



12th July 2010

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

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

Dear Mr Leuner,

**Approach to compliance with the National Energy Retail Law, Rules and Regulations – Issues Paper, 31 May 2010**

CitiPower Pty and Powercor Australia Ltd (“**the Businesses**”) welcome the opportunity to comment on the Australian Energy Regulator (“**AER**”) Issue Paper “*Approach to compliance with the National Energy Retail Law, Rules and Regulations*”.

The Businesses have reviewed the Issues Paper and note that the AER’s approach to compliance is similar to the approach taken by the Essential Services Commission (ESC). The Businesses advise policies, systems and procedures are in place to enable it to effectively monitor compliance under the various current Electricity Distribution rules, laws, codes, guidelines and licences, as well as the legislation to be introduced under the National Electricity Customer Framework.

Notwithstanding the above, the Businesses wish to comment on the following aspects of the paper:

- Information and data requested by the AER for a compliance review or reporting should be within reason and not become an onerous burden on the Businesses. Time and effort are better spent ensuring compliance and monitoring this internally rather than constant external reporting.
- The AER should not place undue reliance upon the information provided from sources external to the businesses 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.
- 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

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enforcement actions. The new regulatory environment has yet to be tested and situations may arise where there are uncertainties in compliance obligations.

Please see attachment A for more detailed comments.

Should you have any further questions in relation this submission, please do not hesitate to contact me on (03) 9683 4282 or at [rherrmann@powercor.com.au](mailto:rherrmann@powercor.com.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Rolf Herrmann', with a long horizontal flourish extending to the right.

Rolf Herrmann  
Manager Regulation

**ATTACHMENT A**

Question no.	AERs' Question	CitiPower & Powercors' response
<b>Section 4: Proposed approach to compliance under Retail Law</b>		
1	What strategies for communication with retailers, distributors and consumers on compliance practice, and the AER's approach to compliance, are likely to be most effective? (e.g. publications, targeted presentations, one-on-one discussions, public forums).	<p>Publications that are made available online are the most effective in that they are accessible by retailers, distributors and customers at any time, and can be sufficiently informative to ensure that people will be provided with detail and not just overarching policies.</p> <p>While public forums and targeted discussions may be useful, the detail may be lost and key messages may be misinterpreted and used as the basis of complaints or claims. Further, employee turnover at retailers and distributors may not ensure continuity in compliance if a public forum or discussion is not supplemented with a publication that is available and accessible at all times.</p>
<b>Section 5.1: Targeting monitoring activities – Factors to be considered in assessing impact of a breach</b>		
2	Are these appropriate indicators of the impact of a breach of provisions?	The indicators outlined in the AERs' compliance approach paper appear to be appropriate.
3	What other factors might be relevant?	The factors outlined in the AERs' compliance approach paper appear to be appropriate.
<b>Section 5.1: Targeting monitoring activities – Factors to be considered in assessing likelihood of a breach</b>		
4	Are these factors appropriate indicators of the likelihood of a breach of provisions?	The indicators outlined in the AERs' compliance approach paper appear to be appropriate.

5	What other factors might be relevant?	The factors outlined in the AERs' compliance approach paper appear to be appropriate.
<b>Section 5.2.1: Market intelligence and information</b>		
6	What are the strengths and weaknesses of these information sources as an input to the AER's compliance monitoring?	The information sources outlined in the compliance approach paper are appropriate; however the AER should verify any information from sources external to the regulated entity by referring an appropriate query to the relevant regulated entity. While such sources of information are potentially valuable, the information can be open to interpretation and may be misleading. The release of misleading information can have a detrimental impact on a business' reputation.
7	What other sources of information and market intelligence should the AER consider?	No further information sources would be necessary to ensure the AER is able to carry out its functions effectively; however where the AER seeks to rely on information based on sources external to the businesses, it should ensure that there is a process for verifying the information.
<b>Section 5.2.2: Targeted compliance reviews</b>		
8	Is the AER's approach to targeted provision reviews appropriate for energy retail markets? If not, what changes to this approach could be made?	<p>The AER's approach to targeted provision reviews is appropriate, however if provision of information by the <b>same</b> regulated entity is required on a quarterly basis, this will become very expensive and onerous upon that regulated entity. The businesses submit that annual compliance reporting is sufficient for the purposes of ensuring compliance. (Note: This does not include instances of material breaches where, as part of an action plan, it has been agreed with the AER that periodic monitoring may be appropriate until the breach is rectified.)</p> <p>In addition, the scope of the review should also be taken into consideration, as an overly broad scope will also increase the burden of compliance.</p> <p>CitiPower/Powercor has no concerns with publication of a summary of the</p>

		results.
<b>Section 5.2.3: Retailer and distributor reporting</b>		
9	What policies, systems and procedures should regulated entities put in place to ensure the reliability, accuracy and timeliness of reports on compliance to the AER?	<p>CitiPower/Powercor has an effective system for monitoring compliance.</p> <p>Compliance is reviewed through annual Electricity Supply Industry Compliance Questionnaires, which are developed from a centralised database comprising of provisions of orders, laws, codes, licences, rules, agreements and guidelines to which the businesses must comply. The questionnaires are distributed to an Accountable Manager who is responsible for ensuring the self-assessment is performed and for identifying areas of non-compliance. The action plans for non-compliant obligations are reported on a quarterly basis to the Risk Management and Compliance Committee, which comprises of members of the businesses Board and Senior Management. The Questionnaire process is well established and a robust system in managing the significant regulatory obligations pertaining to the businesses, particularly where there have been organisational changes resulting in changes in managerial responsibilities.</p> <p>In addition, an internal audit group audits the compliance system usually on a bi-yearly basis, with recommendations from the report implemented.</p>
10	Is the three-tiered structure of reporting proposed appropriate? If not, what alternative structure should the AER adopt?	The proposed three-tiered structure of exception reporting is consistent with current practice. A similar reporting structure has been established under the ESCs' Energy Businesses Compliance Reporting Manual (July 2007).
11	What frequency of reporting (e.g. immediate, quarterly, six monthly, annual) is appropriate? If not, what frequency should be required?	The proposed frequency of reporting for the first tier i.e. "Immediate" reporting is appropriate. However, breaches for tiers two and three should be reported annually unless a previously identified breach is sufficiently material to justify more frequent reporting to monitor progress of any action plan agreed between the AER and the regulated entities. CitiPower/Powercor agrees with the AER's aim to "minimise the cost of burden of compliance

		reporting.”
12	What factors should the AER consider in deciding whether or not to impose a reporting obligation in relation to a particular obligation?	Given the proposed exception reporting, the AER should only impose a reporting obligation in relation to a particular obligation in those circumstances where a previously confirmed breach requires monitoring against an agreed action plan to rectify the breach.
<b>Section 5.2.4: Compliance audits</b>		
13	What factors should the AER consider in determining when an audit should take place?	Given the proposed exception reporting for non-compliance, it would be appropriate to require compliance audits only on a case by case basis in circumstances where the AER has reason to believe that there may be a material compliance issue.
14	What factors should the AER consider in determining the scope of a compliance audit?	The AER should consider the following factors: <ul style="list-style-type: none"> <li>• The materiality of the breach or suspected breach;</li> <li>• Costs of the audit; and</li> <li>• Areas that have been affected.</li> </ul>
15	What factors should be considered in determining whether an audit is to be conducted by or on behalf of the AER, or by a regulated entity?	The AER should consider the severity or gravity of the breach. Breaches which are particularly severe or grave may be audited by an independent auditor on behalf of the AER. Breaches of minor or lesser impact may be conducted by the regulated entity. <ul style="list-style-type: none"> <li>•</li> </ul>
<b>Section 5.2.4: Compliance audits - Cost of compliance audits</b>		
16	Is it preferable to set out standard payment arrangements and default periods within which regulated entities must pay the	It would be preferable to set out in advance the payment arrangements that are to be applied. Alternatively, the AER could require the business subject to the

	costs of an audit to the AER in the AER Compliance Procedures and Guidelines, or to determine these matters on a case-by-case basis?	audit to engage an independent auditor to be approved by the AER which removes the need for cost recovery.
17	Where the scope of a single audit covers more than one retailer or distributor, how should the costs of that audit be allocated between the entities concerned?	No comment.
<b>Section 5.2.4: Compliance audits – Interaction of compliance and performance audits on hardship policies</b>		
18	Is it appropriate to combine compliance and performance audits in relation to retailers’ hardship policies?	Not applicable to CitiPower/Powercor.
19	Where the scope of a single audit covers both compliance and performance issues, how should the costs of the audit be allocated?	Not applicable to CitiPower/Powercor.
<b>Section 6.1: Investigations</b>		
20	How should the results of AER investigations be communicated to the market?	Results of AER investigations in the form of summarised reports are sufficient to inform the market. Under no circumstances should confidential information be published without the consent of the party concerned.
<b>Section 6.2: Objectives of enforcement</b>		
21	Are these appropriate objectives for enforcement under the Retail Law?	The objectives outlined in the AER’s compliance approach paper appear to be appropriate. However, the primary objective should ensure the achievement of the best possible outcome for consumers in the long term, as opposed to

		<p>short or medium term.</p> <p>Disproportionate enforcement action can be costly and can lead to future increased costs and risks and reduced incentive to invest, ultimately leading to higher prices for future customers.</p>
22	Are there other objectives that should guide the AER in enforcement of the Retail Law, Rules and Regulations?	Please refer to response in question 21. Taking into account the long term interest of end users will ensure that supply side constraints are considered in an appropriate way.
<b>Section 6.3: Enforcement priorities</b>		
23	Are these appropriate enforcement priorities for the retail framework?	The enforcement priorities outlined in the AER's compliance approach paper appear to be appropriate.
24	Are there other matters that the AER should consider in determining its Retail Law enforcement priorities?	The enforcement priorities outlined in the AER's compliance approach paper appear to be appropriate.
<b>Section 6.4: Assessment criteria for enforcement action</b>		
25	Are these appropriate criteria for enforcement decisions under the Retail Law?	The enforcement assessment criteria outlined in the AER's compliance approach paper appear to be appropriate.
26	Are there other criteria that should guide the AER in making enforcement decisions under the Retail Law?	The costs of fully complying with the relevant obligation and the degree of non-compliance should also be taken into account. This may prompt a review of the obligation and should also be taken into account in assessing enforcement action necessary. It should be noted that it is not practical to report every instance where 100% compliance is not achieved. In particular, obligations applicable to high volume process driven tasks, such as the offer



		<p>of supply and connection of new customers within 20 business days, are generally not achievable for major customer projects. The AER needs to clarify what constitutes ‘compliance’ for these obligations.</p> <p>Other factors the AER should take into account in determining enforcement are:</p> <ul style="list-style-type: none"> <li>• Any mitigating actions taken by the regulated entity to minimise the impact of the breach;</li> <li>• Exigent circumstances (such as force majeure events); and</li> <li>• Extenuating circumstances such as inconsistent obligations under the NECF and existing electricity legislation including any jurisdictional legislation.</li> </ul>
<b>Section 6.5: Enforcement options – Administrative resolution</b>		
27	In what circumstances will it be appropriate for the AER to use administrative enforcement action? In what circumstances will it be inappropriate?	In all circumstances administrative resolutions will be appropriate. The AER should generally approach their enforcement duties by beginning with the least invasive action before graduating to harsher measures to regulate the business in breach. The threat of more punitive measures will ensure that the regulated entities address compliance issues and breaches effectively and without unnecessary intrusion by the regulator.
<b>Section 6.5: Enforcement options – Enforceable undertakings</b>		
28	In what circumstances will it be appropriate for the AER to accept an enforceable undertaking? In what circumstances will it be inappropriate?	Enforceable undertakings are costly and should only be used in exceptional circumstances where the breach is so grave that it warrants its use and where an issue has escalated through the administrative resolution stages without effective resolution. While it is acknowledged that enforceable undertakings

		can be tailored to particular situations, they require ongoing administration and compliance in addition to compliance with the original obligation.
<b>Section 6.5: Enforcement options – Statutory enforcement action</b>		
29	In what circumstances will it be appropriate for the AER to use statutory enforcement action? In what circumstances will it be inappropriate?	<p>Civil proceedings are costly and should only be used in exceptional circumstances where the breach is so grave that it warrants its use. While the penalties for civil proceedings are not substantial, the legal costs of proceedings can be significant and the proceedings may also have a detrimental impact on the business' reputation.</p> <p>Statutory enforcement action should only be used after administrative enforcement actions have been exhausted.</p>
<b>Section 7: Compliance Reporting</b>		
30	How do you use compliance reports published by energy regulators? What should the objectives of the AER's compliance reports be?	Compliance reports provide a useful comparison of similar businesses and thereby provide a strong incentive on businesses to compare favourably. The AER's stated objectives in section 7 appear to be appropriate.
31	Are quarterly compliance reports likely to be useful, or would a different frequency (e.g. six-monthly, annually) be more appropriate?	Annual reporting is sufficient, more frequent reporting is not helpful.
32	Are there other matters that the AER might usefully include in its compliance reports?	The AER reports should also include a section which discusses what areas or topics they intend to review in the future. This may give the regulated entities a 'heads-up' on what to expect in the near future.

33	Are combined retail compliance and performance reports preferable to separate reports on compliance and performance?	A combined retail compliance and performance report would be preferable to separate reports on compliance and performance as it will facilitate document management.
<b>Section 8: Compliance policies, systems and procedures for regulated businesses</b>		
34	Is AS 3806 an appropriate model for compliance policies, systems and procedures for regulated entities?	The AS 3806 is an appropriate model for compliance policies, systems and procedures for regulated entities.
35	If not, what are its limitations, and how might they be addressed?	No comment.
36	What other models should the AER consider?	Nil.