



28 January 2011

Mr Warwick Anderson
General Manager – Network Regulation North Branch
Australian Energy Regulator
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Anderson

Comment on proposed performance reporting objectives and priorities

ActewAGL welcomes the opportunity to comment on the Australian Energy Regulator's (AER's) *Discussion paper: Objectives and priorities of electricity network provider performance reports* (the discussion paper).

ActewAGL Distribution is the Electricity Distribution Network Service Provider (DNSP) to more than 160 000 customer connections in the ACT, in addition to being the provider of gas network services to almost 120 000 customers in the ACT and surrounding region. ActewAGL is concerned, as a relatively small scale operator, about the increasing cost impacts of the growth of reporting requirements. These requirements have a discernable impact on energy prices and the effectiveness of incentives facing the affected businesses.

The *National Electricity Law* (NEL) confers on the AER functions and powers including the ability to prepare and publish reports on the financial and operational performance of network service providers.¹ The NEL does not, in any form, require the AER to implement a system of regular collection of uniform performance measures. In this respect, the AER's current proposals should be assessed in the context of NEL section 28F(3)(d) (mentioned in the discussion paper, but not further explored) that prohibits the AER from using its powers to demand information "solely for the purpose of collecting information for the preparation of a service provider performance report".

¹ NEL, section 15(1)(ea)

Given the totality of the broad information gathering framework within the NEL, involving checks against the collection of information without reasonable expectation of net benefit to users,² ActewAGL considers the limits placed by the NEL on the collection of performance information to be tacit acceptance by the framers of the NEL of the limited value and excessive burden of the systematic collecting of information for performance reporting.

The discussion paper summarises the objective of annual performance reporting as being to enable stakeholders “to assess compliance with regulatory determinations and to compare the performance of network service providers”.³ The purpose of performance reports is likewise summarised as “to provide comparable information about NSPs’ [network service providers’] operations and financial performance”.⁴

ActewAGL questions whether performance reporting can actually provide meaningful information to stakeholders on compliance or comparative performance. Further discussion of objectives in the discussion paper focuses on four elements:⁵

- Improvement of the regulatory framework;
- Transparency;
- Accountability; and
- Improved performance.

These are addressed in turn below.

On the issue of **improvement of the regulatory framework**, the discussion paper says that performance reporting “will enable the AER to publish meaningful information [to] educate stakeholders on the NSPs’ performance and the outcomes of regulatory processes”.⁶

ActewAGL considers that detailed assessment of the performance of each DNSP within its own context rightly occurs through the price review process, when the justification for certain behaviours and modes of operation can be expertly examined. The production of apparently comparable information outside this context could potentially result in uninformed assessment and commentary bearing no reference to the individual challenges facing the DNSP and giving customers unrealistic expectations about the potential for (and actual cost of) performance improvements.

² NEL, section 28F(2)(b) states: “In considering whether it is reasonably necessary to serve a regulatory information notice, or make a general regulatory information order, the AER must have regard to ... the likely costs that may be incurred by an efficient network service provider or efficient related provider in complying with the notice or order”.

³ Discussion paper, p 2

⁴ *Ibid*, p 2

⁵ *Ibid*, section 2.3, pp 4-5

⁶ *Ibid*, p 4

A far more direct means than mandating performance reporting of involving customers in DNSP performance is through the conduct of willingness to pay and customer satisfaction studies against which operational responses can be gauged. Such initiatives by DNSPs enable them to respond directly to the needs and preferences of customers, rather than through the costly production of information on dimensions of service that may well be outside the interests of consumers.

With regard to **transparency**, the discussion paper claims that “[r]eporting on the NSPs’ expenditure, investment decisions and service levels allows for comparisons to be made between NSPs and over time. This will provide insight into the NSPs’ business practices and decision making”.⁷

The point has been made repeatedly, but remains nonetheless true, that no two DNSPs share the same operating environment and circumstances and that even subtle differences in these have substantial impact on apparent performance and costs of operation, negating the effectiveness of direct comparisons.

ActewAGL frequently cites the example of the ACT’s unique system of overhead reticulation of electricity in the backyards of customers as having substantial impacts on its costs of operation. Another area limiting the effectiveness of comparison is legitimate variations in the treatment of costs through the leasing or purchase of capital items.

The outcome of performance reporting should not be to leave users with the wrong impression with regard to cost or performance measures that are outside the practical control of the DNSP or that arise from a different means of securing services.

With regard to **accountability**, the discussion paper says that performance reports “will allow users to see whether an NSP’s actual expenditure is consistent with its forecast expenditure, and to review why the differences may have occurred” and “will also review and compare the NSPs’ service performance levels”.⁸

The incentive based regulatory framework of the NEL allows DNSPs to determine their method of operation in response to changing operational priorities and the incentives offered over the medium term period of a regulatory determination. This avoids the risk of the regulator micromanaging the operations of the DNSP and provides necessary flexibility for the DNSP in the face of emergent issues or events.

In this context, it is not clear what element of compliance stakeholders would be able to effectively monitor. Even where a DNSP implements its entire proposed capital and operating and maintenance programs as per its determination, the costs and timing of elements of the program could be expected to vary from those forecast. Within the regulatory framework of the NEL, service levels and efficiencies are subject to their own high powered incentives, set at the time of the determination. A system of performance reporting would distort those incentives.

⁷ *Ibid*, p 5

⁸ *Ibid*

On the objective of **improved performance**, the discussion paper claims that performance reporting “will enable comparisons between the NSPs’ expenditure, revenues and performance in different regulatory years and jurisdictions [to] encourage ... more efficient processes [and provide] an incentive to increase service performance while maintaining efficient service levels”.⁹

Once again, the detailed review at the time of the price determination provides the correct context for performance assessment. The determination itself provides effective incentives for performance.

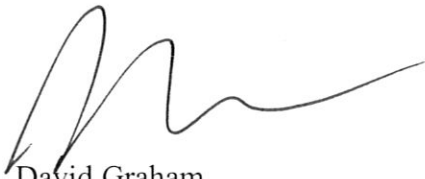
With regard to the priorities set out in the discussion paper, ActewAGL draws the AER’s attention to the Council of Australian Governments publication on best practice regulation which applies to intergovernmental standard setting bodies, including those established by statute, to deal with national regulatory problems.¹⁰ This publication sets out several relevant principles that the AER should consider in setting the scope of its priorities, including:¹¹

- Establishing a case for action before addressing a problem;
- Adopting an option that generates the greatest net benefit for the community; and
- Action should be effective and proportional to the issue being addressed.

Overall, ActewAGL considers that the discussion paper, while including general discussion on the merits of effective regulation and customer engagement, provides few links between these virtues and the proposed system of performance reporting. In view of these limitations, and the likely significant costs of the scheme to electricity customers, ActewAGL considers that the AER has not sufficiently made a case on the balance of benefits over costs.

Any queries on this submission should be directed to Mr Chris Bell, Manager Regulatory Affairs, on (02) 6248 3180.

Yours sincerely



David Graham
Director Regulatory Affairs and Pricing

⁹ *Ibid*

¹⁰ Council of Australian Governments 2007, *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, October p 3

¹¹ *Ibid*, p 4