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General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
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Dear General Manager

**Approach to compliance with the National Energy Retail Law, Rules and Regulations – Issues Paper, 31 May 2010**

Jemena Electricity Networks (JEN) is supportive of the general approach expressed in the Issues Paper. The focus of JEN's submission is on monitoring compliance and compliance reporting.

***Compliance reviews and reporting***

JEN agrees that market intelligence and information obtained from energy ombudsman, AEMO and AER Infocentre would provide an important source of information for the AER to target its compliance monitoring and investigative activities. Complaints data provided to the AER as part of regular service standards and reporting requirements will also provide insight into the type and emerging patterns of complaints.

JEN supports the AER approach of targeted compliance review discussed in section 5.2.2. However, the frequency of review should not be more than one review per year per distributor. Moreover, if a regulated entity's policies, procedures and compliance management system are adequate and no non compliance indentified in the review, then that particular regulatory provision should not be reselected again for review for at least two years.

JEN is also supportive of the three tiered reporting regimes requiring regulated entities to self-identify breaches and report them on an 'exception' basis. The first tier reporting requirements must be reserved for those obligations where the consequences of non compliance are severe. JEN considers the reporting frequency for second tier reporting should be six monthly, otherwise it would be too onerous. A greater reporting frequency may be appropriate where there is evidence of decline in compliance. Equally, the reporting frequency for obligations identified for second tier reporting should be extended to annual reporting for those regulated entities that have adequate compliance management systems – evidenced by a history of satisfactory compliance performance under the existing reporting frameworks applied by jurisdictional energy regulators.

In JEN's view, the AER should consider both the consequences/impacts and likelihood of non compliance when deciding whether or not to require reporting obligation in relation to a particular obligation. In some cases, the impact of non compliance would be consider so significant (e.g. supply disconnection in relation to customers with special needs such as life support) that a first tier reporting required would be warranted regardless of the likelihood of occurrence.

***Compliance audits and costs of compliance audits***

JEN believes the compliance audits should be initiated when the AER has identified non compliance that indicates systemic issues and if not investigated in the short term may escalate to material non compliance with major consequences. Otherwise the audits should be initiated no more than once a year. The factors that should be considered in determining the scope of the audit should have bearing on the impact of non compliance of the obligation and whether the compliance level of the obligation has been previously or recently tested.

More generally, the AER's processes should allow for longer intervals between reviews for businesses that have established a record of satisfactory compliance performance. This provides an added incentive for businesses to perform well as recognised by IPART in its energy reporting manuals[1], for example:

> "IPART may scale back the frequency and/or extent of compliance reporting and auditing if a business has implemented a strong compliance system, receives an adequate compliance audit report, and demonstrates a good compliance history."

The ESCV also recognised the Victorian distributors' good compliance history and required they report the second tier reporting obligations on an annual basis.

Moreover, the scope of any review must be commensurate with the allowance provided by the AER in the regulatory price determinations for the distribution entities.

On the important matter of determining whether an audit is to be conducted by the regulated entity or the AER, the AER must have regard to what amounts have been provided by the AER in the price determinations of distribution entities and the capacity of the regulated entities to pay for the audits. If no or an inadequate amount was provided in the price determination, then the AER should engage the auditor from its own operating budget. JEN strongly disagrees with any proposition by the AER, that the costs of compliance audits conducted by the AER should be recovered from the regulated entities.

Should you have any questions in relation to the matters discussed in the above submission, please contact me on (03) 8544 9442.

Yours sincerely

**Siva Moorthy**
Manager Network Regulation and Compliance

[1] IPART, Electricity Retail Supplier Energy — Reporting Manual March 2010, p7