



Draft Report

**Approach to reporting requirements and
monitoring standards in the electricity market**

**(Guideline on the imposition of additional or
more onerous requirements, procedures or
standards under clause 8.7.2(g) of the National
Electricity Rules)**

February 2011

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Request for submissions

Interested parties are invited to make written submissions on issues regarding this draft report to the Australian Energy Regulator (AER) by **15 February 2011**. Where an interested party considers it necessary or beneficial to have a meeting, the party should state the reasons why such a meeting is necessary or desirable.

Submissions can be sent electronically to: aer inquiry@ aer.gov.au. Please title your email 'Submission on draft report – attention Sonja Eibl'.

Alternatively, submissions can be mailed to:

Tom Leuner
General Manager
AER–Markets Branch
GPO Box 520
MELBOURNE VIC 3001

The AER prefers all submissions to be made public to facilitate an informed and transparent consultative process. Submissions should be made with reference to the ACCC–AER Information policy: the collection, use and disclosure of information (ACCC–AER Information Policy). This document is available at www.aer.gov.au.

Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to submit this information as outlined in the ACCC–AER Information Policy.

All non-confidential submissions will be placed on the AER's website for general access by the public.

Inquiries can be directed to aer inquiry@ aer.gov.au or to Sonja Eibl on (02) 9230 9133.

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Shortened forms

Shortened Form	Extended Form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
draft Guideline	<i>Draft Guideline: Guideline on the imposition of additional or more onerous requirements, procedures and standards under clause 8.7.2(g) of the National Electricity Rules (November 2010)</i>
Electricity Rules	National Electricity Rules
Registered Participant	has the meaning given in Chapter 10 of the National Electricity Rules

1 Summary

This draft report and the associated revised Guideline on the imposition of additional or more onerous requirements, procedures or standards under clause 8.7.2(g) of the National Electricity Rules (revised Guideline) has been informed by submissions on the initial consultation paper and the *Draft Guideline: Guideline on the imposition of additional or more onerous requirements, procedures and standards under clause 8.7.2(g) of the National Electricity Rules (November 2010)* (draft Guideline).

Submissions were received from:

- AGL Energy Limited (AGL)
- United Energy Distribution Pty Limited (UED)
- CitiPower Pty and Powercor Australia Ltd (CitiPower and Powercor).

2 Background

The National Electricity Code Administrator (NECA) issued a guideline on the imposition of additional reporting requirements and monitoring standards under the National Electricity Code in November 2000 (NECA Guideline). NECA's functions and powers were transferred to the AER on 1 July 2005. The NECA Guideline continued to have effect after this date through the operation of the *National Electricity (South Australia) Regulations*.

On 15 November 2010, the AER commenced consulting on the draft Guideline with a view to updating the NECA Guideline. The revised Guideline is based on and substantially similar in operation and intent to the NECA Guideline.

3 Issues raised in submissions

3.1 Structure of the draft Guideline

AGL Energy Limited (AGL) submits that the AER should use sub-categories to identify the purpose of the draft Guideline, the criteria for making a decision and the safeguards available to Registered Participants. AGL submits that these sub-categories were adopted in the NECA Guideline and would assist readers.

The AER accepts that changes should be made to the structure of the revised Guideline and has inserted, for example, the word 'Purpose' prior to the first paragraph. The AER also has made additional changes to the structure and wording of the revised Guideline to further assist readers.

3.2 Purpose

AGL submits that the draft Guideline and the consultation paper link the purpose of the draft Guideline to cost allocation only, whereas the title and content of the draft Guideline concern those matters the AER is to consider before it imposes additional or more onerous requirements, procedures or standards on Registered Participants.

The AER accepts that the purpose of the revised Guideline should reflect both of these aspects as identified in cl. 8.7.2(h) of the Electricity Rules. Clause 8.7.2(h) of the Electricity Rules provides that the AER must develop and implement guidelines governing the exercise of the powers conferred on it by cl. 8.7.2(g). This concerns both the imposition of additional or more onerous requirements, procedures and standards at the request of a Registered Participant and/or the AEMO and in the event that these are imposed, the allocation of costs between Registered Participants and/or AEMO. This is reflected in the revised Guideline.

3.3 Exercise of the AER's powers

AGL submits that the AER should have regard to matters additional to those set out in the draft Guideline.

AGL submits that the AER should take into account the content of the written request (not only whether the information has been provided) and the 'target' Registered Participant's explanation and reasons (not only whether the Registered Participant has had an opportunity to explain).

The AER notes that the draft Guideline requires the AER to have regard to whether it is reasonably necessary to impose additional or more onerous requirements, procedures or standards to monitor or assess a Registered Participants' compliance with the Electricity Rules and whether the information sought by imposing additional or more onerous requirements, procedures or standards cannot reasonably be obtained by more cost effective means. The AER considers that a review of the content of a written request and any explanation and reasons provided by a relevant Registered Participant form an important part of these considerations.

The AER also notes that section 1.4 of the draft Guideline specifically provides that the AER will consult with relevant Registered Participants. This gives any relevant Registered Participants who are the subject of a written request the opportunity to make submissions on compliance costs for the AER's review.

The AER, however, accepts that the inclusion of an express requirement for the AER to have regard to the content of written requests and any information obtained during the consultation process would clarify that they will be taken into account. The AER has amended the draft Guideline accordingly.

AGL also submits that in considering written requests under section 1.2 of the draft Guideline the AER should have regard to whether the Registered Participants and/or AEMO comply with the Electricity Rules and whether the dispute resolution and rules enforcement mechanisms are working effectively as required under cl. 8.7.1(b) of the Electricity Rules.

The AER notes that clause 8.7.2(g) of the Electricity Rules states that the purpose of any additional or more onerous requirements, procedures or standards is to ‘monitor or assess compliance’ with the Electricity Rules by the relevant Registered Participant. Given this, the AER does not consider that it is appropriate, nor will it be possible, to engage in an assessment of a Registered Participant’s compliance before the imposition of additional requirements, because the additional requirements are in themselves directed at monitoring or assessing compliance. Similarly, the AER considers that an assessment of the efficacy of dispute resolutions and enforcement mechanisms is outside of the scope of the guidelines as prescribed by cl. 8.7.2(h) of the Electricity Rules and is better carried out separately from the decision to impose additional or more onerous requirements, procedures or standards.

AGL further submits that the AER should have regard to whether any other Registered Participants are similarly non-compliant and are subject to a corresponding additional obligation with reference to cl. 8.7.1(c) of the Electricity Rules. The AER notes that a decision as to whether a Registered Participant is ‘similarly non-compliant’ would require an assessment of the compliance of other Registered Participants. As discussed above, cl. 8.7.2(g) of the Electricity Rules provides that Registered Participants or AEMO can request the imposition of additional requirements to assess or monitor compliance. Therefore, the AER considers that it is not appropriate to assess whether other Registered Participants are ‘similarly non-compliant’.

Further, the AER notes that cl. 8.7.2(g) of the Electricity Rules provides that the AER is exercising its powers under cl. 8.7.2(d) if it chooses to impose additional obligations. Clause 8.7.2(d) of the Electricity Rules requires the AER to ‘take into consideration the matters set out in clause 8.7.1(c)’ when formulating any additional or more onerous requirements or procedures and standards. This requirement in cl. 8.7.2(d) of the Electricity Rules applies in addition to the general requirement on the AER, under cl. 8.7.1(c), to ensure that its monitoring processes are consistent over time and non-discriminatory.

Finally, AGL submits that the AER should take into account the matters set out in cl. 8.7.1(c) of the Electricity Rules. AGL submits that although the draft Guideline requires the requesting party to have regard to this, it is more appropriately dealt with in terms of the AER’s powers. As explained above, because cl. 8.7.2(d) of the Electricity Rules obliges the AER to take into consideration these matters, the AER considers that such an amendment is not necessary.

CitiPower and Powercor submit that the AER should also have regard to the compliance costs of providing the requested information. In particular, CitiPower and Powercor submit that the AER should consult with ‘affected’ Registered Participants and, on this basis, determine whether there is a net benefit in imposing the additional requirements.

The AER considers that the consultation process outlined in section 1.4 of the revised Guideline provides relevant Registered Participants with an opportunity to make wide-ranging submissions, including in relation to the level of compliance costs. The AER will have regard to all information provided by the relevant Registered Participants in the consultation process.

3.4 Safeguards

Both AGL and UED submit that the AER should consider inclusion of the following safeguards in the revised Guideline:

- Restricting the information to that which is reasonably necessary to monitor compliance. The AER notes that cl. 8.7.2(g) of the Electricity Rules provides that the AER may impose additional or more onerous requirements, procedures or standards in order to monitor or assess compliance. The AER considers that this already imposes a limit on the purpose for which the AER may seek information and the scope of information that it may seek. The AER also notes that it is obligated to observe binding administrative law requirements. However, the AER agrees to include an express provision in a new section 1.6 of the revised Guideline, titled ‘Safeguards’, to highlight that the AER will observe binding administrative law obligations and safeguards set out in the Electricity Rules to restrict the information sought by the AER to that reasonably necessary to monitor or assess compliance with the Electricity Rules.
- Specifying the particular information and a reasonable time period within which to report or provide the information. The AER notes that section 1.4 of the draft Guideline provides that the AER will consult with those Registered Participants the subject of proposed additional or more onerous requirements or procedures and standards. While the AER considers that this in itself provides a safeguard, it agrees to include a provision in the new section 1.6 of the revised Guideline to the effect that it will observe binding administrative law obligations and safeguards set out in the Electricity Rules to specify the particular information and a specify a reasonable period of time for reporting or the provision of the information.
- Consulting with the relevant Registered Participant to determine a reasonable time in which to provide the information. The AER notes that section 1.4 of the draft Guideline provides that the AER will consult with those Registered Participants the subject of proposed additional or more onerous requirements or procedures and standards. As the scope of the consultation is open and parties can provide comment on all aspects of the additional or more onerous requirements or procedures and standards, the AER considers that it is not necessary or appropriate to include this particular change.

3.5 Consultation

UED submits that section 1.4 of the draft Guideline does not ‘provide comfort’ that the AER will consult with relevant Registered Participants before imposing additional or more onerous requirements or procedures and standards. UED bases this concern on the fact that the draft Guideline footnotes cl. 8.7.2(d) instead of cl. 8.7.2 (g) of the Electricity Rules as the basis for consulting with Registered Participants.

The AER accepts that the consultation provision should make clear that consultation will occur before any additional requirements, procedures or standards are imposed and has amended the provision to reflect this.

With regard to the footnote, the AER notes that its power to impose additional or more onerous requirements, procedures or standards is conferred on the AER by cl. 8.7.2(d) of the Electricity Rules. Clause 8.7.2(d) of the Electricity Rules provides that the AER may establish additional or more onerous requirements or procedures and standards which do not apply to all or a particular category of Registered. Under cl. 8.7.2(g), the AER may exercise this power at the request of any Registered Participant or the AEMO. For this reason, the AER considers, that the requirements set out in cl. 8.7.2(d) of the Electricity Rules apply and accordingly, the AER will consult with the relevant Registered Participants which are the subject of a request for the imposition of additional or more onerous requirements, procedures or standards.

3.6 Other Issues

CitiPower and Powercor submit that a determination under cl. 8.7.2 of the Electricity Rules is not subject to merits review and consider that an appeal mechanism should be put in place to allow Registered Participants to appeal against reporting requirements that are unduly onerous, or do not provide for sufficient cost recovery. Such a change is beyond the power of the AER which does not have a rule making power. It is the Australian Energy Market Commission (AEMC) that has this power. Any person may make request to the AEMC seeking a change to a rule or the introduction of a new role.¹

A final issue raised by CitiPower and Powercor relates to the ability of businesses to recover the costs of additional reporting requirements that do not meet the materiality threshold set out in a distribution determination pursuant to cl. 6.6.1 of the Electricity Rules. The AER considers that this raises broader issues regarding how regulated businesses recover regulatory costs that go beyond the scope of this draft report and the revised Guideline. The AER otherwise notes that when considering whether to impose additional or more onerous requirements, procedures or standards and the costs associated with this, the AER will consider the cost effectiveness of the proposed additional requirements. If the AER finds that the additional or more onerous requirements, procedures or standards are warranted and cost effective, the cost pass through mechanism will operate, subject to the usual provisions and requirements, to permit for the recovery of those costs that meet the materiality threshold.

¹ National Electricity Law, s. 91.