



# Submission on *Amendments to AER Compliance Procedures and Guidelines*

23 January 2017

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Australian Energy Regulator

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# Introduction

Ergon Energy Corporation Limited (Ergon Energy), in its capacity as a Distribution Network Service Provider (DNSP) in Queensland, welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) on its proposed amendments to the *AER Compliance Procedures and Guidelines* (the Guidelines). The Guidelines set out the form, manner and timeframes for submission of information and data to the AER, by distributors and retailers who have adopted *National Energy Retail Law* (NERL), as relevant to compliance with obligations in the NERL, *National Energy Retail Rules* (NERR) and applicable Regulations.

Since the AER's last review of the Guidelines (Version 3, September 2014), there have been changes made to the NERR by the Australian Energy Market Commission (AEMC) arising out of determinations relative to expansion of competition in metering and related services, meter read and billing frequency, and customer access to information about their energy consumption. These changes have resulted in a number of new obligations on retailers in distributors under the NERR.

Moreover, the AER has further developed its compliance program and refined its approach to monitoring, investigating and enforcing provisions applicable under the legal framework. The AER also sees a need to set out a framework in relation to Compliance Audits in the Guidelines (given powers available to it under the NERL), including provision of additional guidance material as to the AER's approach.

Ergon Energy acknowledges the need to revisit the Guidelines to ensure they incorporate relevant new legislative provisions and refine the AER's reporting framework, in ensuring it remains consistent with AER's compliance objectives and to improve the quality of reports submitted by entities to which the Guidelines are applicable. However, whilst Ergon Energy generally supports the AER's overarching aim to incorporate new obligations and other proposed amendments, there are some concerns held with facets of the proposal.

This submission focusses on Ergon Energy's key areas of concern and provides responses to specific questions raised in the AER's Consultation Paper (see *Table of detailed comments*). Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AER require.

## Classification of Obligations

Ergon Energy does not support the proposed change of classifications of reportable obligations from Type 1 (including Immediate), 2 and 3 (reflecting the level of potential harm or risk to customers), to "immediate reports", "quarterly reports" and "half-yearly reports" respectively (based on frequency of reporting).

The AER's Compliance Procedures and Guidelines currently establish both a frequency of reporting and the categorisation of selected NERR/NERL reportable obligations, in the event of a breach. The three categories (Type 1, 2 and 3) were adopted to reflect the level of potential harm or risk to customers (e.g. critical, serious or low/limited) whilst different reporting frequencies could apply to (and within) each group of obligations (e.g. Type 1 immediate, Type 1 quarterly etc.). The Guidelines also allowed for the AER to vary the frequency of reporting for obligations for entities, with consideration of a number of factors (current clauses 3.13-3.27) mainly relating to ongoing performance and actions taken therein. It was not unfeasible to have a Type 1, 2 or 3 categorised obligation, reported on a more/less frequent basis should the AER so desire (e.g. as part of

enforcement measures to improve compliance or for closer monitoring), under the current Guidelines as drafted.

In changing the classification of reporting obligations, the AER has removed any clear delineation between categorisations (potential harm or risk) and frequency of reporting. Following from this, under proposed clauses 3.24-3.32, it would seem nonsensical to consider a request for entities to change the frequency of reporting of obligations categorised as “*Half Yearly Report*” to ‘quarterly’, ‘immediate’ (or other timings seem permissible – e.g. weekly updates), without a reclassification under clause 3.23. Confusion would appear imminent else, clauses 3.24-3.32 may be of no relevance or effect.

It must also be recognised that in the lead up to, and on an ongoing basis since, the implementation of National Energy Customer Framework (NECF) in Queensland on 1 July 2015, Ergon Energy has undertaken extensive system and process development (and expenditure) and conducted substantial training of staff and contractors, based on the current classification of reportable obligations. A change to the classification of obligations would undermine such work and resources already expended by Ergon Energy in meeting our NECF obligations, and the level of familiarity which is now well established.

Moving to a new classification of reportable obligations would mean reworking of our processes and documentation, and retraining of staff and contractors. This would appear an unnecessary impost on the time and resources of all involved, particularly without justification as to why the existing classifications of obligations are ineffective or not clearly delineated. Importantly, the proposed reclassifications of obligations and changes to frequency of reporting can be readily accommodated within the current classifications/frequency of reportable obligations.

Ergon Energy requests the AER maintain its current approach to classifications of obligations (Type 1 (including Immediate), 2 and 3) based on level of potential harm to customers, which is more meaningful and relevant than any proposed association with frequency of reporting. We are currently assessing its ability to meet a timeframe of 1 July 2017 with regards to implementation, should it proceed.

Despite this, Ergon Energy is not opposed to the frequency of reporting for the only remaining Type 3 distributor obligation (following proposed amendments to the Guidelines) pertaining to planned interruptions, changing from annually to half yearly. This would effectively remove the need for annual reporting. Ergon Energy also provides in principle support for the expansion of immediate reporting to include NERR rule 120(1)(b), (c) and (e), should the AER consider (demonstrate) there is cause for concern and an increasing trend in non-compliance in this area.

### **Single Pro-forma template and Sign off**

Ergon Energy has no objection to the use of a single pro-forma Compliance Reporting Template (Appendix B.2) for all reporting (including Type 1 immediate written reports), and for the pro-forma per Appendix B.1 as signed by a Chief Executive Officer/Managing Director to accompany submission of any quarterly and biannual reporting.

However, the proposed re-drafting of paragraphs 3.13 and 3.16 introduces a new requirement for (Type 1) Immediate Reports (to be provided within two business days) to be accompanied by the pro-forma B.1 (i.e. Chief Executive Officer/Managing Director signoff). It is not clear that this was intentional, particularly given the AER commented it does ‘not propose to make any amendments or consult on signatories’, given this was explored in the 2014 review of the Guidelines.

Ergon Energy suggests Executive Officer/Managing Director signoff on all reporting would be both impractical and administratively onerous for regulated entities. Ergon Energy takes compliance with the National Energy Customer Framework (NECF) regulatory requirements and guidelines seriously, as demonstrated by our prompt responses in relation to reporting and subsequent independent investigations of breaches. We promote a culture of compliance by focusing on its importance and connection to the corporation's values and the need for a focus on NECF compliance is continually reinforced at the executive level. A sign off by the Chief Executive Officer/Managing Director for compliance reports at the highest level of the organisation is not necessary to demonstrate that the leadership of Ergon Energy is committed to compliance; it is acknowledged that they are appropriately committed and accountable.

Ergon Energy would strongly urge the AER to reconsider the need for compliance reports to be signed off by the CEO or Managing Director and allow for the signatory of written reports to be delegated to an appropriate executive level, at least in the case of immediate (2 business days) Type 1 reports. Specifically, the current drafting of paragraphs 3.13 and 3.16 should be revisited.

Of note, with the proposed removal of an alternative pro-forma relating to "*Reporting of 'no breaches' during the reporting period*", it is unclear how the use of Appendix B.1 (without editing) would accommodate periods where there no breaches reportable. It is assumed that entities would not need to submit a Compliance Reporting Template with nil entries. Clarification should be provided in this regard.

## Table of detailed comments

Consultation Paper Feedback Question	Ergon Energy Comment
1. Are there any concerns with implementing the proposed amendments to the reporting framework by 1 July 2017?	Processes and systems are in place to meet Distribution obligations under NECF. However, documentation and training updates would be required. Ergon Energy is current assessing its ability to meet a timeframe of 1 July 2017 in this regard.
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)?	Ergon Energy is not aware of any issues in this regard.
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?	Ergon Energy supports in principle that the retailer planned interruptions should be included as reportable obligations with a frequency of reporting consistent with existing distributor planned interruption obligations under the Guidelines, in the interests of consumer protection. It is noted that the proposed changes would result in obligations for retailers to report immediately (2 business days) any breaches of rules 124 and 124A(1) (relating to life support customers), and half-yearly any breaches of rules 59C(2)-(5) (relating to retailer interruptions to electricity supply).
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?	Ergon Energy supports the inclusion of rule 59A(1)-(3) and (7) (notice to small customers on deployment of new electricity meters) as reportable obligations under the Guidelines, including the proposed reporting frequency of half-yearly. This also mirrors reporting for rules 59C(2)-(5) (discussed above).
5. Are there any other rules arising from the Metering rule change that should be reportable under the Guidelines?	Ergon Energy is not aware of any other obligations arising from the Metering rule change 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)?	Ergon Energy is not aware of any issues in this regard.
7. What issues may require amending the reporting framework to capture the rules introduced in the Energy consumption rule change?	Ergon Energy is not aware of any issues in this regard and agrees there is no need to attach reportable obligations to new rules which have arisen from the AEMC's Energy consumption determination.

Consultation Paper Feedback Question	Ergon Energy Comment
8. What if any, are the implications of the AER removing the obligation on regulated business to report on rules 55-56B, 58-59 of the NERR?	<p>Ergon Energy supports the proposal to remove reporting requirements on NERR clauses 55-56B and 58-59 (currently classified as Type 3 Distributor obligations). We also have no concern with the proposed amendment to the frequency of reporting for the remaining Type 3 Distributor obligations for planned interruptions and retailer obligations in relation to customer transfers (rule 57) to half yearly, effectively removing all annual reporting.</p> <p>However, we re-iterate our concern with changes to the classifications of reporting categories from type 1, 2 and 3 to 'immediate reports', 'quarterly reports' and 'half yearly reports'. Refer earlier comments.</p>
9. Are there any concerns with the proposed classification/frequency of reporting in relation to rules 116(1), 120(1) and 124(1) of the NERR?	<p>Immediate Type 1 provisions that relate to life support and customer hardship, which are in force to provide critical safe guards for the protection of vulnerable customers. Ergon Energy supports in principle the inclusion of retailer related clauses and proposed frequency of reporting for the stated rules, including changes to reporting of prohibited distributor disconnections under rules 116(1). Ergon Energy also provides in principle support for the expansion of immediate reporting to include NERR rule 120(1)(b), (c) and (e), should the AER consider (demonstrate) there is cause for concern and an increasing trend in non-compliance in this area.</p>
10. Are there any issues with the proposed classification/ frequency of reporting in relation to the rules under Part4, Division 6 and rules 59C(2)-(5) of the NERR?	<p>Ergon Energy does not have any concerns regarding the proposed changes in frequency of reporting for distributors relating to NERR Part4, Division 6 and inclusion of requirements relating to retailer obligations NERR clauses 59C(2)-(5).</p> <p>However, we re-iterate our concern with changes to the classifications of reporting categories from type 1, 2 and 3 to 'immediate reports', 'quarterly reports' and 'half yearly reports'. Refer earlier comments.</p>
11. Are there any issues with the removal of the obligation on business to report on provisions under Part 2, Division 6 of the NERL?	<p>Ergon Energy supports the removal of the obligation to report on specific provisions under NERL Part 2, Division 6.</p>
12. Are there any issues with the removal of the obligation on business to report on rules under Part 2, Division 5 of the NERR?	<p>Ergon Energy supports the removal of the obligation to report on specific provisions under NERR Part 2 Division 5.</p>

Consultation Paper Feedback Question	Ergon Energy Comment
<p>13. Are there any reasons we should not move from two pro-forma report template to a single template?</p>	<p>Ergon Energy has no objection to the introduction of a single pro-forma report (Appendix B1) and template (Appendix B2). However, we reiterate concerns regarding proposed requirements to submit all reports signed by the Chief Executive Officer/Managing Director, particularly Type 1 immediate.</p> <p>Ergon Energy requests that the AER reconsider the need for compliance reports to be signed off by the Chief Executive Officer/Managing Director and allow for the signatory of written reports to be delegated to an appropriate executive level, at least in the case of immediate (2 business days) Type 1 reports. Refer earlier comments.</p> <p>As also noted, it is also unclear how the proposed draft pro-forma B.1 (without edits) is to be used where no breaches have been identified for the period.</p>
<p>14. Are there any improvements that could be made to current reporting template? What issues, if any, have arisen with the current reporting template?</p>	<p>Ergon Energy has no current suggestions for further improvement to the current reporting template (Appendix B2). However, where information relating to a breach is technically complex and difficult to explain in detail in the template, Ergon Energy would prefer to arrange discussions with AER's technical officers to minimise the need for multiple written requests for further information. This has worked well in the past.</p>
<p>15. Do you have any comments on the AER's proposed approach to compliance audit powers under the NERL?</p>	<p>The AER's approach to compliance audit powers under the NERL is reasonable and in accordance with standard audit practice. A targeted, risk-based approach to compliance auditing is supported.</p>
<p>16. Do you have any comments on the AER's Practice Guide for Compliance Audits?</p>	<p>The AER's Practice Guide for Compliance Audits satisfactorily covers off on the initial decision whether to utilise compliance audits. Where compliance audits are utilised, the Guide includes sufficient detail on who can undertake the audits (i.e. the AER or the regulated entity), the agreed Terms of Reference, audit reporting and post-audit activity. The process as outlined in the Guide is in accordance with accepted audit procedures and practice.</p> <p>However, it requested that entities are also given the opportunity to review and</p>



**Consultation Paper Feedback Question****Ergon Energy Comment**

comment on draft audit findings and, where appropriate, provide additional information or correct factual errors before a draft report is submitted to the AER. The opportunity to review a final report, post-audit and pre-publish would be considered to be inefficient, and may also arise in issues with changes via independent auditors outside engagement terms and timeframes. With adequate reviews by both the AER and regulated entities before the completion of the audit (and final audit report) should also remove any possibility of audit reports being 'refused' by the AER as non-compliant with requirements.

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 deciding whether to use its compliance audit powers appears reasonable. A targeted, risk-based approach to compliance auditing is supported.