SP AusNet Submission
AER re Approach to compliance

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SP AusNet
A member of Singapore Power Group

About SP AusNet

SP AusNet is a major energy network business that owns and operates key regulated electricity transmission and electricity and gas distribution assets located in Victoria, Australia. These assets include:

- A 6,574 kilometre electricity transmission network indirectly servicing all electricity consumers across Victoria;
- An electricity distribution network delivering electricity to approximately 575,000 customer connection points in an area of more than 80,000 square kilometres of eastern Victoria; and
- A gas distribution network delivering gas to approximately 504,000 customer supply points in an area of more than 60,000 square kilometres in central and western Victoria.

SP AusNet's purpose is to provide our customers with superior network and energy solutions. The SP AusNet corporate values are :

- Safety: is our way of life. Protect and respect our people and our community.
- Passion: to bring energy and excitement to what we do. Be innovative by continually applying creative solutions to problems.
- Teamwork: to support, respect and trust each other. Continually learn and share ideas and knowledge.
- Integrity: to act with honesty and to practise the highest ethical standards.
- Excellence: to take pride and ownership in what we do. Deliver results and continually strive for the highest quality.

For more information visit: www.sp-ausnet.com.au

Contact

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SP AusNet understands the need for the requirements in the National Energy Customer Framework (NECF) for the AER to monitor and take action on Participants' obligation compliance. SP AusNet is committed to support the AER in their carrying out these requirements. We consider that the AER and industry response to the compliance obligations in the NECF is best handled in an atmosphere of co-operation and not confrontation. Our comments on this framework are hence directed to ensuring that the AER can meet their requirements of ensuring industry compliance in a collaborative manner which minimises costs to the industry and hence ultimately to customers.

We have general agreement with the overall AER compliance approach and recognise a number of similarities with the current gas and electricity compliance regimes.

However as detailed below we have uncertainties and concerns regarding some elements of the details within the Statement of Approach and the AER Compliance Procedures and Guidelines.

Statement of approach

1. Document structure

The NECF obliges that the AER produce the AER Compliance Procedures and Guidelines. The AER has also set a regulatory precedent in their role of regulator for the gas and electricity regimes of having a Statement of Approach outlining the AER's policy and methodology regarding compliance. The AER has carried this model into their proposed NECF compliance framework.

However, in reviewing the AER proposals SP AusNet found the structure inconvenient as our potential obligations and the operating arrangements were spread over the two documents and this was not conducive to understanding the overall regime. We consider that this will also lead to be ongoing confusion.

Further the AER Compliance Procedures and Guidelines are subject to consultation under the NECF, whereas the AER is not mandated to consult regarding the Statement of Approach content. Some current aspects of the Statement of Approach which strongly impact the details of the AER/ industry compliance regime, and hence impact industry costs, are not covered in the AER Compliance Procedures and Guidelines, and hence not formally subject to consultation.

We suggest that the detail be largely combined into a single document. We consider that this should be the broad principle of the documentation structure. Under this recommendation some of the comments we have made below against the Statement of Approach should also apply to these matters as included in the AER Compliance Procedures and Guidelines.

Two examples:

i) the wording in the AER Compliance Procedures and Guidelines regarding compliance audits (Section 4) has very little regarding the basis of a decision to audit and the audit coverage. This is contained in Section 4.2.5 of the Statement of Approach (and in the Decision Paper). We consider that more of this detail should be in the AER Compliance Procedures and Guidelines.

ii) although as recognised in the Draft Decision (Section 3.1) the participation of a regulated entity in an AER review is voluntary (at least notionally), there are some firm commitments that AER have made or should make regarding these reviews, that again would be more appropriately captured in the AER Compliance Procedures and Guidelines.

2. Co-regulatory framework and compliance

SP AusNet consider that whilst the NECF is largely in place, there are still significant uncertainties with respect to the transitional approach for each of the jurisdictional regimes that cover the same area of industry interfacing and supporting of customers.

Although these potential transitional arrangements are unclear, we envisage that this jurisdictional consideration could result in:

- some aspects of the NECF being not adopted or adopted in a modified form
- an additional range of customer obligations, or in further detailed obligations applying to a broad obligation in the NECF
- time based transitions from current jurisdictional obligations to the NECF and/or specific jurisdictional obligations

The role of the AER relative to the jurisdictional regulator with respect to compliance with any state based obligation is unclear. Further some matters covered in the AER framework may not be taken up jurisdictionally or could be delayed in their implementation.

The AER Statement of Approach must recognise these potential impacts of the as yet ill-defined jurisdictional transitional approaches.

3. Market intelligence and information (Section 4.2.1)

Whilst SP AusNet recognise the exercise of considering customer issues as part of the AER's developing an understanding of industry compliance, we have some concerns regarding aspects of this approach:

i) The AER in the Draft Decision recognises some of the issues associated with complaints and process problems received from customers directly, or through complaint handling bodies or consumer advocacy groups. The AER further recognised that using this input as the basis of approaches to industry regarding compliance must be carefully handled to avoid unwarranted reporting or audit costs, and/or potential damage to a regulated entities regulatory or broader reputation.

However having identified these issues the AER has failed to reflect these in the AER Compliance Procedures and Guidelines, and Statement of Approach.

ii) The other aspect of gathering complaints and process issues from customers or through customer bodies, or indeed from other regulated entities, is that it is essential that the regulated entity "accused" of inappropriate actions must be given the opportunity to work through the concerns with the customer or other body, and/or must be given specific detail of the incident(s) which have been the basis of the issue.

This enables a specific and concentrated investigation of the incident(s) which can often expend far less industry effort and cost to produce the a suitable outcome, whether it be a recognition of a system or process issue, or expectations outside of industry obligations. Running broad reports from industry systems can often take expensive IT effort, whereas focussed investigation of specific examples of incidents of concern can often be handled by operational staff at significantly less cost.

A commitment by the AER to attempt a more direct and specific approach to issues before moving to other broader approaches should be include in the Statement of Approach.

4. Targeted compliance reviews (Section 4.2.3)

Whilst SP AusNet support the concept of utilising a more informal review process rather than moving immediately to an audit is an effective and efficient way to deal with compliance concerns.

However we have some uncertainties and issues with aspects of the Statement of Approach Case coverage of reviews:

i) The Statement of Approach currently strongly implies that each entity will be subject to a review every six months, whereas the Draft Decision states:

> The model for targeted compliance reviews we now propose is flexible in its application, with reviews likely to occur at least every six months to allow an extended period of consideration. Participation is intended to be balanced over time so that an individual retailer or distributor can expect to be involved in at least one targeted review each year. For example, we may choose to conduct a rolling review of obligations and regulated entities that is completed over time, rather than a single review of all obligations or all regulated entities in the same period.

We are very unclear what specifically this is stating regarding frequency, however it does appear, in contrast to the Statement of Approach, to be suggesting one review in a twelve month period.

It is our view that AER requests for reviews by an entity (or entities) should be on a case by case basis, and the concept of frequency is not a driver. A review would be requested by the AER if there was an issue or suspected issue. If there was no suggestion that an entity was not compliant, then no reviews would be held; if there were a number of compliance concerns then there would be more reviews.

However even informal reviews can be resource intensive and hence the expectation would be that the AER would limit their use. For example we would not expect a compliance issue with an individual entity to "automatically" become a review of every entity in the wider group of similar entities.

We consider that these concepts should be captured in the AER's compliance framework.

ii) As stated by the AER in the Draft Decision, reviews "provide a combination of evaluative and educative benefits to the market". This benefit may be realised in a review outcome which identifies that an aspect(s) of the NECF is uncertain, ineffective, and/or inefficient. Or may identify that some other element of the regulatory regime is misaligned; for example the NECF and a Jurisdictional regulatory regime (refer SP AusNet comments under 2).

Although we accept the statements in the Draft Decision (Section 7.1 p32) that compliance must be enforced against the NECF as drafted, we would like the Statement of Approach to clearly recognise that where NECF issues are revealed by a review (or by an audit) the AER will commit to follow through to recommend to the AEMC potential NECF changes to overcome the issue.

5. Non compliance Reporting (Section 4.2.4)

In the earlier submissions on the compliance framework the desirability of setting reporting thresholds for high volume repetitive tasks was raised (Draft Decision Section 4.1 p16). The AER were somewhat sympathetic with the industry arguments, however stated that no differentiation in the reporting regime would be recognised for such tasks. The AER however also stated that "the AER may consider introducing a threshold for reporting breaches ….for high volume, process driven tasks after an initial period of observation."

SP AusNet are still concerned that during this initial period single non compliances in a mass market task will still need to be reported, and that this reporting of a non compliancy will not be a true reflection of the entity's balanced and cost effective approach to that task.

However if the AER is not prepared to consider the need for a threshold immediately, the Statement of Approach should at least capture the AER's commitment made in the Draft Decision to "determine the appropriate threshold" based on information and data collected.

Compliance Procedure and Guideline issues

1. Processes for revisions (Section 1.4)

The *retail consultation procedure* should be applicable to proposed AER changes the whole AER Compliance Procedures and Guidelines including the content of Appendices B1, B2, B3 which identify those requirements of the NECF with reporting requirements. AER's choice of these can have a significant affect on the reporting effort required and hence industry input is required to ensure that the regulatory risk and reporting costs are an appropriate balance.

2. Frequency of reporting – concept of "possible breaches" (Section 3.2)

SP AusNet cannot understand the concept of "possible breaches" and hence makes the following comments and/or raises the following queries regarding the concept and its outworkings:

i) The ESC compliance reporting regime has the concept of "potential" breaches, however both these terms ("possible" and "potential") fail to provide clear guidance regarding what this obligation to report a possible breach means. This must be very clear as a Participant failing to report a possible breach would we understand be subject to the enforcement mechanisms under the NECF. Is a possible breach:

- a process or system issue which could have resulted in a breach but did not? or
- a situation where the participant's process or system issue has produced an anomaly but the details are unclear and are still being investigated, and hence it is still unclear whether the anomaly is a breach? or
- some other situation?

The AER compliance documents must make this very clear. SP AusNet has issues with the two potential interpretations suggested above. In the case of the first, this obligation to report a "near miss" is fraught with difficulties in interpretation of the criteria for how an incident qualifies for reporting. In the case of the second, it is difficult to conceive a situation where an incident with respect to an important Type 1 obligation would not be clearly identified as a breach. Refer ii) below for a further comment re Type 2 and Type 3 possible breaches.

ii) If the definition of a "possible breach" is similar to the second interpretation above, ie incident under investigation, then the requirement to report possible Type 2 and Type 3 breaches should be removed. There should be no circumstances that at the time of the submission of the Type 2 or Type 3 report two months after the reporting period (eg Type 2 submitted in February for the 6 months to 31 December), an anomaly should not be clearly identified as a breach or not. This would be consistent with the obligation for potential breach reporting in the ESC regime which only applies for the highest type of obligation breaches. We note also that the Type 2/3 Pro-forma is Appendix A.2 does not refer to possible breaches.

iii) In Section 3.2.1 the drafted obligation is for Type 1 breaches to be reported "as soon as reasonably practicable and in any case within 24 hours…". Our expectation would be that reporting would be within 24 "normal hours of business" ie an incident late Friday should not need to be reported on Saturday but rather no later than Monday. We suggest that the "within 24 hours" to be replaced with "by next business day".

iv) In 3.3.1 we suggest the phase "in writing or in person" be deleted and that "by telephone or email" is sufficient. "In writing" often is taken to mean by post and this is not compatible with the required 24 hours / one business day timeframe.

3. Compliance audits – cost (Section 4.4)

It is considered that the costs of compliance audits should be seen as an expected expense of fulfilling the roles expected of regulated entities, and hence the cost, whether for external or internally sourced auditors, should be recognised as a legitimate expense in the entity's price determination.

In support of this concept SP AusNet consider that the Statement of Approach should recognise this and commit the AER to giving reasonable consideration of these costs in considering an entity's price determination.

4. Compliance Audits Reports (Section 4.6)

Irrespective of whether an audit is carried out by an AER appointed auditor or an auditor appointed by the regulated entity, the entity should have a right to view a draft audit report. The approach should allow (and in fact encourage) the entity's comments to the auditor where the entity has issues with the outcomes and/or the basis of the outcomes, or can provide evidence of particular circumstances not included in the report which may have contributed to the outcome.

Further the entity should have the opportunity to provide input as to whether the auditor's report recommendations are practical and achievable, or whether there are more effective and efficient approaches to overcome a compliance issue. This right should be exercisable before the report is formally finalised and submitted to the AER.

This approach should be captured in a new clause in Section 4.6.

5. Reportable obligations – Report pro-forma (Appendix A)

SP AusNet considers that the proposed wording of the report pro-forma to be signed by the entity's Chief Executive Officer is unnecessarily "severe" in its wording. The Law (Clause 274) which places this obligation for compliance information and data does not make any specific statement with respect to the form of undertaking to accompany this information and data. Whilst we accept that it is appropriate for a high level manager of the entity to sign onto the statement of compliance, we consider that the proposed wording is overly legalistic and harsh, and out of place in a compliance approach which, as we have stated above, should be one of mutual co-operation.

We would prefer to see the statement of compliance pro-forma with wording similar to that currently used for electricity and gas compliance reporting as set out in the ESC's Compliance Reporting Manual (Energy Distribution and Retail Businesses). All senior managers recognise the implications of knowingly giving false and misleading information without this being stated, and the current electricity and gas pro-forma without this statement has successfully supported the existing compliance schemes for some time.

6. Reportable obligations – Details of obligations (Appendix B)

SP AusNet has concern with some aspects of this listing:

i) In the interests of providing a single reference document for the compliance regime it would be advantageous to include more detail in Appendix B of each of the obligations:

- Identification of whether it is a retailer or distributor obligation
- A succinct paraphrased version of the specific obligations covered, worded as clear obligations. A simple example is: Retail Rules Part 6 Division 3 Section (1)

provides a list of when "a distributor may de-energise a customer"; the breach which would need to be reported would be that "the distributor has de-energised a customer for a reason NOT included in the list".

ii) Particularly for Type 1 obligations, the reporting requirements should be restricted to specific, higher impact aspects of the broader obligation. This may mean that the Appendix B identification of a reportable obligation is at a specific clause level rather than at the level of Part and Division.

iii) SP AusNet has not analysed the details of all the distributor obligations identified in Appendix B. It is important however that there be clear industry and AER agreement regarding the details of what constitutes compliance with each of the listed obligations. Our preliminary analyses has identified the following issues:

- The Type 2 obligation regarding negotiated connection contracts (Law Part 3 Division 6) contains a requirement for the distributor to provide "an explanation of the implications of the differences between T&Cs in the proposed negotiated contract and the T&Cs of the deemed standard contract". We argued in the NECF consultations that whilst providing an explanation of the differences between the two was straightforward, the implications are going to be different for every customer and dependant on factors to which the distributor is unlikely to have details. This reporting obligation therefore needs some further clarification.
- The Type 3 obligation regarding Classification of Customers (Rules Part 1 Division 3) is yet to be considered by industry to determine the associated industry processes to support this obligation. When this is subject to industry process design there will be many issues of:
  * industry and customer interactions;
  * uncertainty of definitions;
  * approach for customers moving above and below the threshold, etc.

  Compliance measures for this obligation are currently unclear.