



18 August 2017

Ms Paula Conboy
Chair
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Email: paula.conboy@aer.gov.au

Dear Ms Conboy

RE: HIGH-VOLTAGE CUSTOMER ALLOWANCE

On 17 August 2017, the Australian Energy Regulator (**AER**) provided correspondence from the Minister for Energy, Environment and Climate Change (**the Minister**) to the AER Chair outlining the Victorian Government's proposed high-voltage customer assistance program (**HCAP**). We have previously advocated for such a funding mechanism.

We have, however, consistently noted the establishment of such a scheme alone would be insufficient to avoid our need to install isolation substations at high-voltage (**HV**) customer connection points. In addition to the HCAP funding, we would also require the following:

- formal notification from the Victorian Government that they will take responsibility for ensuring all customer hardening works are undertaken to a suitable standard;
- formal extension from the Victorian Government to the delivery timeframes set out in the Amended Bushfire Mitigation Regulations; and
- binding notification from the Victorian Government that civil penalties will not be enforced where the installation of our REFCL program is delayed due to customer hardening works.

These reasons are discussed in detail below.

Electricity Distribution Code

Customer hardening works will not resolve or abdicate our compliance obligations under the Electricity Distribution Code (**the Code**), as customer installations will still experience voltage variations outside of specified limits. This gives rise to several potential liabilities.

For example, operating our REFCLs in a manner that will knowingly breach our compliance obligations will:

- expose us to potential litigation for any damage to customers' plant and economic damages to production processes;
- risk breaching our debt covenants under our financing arrangements; and
- create circumstances in which insurers may consider denying cover under our bushfire insurance policies. You will appreciate that even the potential for an insurer to respond in such a way, given the nature of this risk, is of significant concern to us.

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No prudent and efficient business would willingly undertake actions that would expose itself to such risks. The funding for which we are asking AER's approval will allow us to both ensure regulatory compliance and avoid these risks.

Non-compliance with the Code may also result in enforcement action from the Essential Services Commission of Victoria (**ESCV**). We understand from the Minister's letter that the AER has been provided informal verbal advice from an ESCV staff member that voltage breaches due to the operation of a REFCL would not result in penalties being enforced. In the context of the evidence we have already provided—that ESCV has formally refused to grant a no-action letter for this very issue—we query the weight that AER can attach to the verbal advice provided, or any suggestion that the Minister can direct an independent regulator to take action it has previously declined to take.

Even if a no-action letter was provided, this would only shield us from regulatory action by ESCV. It would not relieve us from the potential liabilities and risks outlined above.

In the absence of a formal no-action letter from the ESCV, it is clear we continue to have a compliance obligation under the Code. Under the National Electricity Rules (**the Rules**), the AER must approve capital expenditure required to comply with all applicable regulatory obligations or requirements associated with the provision of standard control services.

Therefore, to avoid our need to install isolation substations at HV customer connection points, the ESCV must provide certainty regarding the outcome of its forthcoming review of the Code. The ESCV has not indicated when it expects to conclude its review, and it is clear from previous correspondence that there is no commitment to a particular outcome from its review.

Additionally, if customers are required to undertake hardening works on their assets, we would require written assurance from all customers that their network has been assessed as REFCL compliant.

High-voltage customer assistance program

The allocation of \$10 million under the HCAP scheme is likely to be insufficient to fully fund all required customer works. For example, the Marxsen report into HV customer isolation assessed expected hardening costs for eight sites. The average cost of these works ranged from \$0.3 million to \$1.0 million (depending on the scope of works undertaken). In total, there are over 130 customer sites directly connected to ours and AusNet Service's HV network that will be impacted by the introduction of REFCLs. Even taking the lowest per customer estimate, this suggests the proposed HCAP scheme is significantly under-funded.

Further, even if funding is increased, it is likely that customer hardening works will lag REFCL constructions works, particularly after taking into account the need for customers to successfully apply for funding ahead of tendering the works. This will delay the time by which REFCLs may be operated without risk of damage to customer assets.

Civil penalties regime

The introduction of the Bushfire Mitigation Civil Penalties Scheme includes the following financial penalties for failure to meet the legislated delivery timeframes for each tranche of our REFCL program:

- \$2 million per point for any difference between the total number of required substation points prescribed in the Amended Bushfire Mitigation Regulations and that actually achieved; and
- up to \$5,500 per point for each day that a contravention with the Amended Bushfire Mitigation Regulations continues.

The Minister's letter notes that fair consideration will be given to requests for extensions to the delivery timeframes for installing REFCLs where there is evidence of circumstances beyond our control. The Minister's letter, however, does not constitute a formal no-action letter.

Given the magnitude of the potential penalties, a prudent business would continue to progress on the basis that isolation substations are required.

AER process

The AER is required to make a decision on our contingent project application by 21 August 2017.

On 3 August 2017, the AER convened a round-table meeting between us, AusNet Services, the Department of Land, Water, Environment and Planning (**DELWP**) and Energy Safe Victoria (**ESV**). At the conclusion of that meeting, the AER indicated that any further correspondence must be provided by 7 August 2017 to allow the AER to factor such material into its decision.

Subsequent to that meeting, on 16 August 2017 the AER met with the ESCV to further discuss our obligations under the Code. This is despite the AER having a clear opportunity to invite ESCV to participate in the round-table discussion with all stakeholders.

The AER also accepted a submission from the Minister on 17 August 2017.

We are now asked to respond to the Minister's submission to the AER less than 24 hours after receiving a copy of it, and to respond to the ESCV's verbal submissions to the AER based solely on the single paragraph summary contained in the Minister's letter.

We are concerned that undertaking such engagement so late in the AER's process has not provided us a reasonable opportunity to respond to this new material in a substantive manner, or even to understand what the ESCV has advised the AER or the basis for that advice (which appears to be contrary to a formal decision made by ESCV). Notably, the regulatory framework already includes mechanisms to manage changes in regulatory obligations or circumstances that occur too late to be fully considered—for example, negative pass-through, and the capital expenditure sharing scheme.

The AER's late engagement risks undermining the integrity and independence of the AER decision making process, and the engagement framework the AER has recently espoused.

Should you have any queries regarding this submission, please do not hesitate to contact Renate Vogt on 03 9683 4602, or rvogt@powercor.com.au.

Yours sincerely



Renate Vogt
General Manager Regulation