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Ms Kristen Palmer
Acting Manager
MCE Secretariat
Department of Resources, Energy and Tourism
GPO Box 9839
Canberra ACT 2601
MCEMarketReform@industry.gov.au

Dear Ms Palmer,

The Australian Energy Regulator (AER) welcomes the opportunity to comment on the First Exposure Draft of the National Energy Customer Framework

The AER supports the overall content of the National Energy Customer Framework.

Comments on specific provisions of the legislative package are provided in the attached comment table. The attached comments primarily address drafting issues. The main substantive comments in the attached table relate to limitations on the AER's ability to require periodic compliance and performance reporting by regulated entities. The National Energy Retail Law only contemplates the annual provision of compliance and performance-related information and data. It would be preferable to allow for periodic provision of compliance and performance related data, with the ability to distinguish between data and information which is required on an annual basis, and data and information which is required at more frequent intervals.

Periodic reporting on aspects of both compliance and performance is currently required by many jurisdictional regulators and would enable the AER to more effectively fulfil its compliance and performance monitoring obligations. For example, some jurisdictional regulators have used more frequent retail compliance reporting for a particular business to address a compliance issue. Many regulators have moved to periodic (for example, six monthly) and immediate compliance reporting for key regulatory obligations, with annual compliance reporting reserved for more routine regulatory obligations. Annual compliance reporting without the ability to require more frequent or immediate reporting by regulated

entities may hinder the AER's ability to promptly respond to serious compliance issues, for example breaches of disconnection procedures.

Some jurisdictional regulators have also reported more frequently on aspects of retailer performance such as market shares. Periodic performance reporting would enable the AER to continue this practice, and would also assist the AER to identify emerging trends in areas such as consumer hardship more promptly.

Appropriate sanctions will be needed where regulated entities fail to comply with their reporting obligations. The consequences of non-compliance with reporting obligations under the National Energy Retail Law should be comparable to the consequences that currently apply to other reporting obligations under national energy legislation. The AER notes that civil penalties apply under the National Electricity Law and National Gas Law where regulated businesses fail to comply with regulatory information instruments, and it is an offence to knowingly provide false or misleading information in purported compliance with a regulatory information instrument. Civil penalties also apply if registered participants fail to meet reporting requirements under clause 8.7.2(e) of the National Electricity Rules within specified timeframes. A civil penalty applies under clause 8.7.2(f) where a registered participant recklessly or knowingly provides misleading or deceptive data to the AER. A similar regime should be included in the National Energy Retail Law.

Finally, the AER wishes to raise an area of inconsistency between the National Electricity Law and other national energy legislation. The exposure draft National Energy Retail Law, the National Gas Law, and Part IIIAA of the Trade Practices Act allow for the AER to take enforcement action against any person, whereas the National Electricity Law only allows the AER to take enforcement action against "relevant participants". The development of the second exposure draft of the National Energy Customer Framework, with consequential changes to existing legislation, provides an opportunity to align the National Electricity Law provisions with the other national energy legislation.

Thank you for the opportunity to comment on the National Energy Customer Framework.

Yours sincerely



Tom Leuner
General Manager
Markets Branch