Energy Retailers Association
of Australia Limited

11 Jan 2011

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

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

RE: ERAA submission to AER's Retail Market Performance Reporting Position Paper

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide comments on the Australian Energy Regulator's (AER) Position Paper (the Paper) on Retail Market Performance Reporting.

The Energy Retailers Association of Australia (the Association) is the peak body representing the core of Australia's energy retail organisations. Membership is comprised of businesses operating predominantly in the electricity and gas markets in every state and territory throughout Australia. These businesses collectively provide electricity to over 98% of customers in the NEM and are the first point of contact for end use customers of both electricity and gas.

Objectives and best practice regulation

The implementation of the National Energy Customer Framework (NECF) represents the culmination of the reforms introduced in the mid 1990s to improve the competitiveness and efficiency of electricity and gas markets, and ultimately deliver better outcomes for end customers. The Association believes that, if implemented as originally intended, the NECF should deliver better outcomes for end customers. The inefficiencies associated with the current inconsistent state-based regulatory arrangements governing retail markets require reform and we support the NECF.

In order for the benefits of such reforms to be realised, the Association believes there must be a performance reporting regime which recognises the maturity of the industry and ultimately is more streamlined than current jurisdictional models. Unfortunately the Association does not consider the performance reporting regime proposed by the AER in its paper is consistent with the objectives of energy market reform or is consistent with best practice regulation.

The Association is concerned that the fundamental principles of best practice regulation have been largely ignored in developing these guidelines and indicators. The Federal Government's *Best Practice Regulation Handbook* (the Handbook) insists, 'poorly designed regulation may not achieve its objectives and can impose costs on businesses and community more broadly'. Inadequate guidelines and overly onerous reporting requirements will retract from the potential benefits of the NECF by imposing excessive costs, which works against the objectives of the NECF.
The Association requests that the AER seeks to implement best practice reporting requirements consistent with the Handbook. The Association concedes that the Handbook is intended for regulation; however, the fundamental principles of best practice regulation should apply to the AER's proposed compliance requirements.

In referring to the Handbook, the ERAA would highlight three recommendations of best practice regulation making which the AER should have regard:

- 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 maximising the benefits and taking into account the costs to the community;

- A range of options (including 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.

Retailers are concerned that the AER is seeking to implement an onerous reporting regime that assumes that the risks associated with retailing of energy are considerably less than those in the wholesale market. Placing compliance requirements on retailers for undefined reasons and unspecified purposes are not sufficient reasons to justify the associated costs; this unambiguously fails in best practice regulation making as it does not address a defined, identified problem: possible future social policy considerations are not defined or identified problems. Finally, there has been a limited interpretation of the requirements under the NECF and therefore an insufficient range of options considered; best practice would produce a range of options each of which would be compared on their effectiveness and efficiency.

The Association believes the introduction of the NECF is a crucial opportunity for the AER to establish an efficient and effective reporting regime delivering on the objectives and potential benefits of the NECF. The Association would like to see the AER endeavour to *get this right* from the outset as it will be considerably more difficult to wind back the reporting obligations when the regime comes into effect. The Association would therefore propose that the AER starts with a scaled back version of the reporting guidelines and then where performance of retailers is found to be inadequate add additional measures.

Performance reporting in general

The objective of performance reporting has not been established. It is acknowledged that there is a requirement in the NECF and also has precedent in jurisdictions, it remains unclear what the AER expects to achieve from each measure. We continue to hear in public forums that the point of the performance reporting regime is to inform public policy, and the needs of AER to understand the business for compliance enforcement has also been mentioned a number of times. However, we have heard no evidence that performance reporting to date has informed any particular public policy. Stating that a whole range of highly intrusive data sets should be collected to inform public policy and/or or for other nice-to-know reasons in the opinion of the ERAA is not good enough. To this end the Association would question why retailers' businesses and customer debt profiles should be made transparent in a competitive market simply because someone somewhere finds this of interest.

It appears as though the AER has taken the variety of assertions about what could be possibly interesting information from submissions and treated this as its evidence base. The ERAA would again refer the AER to the Handbook and the need for government to demonstrate in making regulations it is addressing an identified problem. Energy retailers would assume that the AER would carry out its own assessment of the effectiveness of its reporting by looking at the NECF market objective and following regulatory best practice. This would mean looking at more than assertions about people's information requirements to suit their policy agendas and investigating instead the actual customer experiences and potential benefits and weighing these against costs incurred and the problems with the inevitable ambiguity in reporting.

Further, the expectation that it is appropriate for data to be provided quarterly reinforces the problem: such an onerous request should be considered on the basis of a cost benefit analysis and its effectiveness compared to less onerous reporting durations. The AER has a responsibility to make its decisions according to some general standards of good policy making, where these include assessing net benefits.

Hardship program performance indicators

Reporting on the effectiveness or otherwise of retailer hardship program performance relies on there being a clear sense of what a hardship program is supposed to achieve. This clarity has not been provided to date. If the AER believes this is clear through the proposed National Law and Rules, then an unavoidable conclusion should be that performance reporting regime should be true to the NECF provisions. However we have not seen this either, with several indicators going well 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 demonstrably a measure of the effectiveness of a hardship program, retailers suggested that the AER could still collect this information, but call it 'supplementary data' rather than hardship program indicators. (This term is not the only option, but the point is to capture the fact that the information is not unambiguous performance information.) This suggestion was not taken up, with the current list of indicators more onerous again than those put forward in the Issues Paper, and still there is no evidence put forward to substantiate the AER's approach.

In providing guidance to the AER about measuring retailer performance in relation to energy hardship, the Association would refer the AER to its hardship policy. Over the past few years the expectations about the assistance retailers should provide to customers in hardship has increased. Specifically, the requirements on retailers to prevent customers from being disconnected have increased, while the level of financial assistance has largely remained static. However, in focusing on preventing disconnections this is often at the expense of customers accruing higher levels of debt which is also problematic. The Association remains concerned that the proposed performance reporting fails to recognise energy hardship as a shared responsibility between retailers, the government and the community; and that the assistance provided by retailers is far less than influential compared to the financial support provided by governments.

It should therefore be recognised that as long as the customer has sourced an offer from their retailer which is of comparable value to other products in the market, the issue of a customer remaining connected is going to rely more on the financial assistance they receive from the government than the assistance provided by the retailer under its hardship program.

Specific problems of interpretation

Of the indicators proposed, there are several which represent unreasonable reputational risk to retailers due to the inherent and unfounded assumptions underpinning 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 the figures here are publicly reported as relating to the effectiveness of retailers' businesses/hardship programs, this misrepresents to stakeholders what retailers' hardship programs are to achieve and the influence a retailer may have on a customer's behaviour.

To explain, it might be useful to conceive of a spectrum of influence that any retailer's hardship program could have on any customer's behaviour. Indicators such as the number of people on a hardship program are toward one end of the spectrum, where even though the fundamental aspect of a customer's need for support is outside a retailer's control, the influence of the retailer to get the customer onto its hardship program is salient and highly measureable. Further, the implications of numbers shifting in this indicator do not have the same political weight – it is hard to argue that customer numbers should be high or low, as the issue will be how and when the customers' needs were provided for.

At the other end of the spectrum are the indicators such as disconnections within twelve months of people who have left a hardship program. While it might be argued that a retailer has some influence, the other sources of influence are likely to be particularly salient. What happens to a customer in a 12 month period is anyone's guess, and linking their subsequent payment behaviour to the retailer's program is a stretch. Further, no one knows what this indicator is to measure: the AER initially stated that this was about assessing how retailers assisted customers in an 'ongoing way' and the debate on this issue was about retailers affecting long term behavioural change. As this became increasingly hard to support the argument now seems to be that the indicator is to show that if a customer's experience with the retailer was positive that they should feel comfortable to contact the retailer again when needed and avoid disconnection.

The ERAA does not believe this will result in an effective and efficient retail performance reporting framework. If the AER plans to report numbers publicly in a performance report then the burden of proof is on the AER to demonstrate a clear objective and show the net benefit of its approach. A performance reporting approach based on collecting many data sets in the hope that some of it is interesting is entirely invalid.

Indicators not supported by retailers

The following indicators the ERAA does not support in any form:

- A 2.1.3: Level of *residential customer* energy bill debt.
- A 3.1.2: Number of *residential* and *small business customers* disconnected for non-payment on more than one occasion in the same name and at the same address in the previous 24 months.
- A 9.1.7: Proportion of *hardship program customers* who are: not meeting ongoing energy costs; covering ongoing energy costs; and, covering ongoing energy costs.
- A 9.1.11: Number of *residential customers* disconnected for non-payment of a bill who successfully completed the hardship program in the previous 12 months.
- A 9.1.12: Number of *residential customers* who successfully completed the *hardship program* in the previous 12 months who were reconnected in the same name and at the same address within seven days of disconnection.

Should you wish to discuss the details of this submission further, please contact me on (02) 9241 6556 and I can facilitate such discussions with ERAA member companies.

Yours sincerely

Cameron O'Reilly
Executive Director
Energy Retailers Association of Australia