4 May 2011

ATTENTION: LYNLEY JORGENSEN

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

Dear Mr Leuner

Response to AER Draft Procedures and Guidelines and Statement of Approach – compliance with the National Energy Retail Law, Retail Rules and Retail Regulations

ENERGEX welcomes the opportunity to provide comments to the Australian Energy Regulator (AER) on its Draft Compliance Procedures and Guidelines and Draft Statement of Approach relating to compliance with the *National Energy Retail Law (South Australia) Act* 2011 (Retail Law), National Energy Retail Rules 2010 (Retail Rules) and National Energy Retail Regulations 2010 (Retail Regulations).

ENERGEX is committed to establishing appropriate policies, systems and procedures to comply with its obligations under the new National Energy Customer Framework (the Customer Framework) and generally supports the AER's overall approach to monitoring, investigating and enforcing regulated entities' compliance with their obligations as outlined in its Draft Statement of Approach.

In providing a response to the AER's invitation to comment on the Draft Procedures and Guidelines and Draft Statement of Approach, ENERGEX has focussed on issues relating to the reporting requirements for distribution entities as set out in the Draft Procedures and Guidelines. Detailed comments relating to the specific distributor reporting obligations are contained in the attached **Appendix A**. However, ENERGEX would like to highlight the following general areas of concern:

Implementation / Transition

ENERGEX notes that compliance and reporting obligations will apply to regulated entities in participating jurisdictions from the date of commencement. It is also noted that the AER considers that the extensive consultation process has allowed sufficient time for regulated entities to commence planning changes to business systems, policies and procedures in readiness to comply with the new Customer Framework from commencement.

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While ENERGEX appreciates the extensive consultation that the AER has undertaken with respect to the development of the Draft Procedures and Guidelines, there has not until recently been sufficient certainty as to either the final content of the Customer Framework or of the commencement date to allow regulated entities to commence planning with any degree of confidence. ENERGEX therefore supports the AER's commitment to take into account the "newness" of the obligations when making decisions regarding monitoring and enforcement activities.

Transitional arrangements for Queensland have now been finalised, with the Queensland Department of Employment, Economic Development and Innovation recently publishing its *National Energy Customer Framework Queensland Implementation Decision Paper* (March 2011). This decision paper confirms that the Customer Framework will commence in Queensland on 1 July 2012, with the following exceptions, which will not be implemented until the next regulatory determination commencing on 1 July 2015:

- The connection charging aspects contained in Part E of the new Chapter 5A of the National Electricity Rules (NER), including obligations to comply with the connection charge principles and guidelines;
- The requirement for distribution entities to prepare and obtain approval for connection policies under the new Part DA of Chapter 6 of the NER;
- The requirement for distribution entities to obtain AER approval of basic and standard connection offers; and
- The requirement for distribution entities to provide four business days' notice of planned interruptions.

ENERGEX therefore assumes that Queensland distribution entities will not be required to report to the AER on their compliance obligations with respect to planned interruptions until 2015.

Furthermore, as there will be no capability for regulated entities to provide retrospective data prior to implementation of the new Customer Framework on 1 July 2012, ENERGEX seeks confirmation that the first six-monthly and annual reports will be for the periods of 1 July 2012 to 31 December 2012 (to be submitted by 28 February 2013) and 1 July 2012 to 30 June 2013 (to be submitted by 31 August 2013) respectively.

Specification of obligations

ENERGEX acknowledges the AER's approach to classifying obligations by division or subdivision of the Retail Law or Retail Rules rather than by individual provisions and the reasons provided by the AER for adhering to that approach. ENERGEX also notes that submissions were received from stakeholders recommending that the AER's Procedures and Guidelines should define the actual obligations to which reporting requirements will apply and allocate responsibility for compliance with those obligations between distributors and retailers. However, the AER rejected those suggestions on the basis that the onus is on regulated entities to establish internal compliance policies, systems and procedures to effectively monitor and report on their compliance with the Customer Framework.

While ENERGEX concurs that regulated entities have a responsibility to implement adequate measures to ensure compliance with their obligations, it considers that the imprecise wording of a number of the provisions targeted for compliance reporting could lead to disparate interpretations being applied to the circumstances under which an obligation may be considered to have been breached. ENERGEX therefore shares other stakeholders' concerns about the lack of definitions and clarity around reporting parameters for specific obligations. In particular, ENERGEX is concerned that failure to define specific obligations for the purpose of monitoring and reporting compliance will not only lead to subjective interpretations of non-compliance but will also consequently result in inconsistent, poor quality data and diminished ability to compare distributor performance (specific examples are provided in Appendix A).

Furthermore, ENERGEX would like to point out that distribution entities rely on retail entities to provide accurate and timely information regarding customers and to follow market procedures in a timely manner. ENERGEX therefore considers that where a non-compliance has occurred due to a retail entity's failure to comply with its obligations, the AER's Procedures and Guidelines should clearly allocate responsibility for reporting breaches to the retailer and not the distributor requested to perform the service.

ENERGEX considers that the lack of clarity around reporting obligations and responsibilities will impede regulated entities' ability to adequately identify and implement any adjustments to internal systems and processes to ensure compliance and reporting capability in readiness for implementation on 1 July 2012. ENERGEX therefore submits that further consideration should be given by the AER to providing clearly defined definitions of obligations and reporting parameters in its final Procedures and Guidelines to assist regulated entities and to ensure consistent and meaningful reporting.

Reporting breaches of Type 1 Obligations

It is noted that the AER has nominated one business day as an appropriate timeframe within which to provide an initial report of a breach of Type 1 obligations, to be followed by a written report within five business days and a six-monthly consolidated report. ENERGEX also notes the reporting requirements contained in clause 3.1.6 of the Draft Procedures and Guidelines in reference to "possible breaches".

ENERGEX considers that non-compliance with Type 1 obligations should only be reported when a possible breach has been investigated and confirmed as being valid and when responsibility for that breach has been allocated to either the distributor or the retailer. While immediate action will be taken to rectify breaches of Type 1 obligations as appropriate, for example a wrongful de-energisation, ENERGEX does not believe it is feasible to make an informed assessment of the cause of the breach or to determine responsibility for reporting the breach without further investigation. Reporting breaches before they have been appropriately validated and assigned will potentially create misleading and erroneous perceptions of non-compliance. Further, this would lead to difficulties in reconciling the initial reports, the five day written reports and subsequent six-monthly consolidated reports submitted by distributors and retailers. ENERGEX therefore considers that clause 3.1.6 of the Draft Procedures and Guidelines (relating to the reporting of "possible breaches") should not be applied to the initial reporting of Type 1 obligations.

If it is the AER's intention that all Type 1 breaches should be reported before they have been fully investigated and confirmed as being valid, the AER should be mindful that the administrative and resourcing requirements for both regulated entities and the AER will be significant and that the associated costs may outweigh any benefits for customers. To justify the expense that regulated entities will need to incur in resourcing the additional reporting requirements, the AER needs to clarify how the data that is provided within one business day will be utilised. Otherwise, ENERGEX has serious concerns with the short timeframe associated with this obligation and requests that the initial notification be extended to a more reasonable timeframe, e.g. five business days.

In addition, ENERGEX would like to submit that there should be a general exemption from having to meet the tight timeframes for initial reporting of Type 1 obligations in the event of extreme weather events as defined in the Retail Rules. As the AER would be aware, ENERGEX experienced severe weather events in January 2011. During this time, all available resources were diverted away from administrative or non emergency activities to focus on restoring safe supply to affected customers as soon as practicable. ENERGEX therefore considers that it is unreasonable for distributors to be required to report within the one and five day timeframes under such extenuating circumstances.

If you wish to discuss this matter further please contact Louise Dwyer, Group Manager Regulatory Affairs, on 07 3664 4047 or louisedwyer@energex.com.au.

Yours sincerely

Kevin Kehl
Executive General Manager Strategy & Regulation

Attachment

APPENDIX A – DISTRIBUTOR OBLIGATIONS

ENERGEX notes that under the AER's Draft Procedures and Guidelines distributors will have an obligation to submit information and data on the following regulatory obligations:

- Distributor de-energisation of premises (Part 6 Division3 of the Retail Rules)
- Life support equipment (Part 7 of the Retail Rules)
- Obligation to provide customer connection services (Part 3 Division 2 of the Retail Law)
- Negotiated connection contracts (Part 3 Division 6 of the Retail Law)
- Classification of customers (Part 1 Division3 of the Retail Rules)
- Distributor interruption to supply (Part 4 Division 6 of the Retail Rules)

ENERGEX has reviewed the requirements of these compliance obligations and the form and manner in which information and data must be submitted to the AER. In this submission, ENERGEX wishes to highlight its concerns and / or seek clarification from the AER on a number of issues as detailed below:

Distributor de-energisation of premises

(1) Obligation to report breaches

Distributors generally only de-energise (other than at the request of a retailer) under limited circumstances, most commonly for health and safety or emergency reasons. The majority of de-energisations are therefore retailer-initiated and the distributor must rely on the retailer's right to arrange for de-energisation under its contract with the customer and its obligations under Part 6 Division 2 of the Retail Rules.

In addition, distributors rely on retailers to follow correct market procedures and to provide accurate and up-to-date information, including notification that a person residing at the customer's premises requires life support equipment.

As the AER has not clarified responsibility for reporting breaches of regulatory obligations in the Draft Procedures and Guidelines, ENERGEX seeks confirmation that:

(i) Where a distributor actions a retailer's request to de-energise a premises and it is determined that the retailer has not complied with its obligations under Part 6 Division 2 of the Retail Rules, it is the retailer's responsibility to report the breach, not the distributor who has performed the de-energisation.

(ii) Wrongful de-energisations that occur due to a retail entity's failure to follow MSATS procedures (for example not processing a market transfer for a move-in customer in a timely manner) are considered to be a breach of the retailer's obligations.

(iii) In situations where a retailer has failed to register the premises as having life support equipment with the distributor under Part 7 and the premises is de-energised by the distributor at the request of the customer's retailer, the retailer is responsible for the breach.

(2) Frequency of Reporting

The Draft Procedures and Guidelines stipulate that Type 1 obligations must be reported initially to the AER by the next business day of the event "being identified by or reported to the regulated entity" and followed by a written report within five business days.

Currently, when a potential breach of the distributor's obligations regarding de-energisation of premises has been identified by or reported to ENERGEX, ENERGEX's process (so far as reporting is concerned) is to investigate the circumstances of the potential breach (which may require communication with the customer's retailer) and, if it is confirmed that a wrongful de-energisation has occurred, to assign responsibility for the wrongful de-energisation to either ENERGEX or the customer's retailer. In some instances this process may take significantly longer than one business day.

It is ENERGEX's preference that breaches of regulatory obligations relating to de-energisation of premises should be reported to the AER by the relevant regulated entity by the next business day following confirmation of a valid breach of either Part 6 Division 2 or Part 6 Division 3 of the Retail Rules. ENERGEX does not consider that the requirements of clause 3.1.6 of the Draft Procedures and Guidelines relating to the reporting of possible breaches should be applied to the initial reporting of breaches of Type 1 regulatory obligations.

ENERGEX also submits that a general exemption for distributors from having to meet the strict reporting timeframes for Type 1 obligations should be applied during extreme weather events. ENERGEX considers that it is unreasonable for distributors to be required to report within these tight timeframes under such circumstances.

Life Support Equipment

(1) Obligation to report breaches

Under rule 125 of the Retail Rules, distributors are required to register a premises as having life support equipment if it is either advised by a retailer or provided with confirmation from a registered medical practitioner that a person residing at the customer's premises requires life support equipment. Further, rule 126 requires distributors to ensure that the registration details provided under rule 125 are kept up-to-date. This is a significant change to the current jurisdictional arrangement which assigns primary accountability for maintaining life support details to the customer's retailer.

ENERGEX currently has established internal systems and processes to manage life support information and will not de-register a premises as having life support equipment unless requested to do so by the customer's retailer. As a further safeguard to prevent inadvertent de-registering of life support premises, ENERGEX queries the retailer (or, on occasion, the customer) in relation to all requests relating to the same customer at the same premises.

ENERGEX has serious concerns about the potential confusion the new arrangements may cause, particularly as it is anticipated that distributors will continue to rely on retailers to provide life support information for the purposes of updating the distributor's records in the majority of instances.

While ENERGEX will take the utmost care to ensure that its systems and processes are adequate to ensure compliance, it is concerned that there may be situations where a life support customer is de-energised or fails to receive notification of a planned interruption due to the retailer's failing to comply with its obligations under Part 7 of the Retail Law.

Where it has been determined that a breach has occurred due to the retailer's omission to register the customer as a life support customer with the distributor, ENERGEX seeks the AER's confirmation that it is the retailer's responsibility to report the breach.

(2) Frequency of Reporting

The same process for investigating and allocating responsibility for a breach of this obligation applies as detailed under distributor de-energisation of premises above. ENERGEX has the same concerns regarding the initial reporting timeframes for this obligation.

(3) Implementation

It should be noted that the Queensland Department of Employment, Economic Development and Innovation (DEEDI), in its *National Energy Customer Framework Queensland Implementation Decision Paper* (March 2011), has confirmed that the new Customer Framework requirement for distributors to provide four business days notice of planned interruptions will not be implemented in Queensland until the next regulatory determination commencing on 1 July 2015. ENERGEX therefore assumes that it will not be required to report non-compliance with Part 4 Division 6 of the Retail Rules relating to distributor interruption to supply (including to life support customers) until 2015.

Obligation to provide customer connection services

(1) Reporting requirements

Under the Retail Law, "customer connection services" is defined to mean services relating to new connection, connection alteration, supply services including (but not limited to) energisation, de-energisation or re-energisation of the premises; or a service prescribed by the Rules relating to the provision of customer connection services.

As this definition is broad and covers both new connection and ongoing supply, the reporting requirements are open to interpretation. ENERGEX therefore seeks clarification of specific reporting requirements, e.g. service order types.

(2) Definition of reportable breach

Under current and new Customer Framework arrangements, ENERGEX will provide customer connection services to a customer if:

- all necessary documentation has been received from the customer or the customer's representative, including a valid service order request from the customer's retailer;

- the customer's electrical installation is electrically safe (and ready for connection in the case of a new connection);
- safe, convenient and unhindered access to the premises has been provided; and
- the customer has complied with applicable electricity legislation and other relevant instruments.

ENERGEX will not provide customer connection services until all necessary minimum criteria have been met.

ENERGEX assumes that the primary focus for reporting against this Type 2 obligation will be the breach of relevant timeframes. ENERGEX currently reports (and is expected to continue to report) its performance against jurisdictional service order timeframes for a number of customer connection services, including new connections, connection alterations, re-energisations and de-energisations.

As the reporting parameters for this obligation are unclear, ENERGEX therefore anticipates that it will only be required to report non-compliance in relation to timeframes stipulated in Chapter 5A of the NER.

Negotiated connection contracts

(1) Compliance with rule 78(2)(a)

ENERGEX will publish information relating to the small customer's right to have a deemed standard connection contract under Division 4 on its website and respond to an enquiry in writing upon request. ENERGEX therefore seeks confirmation from the AER that this approach meets the requirements of rule 78(2)(a) of the Retail Law.

(2) Compliance with rule 78(2)(b)

ENERGEX has serious concerns with regard to the requirement to provide an explanation about the "implications" of the differences between the terms and conditions of the proposed negotiated connection contract and the terms and conditions of a deemed standard connection contract to customers.

ENERGEX does not consider that it is the distributor's responsibility, nor is it licensed appropriately, to provide specific legal and financial advice to customers, particularly as the implications will vary depending upon the individual circumstances of each customer.

Furthermore, ENERGEX is unclear as to what would be considered to be a breach of this obligation and therefore seeks the AER's advice in this matter.

Classification of customers

(1) Obligation to report breaches

ENERGEX currently classifies customers as either "residential" or "commercial" for internal purposes. With the introduction of the new Customer Framework, the distributor will rely on the retailer to provide the initial customer classification of either "residential customer" or "business customer".

In this regard, Rule 7 provides that customers "must, on request by the retailer, provide sufficient information to the retailer for the retailer to classify ... the customer as a residential customer or a business customer in relation to the premises." ENERGEX seeks confirmation from the AER that there is a positive obligation on retailers to request sufficient information to accurately determine the initial classification at the commencement of every retail contract. Further, ENERGEX seeks confirmation that where the initial classification provided to the distributor by the retailer is subsequently determined to be incorrect, the retailer concerned is responsible for reporting the breach to the AER.

ENERGEX is uncertain at this stage whether the obligation for retailers to provide the initial customer classification to distributors (ie residential or business classification) will apply from 1 July 2012 for all existing customers or whether it will only apply to new customer contracts from that date. Clarification is currently being sought from the Joint Implementation Group.

(2) *Definition of reportable breach*

ENERGEX considers that the following would be considered to be reportable breaches of the distributor's obligations under Part 1 Division 3 of the Retail Rules:

- Failure to initially classify a business customer correctly (in accordance with the requirements of rule 11) as a large customer or small customer and, if a small customer, as or as not a small market offer customer.
- Failure to correctly reclassify a business customer correctly (in accordance with the requirements of Rule 11).
- Failure to notify the retailer for the premises of the initial classification of the customer or failure to notify the customer and the financially responsible retailer of the reclassification of the customer.
- Failure to keep a record of the classification and, where applicable, reclassification of the customer.

While current systems and processes will be reviewed and modified to meet compliance and reporting obligations, ENERGEX would appreciate the AER's advice on the following:

- The initial small/large classification is currently published in MSATS but it is unknown at this stage whether MSATS will also include the business/residential, or small market offer/not small market offer classifications. ENERGEX seeks confirmation from the AER that publication of customer classifications in MSATS is considered to be sufficient notification of the initial classification to the retailer for the premises under rule 9.

- Under both rule 9 and rule 10, notification of the classification or reclassification of a customer must be provided "as soon as practicable". ENERGEX seeks clarification of the timeframe within which notification must be provided before it is considered to be a non-compliance for breach reporting purposes.

- As classification of customers is based on consumption of energy, which can vary considerably between successive 12 month periods, ENERGEX's internal procedure for distributor-initiated reclassifications is to apply a tolerance of +/- 20 per cent. ENERGEX would therefore appreciate the AER's advice as to whether there will be scope to continue to apply a tolerance when reclassifying customers or whether, in doing so, the distributor would be considered to be in breach in rule 11.

Distributor interruption to supply

(1) Implementation

In its *National Energy Customer Framework Queensland Implementation Decision Paper* (March 2011), DEEDI confirmed that the new Customer Framework requirement for distributors to provide four business days notice of planned interruptions will not be implemented in Queensland until the next regulatory determination commencing on 1 July 2015. ENERGEX therefore assumes that it will not be required to report non-compliance with Part 4 Division 6 of the Retail Rules until 2015.

(2) Planned interruptions

Under current jurisdictional arrangements, a distributor is required to make a guaranteed service level payment if it does not give a small customer at least two business days' notice of a planned interruption to that customer's premises. While there is no current requirement to provide details of the expected duration of the outage, ENERGEX's internal policy is to pay a GSL if the customer's power is not restored on the same date as the planned interruption.

As Part 4 Division 6 of the Retail Rules requires distributors to "specify the expected date, time and duration of the interruption", ENERGEX seeks confirmation that ENERGEX's current approach will be considered to be compliant.

(3) Restoration of supply

Part 4 Division 6 of the Retail Rules requires the distributor to use its "best endeavours to restore the customer's supply as soon as possible". ENERGEX seeks clarification as to what would be considered to be a breach of this obligation for reporting purposes.