

**Ergon Energy Corporation Limited
and
Ergon Energy Queensland Pty Ltd**

**Draft Compliance Procedures and Guidelines
and Draft Statement of Approach: Compliance
with National Energy Retail Law, Retail Rules
and Retail Regulations**

Australian Energy Regulator

6 May 2011

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This submission, which is available for publication, is made by:

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1 INTRODUCTION

Ergon Energy Corporation Limited (EECL) and Ergon Energy Queensland Pty Ltd (EEQ) welcome the opportunity to provide comment to the Australian Energy Regulator (AER) on its *Draft Compliance Procedures and Guidelines* and *Draft Statement of Approach* (Drafts).

This submission is provided by:

- EECL, in its capacity as a Distribution Network Service Provider (DNSP) in Queensland; and
- EEQ, in its capacity as a non-competing area retail entity in Queensland.

In this submission, EECL and EEQ are collectively referred to as 'Ergon Energy'.

Ergon Energy reiterates its commitment to establishing policies, systems and procedures to ensure compliance under the new National Energy Customer Framework (NECF). Ergon Energy is generally supportive of the AER's overall approach to monitoring, investigating and enforcing regulated entities' compliance with their obligations as outlined in the Draft Statement of Approach.

In response to the AER's invitation to provide comments on the Drafts, Ergon Energy has focussed on areas of general concern. Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AER require.

2 SPECIFIC COMMENTS

Implementation/Transitional issues

Ergon Energy acknowledges the extensive consultation the AER has conducted in the development of the Drafts. However, Ergon Energy would like to draw to the AER's attention to the fact that certainty in relation to specific content of the NECF and its commencement date have only been provided recently, leaving regulated entities with little opportunity to plan with a degree of confidence. With this in mind, Ergon Energy therefore supports the AER's intention to have regard to the 'newness' of any obligation when considering monitoring and enforcement activities.

The Queensland Department of Employment, Economic Development and Innovation has recently finalised the transitional arrangements for Queensland in publishing its *National Energy Customer Framework Queensland Implementation Decision Paper* (March 2011) (the Paper). The release of this paper confirms the commencement date of the NECF in Queensland as 1 July 2012, and makes clear certain exceptions which will not be implemented until the next regulatory control period commencing on 1 July 2015 being:

- The connection charging elements of Part E of Chapter 5A of the National Electricity Rules (NER), which includes obligations under to connection charge principles and guidelines;
- The requirement for distribution entities to prepare and obtain approval for connection policies under 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.

Further, the Paper makes clear longer term transitional arrangements and a decision on optional elements of NECF for Queensland including from arrangements for supply to customers on pre-payment meter market retail contracts.

On the basis of endorsement of these transitional arrangements, Ergon Energy is also seeking confirmation that Queensland DNSPs will not be required to report to the AER on their obligations relating to any of these transitional arrangements i.e. prepayment meters or planned interruptions (until 2015).

Additionally, Ergon Energy seeks confirmation that it will not be required to provide reports on the basis of retrospective data prior to implementation of the NECF on 1 July 2012. More specifically, Ergon Energy asks the AER to confirm that the first six-monthly report will be for the 1 July 2012 – 31 December 2012 period (to be submitted by 28 February 2013) and the first annual report will be for the period 1 July 2012 – 30 June 2013 (to be submitted by 31 August 2013).

Specification of obligations

Ergon Energy notes the AER's approach to classifying obligations by division of subdivision of the Retail Law or Retail Rules rather than by individual provisions. Ergon Energy shares the concerns of other stakeholders regarding the lack of definitions and clarity around reporting parameters for specific obligations. Whilst Ergon Energy remains committed to its responsibility to implement robust measures to ensure compliance obligations are adequately discharged, it is concerned that failure to define specific obligations for the purpose of monitoring and reporting compliance will lead to subjective interpretations of non-compliance. Further, it may also result in inconsistent, poor quality data and diminished ability to compare performance.

Ergon Energy would also like to point out that DNSPs rely on retail entities to provide accurate and timely information regarding customers and to follow market procedures in a timely manner. Ergon Energy therefore believes that where a non-compliance has occurred as a result of 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.

With these issues in mind, Ergon Energy believes further consideration by the AER should be given to providing clear definitions of obligations and reporting parameters to ensure meaningful and consistent reporting can be offered by regulated entities.

Reporting breaches of Type 1 Obligations

Ergon Energy notes the AER's intention to nominate one business day as an adequate timeframe within which to recognise and provide an initial report of a breach of Type 1 Obligation. This information is to be followed by a written report within 5 business days and reconciled in a six-monthly consolidated report. Ergon Energy also notes the AER's intention, as outlined in 3.1.6 of the Draft Procedures and Guidelines, to require "possible breaches" to be reported in the same manner. Ergon Energy is firmly of the belief that non-compliance with Type 1 Obligations should only be reported when possible breaches have been adequately investigated and confirmed as being a valid breach and also when the responsibility for that breach, be it retailer or distributor, has been allocated. On this basis, Ergon Energy considers that the initial reporting

timeframes applicable to Type 1 Obligations should not be extended to include “possible breaches”.

While Ergon Energy remains committed to its compliance obligations and will continue to take immediate action to rectify breaches of Type 1 Obligations as appropriate, Ergon Energy does not believe it is practicable to make an informed assessment of causes or the responsibility of breaches without adequate investigation. In such circumstances, Ergon Energy has concerns that reporting breaches that are not validated or assigned will generate erroneous perceptions of non-compliance and establish difficulties in later reconciling initial reports, thus interfering with the integrity of aggregated data the AER collects.

In making its decision on the reporting requirements for Type 1 Obligations, Ergon Energy requests that the AER should be mindful that the requisite administrative resources in this respect for both regulated entities and the AER will be significant and these costs will likely outweigh any benefits that may be derived for customers.

In late December 2010 and January and February 2011, Ergon Energy experienced unusual, extreme and severe weather conditions throughout many parts of its network, as the AER would no doubt be aware. With such weather occurrences in mind, Ergon Energy would like to submit that the AER consider a general exemption from reporting timeframes applicable to Type 1 Obligations in the event of extreme weather events as defined in the Retail Rules. In such events, Ergon Energy is focused on the safety and security of the electricity network and its users and with resources directed in this respect, it is unreasonable for distributors to meet requirements to report within stated timeframes under extenuating circumstances.