Attachment A

Energex

Draft Amendments to AER Compliance Procedures and Guidelines

January 2017

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Energex Limited (Energex) is a Queensland Government Owned Corporation that builds, owns, operates and maintains the electricity distribution network in the growing region of South East Queensland, including the poles and wires and underground cables used to connect houses and businesses to the electricity network. We provide distribution services to almost 1.4 million domestic and business connections, delivering electricity to a population base of around 3.2 million people.

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1 Introduction

On 9 December 2016, the Australian Energy Regulator (AER) published for consultation draft amendments to the current *AER Compliance Procedures and Guidelines* (the Guidelines). The Guidelines, which apply to distributors and retailers in jurisdictions that have adopted the *National Energy Retail Law* (NERL), set out the form and manner in which those entities are required to submit information and data to the AER about their compliance with obligations under the NERL and the *National Energy Retail Rules* (NERR).

The AER's proposed amendments take into consideration various rule changes made by the Australian Energy Market Commission (AEMC) since the current Guidelines were last amended in September 2014, in particular the rule determinations relating to meter read and billing frequency, expanding competition in metering and related services and customer access to information about their energy consumption. The amendments are also intended to refine the reporting framework to ensure it remains in alignment with the AER's compliance objectives, improve the quality and reliability of reports submitted to enable comparison between businesses and revise the guidance material relating to compliance audits to reflect the AER's approach to exercising its powers under the NERL.

The AER has requested that interested parties should make submissions on the draft Guidelines by 23 January 2017. Energex's responses to the specific questions raised in the AER's *Notice of draft instrument: Amendments to AER Compliance Procedures and Guidelines* are provided in section 3 of this submission.

2 General comments

As a Distribution Network Service Provider in South-East Queensland with almost 1.4 million domestic and business connections, including over 12,000 premises registered as having life support equipment, Energex completes high volumes of both customer-requested and network-initiated works. For example, during the 2015/16 financial year, Energex completed 39,437 planned interruptions (impacting 266,198 customers), 143,288 de-energisations and 135,116 re-energisations. In order to ensure a high level of compliance with distributor regulatory obligations under the NERL and the NERR and to effectively monitor and self-report non-compliance with those obligations, Energex has established comprehensive systems and processes. Amendments to the AER's reporting framework are therefore of particular interest to Energex.

As the AER has responsibility for monitoring, investigating, enforcing and reporting on regulated entities' compliance with the NERL and the NERR, Energex acknowledges the need for the AER's Guidelines to be up-to-date and relevant. Therefore, the inclusion of obligations that have resulted from rule changes made by the AEMC since the document was last revised in September 2014 and the proposed refinements intended to better enable the AER to undertake its functions are supported. However, while these overall aims are endorsed, Energex does have some concerns with regard to two aspects of the proposed amendments to the reporting framework, namely the intention to replace the existing obligation classification framework and inclusion of a requirement for "immediate reports" to be signed by the Chief Executive Officer or Managing Director of the regulated entity.

2.1 Classification of obligations

Energex does not support replacing the current classification of obligations from Types 1, 2 and 3 to "immediate reports", "quarterly reports" and "half-yearly reports" for the following reasons:

- Since the decision was made to implement the National Energy Customer Framework in Queensland on 1 July 2015, Energex has undertaken process development and training of staff based on the AER's current classification framework. As a result, all relevant documentation refers to Type 1, 2 and 3 obligations and administrative and field personnel (including external contractors) are very familiar not only with those classifications but also the AER's rationale for applying classifications according to the level of potential customer impact that may result from non-compliance. A change to the classification framework would therefore require the amendment of process and training materials and re-education of staff in the new classifications. Energex considers this would be an unnecessary administrative burden and inefficient utilisation of resources.

- Regardless of the practical implications associated with replacing the classification framework, Energex believes that the AER's initial approach to classifying breaches based on level of potential harm to customers is more meaningful and relevant than classifying breaches according to frequency of reporting.

- Reclassification of regulatory obligations and changes to frequency of reporting can already be accommodated within the current classification framework.

As there does not appear to be a significantly compelling reason for replacing the current classification framework other than to align classifications with frequency of reporting, Energex would strongly urge the AER to reconsider the need for this proposed amendment.

2.2 Pro-forma report template signoff

Energex notes that inclusion of section 3.13 in the revised Guidelines will require regulated entities to provide a signed pro-forma for immediate reports which must be submitted within two business days. Currently, regulated entities are only required to provide a signed pro-forma for Type 1 quarterly, Type 2 and Type 3 reports. A pro-forma is not currently required for notification of Type 1 life support breaches.

Energex remains of the view that it is administratively onerous and impractical for regulated entities to be required to provide a pro-forma signed by its Chief Executive Officer/Managing Director within two business days and was of the understanding that the AER, in waiving the obligation to provide a signed pro-forma for Type 1 life support breaches, appreciated the practical difficulties businesses would have in complying with this requirement.

Non-compliance with distributor obligations, particularly obligations that present risks to customer safety and wellbeing, are already taken very seriously by the highest levels of the organisation. Energex's Chief Executive Officer is informed immediately a Type 1 life support breach is identified and is provided with updates on measures being taken to prevent further breaches from occurring by those officers who have operational responsibility for compliance. Energex therefore does not consider there would be any additional value in requiring Chief Executive Officer sign-off of immediate reports and recommends that section 3.13 be removed from the final Guidelines.

As outlined in section 3 below, Energex supports the other proposed amendments to the Guidelines and has made a number of suggestions for further enhancements where considered appropriate.

3 Response to consultation questions

Consultation Question	Energex response
1. Are there any concerns with implementing the proposed amendments to the reporting framework by 1 July 2017?	As processes and systems are already in place to monitor compliance with existing distributor obligations, Energex does not envisage any significant difficulties in achieving a 1 July 2017 commencement date. However, it is noted that the metering contestability rule change does not take effect until 1 December 2017. As retailer deployment of advanced meters has already commenced in South-East Queensland, Energex would welcome early self-reporting by retailers with respect to non-compliance with the new obligations if the new Guidelines commence on 1 July 2017. However, it is 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 24(1)?	Energex is not aware of any issues arising out of the billing frequency rule change that would require this reporting obligation to be reclassified.
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?	Energex agrees in principle that retailer planned interruption obligations should be treated on the same basis as distributor planned interruption obligations under the Guidelines.
4. Should the new retailer notice obligations (specifically rule 59A) be made reportable under the reporting framework? If so, is the obligation to report on a six month basis appropriate?	Energex does not oppose inclusion of rule 59A (notice to small customers on deployment of new electricity meters) as a half-yearly reportable obligation under the Guideline.

Consultation Question	Energex response
5. Are there any other rules arising from the Metering rule change that should be reportable under the Guidelines?	Energex does not consider there are any other NERR obligations that will take effect as part of the new metering contestability framework that should be reportable under the Guidelines.
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)?	Energex is not aware of any reporting issues arising out of the energy consumption rule change that would require this reporting obligation to be reclassified.
7. What issues may require amending the reporting framework to capture the rules introduced in the Energy consumption rule change?	The AER's proposal not to attach any reportable obligations to the new rules arising from the customer access to information about their energy consumption rule change is endorsed on the basis that no systemic issues have previously been identified in relation to 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?	Energex supports the removal of this reporting obligation on the basis that no underlying issues have been identified and that compliance can be effectively monitored through other mechanisms. However, for the reasons outlined in section 2 of this submission, Energex does not support replacing the current classification of obligations from Types 1, 2 and 3 to "immediate reports", "quarterly reports" and "half-yearly reports".
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?	Energex does not have any significant concerns with regard to expanding the requirement for immediate reporting of clauses 120(1)(b), (c) and (e) of the NERR if the AER considers and can demonstrate that there is cause for concern and an increasing trend in non-compliance in this area that would warrant increased frequency of reporting. As noted above, Energex supports consistency in classification/frequency of reporting of distributor and retailer obligations.

Consultation Question	Energex response
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?	Energex does not have any significant concerns regarding the proposed change in frequency of reporting of breaches of planned interruption obligations if the AER considers there is an increasing trend in non-compliance and that increased frequency of reporting is warranted. Energex supports inclusion of retailer planned interruptions as a reportable obligation under the Guidelines in line with distributor reporting obligations.
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?	Energex 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?	On the understanding that no systemic issues have been identified by the AER, the removal of this reporting obligation is endorsed.
13. Are there any reasons we should not move from two pro-forma report templates to a single template?	Energex supports the move to a single pro-forma template for breaches of reportable obligations. However, it is unclear how the proposed draft pro-forma B.1 is to be used where no breaches have been identified for the period, other than to attach a blank report template. It is therefore recommended that amendments are made to the pro-forma to accommodate this scenario. For the reasons outlined in section 2 of this submission, Energex does not support the requirement for a signed pro-forma for immediately reportable obligations.
14. Are there any improvements that could be made to current reporting template? What issues, if any, have arisen with the current reporting template?	Energex does not have any further suggestions for improvements to the reporting template. However, with respect to life support breaches where the cause is technically complex and difficult to

Consultation Question	Energex response
	explain in detail, Energex suggests that discussions between the AER's and the regulated entity's regulatory and technical officers may assist in minimising the need for multiple written requests for further information.
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.
16. Do you have any comments on the *AER's Practice Guide for Compliance Audits*?	Energex considers that the Terms of Reference should also provide that the timeline may include a requirement for a draft audit report to be provided to the regulated entity for review and comment prior to submission to the AER. It is important that regulated entities should be given the opportunity to review and comment on the audit findings and, where appropriate, provide additional information or correct factual errors before the report is submitted 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 unnecessary follow-up action or clarification of misunderstandings after the audit report has been issued to the AER.
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 overall approach to making a determination to use its compliance audit powers is reasonable. Energex 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. However, Energex 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.

Consultation Question	Energex response
	Energex is also of the view that a decision by the AER to undertake a compliance audit should be reasonably foreseeable by the regulated entity, i.e. the decision to undertake a compliance audit should only be made after the AER has engaged with the regulated entity and other options, such as the regulated entity agreeing to undertake appropriate steps to resolve an identified compliance issue, have proven to be ineffective.