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Attention: Ms Rowena Park
General Manager, Compliance and Enforcement Branch
Australian Energy Regulator
By Email: aercompliance@aer.gov.au

19 April 2024

Dear Ms Park,

[Draft Guidelines for Consultation – AER Compliance Procedures and Guidelines](#)

AGL Energy (AGL) welcomes the opportunity to provide feedback to the Australian Energy Regulator (the AER) in response to the abovementioned Draft Guidelines and accompanying Explanatory Statement.

Proudly Australian since 1837, AGL delivers around 4.3 million gas, electricity, and telecommunications services to our residential, small, and large business, and wholesale customers across Australia. As one of the largest providers of essential services, AGL has extensive experience with the delivery of compliance reporting data across a number of jurisdictions.

AGL recognises and respects the important role that compliance reporting data plays in supporting the AER's critical function of "monitoring, investigating, enforcing and reporting on compliance" with relevant energy laws, rules, and regulations. We recognise the need for the framework to remain relevant and responsive to the changing needs of the national energy market and the evolving compliance and enforcement priorities of the AER. Similarly, given the framework is largely reliant on self-reporting, it is also necessary for reporting entities to have a clear understanding of their compliance and reporting obligations through meaningful guidance.

AGL's detailed responses to the consultation questions in the Explanatory Statement are set out within Appendix A attached herewith. We are largely supportive of the changes proposed by the AER, with the exception being the new material breach reporting obligation, which we contend introduces unnecessary complexity and cost.

If you have any questions in relation to this submission, please contact Liam Jones on [REDACTED]

Yours sincerely,

[REDACTED]

Liam Jones
Senior Manager Policy and Market Regulation



Appendix A – AGL’s Responses to Consultation Questions

1. What are your views on the proposed implementation time frame of 6 months and commencement date of 1 January 2025?

AGL notes that the proposed changes outlined in the Draft do not appear to involve any significant system or process development and as such, a proposed 6-month implementation timeframe and 1 January 2025 commencement date should be sufficient and achievable. This assessment assumes that the AER’s Final Decision reflects the Draft and to the extent that there are material changes to the proposed Guidelines, AGL’s readiness may differ.

2. What further steps can the AER take to minimise the costs of reporting under the revised Guidelines?

AGL envisages that these changes will increase its ongoing operating costs for internal governance activities required by the new Guidelines. Specifically, we anticipate increased regulatory and legal costs associated with assessment of potential material breaches as compared to the current framework (refer to our responses to Q4 and Q5 for further detail on our position). To the extent that the new guidelines result in retailers reporting issues more frequently and earlier (as intended), this will also increase the overheads in managing signoffs at all management levels.

To reduce these costs, consideration should be given to the following recommendations:

- a. Abandoning the material breach obligation altogether (see response to Q4).
- b. Should the material breach obligation remain, modifying the guidance given (see response to Q5).
- c. Moving high-risk obligation reporting to a quarterly basis (see response to Q6).
- d. Moving CEO sign-off for material breaches to a quarterly basis. Under the proposed framework, where an initial report does not have CEO sign-off, it must be obtained within 20 business days. It is likely that retailers will require this time period to continue to investigate the (potential) breach. It would benefit retailers and potentially impacted consumers to ensure that this timeframe is primarily utilised for the purposes of progressing and where appropriate, remediating the subject issue. Moving the CEO sign-off component of the process to quarterly basis would free up additional resource/time during this period and will lessen the administrative burden on retailers. It will also make it easier to manage any number of potentially overlapping sign-off processes for various reporting obligations across various jurisdictions.
- e. Expanding the list of people who can sign-off on a final report to include an additional class of ‘responsible officer’ which would be an appropriate executive or senior manager of the retailer such as the Chief Customer Officer.

3. What are your views on the proposed introduction of:

- a. **family violence – rules 76G(1) and 76D of the NERR as immediate retailer reportable obligations, and rule 76A of the NERR as a half-yearly retailer reportable obligation**
- b. **presentation of standing offer prices – section 24 of the NERL as a half-yearly retailer reportable obligation**
- c. **energisation on request for sale of energy – rule 19(2)(b) of the NERR as a half-yearly retailer reportable obligation**



d. re-energisation – rules 106 and 106A(1)-(3) of the NERR as half-yearly retailer reportable obligations and rules 106 and 106A(4)-(6) of the NERR as half-yearly distributor reportable obligations?

In relation to the proposed introduction of new reporting obligations, AGL's specific feedback is as follows:

- a. AGL is supportive of the inclusion of r. 76G(1) and r. 76A respectively. However, AGL does not support the inclusion of r. 76D on the basis that the drafting of the underlying obligation often makes it difficult to make a determination on whether a breach of that rule has occurred or not. While the rule provides clear principles-based guidance to retailers around how they should act, it is less effective in forming a binary decision on whether a retailer has contravened that clause or not.
- b. AGL is supportive of the inclusion of s. 24 of the NERL.
- c. AGL is supportive of the inclusion of r. 19(2)(b).
- d. AGL is supportive of the inclusion of r. 106 and r. 106A(1)-(3). AGL does not provide any view on the inclusion of the distributor equivalents of these obligations.

4. What are your views on the proposed introduction of the reporting of material breaches to the AER as soon as reasonably practicable?

AGL is appreciative of the policy rationale behind the AER seeking more timely visibility of significant issues impacting energy consumers and/or the national energy market. However, AGL does not support the introduction of a material breach reporting obligation and suggests the desired policy outcomes can be achieved through less impactful and more efficient means.

AGL is concerned that material breach reporting, as framed in the Draft, will introduce unnecessary complexity and cost for retailers. The threshold for determining a material breach would be highly subjective and as foreshadowed by the AER, will invariably necessitate retailers conservatively over-reporting. This is undesirable and points to a framework that does not adequately define a retailer's obligations. It would be unfortunate if ambiguous materiality threshold assessments gave rise to a new class of compliance actions against retailers by the AER.

The definition of, and guidance around, what constitutes a material breach adopts an awkward hybrid of principles-based and explicit/quantitative guidance. Somewhat confusingly, the guidance is not intended to be prescriptive, yet simultaneously provides highly prescriptive guidance such as specific time frames for loss of supply or defined percentages of a customer base affected by an issue. This culminates in the guidance being unclear as to the necessary standard. Retailers would benefit from certainty around what is reportable versus what is not, rather than expending unnecessary effort on internal threshold assessments and determinations. There is already a significant amount of effort and governance involved in determining whether a compliance breach has occurred, which will be exacerbated by this process and at worst, may potentially impede the focus on remediating the issue in favour of a focus on making assessments around materiality and obtaining internal signoffs for reporting. We are also concerned that the guidance invites consideration of factors that will often not be known to the retailer, and which will require assumptions and guesswork feeding into the assessment process.

Based on the foregoing, it is our view that the AER should retain the existing breach reporting regime whereby each relevant obligation has a clearly articulated reporting timeframe. The AER may wish to consider targeted adjustments to reporting timeframes to provide quicker visibility. This could for example, involve moving half-yearly obligations to quarterly obligations for high-risk issues.



5. Is there any further information that will assist in understanding the AER expectations, and if so, what would you find helpful?

AGL refers to its response to Q4 above and reiterates our preference that the material breach obligation be withdrawn in favour of maintaining the status quo.

Notwithstanding this, it is our alternative (but non-preferred) recommendation that the AER considers one of the following approaches to improve retailer understanding of the material breach obligations:

- a. Omitting Table 5 and associated commentary from Section A.3 of the Draft and retaining just the high-level principles-based factors; or
- b. Making the guidance more explicit and definitive to further reduce any subjectivity and ambiguity.

6. What are your views on the proposed reduction in the reporting of current quarterly reporting obligation to half-yearly reporting?

For the reasons outlined in response to Q4 above, AGL advocates for retaining the quarterly reporting obligations (in lieu of material breach reporting) and suggests that high-risk obligations could in fact be moved from half-yearly to quarterly (as opposed to the other way around).

7. What are your views on the proposed changes to address the inconsistencies observed by the AER in the reporting on de-energisations?

AGL has previously interpreted its overarching de-energisation breach reporting obligations in a manner consistent with the AER's updated guidance and as such, does not have any objections or concerns with this proposed change.

8. What are your views on the proposed reporting amendment of the following obligations:

- a. **billing – rules 26, 28 and 29 of the NERR**
- b. **retail contracts – rules 47-50 of the NERR**
- c. **EIC – rule 46A of the NERR**
- d. **distributor interruption to supply – rules 88-89 of the NERR**
- e. **energy marketing activities – section 53(2) of the NERL and rules 60-68 of the NERR**
- f. **deployment of new electricity meters – rule 59A (1)-(3) and (7) of the NERR?**

As a general principle, AGL is supportive of efforts to minimise reporting requirements for regulatory obligations that are deemed relatively low-risk or inconsequential. It is appropriate to focus attention both at a retailer and AER level on obligations with greater risk of consumer harm. AGL agrees with the AER's assessment that the indicators considered in Section 4.3 of the Explanatory Statement are suitable to be omitted. Noting that part of the AER's rationale for removing these indicators is the inclusion of material breach reporting, we refer to and repeat our response to Q4.

9. What are your views on the proposed implementation of a portal to submit compliance reports?

AGL is generally supportive of the introduction of an online portal to submit compliance reports. Our experiences with online portals in other jurisdictions highlights the need for redundancy/backup processes in the event that the primary system is unavailable as well as clear record-keeping/receipting to confirm that submissions have been successfully lodged by retailers. Another important consideration will be user



access control and ensuring that retailers are able to be supported in a timely manner with access requests and password resets given the potentially wide range of users that may need access to the portal.

10. What are your views on the proposed changes to section 4 of the Guidelines relating to compliance audits?

AGL is supportive of the proposed amendments to compliance audits.