

10 February 2011

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

Attention: Christopher Streets

Dear Christopher

DRAFT DECISION – Approach to compliance with the National Energy Retail Law, Rules and Regulations

ETSA Utilities appreciates the opportunity to comment on the above Draft Decision. In general we support the Draft Decision but are highlighting some specific concerns we have with the Draft Decision which are detailed below.

BACKGROUND ON COMPLIANCE REPORTING ARRANGEMENTS IN SOUTH AUSTRALIA

ETSA Utilities is currently, required to report its compliance with the obligations that arise from our Electricity Distribution Licence in South Australia. We have a similar tiered reporting regime as proposed by the AER (ie Type 1, Type 2 and Type 3 obligations). Type 1 obligations are reported within 3 days of detecting a breach. Reporting of our compliance with type 2 and 3 obligations is performed quarterly and annually respectively within 2 months of the close of the period.

Materiality of breach

Under our jurisdictional compliance regime we are required to report a material breach of an obligation immediately (ie three days¹) but include a non-material breach of the same obligation in our normal quarterly or annual compliance report. We consider that concept of materiality should be incorporated into the AER's compliance regime.

The "materiality" concept would utilise some of the factors listed under section 6.1 of the AER's "Statement of approach: compliance with the National Energy Retail Law, Rules and Regulations" to determine if a breach is "material" and needs to be reported immediately (ETSA Utilities proposal – 3 business days) or non-material and included in a normal

¹ If the third day of the three days is not a business day then we are required to report on the next business day, this means that we are normally provided with 2 or 3 business days to report a Type 1 breach.

compliance report. An example is provided below for one of the obligations listed in the Draft Decision as a Type 1 obligation (ie Retail Rules Part 6, Division 3).

For example, ETSA Utilities annually reports a minor non-compliance where in error, a customer is disconnected in response to a retailer initiated disconnection. This occurs about 10 times per year in more than 150,000 disconnections per year. The error occurs due to either incorrect customer address information provided by the retailer, incorrect wiring in a block of flats or human error.

The South Australian regulator (ESCoSA) accepts that this degree of non-compliance (ie > 99.9% compliance) is not material. However, under the Draft Decision, as these relate to a breach of a Type 1 obligation (ie Retail Rules, Part 6, Division 3) we would be required to notify the AER of each of these breaches within 24 hours even though the affect of the breach is limited to one customer out of 820,000 customers. We consider that our current compliance reporting is appropriate in these circumstances (ie non-material breach reported via normal periodic compliance report). That said, if the breach was material then it should be reported via the proposed Type 1 process.

ETSA Utilities considers that the reporting period for a Type 1 obligation should be amended to 3 business days from detecting a breach not one day. If the breach/possible breach was detected, the entity can require some time to investigate and determine the required information. This investigation can often involve other parties who may not be readily accessible or provide information in a timely manner. The Draft Decision's requirement means that if the breach was detected on a Friday afternoon we would be required to report the breach by Saturday afternoon. We consider that the allowed time for reporting a breach must be specified in business days and a minimum of 3 business days should be allowed.

Harmonisation

There are no comments within the Draft Decision papers about harmonisation of compliance reporting. As discussed above ETSA Utilities' provides compliance reports to the ESCoSA in accordance with their "Energy Industry Guideline No.4 – Compliance systems and reporting" dated 1 July 2010. ESCoSA's Guideline is at odds with the AER's proposed Guideline in that ESCoSA would only require reporting of material breaches of the obligations listed as Type 1 by the AER's proposal.

Further, the reporting periods and how the non-compliances are reported, are different. We consider that the reporting regime should be aligned to limit the complexity of reporting entity's compliance regime.

If you have any queries, questions or require more detail in regard our submission please contact Grant Cox on 08 8404 5012.

Yours sincerely



Eric Lindner
General Manager Regulation & Risk

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