23 January 2017

Ms Sarah Proudfoot
General Manager, Retail Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Via email: retailcompliance@aer.gov.au

Energy Networks Australia submission to the Draft Amendments to the AER Compliance Procedures and Guidelines

Dear Ms Proudfoot,

Energy Networks Australia welcomes the opportunity to make a submission to the Australian Energy Regulator (AER) in response to the *Notice of Draft Instrument Amendments to the AER Compliance Procedures and Guidelines* (the Guidelines) published by the AER on 9 December 2016.

Energy Networks Australia is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia.

We support a sound, proportionate and efficient compliance framework for the AER's administration of the National Energy Retail Law (NERL), the *National Energy Retail Rules* (NERR) and applicable Regulations.

We note that some of the proposed amendments to the Guidelines arise due to rule changes recently instituted by the Australian Energy Market Commission (AEMC) since the Guidelines were last revised in September 2014. Energy Networks Australia supports the inclusion of revisions implementing changes to meter reading and billing frequency, expanding competition in metering and related services and customer access to information about their energy consumption.

Proposed expanded obligations

Energy Networks Australia has concerns with the inclusion of a new requirement for "immediate reports" to be signed by the Chief Executive Officer or Managing Director of the regulated entity. Whilst Chief Executive Officers or Managing Directors are of course informed and concerned by any breaches to clause 3.7 of the Guideline in some circumstances it may not be possible to arrange Chief Executive Officer or Managing Director signature on a report within two business days. Energy Networks Australia would support a change to proposed clause 3.13 so that the Chief Executive Officer or Managing Director '*or their delegate'* are able to sign off on a report to the AER in these circumstances in order to ensure timely sign off on these important reports.

Energy network businesses do not support the expansion of immediate reporting to include NERR rule 120(1)(b), (c) and (e) breaches of de-energisation requirements. The industry supports the AER's prior approach of classifying breaches based on the potential level of harm to customers. The AER introduced the current arrangements via the June 2014 review of the Guidelines, which removed NERR rules 120(1)(b), (c) and (e) from the immediate reporting regime. It's not clear why this assessment has changed under the current revision of the Guidelines. In the previous review the AER noted:

> *"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"[1].

Energy Networks Australia does not believe that the AER has demonstrated a sound case for introducing changes which would require breaches to Part 4 Division 6 to be reported on a half yearly basis. Current regulatory arrangements are based on a risk-based approach. The AER has not demonstrated that there is an increasing trend in non-compliance in this area[2].

The most recent *AER National Energy Retail Law Annual Compliance Report 2015-16* published on 22 November 2016 states:

"Distributor type 3 obligations … increased. This may be attributable to the introduction of the Retail Law in Queensland. Whilst the number of breaches has increased, the percentage of customers affected by the reported breaches is extremely low. We will continue our engaging with businesses to address the underlying cause of these breaches in 2016-17".

Audit processes and checks

We note that under the NERL sections 275 and 276 the AER can carry out compliance audits of a business' compliance with the NERL and NERR. Compliance audits are to be carried out in accordance with the Guidelines. Energy Networks Australia welcomes the additional detail provided in the proposed revisions to the Guidelines, as well as the accompanying *AER's Practice Guide for Compliance Audits*.

In addition, Energy Networks Australia is concerned that:

- there are no requirements on the AER and / or their third party auditor to provide draft audit reports to affected stakeholders;
- there is limited time provided for regulated entities to comply with the request for an Audit Proposal; and
- it is unclear whether the cost of requested audits can be recovered by the regulated entity as part of their regulated operating expenditure.

Energy Networks Australia is keen to ensure that there is an opportunity for businesses to address any factual errors which may impact on audit findings or recommendations. Such an approach is standard industry practice, and Energy Networks Australia requests its inclusion in the Final Guideline.

With regards to compliance audits to be undertaken by the regulated entity, draft clause 4.25 (requiring compliance within 10 business days of receiving the notice) does not provide adequate time for regulated entities to comply with the request for an Audit Proposal. A key issue is the time it takes to engage third party auditors and then determining if the person or persons performing the audit will be able to carry out the audit in compliance with clause 4.3. Specifically, it may require additional time to comply with the specifications in the Terms of Reference. Energy Networks Australia recommends the creation and use of an audit panel, similar to the panel used by the Victorian Essential Services Commission.

As a possible model, network businesses note the current approach the Independent Pricing and Regulatory Tribunal (IPART) utilises to manage audits. IPART's approach is to request the audit and the regulated entity must provide a final audit report by a certain date, the timings between the request and the delivery of the final report are then managed by the regulated entity to meet the deadline whilst

[1] AER, Notice of draft instrument | Amendments to Compliance Procedures and Guidelines, June 2014, p. 14.

[2] In Victoria, regulatory audits are generally performed by an independent auditor selected from the Essential Services Commission's audit panel and follow the requirements of the Commission's Guideline No. 22 – Regulatory Audits of Energy Businesses.

providing various key documents to IPART throughout the audit timeframe. For example, the audit proposal is provided to IPART for approval and IPART endeavours to approve the proposal within 10 business days of receipt.

Energy Networks Australia requests that the Draft Guideline is amended to state that the audits (whether undertaken by the AER or the regulated entity) are a regulatory obligation, and as such, form part of the standard control operating expenditure. Recognition as a standard control service obligation will ensure regulatory oversight of the time and cost of audits within AER regulatory processes, including efficiency benchmarking. It will also ensure that the costs of complying with the guideline will be reviewed in assessing whether they give rise to a positive pass through event. It is important to note that if the AER chooses to undertake an audit, or requests the regulated entity to undertake one, this does not automatically mean that the regulated entity has breached the NERR and as such, the audits should be considered necessary expenditure to comply with regulatory obligations.

We attach responses to the specific consultation questions posed at Attachment A. If further information is sought on this matter, please contact Ms Kate Healey, Director Regulation, on 02 6272 1516 or by email on khealey@energynetworks.com.au.

Yours sincerely,

John Bradley
Chief Executive Officer

Attachment A

Question Number	Consultation Question	Energy Networks Australia response
1.	Are there any concerns with implementing the proposed amendments to the reporting framework by 1 July 2017?	No. Energy Networks Australia notes that member businesses have processes and systems in place to monitor compliance with distributor obligations. Energy Networks Australia does however note that the *Expanding Competition in Metering and Related Services* rule change does not take effect until 1 December 2017. As retailer deployment of advanced meters has already commenced Energy Networks Australia would welcome early self-reporting by retailers on non-compliance with the new obligations. It is however appreciated that compliance with these reporting obligations would not be enforceable by the AER until the new rules take effect.
2.	Are there any issues arising out of the Billing frequency rule change that may require changes to the current classification/frequency of reporting in relation to rule 29(1)?	No.
3.	Are there any risks with making the reportable obligations for retailer planned interruption rules the same as distributor planned interruption rules in the Guidelines?	Energy Networks Australia agrees that retailer planned interruptions should be treated on the same basis as existing distributor planned interruption obligations under the Guidelines. It is therefore appropriate that breaches of rules 124 and 124A(1) relating to life support customers should require immediate reporting and that breaches of rules 59C(2)-(5) relating to retailer interruption to electricity supply should be reported half-yearly in line with distributor reporting obligations.
4.	Should the new retailer notice obligations (specifically rules 59A) be made reportable under the reporting framework? If so, is the obligation to report on a six month basis appropriate?	Energy Networks Australia supports inclusion of rule 59A (notice to small customers on deployment of new electricity meters) as a half-yearly reportable obligation under the Guideline.
5.	Are there any other rules arising from the Metering rule change that should be reportable under the Guidelines?	No.
6.	Are there any matters arising from the Energy consumption rule change that may require a reconsideration of the classification/frequency of reporting in relation to rule 28(2)?	No.
7.	What issues may require amending the reporting framework to capture the rules introduced in the Energy consumption rule change?	Energy Networks Australia endorses the AER's proposal to not attach reportable obligations to new rules arising from the customer access to information about their energy consumption rule change on the basis that

Question Number	Consultation Question	Energy Networks Australia response
		no systemic issues have previously been identified in relation to the provision of historical billing or energy consumption information.
8.	What, if any, are the implications of the AER removing the obligation on regulated businesses to report on rules 55-56B, 58-59 of the NERR?	Energy Networks Australia supports the removal of this reporting obligation as no underlying issues have been identified and compliance can be effectively monitored through other mechanisms.
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?	Energy Networks Australia does not have any concerns with respect to the AER's proposal to require immediate reporting on potential breaches of all sub-clauses under rules 116(1). Energy Networks Australia does not support the expansion of immediate reporting to include NERR rule 120(1)(b), (c) and (e) breaches of de-energisation requirements. The industry supports the AER's prior approach of classifying breaches based on the potential level of harm to customers. Energy Networks Australia supports the inclusion of retailer life support obligations under rule 124A(1) as an immediately reportable breach to ensure consistency with distributor life support obligations.
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 current arrangements are based on a risk-based approach. The AER has not explained why these increases in reporting frequency are necessary or what benefit they will provide or that there is an increasing trend in non-compliance in this area.
11.	Are there any issues with the removal of the obligation on businesses to report on provisions under Part 2, Division 6 of the NERL?	Energy Networks Australia supports the removal of this reporting obligation on the basis that compliance can be effectively monitored through other means.
12.	Are there any issues with the removal of the obligation on businesses to report on rules under Part 2, Division 5 of the NERR?	No.
13.	Are there any reasons we should not move from two pro-forma report templates to a single template?	No. It is unclear how the proposed draft pro-forma B.1 is to be used where no breaches have been identified for the period. Energy Networks Australia recommends that amendments are made to the pro-forma to accommodate this scenario. Energy Networks Australia does not support the requirement for a signed pro-forma for immediately reportable obligations unless a delegate's sign-off is acceptable.

Question Number	Consultation Question	Energy Networks Australia response
14.	Are there any improvements that could be made to current reporting template? What issues, if any, have arisen with the current reporting template?	No.
15.	Do you have any comments on the AER's proposed approach to compliance audit powers under the NERL?	A targeted, risk-based approach to compliance auditing is supported. Energy Networks Australia would support the use of an audit panel, similar to that used by the Victorian Essential Services Commission.
16.	Do you have any comments on the AER's Practice Guide for Compliance Audits?	➢ Energy Networks Australia suggests that the Terms of Reference should allow a requirement for a draft audit report to be provided to the regulated entity for review and comment prior to submission to the AER. This additional stage will assist in ensuring that the compliance audit produces reliable findings on a regulated entity's ability to meet its obligations and minimise the need for follow-up action or clarification of misunderstandings after the audit report has been issued to the AER. ➢ With regards to Paragraphs 4.12(c) and 4.25(c) circumstances may exist where it is not reasonable or appropriate for auditors to have access to information – this is recognised in s206 of the NERL through the inclusion of certain qualifications (see for example sub-sections (6) and (8)). Energy Networks Australia considers it reasonable and appropriate for auditor access to a regulated entity's information be subject to reasonable restrictions consistent with the protections built into s206 of the NERL. ➢ Regarding Paragraph 4.16 – Energy Networks Australia considers it appropriate that the AER should be required to produce to the party bearing the audit costs reasonable evidence justifying any costs claimed under this paragraph, specifically around the matters specified in 4.16(a) to (d). ➢ With regards to paragraph 4.3(b) it is not clear what 'established audit requirements' means in the context of a compliance guideline. 'Established audit requirements' may be relevant for financial audits, but Energy Networks Australia queries whether this might be interpreted to exclude parties well suited to undertake compliance audits (e.g. a law firm). This issue could be addressed by inserting "(where relevant)" after "audit requirements".

Question Number	Consultation Question	Energy Networks Australia response
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?	Energy Networks Australia supports the AER's approach to making a determination to use its compliance audit powers. Energy Networks Australia agrees that the decision to use compliance audits should be made on a case-by-case basis and take into consideration levels of compliance, potential risks to consumers and the broader market, as well as the ability to obtain compliance information through alternative means. Energy Networks Australia considers that the AER should also strive to ensure fairness, consistency and transparency in the application of its compliance audit powers across regulated entities and would therefore welcome inclusion of these key factors in the AER's decision-making criteria. Energy Networks Australia would support removal of the requirement for businesses to provide an Audit Proposal within 10 business days of receiving the notice from the AER. This timeframe is not achievable for businesses who outsource regulatory audits, and are required to undertake a competitive tender/quotation process to appoint the auditor.