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Australian Energy Regulator - Markets Branch
GPO Box 520
Melbourne VIC 3001

AERInquiry@aer.gov.au

Dear Sir/Madam

RE: Australian Energy Regulator's Market Performance Reporting - Position Paper

TRUenergy welcomes the opportunity to provide the following comments in relation to the Australian Energy Regulator's (AER) Retail Market Performance Reporting - Position Paper (the Guideline).

In responding to the Issues Paper TRUenergy believes there are number of fundamental issues associated with the establishment of the performance reporting regime which the AER have not adequately assessed. Specifically, TRUenergy does not consider the AER has given sufficient consideration to either the maturity of the retail market, or the guidelines established by the Office of Best Practice Regulation (OBPR) on the making of effective regulations and the need for a clear objective for retailers' hardship programs. In failing to consider these issues the Position Paper is proposing to establish an extended reporting regime that will impose additional and unnecessary costs on retailers and customers, while not providing the AER with the necessary evidence to measure retailer performance.

TRUenergy has been concerned for some time as to the way regulators interpret performance data and the purposes of performance reporting. While TRUenergy accepts that regulator measuring performance is a necessary part of retailing electricity and gas, regulators should be limit their role in commenting on market performance, particularly where trends are open for interpretation.

Although the AER has indicated that its intention is to have the guidelines in place by 1 July 2011, TRUenergy believes that as the MCE have now confirmed that the current timeframe for the implementation of the NECF is mid 2012 there is no justification to rush the consultation for the NECF guidelines to meet the 2011 deadline. If anything TRUenergy would support the AER taking longer to ensure the issues associated with each guideline are fully understood and consulted upon.

Maturity of the retail energy market

The retail energy market today is fundamentally different from when it began almost ten years ago in 2002. Over this time we have witnessed a number of changes not just associated with the number of retailers and the type of products, but more importantly in terms of the level of competition and the management of customer hardship. As a result of such developments the risks associated with retailing energy today are much less than what they were at market start, and are fundamentally less than those faced in the wholesale market. In understanding the operations of retail businesses today, TRUenergy would highlight that the risk of reputational damage and the potential for customer loss represents a significant incentive for all retailers to establish comprehensive risk mitigation and compliance processes. Given that the NECF is unlikely to be implemented in mid 2012, which is over a decade since full retail contestability was first introduced in 2001, the AER must ensure that the reporting guidelines reflect the maturity of market.

Best regulatory practice

TRUenergy also questions the consistency of the development of these guidelines with Office of Best Practice Regulation (OBPR). OBPR principles govern all Australian Government departments, agencies, statutory authorities and boards. In the OBPR's handbook, well designed regulation has a vital role to play in overcoming the problems that lead to inefficient or inequitable market outcomes. OBPR believes this is best done through its regulatory impact analysis:

- requiring a case to be established for acting in response to a perceived policy problem, including addressing whether regulatory action is required and whether the proposed regulation achieves the policy objective in a manner that minimises costs for business and the community;
- encouraging transparent, timely and meaningful consultation with affected parties;
- assisting decision makers to understand the full range of costs and benefits of their decision, at the time they are making their decision; and,
- making the information available to government decision makers available to the public.

While TRUenergy recognises that a regulatory impact analysis is not a statutory requirement as part of the creation of guidelines associated with the NECF, such analyses removes the guesswork, and ensures that the guideline sufficiently balances the needs of the industry with those of consumers.

In highlighting the OBPR principles, especially those associated with the introduction of regulation that is effective at addressing an identified problem, the AER has not established well enough the perceived issue that each of its guidelines are aimed at addressing. While the AER has proposed that some of the reporting indicators 'may' give it more insight about performance, such an approach is inconsistent with the principles established by OBPR and arguably results in retailers reporting for the sake of reporting.

If the AER cannot provide a sufficient explanation as to what the objective of each performance guideline is, then arguably the AER is imposing unnecessary reporting obligations upon retail businesses. As acknowledged by the AER at the recent public forum, it is far easier for the AER to add additional guidelines in the future as opposed to having to rescind them in the future.

As well as considering the principles established by OBPR, TRUenergy also believes the AER must have regard for the objective of the NECF. The introduction of the NECF represents the culmination of reforms to improve productivity within the energy sector which began in the mid 1990's. TRUenergy highlights that the reporting guidelines are consistent with the intended objective of the NECF to reduce regulatory complexity and lower barriers to entry.¹ However, TRUenergy does not believe the market performance reporting regime outlined in the issues paper is sufficiently consistent with these principles, especially when comparing the current reporting requirements with the existing jurisdictional reporting requirements.

In Appendix 1 TRUenergy has prepared a spreadsheet comparing the proposed performance reporting with the existing requirements and then shaded the major States which have quarterly reporting. The table clearly demonstrates that what the AER is proposing is fundamentally more burdensome, and thus inconsistent with the objectives of the NECF. TRUenergy would argue that these should be changed at a minimum to bi-annual reporting and then in any case where it is shown that a retailers' performance is insufficient, the reporting obligations for that retailer be increased.

Retailer hardship programs

Given the growing public interest around energy pricing, TRUenergy remains concerned with the AER's approach toward hardship and what it expects from retailers. As highlighted in the public forum TRUenergy does not believe the AER as adequately identified the objective of retailer hardship scheme in terms of keeping customers connected and concurrently ensuring these customers do not accrue an unserviceable debt. Without such an objective it is impossible to establish a comprehensive and effective set of indicators on retailer performance. It remains unclear what the AER expects retailers should focus on with their hardship programs.

¹ The Hon. J.D. Hill, (2010) South Australian House of Assembly Hansard, p.1738

Because of this, many of the proposed reporting requirements associated with hardship are also focused on broader issues of social policy and are fundamentally influenced by issues outside the control of energy retailers. TRUenergy is concerned that if these indicators are not separated, retailers will inevitably be held responsible for detrimental customer outcomes that are unrelated to the performance of their hardship programs.

TRUenergy has provided additional information on aspects of the proposed performance measures in the attached document.

Given the clear differences in opinion TRUenergy has with the AER's proposed reporting I would welcome the opportunity to discuss the contents of this submission with the AER. Should you have any questions in relation to this submission please call me on (03) 8628 1185.

Yours sincerely

Alastair Phillips
Regulatory Manager
TRUenergy

TRUenergy has prepared comments on the following areas of the Issues Paper.

Retail Market Structure

While TRUenergy recognises the importance of monitoring the level of competition in the market through market share and customer transfers TRUenergy does not see a need for reporting on the number of customer on market based and standard contracts any more frequently than once a year. TRUenergy does not believe there would be any benefit knowing how these vary over the course of the year given that any commentary is likely to be highly speculative.

Small Business

TRUenergy would highlight that a fundamental inconsistency exists between the AER's approach to retailer performance reporting associated with small business customers and the AER's approach to the protection of small business customers under the exempt sellers' framework. TRUenergy would note that there are a number of indicators where retailers are required to provide data associated with small business customers and as such would inevitably draw the conclusions such performance indicators are aimed at providing these business customers with the same protections that exist for residential customers. While TRUenergy does not see a need to provide small business customers with similar safeguards, the AER has insisted that such measures are required. TRUenergy believes that this approach is inconsistent with what it is proposing with regard to the exempt selling framework where the AER has highlighted that the administrative costs of extending such protections to cover small business is prohibitive. While TRUenergy does not believe small business customers deserve the same consumer protection measures afforded to residential customers, if they are to be imposed on retailers, TRUenergy would insist that a consistent approach is taken toward protecting small business customers of both retailers and exempt sellers.

Energy Affordability/Energy Hardship

TRUenergy would again highlight that energy affordability is an issue that is far broader than the support offered by retailer's hardship programs. In understanding the issue of energy affordability TRUenergy would highlight that there are customers who can pay their bill but decide not to pay them and those customers who due to their personal circumstances simply do not have the means to pay their energy bills. Of this latter category there are two distinct groups of customers; those customers in short term hardship who have had temporary change in their circumstances, as a result of a loss of job, relationship breakdown, short term sickness; and those that are in long term hardship who require broader assistance with the payment of their energy bills. TRUenergy acknowledges retailers have a role assisting customer in short term hardship, however for customer in long term hardship the responsibility for assisting such customers must largely lie with the government through the funding of targeted financial assistance. Moreover, for those customers in hardship it is likely that if they are struggling to pay their bill then it is likely they will be experiencing broader issues financial and social issues beyond the assistance provided by retail businesses. While TRUenergy acknowledges that electricity and gas are essential services it does not believe that energy retailers can be asked to do any more to assist customers in long term energy hardship.

TRUenergy believes there are a number of issues with the AER's approach to hardship specifically in relation to:

- The identification of hardship customers;
- The inability of retailers to make contact with some customers;
- The inverse relationship between debt and disconnections; and,
- The long term effect of retailers' hardship programs to change customer behaviour.

The identification of hardship customers

TRUenergy remains concerned with the continual reference to retailers having to identify customers in hardship. Throughout the consultations with the AER on the NECF guidelines TRUenergy and other retailers have consistently advised the AER that retailers do not have the capability in their systems to identify customers in hardship. Again, TRUenergy would state that there is no single definition of hardship and as such it is impossible to identify customers in hardship simply from the information in their systems. While TRUenergy would acknowledge that there is a requirement in the NECF for retailers to identify customers, TRUenergy would ask the AER how they are meaningfully meant to do this.

The inability of retailers to make contact with some customers

TRUenergy would again emphasise one of the key issues which affects the success of the customer on a retailer's hardship scheme is their willingness to engage with their retailer. Unfortunately, the ability to assist a customer in hardship is fundamentally compromised if the customer chooses not to engage with their retailer. Because retailers rely on engagement from the customer in order for them to remain on the program, it is difficult to measure the effectiveness of a retailers' hardship program given the large proportion of customers who choose not to engage with TRUenergy.

The inverse relationship between debt and disconnections

TRUenergy believes the AER must establish a clear objective for retailers' hardship programs to guide them in terms of the assistance they provide under their hardship schemes. While the AER acknowledges that on occasions retailers need to consider whether to allow customers to continue to accrue energy debt or whether to disconnect that customer, but fails to propose any approach as to what retailers should do. It must be recognised that without any clear direction provided by the AER retailers are unlikely to be able to prevent disconnections increasing and debts decreasing and as such these indicators are likely to continue to fluctuate as an inverse relationship.

The long term effect of retailers' hardship programs to change customer behaviour

TRUenergy also remains concerned that the AER's expects retailers to fundamentally change the behaviour of those customers who graduate from a retailer's hardship program. In providing assistance to customers in hardship TRUenergy cannot force the way retailers use electricity and as such are reliant on the customer as to whether customers choose to adopt what they have learnt from being on a hardship program or to disregard it. Equally, TRUenergy would also emphasise that indicators A.9.1.11 and A.9.1.12 are also influenced if the customer was to face an additional changes in their broader circumstances (loss of employment, marriage breakdown, illness, etc), which may prevent the customer from implementing what they have learnt from being on a retailer's hardship program.

Because of these issues TRUenergy does not support the inclusion of the following reporting measures in any form on the basis they are indicators which do not relate to retailer performance:

- A 2.1.1 Level of *residential customer* energy bill debt;
- A 2.1.2 Level of *residential customer* energy bill debt for small customers
- A 2.1.3 Level of *residential customer* energy debt
- 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 3.1.1 Number of residential and small business customers disconnected for non-payment; and,
- 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 3.1.3 Number of *residential* and *small business customers* reconnected within 7 days of disconnection, in the same name and at the same address and at the same address.
- A 3.1.9 Number of *residential customers* (excluding hardship program customers) disconnected for non-payment of a bill who successfully completed the hardship program in the previous 12 months
- 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

Retail Market Activities

Security Deposits

TRUenergy does not believe there is any purpose to collecting information associated with security deposits on the basis that the number of security deposits being collected is a function of a customer's credit history. TRUenergy does not consider this information provides any useful insight into energy affordability or energy hardship or retailer performance.

Because of these issues TRUenergy does not support the inclusion of the following reporting measures:

A.6.1.1 Number and aggregate value of security deposits held by retailers for residential and small business customers

A.6.1.2 Number and aggregate value of security deposits held for longer than 12 months

Customer Service

TRUenergy would note that the proposed indicators for customer service provide very limited insight into retailers' level of customer service and therefore, are not an effective way of measuring the level of customer service being delivered by retailers.

TRUenergy would highlight that although the average wait time and service level results varied considerably for TRUenergy over the past 24 months the number of customers churning out or lodging complaints remained relatively constant, demonstrating that there is no correlation between customer service and these indicators.

In commenting on the proposed performance measures for customer service TRUenergy would also highlight that in 2010, TRUenergy won the prestigious Canstar Blue - 2010 Best Energy Retailer in South Australia award. Canstar conducted a Consumer survey whereby South Australian consumers rated Energy Retailers in 4 categories: Customer Service, Price, Billing and the Customers overall satisfaction with their Retailer. TRUenergy was rated as the best of the South Australian energy providers in all 4 categories. Important this took place during a period where TRUenergy's service levels were below the measures established by the South Australian Government to benchmark customer service. Again TRUenergy would highlight that the proposed indicators are not relevant when assessing customer service.

Because of this TRUenergy does not agree to the inclusion of the proposed indicators for customer service in the retailer performance reporting guideline.

	AER	VIC	NSW	QLD	SA
A1 Retail Market Structure					
A.1.1.1 The number of customers on <i>standard retail contracts</i>	Quarterly	NA <i>Customer numbers are requested on a Biannual basis however not split between standard and market contracts</i>	Annual	Quarterly <i>Customer numbers are provided quarterly this is split between market and non-market contracts.</i>	Quarterly <i>Customer numbers are provided quarterly but not split between standard and market contracts.</i>
A.1.1.2 The number of customers on <i>market Retail contracts</i>	Quarterly	NA <i>Customer numbers are requested on a Biannual basis however not split between standard and market contracts</i>	Annual	Quarterly <i>Customer numbers are provided quarterly this is split between market and non-market contracts.</i>	Quarterly <i>Customer numbers are provided quarterly but not split between standard and market contracts</i>
A2 Handling of Customers Experiencing Payment Difficulties					
A.2.1.1 Number of <i>small customers</i> repaying an energy bill debt	Quarterly	NA	NA	NA	NA
A.2.1.2 Average amount of energy bill debt for <i>small customers</i>	Quarterly	Biannual, however only for those customers on the Hardship Program	NA	NA	NA
A.2.1.3 Level of <i>residential customer</i> energy bill debt	Quarterly	Biannual, however only for those customers on the Hardship Program	NA	NA	NA
A.2.2.1 Number of <i>residential customers</i> using Centrepay	Quarterly	NA	Annual	NA	NA
A.2.3.1 Number of <i>residential customers</i> (excluding <i>hardship program customers</i>) on a payment plan	Quarterly with monthly data	Biannual	NA	NA	Quarterly
A.2.3.2 Number of payment plans successfully completed	Quarterly with monthly data	NA	NA	NA	NA
A.2.3.3 Number of payment plans cancelled by the retailer for non-payment	Quarterly with monthly data	NA	NA	NA	NA

A.2.3.4 Number of <i>residential customers</i> (excluding <i>hardship program customers</i>) with two or more payment plans cancelled for non payment in the last 12 months	Quarterly	NA	NA	NA	NA
A3 De-Energisation and Re-Energisations					
A.3.1.1 Number of <i>residential</i> and <i>small business customers</i> disconnected for non-payment	Quarterly with monthly data	Biannual	Annual & Quarterly	Annual & Quarterly	Quarterly
A.3.1.2 Number of <i>residential</i> and <i>small business customers</i> disconnected for non-payment on more than one occasion in the same name and at the same address in the previous 24 Months	Quarterly	Biannual	NA	NA	NA
A.3.1.3 Number of <i>residential</i> and <i>small business customers</i> reconnected within 7 days of disconnection, in the same name and at the same address	Quarterly with monthly data	Biannual	Annual	Quarterly	Quarterly
A.3.1.4 Number of <i>residential</i> and <i>small business customers</i> reconnected in the same name at the same address (regardless of the date of disconnection)	Quarterly with monthly data	Biannual	Annual	Quarterly	NA
A.3.1.5 Number of <i>hardship program customers</i> disconnected for non payment	Quarterly	Biannual	NA	NA	NA
A.3.1.6 Number of <i>hardship program customers</i> reconnected within 7 days of disconnection, in the same name and at the same address	Quarterly	Biannual	NA	NA	NA
A.3.1.7 Number of <i>energy concession customers</i> disconnected for non payment	Quarterly	NA	Annual	Quarterly (pension concession card)	NA
A.3.1.8 Number of <i>energy concession customers</i> reconnected within 7 days of disconnection, in the same name and at the same address	Quarterly	Biannual	NA	NA	NA
A.3.1.9 Number of <i>residential customers</i> (excluding <i>hardship program customers</i>) disconnected for non payment of a bill who were on a <i>payment plan</i> in the previous 12 months	Quarterly	Biannual	Annual	NA	NA

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A.3.1.10 Number of <i>residential customers</i> (excluding <i>hardship program customers</i>) who were on a <i>payment plan</i> in the previous 12 months who were reconnected within seven days of disconnection in the same name and at the same address	Quarterly	Biannual	Annual	NA	NA
A4 Concessions					
A.4.1.1 Number of <i>residential customers</i> recorded by the retailer as entitled to a government funded energy concession administered or delivered by the retailer	Quarterly	NA	NA	NA	Quarterly
A5 Pre Payment Meters					
A.5.1.1 Total number of <i>PPM customers</i>	Quarterly	NA	NA	NA	NA
A.5.1.2 Number of <i>PPM customers</i> that receive an energy concession	Quarterly	NA	NA	NA	NA
A.5.1.3 Number of PPMs removed due to payment difficulties	Quarterly	NA	NA	NA	NA
A.5.1.4 Number of <i>PPM customers</i> using a PPM system capable of detecting and reporting self-disconnections	Quarterly	NA	NA	NA	NA
A.5.1.5 Total number of PPM selfdisconnection events	Quarterly	NA	NA	NA	NA
A.5.1.6 Total number of <i>PPM customers</i> self disconnected	Quarterly	NA	NA	NA	NA
A.5.1.7 <i>Average duration of self disconnection events.</i>	Quarterly	NA	NA	NA	NA
A.5.1.8 <i>Duration of self-disconnection events</i>	Quarterly	NA	NA	NA	NA
A6 Security Deposits					
A.6.1.1 Number and aggregate value of security deposits held by retailers for <i>residential</i> and <i>small business customers</i>	Quarterly	Biannual	Annual	Number and percentage of security deposits held only not aggregate value.	Quarterly
A.6.1.2 Number and aggregate value of security deposits held for longer than 12 months for <i>residential customers</i> and 24 months for <i>small business customers</i>	Quarterly	NA	Annual	NA	NA

A7 Customer Service					
A.7.1.1 Total number of calls to an operator	Quarterly	Biannual	Annual	Annual	Quarterly
A.7.1.2 Number and percentage of calls forwarded to an operator that are answered within 30 seconds.	Quarterly	Biannual	Annual	Annual	Quarterly
A.7.1.3 Average time before an operator answers a call	Quarterly	Biannual	NA	Annual	NA
A.7.1.4 Number and percentage of calls abandoned before being answered by an operator.	Quarterly	Biannual	Annual	Annual	Quarterly
A8 Complaints					
A.8.1.1 Complaints – total	Quarterly	Biannual	Annual	Annual & Quarterly	Quarterly
A.8.1.2 Complaints – marketing	Quarterly	Biannual	Annual	NA	Quarterly
A.8.1.3 Complaints - billing	Quarterly	Biannual	Annual	Annual & Quarterly	Quarterly
A.8.1.4 Complaints – customer transfers	Quarterly	Biannual	NA	NA	Quarterly
A.8.1.5 Complaints – Other	Quarterly	Biannual	Annual	Annual & Quarterly	NA
A9 Hardship Program Indicators					
A.9.1.1 Number of customers <i>on a retailer's hardship program</i>	Quarterly with monthly data	Biannual	NA	NA	Quarterly
A.9.1.2 Number of <i>hardship program customers</i> recorded by the retailer as entitled to receive a government funded energy concession, administered or delivered by the retailer	Quarterly	Biannual	NA	NA	NA
A.9.1.3 Number of customers <i>denied access</i> to the hardship program	Quarterly with monthly data	Biannual	NA	NA	NA
A.9.1.4 Average <i>debt</i> upon entry into the hardship program	Quarterly with monthly data	Biannual	NA	NA	NA
A.9.1.5 Levels of debt of customers entering the hardship program	Quarterly with monthly data	NA	NA	NA	NA
A.9.1.6 Average <i>debt</i> of hardship program customers	Quarterly with monthly data	NA	NA	NA	NA
A.9.1.7 Proportion of <i>hardship program customers</i> who are: _ Not meeting ongoing energy costs (debt increasing); _ Covering ongoing energy costs (debt stable); _ Covering ongoing energy costs and portion of arrears (debt reducing).	Quarterly	NA	NA	NA	NA

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A.9.1.8 Customers who are managing their payment plans (payment plan success rate)	Quarterly	NA	NA	NA	NA
A.9.1.9 Number of customers exiting the hardship program	Quarterly with monthly data	Biannual	NA	NA	NA
A.9.1.10 Number of customers who: _ Successfully completed the program or exited the hardship program by agreement with the retailer; _ Were excluded /removed from the program for non-compliance; _ Transferred away from the retailer.	Quarterly with monthly data	Biannual	NA	NA	NA
A.9.1.11 Number of <i>residential customers</i> disconnected for non-payment of a bill who successfully completed the hardship program in the previous 12 months	Quarterly with monthly data	Biannual	NA	NA	NA
A.9.1.12 Number of <i>residential customers</i> who successfully completed the <i>hardship program</i> in the previous 12 months who were reconnected in the same name and at the same address within seven days of disconnection	Quarterly with monthly data	Biannual	NA	NA	NA
A.9.1.13 Assistance provided to <i>hardship program customers</i>	Quarterly	Biannual	NA	NA	NA
A.9.1.14 Payment methods of <i>hardship program customers</i>	Quarterly	NA	NA	NA	NA