

23 January 2017

Sarah Proudfoot
General Manager – Retail Markets
Australian Energy Regulator AER
GPO Box 520
Melbourne Vic 3001

Via email: retailcompliance@aer.gov.au

Dear Ms Proudfoot

RE: DRAFT AER COMPLIANCE PROCEDURES AND GUIDELINES

Endeavour Energy welcomes the opportunity to provide feedback on the Australian Energy Regulator's (AER's) Draft AER Compliance Procedures and Guidelines (Draft Guidelines). Endeavour Energy supports the implementation of nationally consistent compliance procedures that enhance the confidence of key customer protections.

Broadly speaking, we consider the Draft Guideline better promotes compliance with the National Electricity Retail Rules (NERR) as it:

- Provides greater clarity with defined terms;
- Defines the AER's approach to compliance audits; and
- Provides consistency across retailer and distributor reporting.

For example, terminology has been changed to provide clarity of the different levels of reporting required, with the words "immediate", "quarterly" and "half yearly" replacing the current unclear terminology "Type 1 immediate", "Type 1 quarterly" and "Type 3", respectively.

Further, the Draft Guideline proposes to align distributors' reporting period for all sub-clauses of 120(1) in the NERR to immediate, to achieve consistent treatment of prohibited disconnection clauses. In contrast, the current Guideline's reporting timeframes for prohibited disconnection are inconsistent as they require immediate reporting of rules 120(1)(a) and (d) and then quarterly reporting of the remaining sub-clauses of 120(1).

Endeavour Energy is also supportive of the following proposed changes in the Draft Guideline:

- A framework for audits is now identified, increasing transparency and an understanding of audit requirements;
- The inclusion of retailer interruptions giving a consistent emphasis to providing customers with information about planned interruptions across the energy industry; and
- Obligations currently known as type 3 changed from annual to half yearly reporting. This improves the reporting process by reducing the higher volume of reporting to be prepared in July/August each year when other end of financial year reporting is occurring.

Notwithstanding the improvements noted above, Endeavour Energy has concerns regarding the details of the Draft Guideline's requirements on compliance audits carried out by the AER and regulated entities. Our concerns relate to:

- There being no requirements for the AER and / or their third party auditor to provide draft audit reports to affected stakeholders;
- The insufficient time provided for regulated entities to comply with the request for an Audit Proposal; and
- The ability or other to recover the cost of requested audits by the regulated entity as part of their regulated operating expenditure.

For audits carried out by the AER, there is no mention of providing the draft or final audit report to affected stakeholders in order to allow comment/clarification/addressing of any issues found. Of particular concern is that an opportunity is provided to address any factual errors that may materially impact on audit findings or recommendations. Such an approach is standard industry practice, and we request its inclusion in the Final Guideline.

With reference to compliance audits to be undertaken by the regulated entity, the draft clause 4.25 does not provide adequate time (within 10 business days of receiving the notice) 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, will they have suitable experience in the energy sector and be able to comply with the specifications in the Terms of Reference. One of the potential unintended consequences of requiring such short timeframes for the audit is that businesses may seek to develop template audit documents that may not adequately address relevant matters.

As the audit request may cover any of the obligations under the Retail Law or Retail Rules, answering the capabilities of the proposed audit personnel may require longer than the initial proposed timeframe. We recommend that this clause be amended to reflect the current approach that 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 while also 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.

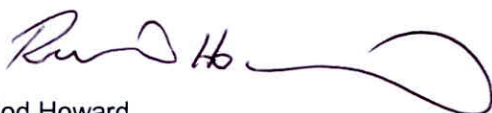
Endeavour Energy also requests that the Draft Guideline is amended to state that the audits (whether undertaken by the AER or the regulated entity) are a regulatory obligation and as such, form part of the standard control operating expenditure. Recognition as a standard control service obligation will ensure regulatory oversight of the time and cost of audits within the AER regulatory process, 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 also important to note that if the AER chooses to undertake an audit, or requests the regulated entity to undertake an audit, this does not automatically mean that the regulated entity has breached the NERR and as such, the audits should be considered as necessary expenditure to comply with regulatory obligations.

Finally, in reviewing the Draft Guidelines we have identified some drafting errors that should be amended. These are:

- **Table of Contents:** Appendix B B.2 does not have the correct page number.
- **Clause 3.10:** 'reportable on a half yearly basis' should actually be 'reporting on a quarterly basis'.
- **Clause 3.27:** 'decrease the frequency of for obligations' should be 'decrease the frequency for obligations'.
- **Clause 4.25(b):** 'clause 4.3 the Guidelines' should be 'clause 4.3 of the Guidelines'.

If you have any queries or wish to discuss this matter further please contact Meghan Bibby, Manager, Customer Service at Endeavour Energy on (02) 9583 5323 or via email at meghan.bibby@endeavourenergy.com.au.

Yours sincerely



Rod Howard
Acting Chief Executive Officer