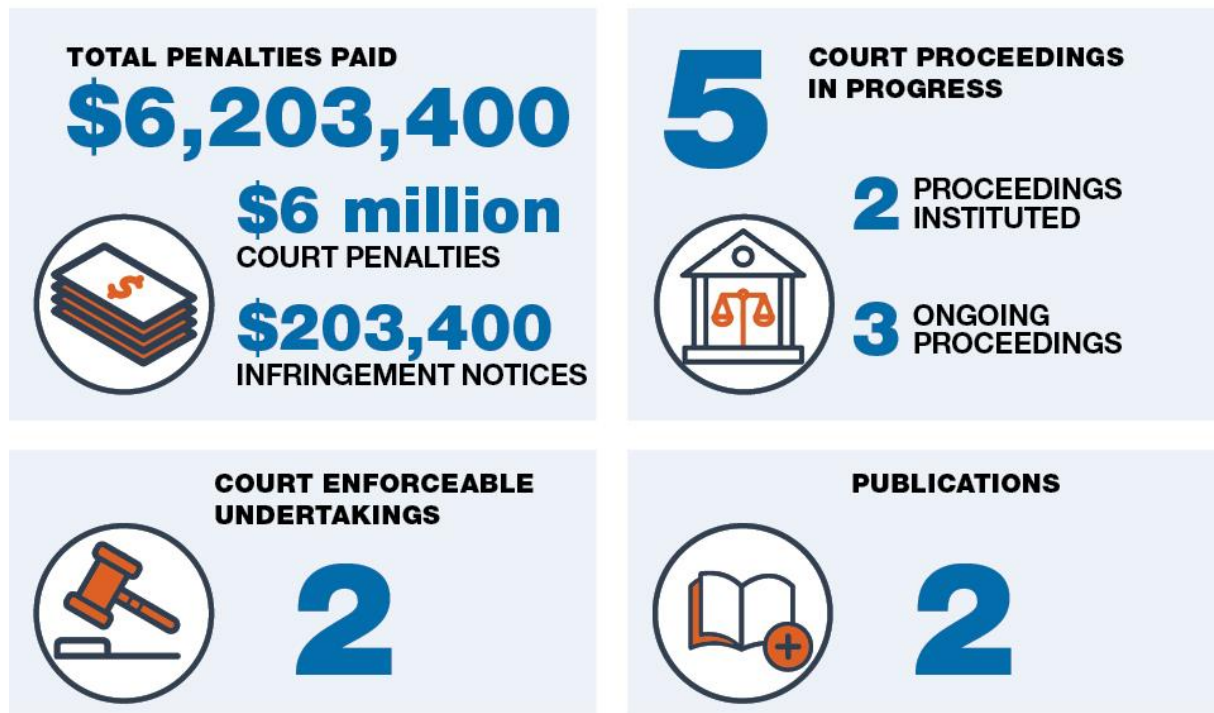


Compliance and enforcement update



The Australian Energy Regulator (AER) continues to deliver outcomes and actions across the AER compliance and enforcement priorities, and strategic objectives. This report details the AER's compliance and enforcement activities from 1 July to 31 December 2023, including the following key updates:

- In proceedings brought by the AER, the Federal Court has ordered that AGL Energy Ltd subsidiaries, operators of AGL's Bayswater and Loy Yang power stations, pay penalties totalling \$6 million for breaches of the National Electricity Rules associated with the failure to provide essential system services (page 4).
- The AER instituted proceedings against Santos Direct Pty Ltd (Santos) for alleged breaches of important record keeping obligations in the National Gas Rules relating to the Day Ahead Auction for gas pipeline capacity (page 8).
- The Federal Court found that Pelican Point Power Limited (Pelican Point) breached the National Electricity Rules by failing to disclose to AEMO the full capacity of its Pelican Point Power Station that was available during heatwave conditions in February 2017. A hearing on penalty was held on 18 and 19 December 2023 and the AER is currently awaiting judgment on penalty (page 9).
- The AER instituted proceedings in the Federal Court against embedded network seller CAM Engineering and Construction Pty Ltd for allegedly failing to become a member of the Energy and Water Ombudsman NSW (EWON) scheme, in breach of the Retail Law obligations (page 12).

Compliance and enforcement priorities for 2023–24

-  **1** Improve outcomes for customers experiencing vulnerability, including by improving access to retailer hardship and payment plan protections
-  **2** Make it easier for consumers to understand their plan and engage in the market by focusing on compliance with billing and pricing information obligations, including the Better Bills Guideline
-  **3** Support power system security and an efficient wholesale electricity market by focusing on generators' compliance with offers, dispatch instructions, bidding behaviour obligations and providing accurate and timely capability information to AEMO
-  **4** Improve market participants' compliance with performance standards and standards for critical infrastructure
-  **5** Clarify obligations and monitor compliance with reporting requirements under the new Gas Market Transparency Measures

Priority 1 – Improve outcomes for customers experiencing vulnerability

The Australian Energy Regulator (AER) has achieved a range of outcomes to ensure customers experiencing vulnerability are provided with the full suite of hardship protections they are entitled to under the National Energy Retail Rules (Retail Rules) and National Energy Retail Law (Retail Law). These outcomes have strong links with our [Towards energy equity strategy](#).

We have reviewed a number of retailer hardship policies since July 2023 and recently approved Origin Energy's varied policy. Hardship policies are vital in setting out how retailers identify and support customers experiencing vulnerability. We engaged with Origin Energy to ensure its policy incorporated vital customer protections. This included that customers who have outstanding debts when leaving Origin's hardship program because they are transferring to another retailer or no longer require energy supply from Origin Energy have access to an arrangement for the repayment of that debt and that such arrangements will be offered by Origin Energy in a manner consistent with the hardship policy.

We consider that many current retailer hardship policies could be improved and are actively engaging with retailers to review and update their policies. In updating their hardship policies, we expect retailers to be guided by recently approved policies and legislative requirements.

The AER has also finalised a round of spot checks of selected retailers' compliance with the hardship obligations using compulsory notices. We shared our findings in an industry

guidance letter in January 2024, which set out our compliance expectations. This includes that retailers must:

- have adequate identification practices in place, and
- holistically consider a customer's capacity to pay and provide achievable payment plans.

In the next 6 months, the AER will be undertaking an in-depth analysis of key hardship metrics within the AER's Retail Performance Data and other intel sources to identify any further compliance concerns with retailer obligations relating to managing vulnerable customers. These insights will inform where future compliance reviews should be undertaken.

The AER is also currently investigating a number of retailers for potential breaches of hardship obligations in the Retail Law and Retail Rules. This includes potential failures to implement hardship policies, offer and apply payment plans and consider a customer's capacity to pay when establishing a payment plan.

AGL Centrepay litigation

In addition to our hardship compliance work, in December 2022 the AER instituted proceedings in the Federal Court against AGL Retail Energy Limited and 3 other subsidiaries of AGL Energy Limited (together, AGL) for allegedly deducting Centrepay payments from customers when it was not entitled to. Most if not all of these customers are likely to have been vulnerable and experiencing financial disadvantage. The AER alleges that AGL failed to notify the affected customers that they had been overcharged as a result of AGL making deductions through Centrepay payments and failed to use best endeavours to refund the overcharges within the required time periods. The matter is set to go to trial in mid-2024.

Priority 2 – Make it easier for consumers to understand their plan and engage in the market by focusing on compliance with billing and pricing information obligations, including the Better Bills Guideline

Bills are a key source of information and communication between consumers and energy retailers. The information on bills helps customers to make confident decisions, such as making sure they are on the best deal to suit their circumstances. In March 2022 the AER introduced the mandatory Better Bills Guideline, which sets out how retailers must prepare and issue bills to small customers. A second version of the Guideline was published in January 2023 and full compliance with the Guideline was required by 30 September 2023.

Since July 2023, the AER has considered applications from 3 retailers to include additional information in Tier 1 (or the first page) of their small customer bills, beyond what is allowed under the Guideline. The AER decided to refuse to approve the requests from these retailers, noting that Tier 1 is intended to contain key, essential information only and this additional information could be included elsewhere on the bill.

The AER has commenced a review of retailer compliance with the Guideline and will undertake further spot checks in the coming months. Among other aspects of the Guideline, our review will focus on the new requirement to have a 'better offer' message on the front page of a small customer's bill. This message must tell the customer if the retailer can offer them a better deal and include details of how to switch plans. This could result in significant savings for customers, benefiting customers facing rising cost-of-living pressures. We will review retailers' new bills, with the possibility of publishing guidance for industry to assist compliance with these new billing requirements.

The AER has also written to industry following our June 2023 [enforcement action](#) taken against CovaU Pty Ltd for failure to display standing offer prices on its website. We have

reminded retailers of their obligations and provided guidance, including on what we consider to be good practice around the clear labelling of standing offer prices on their websites.

Priority 3 – Support power system security and an efficient wholesale electricity market by focusing on generators’ compliance with offers, dispatch instructions, bidding behaviour obligations and providing accurate and timely capability information to AEMO

The AER is focused on generators’ obligations relating to offers, bidding and compliance with the Australian Energy Market Operator (AEMO) dispatch instructions because these are critical to power system security and efficient outcomes in the wholesale electricity market. This is particularly the case where conduct contributes to market events. Ensuring compliance with latest offers and AEMO dispatch instructions is an ongoing and active responsibility for all National Electricity Market (NEM) participants. With the energy transition, it is critical that these obligations are fully understood and widely complied with.

It is also critical that generators provide accurate and timely information about their capability and availability to AEMO. This includes for providing system services such as frequency control ancillary services (FCAS) which maintains the frequency of the electricity system and for AEMO’s projected assessments of system adequacy (PASA) which assess the adequacy of electricity supply to meet demand. Since July 2023 the AER has taken the following actions to support this priority:

- reviewed data around wholesale market bidding behaviour to identify potential issues of non-compliance
- commenced review of various compliance guidance to identify updates needed in light of recent market reforms
- progressed compliance messaging to industry to support AEMO’s management of risks identified in its *Summer operations 2023–24 work program*.

The recent Pelican Point partial judgment, arising from conduct in the 2017 summer, reinforces the importance of accurate PASA submissions to AEMO. More information on this outcome is set out in the ‘Wholesale electricity and gas’ section of this report.

AGL FCAS judgment

In addition to the above actions, on 30 October 2023 the Federal Court ordered that operators of AGL’s Bayswater¹ and Loy Yang² power stations pay penalties totalling \$6 million for breaches of the National Electricity Rules. The Court found in periods between September 2018 and August 2020 that certain units at the AGL power stations did not comply with dispatch instructions given to them by AEMO in relation to FCAS they had offered, and were paid, to provide.

Her Honour Justice Button, noted the penalties reflected ‘the importance of power generators being in a position to supply contingency in accordance with their offers, which is of vital importance to the maintenance of a secure and stable power network’. This matter reinforces the need for participants to:

- ensure clear and effective lines of communication between operation teams and trading teams about the status of any plant settings affecting plant ability to deliver FCAS

¹ AGL Macquarie Pty Ltd

² AGL Loy Yang Marketing Pty Ltd

- proactively monitor plant performance in response to frequency deviations to detect potential under delivery
- have comprehensive processes and procedures in place to support compliance, including ensuring processes are embedded and appropriately followed.

Under the National Electricity Rules, electricity generators can offer to be on standby to provide FCAS to stabilise network frequency when there is a power system disturbance. These services are essential to keep the lights on following a power disturbance in the grid and are critical during the rapid transition to renewable energy generation.

Priority 4 – Improve market participants’ compliance with performance standards and standards for critical infrastructure

The requirement for generators and facilities that consume electricity to comply with their performance standards is critical to power system security, particularly when this conduct can cause or exacerbate market events. It is also critical for network service providers (NSPs) to comply with their obligations in the National Electricity Rules and/or connection agreements, including in providing supervisory control and data acquisition (SCADA) infrastructure. SCADA is essentially a system of software and hardware elements that gives operators, owners, and other stakeholders an inside look at what’s happening inside a plant, facility, or process. In the NEM, SCADA communications allow real-time data flows about the status of transmission, load and generator equipment to AEMO and Transmission Network Service Providers’ control rooms as well as the delivery of dispatch instructions..

Ensuring compliance with performance standards and the provision of SCADA infrastructure is an ongoing and active responsibility for all market participants. With the increase in number and complexity of new connections arising as part of the energy sector’s transition, it is critical that all participants fully understand and comply with their responsibilities. The following sections outline the various actions the AER has taken since July 2023 to support this priority.

Supervisory control and data acquisition (SCADA)

The AER is liaising with AEMO on its review into SCADA performance and compliance with relevant obligations. The AER will continue to assess potential individual breaches with a particular focus on identifying systemic issues and will undertake compliance action where appropriate.

Review of generator compliance programs

The AER is in the process of completing the 2023 Generator Compliance Programs (GCP) review. Each year, the AER undertakes a GCP review focused on registered generators’ obligations under rules 4.15(b) to 4.15(c) of the National Electricity Rules.

Rule 4.15 requires registered participants to institute and maintain a compliance program in accordance with Reliability Panel’s [Template for generator compliance programs](#). In particular, the GCP must:

- include procedures to monitor the performance of the plant in a manner that is consistent with good electricity industry practice
- provide reasonable assurance of ongoing compliance with applicable performance standards.

Under the review, GCPs’ capabilities of ongoing testing and monitoring of compliance with Generator Performance Standards (GPS) are assessed. A generator’s ability to identify and report potential non-compliance with its registered GPS is crucial for AEMO to ensure the

security and reliability of the power system. Rule 4.15(f) requires generators to report GPS non-compliances to AEMO and for AEMO to forward these reports to the AER.

The review is conducted in the form of a negative assurance audit. This means that the AER checks for 'reasonableness' to satisfy that there is no evidence of non-compliance with the relevant National Electricity Rules provisions, based on information provided in responses and interviews with the generators. The review also considers the 10 compliance principles outlined in the template, focusing on Principle 5 and the GEIP (governance, expertise, implementation and performance) of a compliance program.

The AER will update stakeholders on the progress of the 2023 GCP review in the AER's annual compliance and enforcement report for 2023–24.

May 2021 power system event

The AER is continuing its investigations into the 25 May 2021 power system event, involving the trip of multiple generators and high voltage transmission lines in Queensland following an initial plant issue at the Callide C Power Station. In the course of this investigation, the AER identified that CS Energy Limited (CS Energy) had been allegedly operating a generating system without the required regulatory approval. In October 2023, CS Energy paid a \$67,800 infringement notice issued by the AER in relation to this alleged breach. More information on this outcome is set out in the 'Wholesale electricity and gas' section.

Letter setting out compliance approach for system strength service providers

The AER undertook extensive stakeholder engagement about the implementation of the system strength framework, including the calculation of system strength quantity (SSQ) when calculating system strength charges for new connections to the network. Following this engagement, the AER published a letter containing the AER's views on the compliance concerns expressed by networks and noting that, should a system strength service provider adopt AEMO's revised methodology when calculating system strength charges, the AER does not intend to take action in relation to resultant potential non-compliance.

The AER's position recognises that the revised SSQ methodology is expected to benefit consumers and to allow the Australian Energy Market Commission (AEMC) to progress AEMO's rule change request to implement the revised methodology as a priority. Once the AEMC has issued its final rule change, the AER will reassess its position on what is a compliant approach for new connections going forward. This letter does not affect previous guidance the AER provided to transmission network service providers in November 2022 about the importance of compliance with other essential service obligations.

Priority 5 – Clarify obligations and monitor compliance with reporting requirements under the new Gas Market Transparency Measures

Australian energy ministers have promoted staged reforms to improve transparency in eastern and northern gas markets, with a view to informing efficient gas industry investment and delivering the benefits of efficient resource allocation to energy users. New gas market transparency reforms were legislated in late 2022, following the passage into law of the National Gas Amendment (Market Transparency) Rule 2022. The reforms expand reporting to the Gas Bulletin Board and to AEMO's Gas Statement of Opportunities, resulting in enhanced transparency of traded gas volumes and prices and increased information on overall gas supply adequacy. New participant reporting to the Gas Bulletin Board commenced on 15 March 2023. The AER has since focused on participant compliance with the new Gas Bulletin Board reporting requirements, engaging with gas market participants on how to report under the National Gas Rules and communicating the AER's compliance expectations.

Short-term contract reporting

Gas Bulletin Board reporting requirements have been extended to the reporting of bilateral short-term gas supply and swap transactions providing information to buyers on the short term costs of gas commodity. During 2023 we have worked with AEMO to clarify for participants how short-term gas transactions should be reported, with guidance provided in AEMO's [Gas Transparency Measures – FAQ](#) fact sheet. In August and September we met separately with around 15 reporting entities to discuss anomalies in their reporting and AER compliance expectations. We have used feedback from these meetings to inform our *Special report: Wholesale gas short term transactions reporting*, published on 6 December 2023. The report provides observations and insights into short-term gas supply and swap transactions, identifies reporting challenges and provides ideas on how to report this information.

Since the commencement of reporting on 15 March 2023, we have identified several reporting errors and followed up on these with participants, resulting in the correct transaction information being resubmitted to AEMO. The AER will consider the need for further guidance on reporting in the first half of 2024.

Reserves and Resource Reporting

For the first time, Gas Bulletin Board reporting requirements have also been extended to the reporting of reserves and resources information by owners of gas fields, providing buyers with information on gas field volume and development data and prices associated with contracting with field owners / suppliers. This reporting includes the requirement for gas field owners:

- to report their gas field interests and reserves and resources estimates to AEMO
- to report the gas price assumptions used in preparing reserves and resources estimates to the AER.

The AER has observed inconsistencies in the way data is reported by field owners, as well as potential non-compliance due to low-quality data and missing information, and we are working constructively with field owners to ensure clear understanding of the AER's compliance expectations. In July 2023, we published our [Guidance Note on Reserves and Resources Reporting by Gas Field Owners](#). This publication was updated in August and provides guidance on what information is to be provided to both AEMO and the AER to be regarded as compliant with the National Gas Rules. We have been receiving the first gas price assumptions submissions from gas field owners and are assessing these for compliance with the National Gas Rules and according to compliance expectations set out in the AER's Guidance Note. The submitted price assumptions will inform the AER's own obligation to report on these assumptions, which is a new requirement under the National Gas Rules. The AER will publish its first report on reserves and resource price assumptions toward the end of Q1 2024. We are working to ensure that gas field owners are complying by submitting accurate, high-quality information.

Broader Gas Market Transparency Measures

The AER has been monitoring further aspects of the Gas Market Transparency Measures, which has extended reporting requirements to other gas market participants, such as large users, within the Gas Bulletin Board reporting framework. We have engaged with participants on their registration and reporting compliance obligations and have confidence that in Q4 2023 there was a strong level of compliance with the reforms. We have also monitored compliance with the East Coast Gas Reforms under the new Part 27 of the National Gas Rules, which commenced in June 2023 and introduced further Gas Bulletin Board reporting obligations to help AEMO manage east coast gas market supply threats.

Enduring compliance and enforcement priorities

In addition to our work in priority areas, the AER continues to act where there are serious issues impacting consumers experiencing vulnerability, including customers requiring life support equipment and consumers affected by family violence.

New family violence protections commenced under the Retail Rules on 1 May 2023 to improve energy retailers' response to, and support of, customers experiencing family violence across National Energy Customer Framework jurisdictions. Among other things, retailers are now required to develop and publish a family violence policy. The AER has commenced a proactive review of a selection of retailer family violence policies. Our findings will be shared broadly with industry in early 2024 and used to inform our view of good practice as we seek to finalise the AER's [interim guidance note](#) later this financial year.

The AER also continues to prioritise compliance with the life support rules in the Retail Rules, including prompt review of self-reports relating to life support (which must be submitted within 2 business days of a business identifying a potential compliance concern) and taking further compliance and/or enforcement action where appropriate. The AER also continued to monitor Endeavour Energy's court enforceable undertaking, which it gave the AER in June 2022. This undertaking concluded in December 2023.

Wholesale electricity and gas

In addition to the work undertaken in each of the compliance and enforcement priority areas, the AER has continued to progress important ongoing work in areas previously identified as priority areas and where there are serious issues impacting the market.

Santos Direct – institution of proceedings – Day Ahead Auction obligations

On 19 October 2023 the AER instituted proceedings against Santos Direct Pty Ltd (Santos) for alleged breaches of important record keeping obligations in the National Gas Rules relating to the Day Ahead Auction for gas pipeline capacity.

The Day Ahead Auction commenced in 2019 and was designed to improve competition in the gas market by providing access to contracted but unused capacity on gas pipelines. The AER alleges that on 4,701 occasions between March 2019 and June 2021, Santos failed to keep the required records of its material renominations for the Day Ahead Auction across 6 different auction facilities, contravening Rule 666(1) of the National Gas Rules.

The AER is seeking pecuniary penalties, declarations, an order requiring the implementation of a compliance program, and costs.

This matter relates to 2022–23 Compliance & Enforcement Priority 5 – Ensure timely and accurate gas auction reporting and demand forecasting in downstream wholesale gas markets by registered participants.

Jemena matters – Gas Bulletin Board and Day Ahead Auction obligations

Payment of infringement notices

In December 2023, Jemena Northern Gas Pipelines Pty Ltd (Jemena) paid 2 infringement notices totalling \$135,600 and the AER accepted a court enforceable undertaking for alleged breaches of the National Gas Law and National Gas Rules related to the Gas Bulletin Board.

The Gas Bulletin Board provides transparency in the wholesale gas market. Having up-to-date gas flow information facilitates trade in gas commodity and pipeline capacity. Greater transparency across wholesale gas markets informs price discovery and commercial decision-making and can ultimately lead to lower prices for consumers.

It's alleged that, on multiple occasions between October 2020 and December 2022, Jemena failed to provide the AEMO with short and medium-term capacity outlooks for the Gas Bulletin Board that accounted for the impact of scheduled maintenance on the daily capacity of its pipeline. As a result, gas market participants did not have access to accurate information on available pipeline capacity on the relevant days, which may have impacted commercial decisions.

Ongoing litigation

In addition, the AER has ongoing proceedings against 4 Jemena subsidiaries. In June 2023 the AER instituted proceedings in the Federal Court against Jemena Eastern Gas Pipeline (1) Pty Ltd, Jemena Queensland Gas Pipeline (1) Pty Ltd, Jemena VicHub Pipeline Pty Ltd and Jemena Darling Downs Pipeline (3) Pty Ltd relating to alleged large-scale failures to submit accurate auction quantity limits (AQLs) to AEMO for 4 pipelines and failure to ensure auction services were correctly scheduled for 3 pipelines over a nearly 3-year period. The AER alleges that by failing to submit accurate AQLs, the Jemena subsidiaries understated their available capacity on numerous occasions. In several instances, incorrect AQLs resulted in 'lower tier' services, such as interruptible services, being scheduled ahead of services that could have been won through the auction. The AER is seeking pecuniary penalties, declarations, an order requiring the implementation of a compliance program, and costs.

These matters relate to the 2022–23 Compliance & Enforcement Priority 5 – Ensure timely and accurate gas auction reporting and demand forecasting in downstream wholesale gas markets by registered participants.

Pelican Point – partial judgment on liability received – PASA obligations

On 20 September 2023, the Federal Court found that Pelican Point Power Limited (Pelican Point) breached the National Electricity Rules by failing to disclose to AEMO the full capacity of its Pelican Point Power Station that was available during heatwave conditions in February 2017. Specifically, it found that Pelican Point failed to comply with its legal obligation to disclose short-term availability information to AEMO.

The proceedings concern events on 8 February 2017, when South Australia experienced a Lack of Reserve Level 3 scenario as a result of high demand and diminishing supply due to heatwave conditions. This resulted in AEMO needing to interrupt 100 MW of customer load to maintain power system security.

On 26 August 2019, the AER instituted proceedings in the Federal Court, alleging that Pelican Point contravened the National Electricity Rules by failing to notify AEMO that it had physical plant capability that could be made available on 24 hours' notice. The AER argued that, as a result, until late in the afternoon of 8 February 2017, AEMO was unaware it had the ability to issue a direction to Pelican Point to make the full capacity of the power station available and that this impaired AEMO's ability to manage power system security.

A hearing was held on this matter in April and September 2021. A partial judgment on liability was handed down in September 2023, with the Court finding that from 3 February 2017 Pelican Point did not correctly notify AEMO of short-term physical plant capability that could be made available on 8 February 2017 with 24 hours' notice.

A hearing on penalty was held on 18 and 19 December 2023 and we are currently awaiting judgment on penalty.

CS Energy – payment of infringement notice – owning, operating or controlling registration requirements

On 16 October 2023, CS Energy Limited (CS Energy) paid a \$67,800 infringement notice issued for an alleged breach of the National Electricity Law (the Electricity Law) for operating a generating system without the required regulatory approval.

Any entity that owns, controls or operates an electricity generator must apply to AEMO to be a Registered Participant for the activity or for an exemption from registration. Failure to do so could cause operational issues for AEMO, including its ability to contact appropriate staff to raise important matters when necessary to manage power system issues.

It's alleged that CS Energy breached section 11(1) of the Electricity Law by operating the Callide C Power Station without being a Registered Participant or having an exemption from registration. CS Energy has been operating Callide C Power Station for a number of years but only submitted an application for exemption following the AER's investigation into events that led to the 25 May 2021 power system event.

CS Energy subsequently obtained this exemption in September 2023.

The AER also sent a letter to industry reiterating the importance of complying with section 11(1). The letter underlines our expectations that each business in the National Electricity Market actively assess their registration status for all generating systems they own, operate or control, and ensure they hold the appropriate registration or exemption from AEMO.

Retailer Reliability Obligation

The Retailer Reliability Obligation (RRO) builds on existing spot and financial market arrangements in the NEM to encourage investment in electricity generation capacity and demand response. It achieves this by introducing a contracting requirement on certain businesses (electricity retailers or large energy users that purchase electricity directly from the wholesale electricity market).

If AEMO (or a responsible Minister) identifies an electricity reliability gap in supply for a region in three years time, liable entities are put on notice to enter into sufficient qualifying contracts to cover their share of the peak demand forecast for that region during the forecast gap period. If the forecast gap persists, then one year before it is expected to commence those liable entities must report their net contract positions (NCPs) to the AER. If, at any point during a reliability gap period, actual peak demand is greater than the one-in-two year peak demand forecast, a liable entity must be sufficiently contracted so that it has a NCP that is equal to its share of forecast demand for the relevant trading interval.

In addition to the AER's role in administering the RRO, we monitor and enforce compliance by 'liable entities' with the RRO provisions. On 31 July 2023, liable entities for the reliability gap forecast in South Australia for early 2024 were required to submit their NCPs for the gap period to the AER. The AER proactively engaged with potential liable entities in the lead up to this due date to promote awareness of, and compliance with, the obligation to report NCPs. This included the AER developing a a template for liable entities to record their NCP reports in the form specified by the Contracts and Firmness Guidelines.

This is the first time reporting obligations under the RRO have been triggered. The AER's proactive efforts were particularly important to support participants' understanding of compliance with the framework. We have continued to liaise with participants to help them understand the framework as they continue to prepare for the forecast reliability gap period.

Market intervention compliance

The AER has continued to closely review and assess monthly reports submitted by coal suppliers and power stations under emergency directions imposed by the NSW Minister for Energy. This enables the government to impose price caps on coal used in the NSW power sector. The AER's role is to ensure NSW coal suppliers and power stations comply with directions and enable reporting on the impacts of the market interventions.

In December 2022, a coal market price emergency was declared in NSW, giving the NSW Minister for Energy the power, between 22 December 2022 and 30 June 2024, to make directions in response. Ministerial directions were made for specific coal mines and coal-fired power stations, which include the imposition of a \$125 per metric tonne cap on the price of thermal coal sold to power stations (unless a higher price cap has been approved by the Minister).

The AER reviews monthly reports submitted by coal suppliers and power stations and liaises closely with the NSW Office of Energy and Climate Change and industry participants to obtain further information. The AER has found that compliance has generally been good, but has identified a number of issues that it is continuing to follow up. If non-compliance is uncovered, the AER will take appropriate regulatory action in accordance with its Compliance and Enforcement Policy.

Gas network compliance

Development of the compliance regime for new gas network regulations

Recent amendments to the National Gas Law, National Gas Regulations,³ and National Gas Rules (which came into effect 16 March 2023) were made to improve the reporting and support competition associated with gas pipeline service providers. The amendments require the AER to actively monitor the behaviour of gas service providers and compliance with their obligations. The amendments also mean that the existing [Annual Compliance Order](#) (ACO) is no longer in effect.

Under the existing ACO, service providers of covered transmission or distribution pipelines were required to report on any non-compliance with key regulatory obligations at the end of each financial year and reports were to be provided to the AER by 31 October each year.

The recent amendments require the AER to develop Compliance Procedures and Guidelines to enable market participants to better understand their compliance obligations. The amendments require the development of a new compliance regime. Consultation on the new regime will commence in early 2024.

Given the ACO was no longer in effect, in September 2023 the AER issued an Interim Information Request (IIR) to existing pipeline service operators covered by the previous compliance regime and also to those who will be subject to the new regime. The information sought in the IIR was similar to that contained in the superseded ACO. The AER has received responses from pipeline service operators and is currently assessing them. The information provided will be useful for the AER as it develops the new compliance regime.

³ Regulations means the regulations made under Part 3 of the National Gas (South Australia) Act 2008 of South Australia that apply as a law of this jurisdiction.

Retail electricity

CAM Engineering – institution of proceedings – embedded network exempt seller obligations

On 20 October 2023, the AER instituted proceedings in the Federal Court against CAM Engineering and Construction Pty Ltd (CAM Engineering) for allegedly failing to become a member of the Energy and Water Ombudsman NSW (EWON) scheme, in breach of section 112(2) of the Retail Law.

As the developer of Cooranbong Gardens retirement village in NSW, CAM Engineering holds an exemption to sell and supply electricity to residents through the embedded network located at the village, and must comply with the AER's Retail Exempt Selling Guideline.

The AER alleges that CAM Engineering obtained its retail exemption on 11 March 2021, but did not join EWON until 22 July 2022, despite reminders and warnings. During this 16-month period, energy customers of the village did not have access to the important dispute resolution service that EWON provides.

The AER had previously issued CAM Engineering with an infringement notice for the alleged breach. CAM Engineering did not pay the penalty specified in the infringement notice. The AER is seeking declarations, penalties, an order requiring corrective disclosure, and costs.

This matter relates to 2022–23 Compliance & Enforcement Priority 2 – Improve outcomes for consumers in embedded networks, including by enabling access to ombudsman schemes.

Trinity – embedded network exempt seller obligations

On 28 August 2023, the AER accepted a court enforceable undertaking from embedded network operator, Trinity Place Investments Pty Ltd (Trinity) after it admitted to overcharging approximately 110 consumers for electricity by approximately \$34,000 between December 2019 and January 2023 at its Maroochy Cabins Complex on the Sunshine Coast. By charging electricity tariffs higher than the standing offer price that would be charged by the relevant local area retailer, Trinity failed to comply with an exemption condition set out in the Retail Exempt Selling Guideline in breach of section 112(2) of the Retail Law.

The undertaking requires Trinity to, among other things, refund affected consumers, commit no further overcharging, and improve its compliance systems and processes regarding energy pricing.

On 12 October 2023, the AER sent a letter to industry further publicising the enforcement outcome and reminding relevant exempt sellers of their obligations under condition 7 of the AER's Retail Exempt Selling Guideline.

Ring-fencing

Ring-fencing obligations require legal and functional separation of the regulated activities of a network business from the activities of any related entity. This contributes to promoting competition, including by preventing regulated businesses from discriminating in favour of their related entities and preventing cross-subsidisation from regulated customers. Increased competition helps to facilitate innovation and provide more choices for consumers.

In accordance with Version 3 of the Ring-fencing Guideline (electricity distribution) 2021, distribution network service providers (DNSPs) are required to submit annual compliance reports (ACRs) to the AER each calendar year, as well as an assessment of compliance by a suitably qualified independent authority. The AER has reviewed each of the ACRs and reports provided by the independent authorities for the 2022 reporting period. The AER has addressed identified issues by directly engaging with DNSPs.

The AER is also considering possible breaches of ring-fencing provisions to determine whether an enforcement outcome is warranted, given the nature of the breach and the impact on the market. The AER will publish any relevant enforcement outcomes on its website.

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