediately (within 48 hours of the breach occurring). These include:*

- *obligations on retailers and distributors with respect to customers requiring life support equipment;*
- *obligations on retailers not to de-energise a hardship customer or a residential customer who is adhering to a payment plan; and*
- *obligations on retailers and distributors not to de-energise or arrange for the de-energisation of a customer for non-payment during an extreme weather event.*

*This requirement recognises that certain obligations present unique risks for customer safety and wellbeing, and that more immediate action may be required where that risk is apparent or continuing. It also seeks to recognise that certain 'vulnerable' consumers may require greater protection if appropriate relief is not provided when a breach is first identified."<sup>2</sup>*

As the above demonstrates, the AER highlighted in their last review that these obligations should not be treated consistently based on a risk approach. As such, we would encourage the AER to consider keeping the reporting frequency as quarterly for Rules 120(1)(b), (c) and (e).

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<sup>2</sup> AER, *Notice of draft instrument – Amendments to AER Compliance procedures and guidelines*, June 2014

### **10. Are there any issues with the proposed classification/frequency of reporting in relation to the rules under Part 4, Division 6 and rules 59C(2)-(5) of the NERR?**

The AER is proposing to amend the frequency of reporting under Part 4, Division 6 from annually to half yearly. AGN considers that the benefit of changing the frequency of reporting is unclear, so would encourage the AER to maintain the current reporting frequency.

The AER's *Compliance and Enforcement Approach* states the AER undertakes risk assessments to target compliance activities:

*"We undertake a risk assessment of each obligation in the national energy laws to assist us to target and prioritise our monitoring and compliance activities. The risk assessment involves an analysis and ranking of each obligation to determine its compliance risk, based on two criteria:*

- *the impact on businesses, consumers and other stakeholders of a breach of the obligation, and*
- *the probability that a breach would occur"*<sup>3</sup>

Additionally, the AER has made the following comment in relation to the frequency of type 3 obligation breaches (relating to notification of planned interruptions):

*"Whilst the number of breaches has increased, the percentage of customers affected by the reported breaches is extremely low"*<sup>4</sup>

Given the percentage of customers affected by the notification of planned interruptions is extremely low, AGN considers that the benefit of increasing the reporting frequency of these breaches (i.e. increasing consumer confidence in the energy market) is relatively low. As such, we do not consider there is a strong need to monitor trends in breaches or potential breaches at a higher frequency at this point in time.

### **13. Are there any reasons we should not move from two pro-forma report templates to a single template?**

AGN is supportive of the AER moving to a single template.

### **14. Are there any improvements that could be made to the current reporting template? What issues, if any, have arisen with the current reporting template?**

AGN has not identified any issues with the current reporting template and is supportive of the proposed change to remove any redundant fields.

### **15. Do you have any comments on the AER's proposed approach to compliance audit powers under the NERL [National Energy Retail Law]?**

AGN is supportive of the AER audit processes that:

- provide regulated entities with clear advice regarding the scope and prompt for a compliance audit;
- clarify the information the AER will request throughout a compliance audit;

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<sup>3</sup> AER, *Compliance and Enforcement Statement of Approach*, April 2014.

<sup>4</sup> AER, *AER National Energy Retail Law annual compliance reports 2015-16*, 22 November 2016.

- provide clear findings that are unambiguous; and
- are evidence based and includes findings that can be substantiated.

We also agree with the requirement that businesses are given a reasonable opportunity to provide comments on factual errors it identifies in the audit report. We believe this process could be further improved by providing businesses a copy of the audit report before it is finalised. This would increase the transparency of the audit process and potentially enable the publication of any such reports in a timely manner.

## **16. Do you have any comments on the AER's Practice Guide for Compliance Audits?**

AGN supports the consideration the AER has given to the approaches adopted by the Essential Services Commission of Victoria and the Independent Pricing and Regulatory Tribunal. In particular, AGN supports the adoption of already established practices regarding compliance audits to avoid compliance costs incurred by businesses associated with varying regulatory requirements across different state jurisdictions in Australia.

As a business operating across different jurisdictions, AGN considers that this approach is consistent with the long-term interests of energy customers.

## **17. Do you have any comments on the audit process and the factors the AER will apply when making a determination to use its compliance audit powers?**

The AER's *Compliance and Enforcement Statement of Approach*<sup>5</sup> highlights the use of targeted compliance reviews and strategic compliance projects as a mechanism for the AER to gather information and monitor compliance. AGN would support the inclusion of these reviews into the Guide as a means of obtaining information prior to the use of a compliance audit.

AGN supports the AER's "*Compliance and Enforcement Statement of Approach*" which states:

*"We acknowledge that audits can be intrusive and costly. We therefore consider the scope, coverage and timing of audits on a case by case basis."*<sup>6</sup>

AGN acknowledges that audits can be costly for businesses and that this cost impact can be minimised with effective processes and communication between all parties.

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<sup>5</sup> AER, *Compliance and Enforcement Statement of Approach*, April 2014.

<sup>6</sup> Ibid.