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8 June 2010

Mr Tom Leuner
General Manager – Markets Branch
Australian Energy Regulator
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Email: AERInquiry@aer.gov.au

Dear Mr Leuner

ActewAGL Retail welcomes the opportunity to review and provide comments on the Australian Energy Regulator's (AER) Developing National Hardship Indicators – Issues Paper.

While ActewAGL supports the AER's efforts in developing National Hardship Indicators in accordance with the proposed National Energy Retail Law (NERL), ActewAGL does not support the use of indicators to assess the effectiveness of individual retailer's hardship policies or their compliance with those polices.

ActewAGL considers that it is important to differentiate between hardship outcomes measured by reference to hardship indicators, and compliance and performance of retailers in respect to their own hardship program. These are different issues that are addressed separately under the proposed NERL.

Energy retailers currently operate hardship programs that are compliant with legislative requirements in individual jurisdictions. These requirements are specific and measurable and relate to actions undertaken by the retailer under relevant laws and rules, rather than the customer outcomes that result from those actions. Similarly, the proposed NERL includes minimum requirements for hardship policies, which must be approved by the AER, and the retailer must comply with its approved hardship policy. ActewAGL considers that retailers should be assessed against these requirements in respect of their compliance, rather than outcomes and assumptions derived from the National Hardship Indicators.

ActewAGL supports the AER seeking to gather hardship indicators from the wider community, including financial counselors, community groups etc. to inform them from a policy perspective of issues that affect consumers that either do or have the potential to push consumers into a hardship position.

Attached please find ActewAGL's full response to the AER's Developing National Hardship Indicators – Issues Paper.

If you have any questions regarding this submission, please contact Sheryl Harrington, Manager Compliance and Administration on telephone: (02) 6229 8172 or email: sheryl.harrington@actewagl.com.au.

Yours sincerely

Ayesha Razzaq
General Manager Retail

ActewAGL Submission –

National Hardship Indicators – Issue Paper

1. Introduction

Under the proposed National Energy Retail Law (NERL), each retailer is required to develop and have approved by the Australian Energy Regulator (AER) a customer hardship policy. The purpose of the customer hardship policy is to "...assist hardship customers to better manage their energy bills on an ongoing basis."

Under Section 306 of the proposed Retail Rules, the AER must also determine National Hardship Indicators which must cover:

- Entry into hardship programs;
- Participation in hardship programs; and
- The assistance available and provided to customers under these hardship programs.

The AER Issues Paper draws a link between the outcomes observed through performance monitoring using the national hardship indicators, and the suitability of each retailer's hardship policy and compliance with that policy. ActewAGL does not consider that this link is appropriate or contemplated under the proposed NERL.

A retailer's hardship policy can cover a broad range of approaches, while meeting the minimum requirements set out under the proposed NERL. These can include measures that may be put in place before a customer is placed on a payment plan or formally enters into a hardship program, such as extended payment deadlines and compassionate debt forgiveness. The hardship policies may also address socioeconomic factors that are specific to a retailer's area of operation, such as seasonal incomes for farming districts. ActewAGL considers that this differentiation is appropriate and is likely to support innovation in approaches adopted by retailers to assist their customers to pay their energy bills on time.

Similarly, it can be expected that outcomes, including the number of customers in a hardship program, will differ across retailers. Again, this is likely to be a function of socioeconomic factors; history of energy price rises in a region[1], and other factors that reflect overall economic conditions or are specific to a retailer's area of operation. Importantly, these factors may not be related to the adequacy of the retailer's hardship policy or the retailer's compliance with that policy.

A retailer's performance in respect to their hardship policy, measured by reference to hardship indicators such as entry into a program, is therefore potentially a very poor indicator of:

- The adequacy of a retailer's hardship policy; or
- The retailer's compliance with the policy.

Instead, these indicators are likely to be measuring other broader factors contributing to hardship. ActewAGL therefore considers that it is important to differentiate between hardship outcomes measured by reference to hardship indicators, and compliance and performance of retailers in respect to their own hardship program. These are different issues that are addressed separately under the proposed NERL.

ActewAGL's comments in the remainder of this submission seek to reflect this distinction in the Hardship indicators discussed in the Issues Paper.

2. Purpose and Objective of the National Hardship Indicators

[1] For example there may be more customers entering a hardship program immediately after a significant increase in energy prices due to increased network charges.

A number of the AER's aims relate to using the National Hardship Indicators to monitor compliance with, or to evaluate, a retailer's hardship policy. ActewAGL does not consider that the National Hardship Indicators are intended to be used in this way, and as set out above, are inappropriate for this purpose.

Retailers can only be judged on whether or not they are complying with their approved hardship policy. This is consistent with the proposed NERL which separates the compliance regime, relevant to the regulated entities' compliance with the Law and Rules (Division 1 of Part 12), from the performance regime, which addresses, amongst other things, reporting against the National Hardship Indicators (Division 2 of Part 12).

Guidance in this respect is provided by section 1212 of the proposed NERL which provides a power for the AER to "conduct performance audits in respect of the performance of retailers *by reference to national hardship indicators*" [emphasis added]. Importantly, at no point do the law or rules draw a link between the development and approval of hardship policies (sections 225-227 of the proposed NERL), and performance against the National Hardship Indicators (section 1211). ActewAGL therefore considers that AER dot points 1, 2 and 6 are inconsistent with the proposed NERL.

Further, ActewAGL considers that it is inappropriate for the AER to expect competition between retailers over hardship. As noted above, factors that contribute to the number of customers in hardship for a particular retailer may differ significantly by region and circumstance. ActewAGL therefore considers that dot point 4 should be revised.

3. Possible National Hardship Indicators

- *Number of customers currently on the hardship program*

ActewAGL notes that the AER's preliminary view is that "the number of customers on a hardship program is a key measure for monitoring entry into hardship programs" and that it will provide an "overall picture of the level of activity by retailers in this area" and the success of their policy and program.

ActewAGL considers that interpreting this indicator in the way suggested by the AER will lead to misleading and erroneous results. As noted above, the geographical location or area that a retailer operates within will influence the number of customers that a retailer may serve that are likely to require hardship assistance. For example, ActewAGL Retail operates in the Canberra and Capital Region which is a small geographical area compared to other retailers and as such, ActewAGL will have less customers on their hardship program compared to a retailer who operates in all States and Territories.

Further, we consider that this approach will not take into account the wealth profile of a different customer bases served by retailers. This would be particularly relevant for the ACT where earnings per household are higher than the national average which again would tend to reduce the number of customers in hardship in the ACT.

ActewAGL supports the reporting of the total number of customers on a retailer's hardship program. However as outlined above, ActewAGL does not support using this as an indicator of the success or otherwise of a retailer's hardship program.

Recording information on a monthly basis by retailers could potentially lead to costly system enhancements being required; however ActewAGL does support the recording of necessary information regarding hardship programs as long as it can be clear, specific and based on the requirements detailed in the draft Law and Rules. ActewAGL considers that annual reporting is sufficient.

- *Number of hardship program participants who receive any appropriate government energy concessions*

ActewAGL does not support this indicator, as it will unnecessarily add to the compliance burden of retailers without providing useful information to policy makers.

The main justification provided by the AER in including this indicator relates to monitoring compliance with the retailer requirement under respective hardship policies to inform customers of relevant government concession programs available. As stated previously, ActewAGL does not consider the National Hardship Indicators are intended for this purpose.

- *Number of customers entering the hardship program*

The AER states that this indicator would allow it to monitor:

- ongoing activity to identify customers in hardship;
- promotion of a retailer's hardship program; and
- whether staff awareness of hardship policies has improved if more customers are being proactively identified as being in hardship.

Consistent with the discussion above, using this as an indicator of the success or otherwise of a retailer's hardship program is likely to be misleading, and is inconsistent with the intent of the Law.

Embedded in the intended use of this indicator is an assumption that retailers with higher numbers of customers in a hardship program are more compliant and have better hardship programs. ActewAGL considers that this would be a perverse interpretation of this data as retailers have a strong incentive to assist customers before they enter into hardship programs through flexible payment options and compassionate concessions. A preferred outcome for retailers and customers is for energy bills to be paid on time, with few customers requiring hardship assistance. Under the AER's proposed use of performance data, such an outcome would unfairly pinpoint a retailer for targeted compliance attention if it managed to achieve this aim.

ActewAGL considers that periodic recording of the number of customers on a retailer's hardship program is sufficient to monitor the entry and exit of customers from hardship programs.

- *Third party referrals to hardship programs*

ActewAGL agrees with the AER's preliminary view that data collected under this indicator would be difficult to interpret. ActewAGL notes that the AER considers that this indicator may be monitored under the compliance regime. ActewAGL does not support this approach, nor do the draft Law and Rules contemplate it. Further, ActewAGL questions what value the AER would gain from this indicator.

- *Number of customers denied access to the hardship program*

ActewAGL does not agree with the AER that reporting on this indicator may indicate where a retailer's eligibility for its hardship program is too restrictive or stringent.

The AER must approve hardship policies under section 226 of the proposed NERL, including the retailer's identification of customers in hardship and options and processes undertaken by the retailer in accordance with the hardship policy. ActewAGL considers that this is the appropriate context in which to assess a retailer's hardship policy.

ActewAGL further considers that this indicator will be difficult to report on in practice, given the uncertainty in defining when a customer can be considered to have been *denied access* to a program. It would also impose a significant compliance burden by requiring the retailer to record reasons for denying access, which it would need to provide to the AER if the AER considers that its reported performance against this indicator was high.

- *Summary of proposed "Entry into hardship program" indicators*

ActewAGL sees limited usefulness in the proposed indicators in providing the AER with useful information on the effectiveness or otherwise of retailers' hardship programs.

4. Hardship program participation and assistance

- *Average debt upon entry into the hardship program*

ActewAGL supports the collection of this data as a National Hardship Indicator, but not as an indicator of potential compliance issues.

Retailers can only monitor issues with a customer's account which may provide an indicator that they may be facing short or long-term hardship. The most likely indicator in this respect may be the non-payment of a bill. The AER therefore needs to be cognisant that an average debt level will relate to energy usage and charges, and will be different across geographical regions and even from suburb to suburb. ActewAGL does not support the AER's assertion that using this indicator will show that a retailer may not be proactive and would signal possible compliance issues.

A major issue facing retailers in trying to assist consumers who may potentially be in hardship is their reluctance to engage with us. Retailers can provide a supportive environment for a customer, however just the mere fact of contacting a customer and suggesting that they may need assistance could lead to the employee being abused and a complaint being received.

ActewAGL supports the AER's view that debt should be defined as the dollar amount which has been outstanding to the retailer for a period of 90 days or more.

ActewAGL does not support reporting this indicator on a monthly basis.

- *Average debt upon exit from a hardship program*

ActewAGL supports the collection of this data as a National Hardship Indicator.

ActewAGL does not, however, consider that this data provides a good indicator of the effectiveness of the assistance offered by a retailer to a hardship customer, as suggested by the AER. A customer may exit a hardship program with a higher level of debt than on entry for a number of reasons. For example, this circumstance can arise where a customer does not comply with a payment plan, or where a change in circumstances for the customer means that it no longer requires assistance. As these circumstances reflect vastly different underlying situations, the usefulness of this indicator as a tool to assess the effectiveness of a retailer's hardship program is limited.

- *Average length of participation in hardship programs*

ActewAGL supports the AER's preliminary view not to collect data on the average length of participation in a retailer's hardship program.

- *Total number of customers exiting the hardship program <u>and</u> the number of customers excluded from the hardship program for non-compliance with program requirements*

ActewAGL supports the collection of data on the number of customers excluded from hardship programs for non-compliance with program requirements. ActewAGL does not, however, support the use of this data as an indication of the effectiveness of the retailer's hardship policy.

Retailers cannot control the behavior of customers if they cease complying with a payment plan entered into with a retailer. Also a retailer may comply with the notification/contact requirements in its hardship policy, but may not in the end be able to make contact with a customer. It is therefore simplistic to assume that this indicator would provide an assessment of how effective the retailer is in engaging and enabling a customer to participate in its hardship program. The customer also has a responsibility to engage with the retailer, particularly if their circumstances change and they can no longer afford the agreed payment arrangement.

ActewAGL does not support the collection of data on the number of customers exiting each retailer's hardship program as this information can be derived from information provided under other Indicators. As such, it would represent an unnecessary additional compliance burden on retailers.

- *Number of customers who were disconnected during the reporting period and who have been on a hardship program in the previous 24 months*

ActewAGL does not agree that this indicator would indicate the effectiveness of the assistance provided to hardship customers.

A customer's circumstances can change over time. This can make disconnection following leaving a hardship program a poor indicator of the appropriateness of the hardship policy, or the decision to remove the customer from hardship assistance at the time.

Under the proposed NERL, a retailer must offer assistance to hardship customers, and must give effect to the principle that disconnection due to non-payment is a last resort option. A retailer should only be assessed against its compliance with its hardship policy and this principle, in preference to potentially remote and ambiguous indicators.

- *Number of customers who, during the reporting period, were reconnected within seven days of being disconnected and who have been on the hardship program in the previous 24 months*

ActewAGL supports the provision of data on disconnection and reconnection within 7 days as a National Hardship Indicator. As stated above, ActewAGL does not support, however, reporting on whether a customer has been on a retailer's hardship program 24 months prior to being disconnected, or the use of this data as a compliance indicator.

Customers can be disconnected and reconnected within seven days for a variety of reasons, for example:

- Potential hardship (long or short term);
- Fraudulent use of power;
- Unlawful occupancy of premises; or
- Not in hardship but just don't want to pay their bills.

Retailers make every attempt to contact customers prior to disconnection, however if a customer will not engage with a retailer, the only way to initiate contact may be through disconnection. While it is unfortunate that disconnection can occur where the customer is in hardship, it is not possible for the retailer to distinguish this case from other cases when the customer does not engage with the retailer. This should not be taken to mean a retailer's hardship program is ineffective, or lead the AER to the conclusion that there may be a compliance issue.

Again it must be recognised that a customer's circumstances can change very quickly which has nothing to do with the effectiveness or otherwise of a retailer's hardship program.

4. Summary of proposed "Hardship program participation and assistance" indicators

The AER has requested stakeholder views on the overall scope of the proposed set of National Hardship Indicators as a whole and whether they will, as far as possible, assess the impact of retailers' hardship policies.

ActewAGL considers that National Hardship Indicators are not only energy related and the AER cannot effectively inform itself based on the indicators presented on whether or not a retailer's hardship policy is effective. As mentioned previously, retailers can only be assessed for compliance and the effectiveness of their programs based on requirements under the draft Law and Rules.

5. Consumer experience of retailer's hardship policies

The AER is seeking stakeholder views on whether it would be beneficial for retailers to submit anonymous case studies or examples of good practice once a year.

ActewAGL supports the provision of case studies and considers that these would better inform the AER on the effectiveness of individual retailer's hardship policies and programs.

ActewAGL suggests that the AER conduct quality assessments on case studies which would allow them to draw conclusions based on the retailer's compliance with the Law and Rules. As an example, the AER could assess whether the information provided in the case studies comply with the retailer's approved policy, such as:

- a payment arrangement has been entered
- has the payment arrangement been reviewed within the first 12 months to ensure it is still appropriate for the customer
- has the customer been offered a range to programs to assist in bridging the gap between consumption and affordability
- has the retailer ensured that the consumer is being provided with relevant and appropriate government concessions
- if a customer is disconnected or removed from the hardship program, the retailer has complied with the approved criteria in its policy and the Law and Rules.