23rd December 2010

General Manager, Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear Mr. Leuner

Re: AER Retail Market Performance Reporting

Australian Power & Gas (APG) welcomes the opportunity to provide comment on the Australian Energy Regulator (AER) position paper on *Retail Market Performance Reporting*.

APG has a number of concerns with the proposed reporting regime. We are concerned that the proposed reporting and monitoring regime has been developed without the AER having given due consideration to best practice regulation. In particular the objective of the performance reporting has not been established. A failure to follow "Best Practice" regulation will result in poorly designed regulation that will not achieve any objective whilst imposing costs on business and the community

We are also concerned that both the type and frequency of the reporting has been developed in the absence of consideration of any clear policy objectives. That is a number of the performance reporting statistics are being requested on a "nice to have" basis and there is no evidence to support their requirement in meeting any policy objectives or reform process.

Benefits from the national reform process will only be achieved where the performance reporting regime recognizes the maturity of the industry and seeks to streamline the existing inefficient jurisdictional reporting regimes. Anything less would not be consistent with the overarching objectives of the National Energy Consumer Framework (NECF).

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Our further comments are detailed in the attached. APG would welcome the opportunity to further discuss our comments and concerns on the proposed performance reporting regime.

Should you wish to discuss further I may be contacted on (02) 8908 2714 or via email: sruddy@auspg.com.au

Yours sincerely

Shaun Ruddy
Manager Regulatory & Compliance
Australian Power & Gas

AER Retail Market Performance Reporting

Objectives and Best Practice Regulation

The implementation of the National Energy Consumer Framework (NECF) represents the culmination of the reforms introduced in the mid 1990's to improve the competitiveness and efficiency of the electricity and gas markets, and ultimately deliver better outcomes for end customers.

The NECF reform process has recognized (and seeks to address) the current jurisdictional divergence and complexities that exists which add regulatory burden and costs which are ultimately imposed on consumers and the community more broadly. The overarching policy objective of the NECF seeks to remove these inefficiencies and create better outcomes for end consumers.

It is our view that this policy objective is not being met under the AER's proposal for "Market Performance Reporting".

The AER is seeking to introduce an onerous reporting regime that in our view goes beyond a reasonable reading of retailer performance and requires retailers to report more frequently then is efficient or required. When placing compliance obligations on retailers, the AER must only do so in order to meet clear policy objectives or to address identified (quantified) market failures.

We have seen no evidence to support that the proposed market performance reporting regime will address either of these.

Under the principles of *Best Practice Regulation* there are three key elements that must be assessed to determine the requirement for further or new regulations. These being,

- There needs to be a defined problem to be addressed which should be identified in the first stages of the policy development,
- Regulation making should be effective and efficient – effective in addressing an identified problem and efficient in terms of maximizing the benefits and taking into account the costs to the community,
- A range of options (including maintaining the status quo of no action at all) to address the identified problem should be considered and compared on the basis of their effectiveness and efficiency.

It is our view that the proposed market reporting regime has not been assessed against these three key elements of best practice regulation.

Placing compliance obligations on retailers where their requirement has not been assessed against the above criteria is not in the best interests of the market or consumers.

A number of the proposed reporting statistics are being included on a "nice to know" or "could be useful in the future to inform social policy" basis. This is not acceptable.

To expect retailers to incur significant costs (which will ultimately be borne by consumers) to make system and process changes to capture data where there is no clear defined use for the data is not acceptable.

APG would strongly urge the AER to review the required data sets in light of our previous comments.

<u>Performance Reporting in General</u>

The objective of performance reporting has not yet been established. Whilst we recognize the existing jurisdiction requirements and that of those proposed under the NECF, it remains unclear what benefit the community and consumers receive from performance reporting.

During the consultation process we have heard comment that "performance reporting regime is to inform public policy", however no evidence has been provided to date that demonstrates performance reporting has been used to inform any public policy.

To require retailers to collect and report on a range of performance reporting statistics on the basis they "may" inform the public policy debate, whilst requiring retailers to implement costly system and process changes in order to meet the reporting requirement is far from being in the best interests of consumers and the market. We would again refer the AER to the principles of best practice regulation.

The issue of the frequency of reporting is also a key concern. The proposal for quarterly reporting is an onerous requirement and one where again we have not seen any evidence, apart from comments that it would be "nice to have", that support the requirement for quarterly reporting. There has been no clear policy objective or identified market failure that warrant or justify the requirement for quarterly reporting.

We remain concerned at the level (detail) and type of reporting statistic the AER are seeking from retailers. Especially statistics around retailers business and customer debt profiles.

As we commented in our first submission, the disclosure of commercially sensitive information for publically listed companies is a key issue of concern. We continue to have concerns that the disclosure of customer debt information (levels) may be viewed as price sensitive information.

Regardless to disclose such information in a competitive environment and in the absence of any clear policy objective for their use, is not consistent with best practice regulation.

<u>Hardship Program Performance Indicators</u>

Reporting on the effectiveness of retailer's hardship programs relies on a number of factors being established. Importantly there would need to be a clear sense of what a hardship program is to achieve. This clarity, to date has not been provided on a jurisdictional or national level. If the AER believes this is clear through the proposed National Law & Rules, then an unavoidable conclusion should be that a performance reporting regime should be true to the NECF provisions.

However the AER has proposed a number of indicators that go far beyond any reasonable or evidence-based assessment of what hardship program performance reporting should cover according to the Law or Rules.

Given that many of the indicators proposed by the AER are not a measure of the effectiveness of a hardship program, APG would suggest that these indicators would only be provided on a voluntary basis.

In assessing a retailer's hardship program performance the AER must take into consideration the role of the retailer in assisting a customer who is experiencing difficulty in meeting their financial obligations. Requirements on retailers have increased over the last few years, however direct financial assistance to consumers has remained static. Retailers are only able to do so much, and there needs to be a greater social responsibility obligation taken up by the Government of the day to ensure people experiencing genuine hardship are provided with assistance.

APG is concerned that there has been a failing on the ARS's part to recognize that energy hardship is a shared responsibility between retailers, the Government and the community, and the assistance provided by retailers is far less influential than the financial support provided by Government.

Interpretation Issues

APG is concerned that several reporting indicators represent an unreasonable reputational risk to retailers due to the inherent and unfounded assumptions that underpin them.

These include the requirements to report on disconnections of a former hardship program participant within 12 months and multiple disconnections within 24 months. While ever these figures are publically reported as relating to the effectiveness of retailer's hardship programs, this will misrepresent to stakeholders what retailer's hardship programs are meant to achieve and will overstate the influence a retailer may have on a customer's behavior. These statistics should not be linked to retailer's hardship program performance.

The ability of a retailer to influence a customer's behavior is limited and is different for each customer according to their unique circumstances. For the AER to attempt to review and assess the performance of a retailer's hardship program on the basis of generalized reporting statistics, such as those around disconnections, is a flawed approach.

If the AER plans to report numbers publically in a performance report then there is a burden of proof on the AER to demonstrate a direct correlation of the statistic against the objective that is being assessed.

Reporting Indicators

APG does not support the inclusion of the following indicators

A 2.1.3	Level of residential customer energy bill debt
A 9.1.7	Proportion of hardship customers who are; not meeting ongoing energy costs; covering ongoing energy costs; and, covering ongoing energy costs and arrears

A 3.1.1 Number of business and residential customers disconnected for non-payment

A 3.1.3 Number of business and residential customers disconnected for non-payment on more than one occasion in the same name at the same address in the previous 24 months