



EnergyAustralia

LIGHT THE WAY

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EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 9060 0000
Facsimile +61 3 9060 0006

enq@energyaustralia.com.au
energyaustralia.com.au

Submitted electronically: aercompliance@aer.gov.au

AER Draft Compliance Procedures and Guidelines

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

EnergyAustralia appreciates the opportunity to provide comments on the AER's Draft Compliance Procedures and Guidelines 2024. We focus on a few comments and clarifications below.

- **Material breach reporting** – We appreciate the AER's reasons for imposing a requirement to report material breaches. In relation to the guidance in A.3, we seek clarity on the guidance around "Effect of the breach on market participants" through the AER providing some examples of what the AER is referring to. This could be provided in either the guideline itself or the AER's final explanatory statement. Specifically:
 - "Prolonged or inaccurate customer transfers, which impact the retail energy market" – what is an example of the type of harm the AER is targeting? E.g. impact to retailers losing revenue from a customer that should have transferred earlier.
 - "Lack of coordination between market participants, which impacts the retail market" – again, an example of the harm would be useful.
 - "The conduct of the reporting entity resulted in another market participant failing to meet a regulatory obligation" – again, an example of the harm would be useful.
- **Mid-term progress report** – In the audit requirements, the AER has removed the draft audit report and replaced it with a "mid-term report" to be provided to the AER or the regulated entity to review. We seek more clarity on:
 - what the mid-term report is meant to be, especially since 4.14 refers to draft findings and the review of them which seems to imply it is something other than a draft report.
 - when exactly it will be required (i.e. in the middle of the timeframe before the final report is due), and
 - when it will be provided to the AER instead of the regulated entity i.e. is this only where the AER is conducting the audit? If it is provided to the AER, we would expect that the regulated entity would have the opportunity to review the report before it is provided. This would align with the general approach to compliance audits in all jurisdictions, and procedural fairness

principles – an opportunity for the regulated entity to answer any findings and provide further relevant information before the report is finalised.

- **Choice of auditor and related costs** - We are concerned that where the AER carries out a compliance audit and arranges for contractors to undertake the audit on its behalf, the AER might:
 - choose a high cost, top-tier auditor, when a lower cost mid-tier auditor may complete the audit to an equivalent standard.
 - Choose Tier 1 auditors for Tier 1 Retailers, and lower cost auditors for smaller retailers.

Our position is that the AER should consider cost effectiveness when selecting an auditor (and that this could be reflected in the guidelines), and that they should choose the same auditor regardless of the retailer's size. Failure to do so, will mean higher than necessary costs, which will ultimately likely be passed on to the retailer's customer base.

- **Time to pay auditors** – Paragraph 4.21 states that the regulated entity is required to pay the invoice no later than 30 days after the AER issues the invoice. This timeframe is too short given internal procurement and payment processes. We suggest that 45 *calendar* days is a more reasonable timeframe.

If you have any questions, please do not hesitate to contact me ([REDACTED] or [REDACTED] [REDACTED]).

Regards

Selena Liu

Regulatory Affairs Lead