



10 February 2011

Mr Tom Leuner  
General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Mr Leuner

**Approach to compliance with the National Energy Retail Law, Rules and Regulations**

AGL Energy Ltd (**AGL**) welcomes the opportunity to comment on the AER's *Statement of Approach to Compliance with the National Energy Retail Law, Retail Rules and Regulations*, and draft *Compliance Procedures and Guidelines* (the **Guidelines**), published by the Australian Energy Regulator (the **AER**) in December 2010.

It is pleasing that the AER appears to have taken stakeholder feedback into consideration when revising some elements of its approach to compliance. We support, in principle, the approach the AER is now intending to take, providing that the costs associated with compliance monitoring and reporting (which will ultimately be borne by customers) can be justified by the benefits of the compliance regime. As such, our comments, as set out in Attachment A, are fairly brief. We have not commented specifically on the Guidelines, which we consider adequately reflect and support the proposed compliance framework.

As stated in our previous submission on compliance and enforcement, AGL will work co-operatively with the AER to support its compliance monitoring and reporting functions. We encourage the AER to take a similarly co-operative approach and to intervene only when necessary and appropriate.

Should you wish to discuss any aspect of this submission further please contact Anna Stewart, Manager Regulatory Policy and Strategy on 03 8633 6830.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Alex Cruickshank', written in a cursive style.

**Alex Cruickshank**  
**Head of Energy Regulation**

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## **Attachment A**

### **1. Targeting monitoring activities**

AGL supports the AER's intention to devote greater attention to monitoring compliance with new obligations during the transition to the National Energy Customer Framework. Having said this, the monitoring activity should still be targeted on the potential impact and likelihood of a breach, as opposed to undertaking intrusive monitoring simply because an obligation is new.

### **2. Market intelligence and information**

AGL remains concerned by the way in which Ombudsman complaints and community and consumer group feedback will be used to inform the AER with regard to compliance issues (real or perceived) within the market. It is important that the AER recognises the limitations of such sources and provides retailers with the opportunity to respond to issues before further action is taken.

### **3. Targeted compliance reviews**

While AGL still queries the value of targeted compliance reviews, we are pleased that the AER has recognised the potential regulatory burden which would have resulted from quarterly reviews. A flexible approach, whereby reviews will occur at least bi-annually, is a more acceptable proposal.

### **4. Retailer reporting**

AGL supports the revised approach to reporting where there will be a requirement for immediate, six-monthly and annual reporting for type 1, 2 and 3 obligations respectively.

### **5. Compliance audits**

AGL welcomes the AER's proposal that the decision to undertake a compliance audit be made on a case-by-case basis. We also support the draft Guidelines in terms of the process to be undertaken in selection of the audit process, audit scope and cost allocation. As noted in our previous submission, we do not oppose the AER combining performance and compliance audits in relation to customer hardship, so long as it is clear which results relate to performance and which relate to compliance.

### **6. Enquiries and investigations**

AGL remains concerned at the prospect of the AER publicly reporting on completed investigations, unless the retailer in question has first had sufficient opportunity to verify the facts, rectify the breach and make any claims to confidentiality. We are strongly opposed to the suggestion by some stakeholders in the previous consultation round that all investigations should be reported on. This could lead to serious reputational risk for retailers, particularly where an issue is picked up in the media and misrepresented. We agree that there may be lessons learnt from regulatory breaches, which may be of benefit to the rest of the industry. However, as noted in the issues paper, the AER must be careful to report investigations accurately, objectively and with as much context as possible.

### **7. Enforcement**

We refer to our previous comments in relation to enforcement, and reiterate our view (which appears to be shared by the AER), that the any enforcement action should be

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undertaken on a case by case basis. The type of enforcement action taken should also be commensurate with the impact and seriousness of the breach, and the circumstances leading to the breach.

#### **8. AER compliance reports**

AFL supports the AER's revised approach to compliance reporting, where the AER now proposes quarterly bulletins rather than quarterly reports, which in our view, were onerous and of limited value.

To the extent that any compliance reports refer to the findings of a compliance audit, we submit that those findings should come from the final audit report, as approved by the board of the audited entity.

#### **9. Compliance policies, systems and procedures for regulated entities**

AGL maintains its support of the use of the Australian Standard on Compliance Systems (AS 3806) as the basis for regulated entities' compliance policies, systems and procedures.

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