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

Dear Sir/Madam

Compliance & Enforcement – Draft Decisions

APA Group is a major Australian gas transmission and distribution company, owning gas networks in Queensland and regional New South Wales and operating gas networks in South Australia, Victoria, New South Wales and Northern Territory.

APA has a combined interest of approximately 12,000km of gas pipelines and 2,800km of gas distribution networks, estimated to transport natural gas to over one million consumers. APA also provides maintenance and operational services to Envestra, Australia's largest distributor of natural gas. Evidently, APA is a major participant in the supply of energy to Australian homes and is well placed to comment on compliance and enforcement in relation to the National Energy Customer Framework ("NECF")

APA has reviewed the second round consultation papers released by the Australian Energy Regulator ("AER") concerning Approach to Compliance, Compliance Procedures and Guidelines and Statement of Approach, and generally supports the AER's proposed framework.

The greatest concern for APA is the proposed classification of regulatory obligations set out in the draft Compliance Procedures and Guidelines. The appropriateness of the obligations together with their duplication with existing regulatory obligations is disconcerting because they depart from the overall objective to streamline jurisdictional regulations and reduce the compliance burden on distributors and retailers. Further comment is set out below.

APA welcomes the opportunity to be involved in these matters and looks forward to participating in future stakeholder consultations.

If you have any queries on this submission please contact Joanne Parry on (08) 8113 9108.

Yours sincerely



John Ferguson
General Manager, Networks

Draft Compliance Procedures and Guidelines "B. Classification of Regulatory Obligations"

B.1 Type 1 Regulatory Obligations

Retail Law Part 2 Division 10 - Prepayment Meter Systems (R)
Retail Rules Part 6 Division 2 Retailer-initiated De-energisation of Premises (R)
Retail Rules Part 6 Division 3 Distributor De-energisation of Premises (DB)
Retail Rules Part 7 Life Support Equipment (R)

The AER has defined type 1 regulatory obligations as those obligations for which a breach would have a critical impact on customers and the impact is likely to escalate in the short (one to three month) term if not remedied quickly.¹ Furthermore that 'all actual or potential breaches of type 1 obligations are to be reported to the AER as soon as reasonably practicable and in any case within 24 hours of the event being identified or reported to the regulated entity.'² A written report on all actual or possible breaches is also to be provided to the AER as soon as reasonably practicable or at best within five business days of the breach occurring.³

Of the NECF provisions classified by the AER as a type 1 obligation distributors would have to report on breaches relating to the de-energisation of customer premises as set out in Part 6 (Division 3) of the Retail Rules. On that basis APA raises the following concerns and ask that the AER consider these issues accordingly when preparing the final version of the Compliance Procedures and Guidelines.

Distributor De-energisation of Premises [Retail Rules Part 6 Division 3]

Rule 119(1)(a)

A distributor may de-energise a customer's premises if—

(a) the customer's retailer informs the distributor that it has a right to arrange for de-energisation under its contract with the customer and requests the distributor to de-energise the premises; or

In accordance with current market rules, gas distributors receive notification from retailers requesting a disconnection or de-energisation of a customer's premises. This notification is called a 'service request' and is received via B2B exchanges and in most instances provides a reason for the de-energisation. There is however no explicit declaration from the retailer stating that they have a right to arrange for de-energisation under its contract with the customer. Therefore for each de-energisation request received and completed post NECF, distributors will be in effect breaching the rule and because it has been classified as a type 1 obligation, distributors must report each breach to the AER as soon as reasonably practicable or within 24 hours and provide a follow up report.

APA alone performs approximately 20,000 de-energisations each year across both its own networks in Queensland and regional New South Wales and Envestra's networks in South Australia, Queensland and Victoria. APA thus suggests that rather than retailers and distributors modifying their B2B systems to incorporate the declaration on each service request (the costs for and benefits for which have already been queried by the industry), retailers provide a blanket declaration which covers all de-energisation requests. APA therefore seeks advice from the AER as to whether such a declaration is sufficient to avoid future breaches.

¹ AER Draft Approach to Compliance December 2010 Section 4.1 Page 16.

² AER Draft Compliance Procedures and Guidelines December 2010 Paragraph 3.2.1 Page 9.

³ AER Draft Compliance Procedures and Guidelines December 2010 Paragraph 3.2.2 Page 9.



Rule 119(1)(d)

A distributor may de-energise a customer's premises if—

(d) "the customer has provided false information to the distributor or the customer's retailer, in circumstances where the customer would not have been entitled to have the premises energised if the false information had not been provided; or" [underlining added]

Distributors can only comply with this requirement if:

1. the customer has provided false information to the distributor directly or;
2. the distributor has been made explicitly aware that the customer has provided false information to the relevant retailer.

Distributors are not privy to the information communicated between a retailer and its customer and therefore APA cannot know whether the customer's premises are legally entitled to be energized. APA hence seeks confirmation from the AER that a breach can only occur in the second instance, i.e. if the distributor was explicitly advised by the retailer that the customer has given the retailer false information.

Rule 120(1)(b)

Restrictions on de-energisation

(b) "where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the distributor under the distributor's standard complaints and dispute resolution procedures, and the complaint remains unresolved; or"

The circumstances in which a distributor will de-energise a customer's premises (in practice) include customer debt, leaks and emergencies. Complaints regarding customer debt are the responsibility of the relevant retailer as distributors do not bill customers for on-going services. In situations where distributors do charge customers i.e. connection contributions, non-payment results in an incomplete connection rather than de-energisation of the premises. Furthermore de-energisation of customer premises for leaks and emergencies is permitted by energy laws.

Hence the circumstances in which a distributor will receive customer complaints for a "proposed" de-energisation are rare and unlikely to occur (we believe this has never occurred in APA's history). APA does acknowledge that the provision aligns with the NECF's policy intent, however the potential 'severity' and 'impact' on customers does not warrant it being classified as a type 1 obligation.

Rule 120(1)(c)

Restrictions on de-energisation

(c) "where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the energy ombudsman and the complaint remains unsolved; or"

Similar to the issues raised in points 2 and 3 above, distributors are unable to comply with this provision unless they have been made explicitly aware of the complaint, particularly if the complaint relates to a matter between the customer and their retailer. APA therefore seeks confirmation from the AER that a breach can only occur if the distributor was explicitly aware of the issue and it was in fact a network issue. (If the issue were a retail issue, then the retailer would not be entitled to make a request for disconnection).

Furthermore the likelihood that there will be customer complaints directed at distributors prior to de-energisation is low as discussed further above. Classifying this provision as a type 1 obligation is therefore inappropriate.

Rule 120(1)(d)

Restrictions on de-energisation

(d) "where the customer's premises are to be de-energised under rule 111 – during an extreme weather event; or"

As a general comment the definition for 'extreme weather event' provided in the rules is arbitrary and provides little guidance for distributors other than to rely on what a non-specified "local instrument" declares as "extreme."⁴ If such declarations are not explicitly made distributors will be left to use their own discretion, which may consequently constitute a breach. APTA recognises that this clause and the term "extreme weather events" is directed at electricity distributors, where extreme weather events may be defined or commonly understood. Rule 120(1)(d) is not applicable to gas distributors, and should therefore not be a type 1 obligation for gas distributors.

General Comment

In addition to the points made above APTA is somewhat perplexed as to why rules 119 and 120 have been classified as type 1 obligations because it is a rare occurrence where customer premises are de-energised by distributors without the proper authority and grounds. In South Australia, for example, APTA performs around 8,000 de-energisations per annum of which approximately 3-5 may be incorrect due to the wrong address being advised to field staff. In such cases APTA rectifies the situation immediately, and therefore cannot understand how de-energisations fit the criteria for a type 1 obligation. APTA believes that a type 3 obligation is more appropriate.

B.2 Type 2 Regulatory Obligations

Retail Law Part 2 Division 5 - Explicit Informed Consent (R)
Retail Law Part 2 Division 6 - Customer hardship(R)
Retail Law Part 2 Division 7 - Payment Plans(R)
Retail Law Part 2 Division 8 - Energy Marketing Rules (R)
Retail Law Part 3 Division 2 - Obligation to Provide Customer Connection Services (DB)
Retail Law Part 3 Division 6 - Negotiated Connection Contracts (DB)
Retail Rules Part 2 Division 3 - Customer Retail Contracts—Pre-contractual Procedures (R&DB)
Retail Rules Part 2 Division 4 - Customer Retail Contracts – Billing (R)
Retail Rules Part 2 Division 5 - Tariff Changes (R)
Retail Rules Part 2 Division 10 Subdivision 3 - Energy Marketing Activities (R)

The AER has defined type 2 regulatory obligations as those obligations for which a 'breach is likely to have a serious impact on customers, which is likely to escalate or become widespread in the medium (three to six month) term if steps are not taken to rectify it'.⁵ Furthermore that 'all actual or possible breaches of type 2 obligations are to be reported in writing to the AER on a six-monthly basis'⁶ with the dates for submission being 28 February⁷ and 31 August⁸ for each reporting period.

Of the NECF provisions classified by the AER as type 2 obligations distributors would be obliged to report on breaches concerning the connection of customers (when requested) and the provision of pre and post contractual information to customers about the connection process. On this basis APTA responds as follows and again asks that the AER consider these matters accordingly when preparing the final version of the Compliance Procedures and Guidelines.

⁴ National Energy Retail Rules Rule 108.

⁵ AER Draft Approach to Compliance December 2010 Section 4.1 Page 16.

⁶ AER Draft Compliance Procedures and Guidelines December 2010 Paragraph 3.2.3 Page 9.

⁷ AER Draft Compliance Procedures and Guidelines December 2010 Paragraph 3.2.3(a) Page 9.

⁸ AER Draft Compliance Procedures and Guidelines December 2010 Paragraph 3.2.3(b) Page 9.



Obligation to Provide Customer Connection Services [Retail Law Part 3 Division 2]

s66

(1) A distributor must, subject to and in accordance with the energy laws, provide customer connection services for the premises of a customer—

(a) who requests those services; and

(b) whose premises are connected, or who is seeking to have those premises connected, to the distributor's distribution system.

Note— The Rules may provide that a retailer may arrange customer connection services.

(2) The customer connection services must be provided to a customer in accordance with the relevant customer connection contract.

Note—This section is a civil penalty provision.

Natural gas is both a discretionary fuel and one which must compete with electricity, which means that consumers have a choice of whether or not to connect. Gas distributors strive, in an increasingly competitive market (especially since changes in solar hot water rebates), to gain connections, and to connect new customers as soon as possible. Hence while this may be an appropriate compliance obligation for electricity distributors, it is not appropriate for gas distributors, where there is already a strong incentive for gas distributors to comply and meet the demand for connections.

APA furthermore questions the appropriateness of a 6-monthly reporting obligation given the AER's means of assessing the likelihood of a breach and the corresponding civil penalty applied to section 66.

"In its assessment of the likelihood of a breach of a particular obligation, the AER will consider behavioural incentives (and disincentives) to comply with that obligation. Where there is a strong incentive to comply, the AER's monitoring is likely to be less intrusive. For example, if a breach will be highly visible and damaging to a regulated entities reputation, there may be a strong incentive to comply."⁹

Receiving a civil penalty for non-compliance is potentially highly visible and damaging to a distributor's reputation and provides a strong incentive for compliance especially given that the financial penalty attached to a breach is \$100,000.00.¹⁰

Negotiated Connection Contracts [Retail Law Part 3 Division 6]

s78

*(1) This section applies where a distributor and a small customer negotiate and enter into a customer connection contract (a **negotiated connection contract**) in accordance with the relevant requirements of—*

(a) in the case of electricity—Chapter 5A of the NER; or

(b) in the case of gas—Part 12A of the NGR,

including the requirements of the relevant negotiating framework.

(2) The distributor must provide—

⁹ AER Draft Approach to Compliance December 2010 Section 1.1 Page 6.

¹⁰ National Energy Retail Law s2.



(a) information relating to the small customer's right to have a deemed standard connection contract under Division 4; and
(b) an explanation of—
(i) the differences between the terms and conditions of the proposed negotiated connection contract and the terms and conditions of a deemed standard connection contract; and
(ii) the implications of those differences.
(3) A negotiated connection contract operates to the exclusion of provisions of a deemed standard connection contract dealing with the same matters.
Note—A retail customer may negotiate customer connection services for electricity (under Chapter 5A of the NER) and for gas (under Part 12A of the NGR).

Distributors can publish this information on their websites and incorporate it into their standard paperwork which can be accessible by customers and readily auditable by the AER, therefore APA proposes the 6-monthly reporting obligation be amended to an annual report obligation.

Customer Retail Contracts—Pre-contractual Procedures [Retail Rules Part 2 Division 3]

Rule 17

(1) This rule applies where a distributor is contacted—

(a) directly; or

(b) on referral by a retailer, by a small customer for premises who is seeking customer retail services for the premises.

(2) The distributor must advise the small customer which retailer has an obligation to make a standing offer to the customer, and, if the customer is a move-in customer or is seeking a new connection, also inform the customer that—

(a) requests for customer retail services must be made to a retailer; and

(b) the customer may be able to choose their retailer; and

(c) a list of retailers is available from the AER's website.

Note—This subrule is a civil penalty provision for the purposes of the Law. (See the National Regulations, clause 6 and Schedule 1.)

Distributors can incorporate this information into the 'standing offer' for small customers which is a pre-contractual document and suffices as a pre-contractual procedure. Standing offers are approved by the AER, so APA proposes that the frequency of this reporting obligation be amended from 6-monthly to annually.

This proposal is also made in light of the fact that Rule 17 attracts a civil penalty if breached. As per the comments in relation to section 66, APA questions the appropriateness of a 6-monthly reporting obligation because a civil penalty is arguably a strong incentive to comply, and justifies less intrusive monitoring.¹¹

¹¹ AER Draft Approach to Compliance December 2010 Section 1.1 Page 6.



B.3 Type 3 Regulatory Obligations

Retail Rules Part 1 Division 2 - Consumption Threshold Matters (R&DB)
Retail Rules Part 1 Division 3 - Classification of Customers (R&DB)
Retail Rules Part 2 Division 9 - Other Retailer Obligations (R)
Retail Rules Part 4 Division 6 - Distributor Interruption to Supply (D)

The AER has defined type 3 regulatory obligations as those obligations for which a 'breach is likely to have a low or limited impact on customers, but may escalate or become widespread in the long (six to 12 month) term if not rectified'.¹² Furthermore that 'all actual or possible breaches of type 3 obligations must be reported in writing to the AER on an annual (financial year) basis' with the date for submission being 31 August in each year.¹³

APA has no comment on these obligations.

Additional Matters

Aside from the appropriateness of the regulatory obligations classified by the AER, APA is concerned with the number of reporting requirements under the NECF which are duplicates of existing reporting requirements that distributors currently have in relation to state regulators.

APA raises this issue because one of the NECF's key policy objectives is to streamline jurisdictional regulations into a national scheme and minimize the burden of compliance on regulated entities, particularly those operating in multiple jurisdictions. The AER's proposed obligations are not aligned with this policy as they effectively double the burden and cost for distributors who will be submitting the same reports to both state regulators and to the AER and at different frequencies.

Contrary to the NECF's overall objective of promoting a more efficient energy market,¹⁴ the proposed obligations also contradict the AER's position on which obligations should be reported on. As per the AER's first issues paper:

*"Retailer and distributor reporting is only one of the monitoring mechanisms that will be available to the AER. Not all obligations under the retail framework will attract a reporting obligation. **Our aim is to minimise the cost and burden of compliance reporting to regulated entities, and therefore to customers, by imposing reporting obligations only where information cannot be obtained through other means.** In particular, the AER will not impose reporting requirements for obligations for which adequate information to monitor compliance can be obtained through information that is already available to the AER."*¹⁵

Summary of position from current paper:

*"We propose to apply a targeted framework of exception reporting to obligations under the Customer Framework for **which we consider other sources of information are likely to be insufficient.**"*¹⁶

¹² AER Draft Approach to Compliance December 2010 Section 4.1 Page 16.

¹³ AER Draft Compliance Procedures and Guidelines December 2010 Paragraph 3.2.4 Page 9.

¹⁴ National Energy Retail Law s13.

¹⁵ AER Issues Paper: Approach to Compliance 31 May 2010 Section 5.2.3 Page 22.

¹⁶ AER Draft Approach to Compliance December 2010 Section 4.2 Page 18.



Existing reports submitted to state regulators are a source of information for the AER where some distributors' obligations/compliance with the NECF can be monitored (for example, connection timeframes). APA therefore seeks advice from the AER as to whether state reports will be sufficient sources of information for reporting on the NECF where there is a duplicate obligation.

If however it is intended that jurisdictional reporting requirements will eventually cease but in the short term entities are still required to report to state regulators, APA seeks further guidance from the AER as to the expected timeframes and transition requirements for elimination of duplication.