



11 February 2011

Mr Christopher Streets  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

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

Dear Mr Streets,

**RE: AER APPROACH TO COMPLIANCE AND ENFORCEMENT UNDER  
THE NECF**

CitiPower and Powercor Australia (**the Businesses**) refer to the following documents released by the Australian Energy Regulator (**AER**) in December 2010:

1. Draft decision entitled *Approach to compliance with the National Energy Retail Law, Rules and Regulations*;
2. Draft document entitled *Statement of Approach - Compliance with the National Energy Retail Law, Rules and Regulations*; and
3. Draft document entitled *Compliance Procedures and Guidelines - National Energy Retail Law, Rules and Regulations*.

(collectively **the draft papers**)

The Businesses make the following submissions for the AER's consideration.

**Section 2 – Market intelligence and information**

The Businesses note that the AER proposes to collect and monitor information from regulated entities, customers, consumer groups, energy ombudsman schemes and other agencies such as the Australian Energy Market Operator (**AEMO**) for signs of breaches of the Customer Framework. The Businesses reiterate that the AER should not place undue reliance upon the information provided from sources external to distributors without first ensuring the veracity of the information provided before publication. This can be done by consulting with the affected businesses prior to publication to ensure that the businesses are accorded a degree of procedural fairness.

**Section 3 – Targeted compliance reviews**

The Businesses note that the AER proposes to conduct target compliance reviews at least once every six months, with the scope of each review determined with regard to recent market events, observed patterns or trends in compliance or customer

**REGISTERED OFFICE**

40 Market Street, Melbourne VIC Australia Telephone: (03) 9683 4444 Facsimile: (03) 9683 4499  
Address all Correspondence to: Locked Bag 14090, Melbourne VIC 8001 Australia  
CitiPower Pty ABN 76 064 651 056 General Enquiries: 1300 301 101 [www.citipower.com.au](http://www.citipower.com.au)  
Powercor Australia Ltd ABN 89 064 651 109 General Enquiries: 13 22 06 [www.powercor.com.au](http://www.powercor.com.au)

complaints. The Businesses note the AER's comments that where such reviews would be unwarranted, the frequency of reviews would be reduced.

#### **Section 4 – Retailer and Distributor reporting**

The Businesses note that the AER proposes to apply a targeted framework of exception reporting to obligations under the Customer Framework for where the AER considers other sources of information are likely to be insufficient. The AER proposes under this framework that Type 2 obligations be reported on a six-monthly basis. The Businesses submit that breaches for Type 2 obligations should be reported annually unless a previously identified breach is sufficiently material to justify more frequent reporting. Reporting on a six-monthly basis will incur additional costs, as currently the Businesses are reporting Type 2 and 3 obligations from the ESCV Compliance Reporting Manual on an annual basis. The ESCV did not consider it necessary to report the Businesses' Type 2 obligations on a more frequent basis.

In addition, Appendix B of the draft Compliance Procedures and Guidelines identify those requirements of the Retail Law, Rules and Regulations which fall under the proposed exception reporting framework. It lists the part, division and in one instance, the sub-division of Type 1, 2 and 3 regulatory obligations. The Businesses submit that it would provide greater clarity if the actual clause from the Retail Law, Rules and/or Regulations was linked to the obligation.

#### **Section 5 - Compliance Audits**

The Businesses note that the AER proposes to adopt a flexible approach to compliance auditing that allows decisions on the appropriate audit mechanism and the timing and scope of an audit to be made on a case-by-case basis. The Businesses consider the proposed process and approach to be acceptable, however note that there is no ability for the Businesses to review the draft audit report before it is finalised. This is necessary to ensure all facts in the audit report are correct. The Businesses submit that an additional clause be added to the Compliance Procedure and Guidelines to allow for the Businesses to review the draft before it is finalised.

The Businesses would like to reiterate that the AER must take into account the nature and complexity of the NECF and the transition from state energy laws, and the businesses' efforts in meeting compliance, in assessing any breaches of compliance and subsequent remedial enforcement actions. The new regulatory environment has yet to be tested and situations may arise where there are uncertainties in obligations.

Should you have any further questions in relation this submission, please do not hesitate to contact me on (03) 9683 4465 or at [bcleeve@powercor.com.au](mailto:bcleeve@powercor.com.au).

Yours sincerely



**Brent Cleeve**  
**MANAGER REGULATION**