



By email: AERInquiry@aer.gov.au

Jemena Limited
ABN 95 052 167 405

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321 Ferntree Gully Road
Mount Waverley VIC 3149
Locked Bag 7000
Mount Waverley VIC 3149
T +61 3 8544 9000
F +61 3 8544 9888
www.jemena.com.au

General Manager
Markets Branch
Australian Energy Regulator
PO Box 520
MELBOURNE VIC 3001

AER Issues Paper – Retail Market Performance Reporting

Jemena appreciates the opportunity to comment on matters in the AER *Issues Paper, Retail Market Performance Reporting (issues paper)* that are likely to affect electricity and gas distribution businesses.

Jemena directly owns Jemena Gas Networks in NSW (**JGN**), the largest individual gas distribution network in Australia, and Jemena Electricity Networks in Victoria (**JEN**). Jemena partially owns the United Energy Distribution electricity distribution business in Victoria (34%) and the ActewAGL gas and electricity distribution business in the ACT (50%). These businesses will be individually affected by the introduction of the National Energy Retail Law and Rules, which impose new obligations on distributors.

In the interests of good regulatory practice, the AER's required content and frequency of performance reporting should only be that necessary to provide relevant and timely information to the market, and should not exceed current jurisdictional reporting requirements, where they exist.

JEN looks forward to participation in the next stages of the AER consultation. If required, I can be contacted on (02) 9270 4512 or email: sandra.gamble@jemena.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Sandra Gamble".

Sandra Gamble
Group Manager Regulatory

AER Issues Paper – Retail Market Performance Reporting

1. Introduction

Subject to it passing into law, under the National Energy Retail Law (**NERL**) ss 1214 (d) and (e), the AER will be required to report on:

- the performance of distributors by reference to distributor service standards and associated guaranteed service level (**GSL**) schemes
- performance of distributors in relation to the small compensation claims regime under Part 7.

Under NERL s. 1202, a regulated entity must establish policies, systems and procedures to effectively manage compliance with the NERL and Rules, and these policies must be established in accordance with AER compliance procedures and guidelines. Under NERL s. 1203, the entity must submit compliance information specified in the guidelines to the AER.

The issues paper indicates that the current consultation is preliminary to the development of formal guidelines for performance reporting procedures and content, which will be established by the AER after passage of the NERL.

Jemena notes that the distribution component of the current consultation is quite small compared with retail matters. The distributor issues under current discussion may not be typical of matters which are likely to require detailed consideration when addressing distributor compliance with the NERL and Rules more broadly, as the AER intends. Our comments therefore are very preliminary.

2. Broad indications of AER approach to reporting

The issues paper suggests the following broad characteristics of AER reporting regimes under the NERL:¹

- performance reports will provide an holistic commentary on the energy retail market and the businesses operating in it
- reports will address market characteristics at a national and jurisdictional level
- reports will distinguish different customer categories, including small and large customers, and residential and business customers
- the AER's intention is to publish quarterly reports, with a consolidated annual report
- the AER anticipates that information reported by retailers and distributors at each interval will be on a monthly or quarterly basis to allow examination of seasonal and other trends.

Jemena offers the following generic comments on future distributor reporting.

Quarterly reporting

The issues paper does not explain the AER's rationale for requiring distributor reports on service standards and GSL payments at more frequent intervals than the current

¹ AER, Issues paper, pp. 5-6.

jurisdictional equivalent. For example, reporting on these matters by electricity distributors to the Essential Services Commission of Victoria (**ESCV**) has largely been confined to annual reporting. An exception is supply reliability which is reported monthly (although distributors consider this monthly reporting to be unnecessary, given that the ESCV produces one comparative performance report per year).

The AER's draft decision² for the Victorian electricity distribution price review signalled an intention to maintain reporting for service standards and GSLs under the existing ESCV annual framework.³ Yet the reporting regime envisaged in the issues paper suggests that quarterly reporting is now envisaged for distributor service standards and GSL payments.

While there appears to be some ambiguity between the AER's reporting intentions for distribution under the existing National Electricity Law (**NEL**) and the intended NERL, Jemena takes some comfort from the following statements in the issues paper:

Where jurisdictional regulatory bodies retain responsibilities for monitoring and reporting on these issues, we will work closely with them to minimise unnecessary duplication of service standard reporting requirements on distributors. *We will also avoid duplication of reporting requirements where there are overlaps with other reporting requirements that will apply to distributors under the performance regimes administered by the AER under the Electricity and Gas Laws.*(emphasis added)⁴

Jemena notes that current annual reporting to the ESCV by distributors comprises a mix of annual, six-monthly and monthly data (depending on the measure in question), so it would still be open to the AER to conduct a more detailed analysis of the data if it so wished.

The issues paper also notes that some jurisdictional performance standards may only be annual measures in any event, and that the AER reporting frequency would mirror that standard. Jemena fully supports this position.

Jemena believes that there is no reason to require distributor reports on service standards and GSL payments to be compiled at more frequent intervals than the current jurisdictional equivalent.

Examination of seasonal and other trends

Jemena submits that short term analysis of seasonal performance trends is likely to be more relevant to retailers than distributors (given the NERL focus on retail contestability, customer transfer, energy affordability and capacity to pay), and questions the value of the AER devoting resources to short term analysis of distributor performance. The three national energy objectives (NEL, National Gas Law, and NERL) all focus on the long term interests of consumers, and JEN submits that long term trends in distributor performance are by far the most relevant indicators for these objectives.

Some measures of electricity distributor KPI performance (e.g. unplanned interruptions) are strongly influenced by random extreme weather events, and short term performance reporting could not disclose meaningful trends. The present

² AER, *Draft decision, Victorian electricity distribution network service providers, Distribution determination 2011–2015*, June 2010 (**Victorian draft decision**).

³ AER, Victorian draft decision, s. 21.7.3, p. 915.

⁴ AER, Issues paper, p. 46.

method of analysis in Victoria is to note these extreme events and normalise the comparative annual performance indicators accordingly.

Short term reporting to the AER by its nature means that distributor focus would have to shift to explaining short term variations in performance, when, as indicated it is longer term trends that are most significant for consumers.

3. Distributor reporting and recent AER draft decisions

Section 2 above noted that the Victorian electricity draft decision has canvassed annual reporting for outcome based measures of distributor performance. The draft decision also signalled a specific consultation process with the Victorian DNSPs on these matters:

It is proposed that the monitoring framework set out in this chapter will replace the existing annual reporting framework previously established by the Essential Services Commission of Victoria (ESCV) for monitoring a DNSP's regulatory accounts and network performance indicators.

The outcomes monitoring measures proposed in this chapter are intended to provide guidance on the framework that the AER intends to implement. The AER will undertake further consultation with Victorian DNSPs and other stakeholders to determine the specific form of the outcome measures for Victorian DNSPs to report against as part of a separate RIN process.⁵

Given the impending consultation, Jemena sees no need for further discussion of distributor performance reporting on service standards, at least in respect of Victorian distributors. Jemena submits that the AER should defer consideration of Victorian DNSP's performance reporting requirements to its further consultation in accordance with the draft decision. The same reasoning would apply where the AER has signalled a similar approach for distributors in other jurisdictions.

With regard to Jemena's gas distribution network in NSW, Jemena notes that service standard requirements are set out in the NSW Gas Distribution Code. These will be subsumed into and augmented by the retail support obligations in Part 5 of the National Energy Retail Rules.

4. Distributor performance and the small competition claims regime

AER proposed reporting regime

The issues paper notes that:

Part 7 of the draft Retail Law establishes a small compensation claims regime to enable small customers to make claims for compensation from distributors in relation to 'claimable incidents' and 'compensable matters'. The incidents and matters for which compensation will be available have yet to be determined, and will be established on a jurisdiction-by-jurisdiction basis. No claimable incidents or compensable matters have been identified in the second exposure draft of the Retail Law or Rules.

In the absence of identified 'claimable incidents' and 'compensable matters', it is difficult to say what indicators of distributor performance might be appropriate.⁶

⁵ AER, Victorian draft decision, p. 907.

⁶ AER, Issues paper, pp. 46-47.

Jemena agrees with the issues paper in that that the proposed small compensation claims regime is totally untested at this time, and that appropriate indicators for distributor performance are essentially unknowable, given the lack of detail in the second exposure draft of the NERL and Rules.⁷ Despite this, the issues paper suggests that distributor performance could be measured against two generic indicators:

- the extent to which customers are aware of and able to access the small claims regime
- the extent to which customers accessing the regime receive an appropriate amount of compensation for claims.

The issues paper acknowledges that any assessment of distributor performance in this area would require 'qualitative assessment' to determine how well the regime is implemented. The paper suggests that matters for investigation would include the drivers behind apparent trends in the number of complaints made and the amount of compensation paid by distributors within a reporting period (by category of incident). The paper considers the following information would be relevant:

- steps taken by the distributor to make customers aware of the small customer compensation claims regime
- the number of complaints received by a distributor in relation to its administration of the small compensation claims regime.

The issues paper says that reported information 'will allow us to identify unexplained disparities in the operation of the regime from distributor to distributor, which may warrant further investigation'.⁸ The paper proposes quarterly information collection and publication.

Jemena comments on proposed information collection and reporting

Information provision and publication

Jemena has no issues with providing meaningful information to the AER on the compensation claims regime.

However, Jemena does not support public reporting of the total amount of compensation payments paid out to the customers or even the number of successful claims. The Energy and Water Ombudsman of Victoria (**EWOV**), which operates a dispute resolution scheme which all distributors and retailers belong, does not report the sort of information suggested in the consultation paper.⁹

There are good reasons for not publishing this kind of detail, including the discouragement of excessive claims or claims with only slight merit. Jemena notes that under s. 701(2) of the draft NERL, a claimant does not have to establish fault, negligence or bad faith on the part of a distributor in order to receive compensation.

⁷ For example, a 'claimable incident' can be prescribed by national regulations, as well as a jurisdictional instrument.

⁸ AER, Issues paper, p. 48.

⁹ EWOV reports only the total annual dollar amount paid 'in respect of customer service issues' for all complaints referred to EWOV.

This is similar to existing practice under the EWOV procedures, which allow for a 'minimum no-fault payment' to be made to a claimant.

Both EWOV and the Energy and Water Ombudsman of NSW (**EWON**) do list complaints and issues by individual retailer and distributor when presenting high level statistics. However, neither ombudsman identifies particular parties when presenting detailed case studies in their annual reports.

Frequency of reporting and publication

Consistent with Jemena's views on GSL and service standard reporting, Jemena submits that there is no reason to produce reports on the operation of the small compensation claims regime at more frequent intervals than the nearest jurisdictional equivalent – that is, the ombudsman schemes.

EWOV and EWON both report only annually on energy-related complaints and issues. Neither authority has seen the need for quarterly external publication as proposed in the issues paper.

Proposal to seek information from ombudsmen

The issues paper says:

The AER could also seek information from energy ombudsman about the number of complaints made by customers to their schemes in relation to the small compensation claims regime, and the number of those complaints determined in favour of the complainant.¹⁰

Jemena does not consider that 'second hand' information of this type is a reliable indicator of the effectiveness of a distributor's compensation scheme. Information obtained from ombudsman schemes would reflect the policies, procedures and effectiveness of those schemes, and not necessarily measure distributor performance. On the other hand, Jemena agrees that if ombudsman consistently rejected complaints in relation to compensation regimes, their rejection would to some extent indicate that effective regimes were in place.

Steps taken by distributor to promote regime

The issues paper proposes that one basis for making a 'qualitative assessment' of distributor performance would be the steps taken by the distributor to make customers aware of the small customer compensation claims regime

Jemena considers that 'qualitative assessment' of distributor performance by the AER raises a number of problematic issues, including a need to maintain objectivity and a need to ensure that consistent judgements are applied between distributors. Jemena considers that objective measures should be used in preference to 'qualitative assessment' wherever possible.

In the case of promoting the small customer compensation claims regime, Jemena supports a model based on the existing ESCV requirements that retailers and distributors must publish on their websites details of their complaints resolution and

¹⁰ AER, Issues paper, p. 47.

compensation avenues. Jemena submits that there is no need to go beyond this level of publicity.

Jemena observes from participating in the NECF consultations that the compensation regime proposed in Part 7 of the draft NERL is based largely on the voltage variation compensation scheme contained in ESCV Guideline no. 11 (**Guideline**). That guideline states:¹¹

Each distributor must:

(a) publish a copy of this guideline, and details of the policies and procedures the distributor has adopted in relation to this guideline, on its web-site; and

(b) give a copy of this guideline to any person, on request by that person.

Jemena submits that a distributor requirement of this kind, suitably adapted to Part 7 of the NERL, is all that is required in terms of promoting the small customer compensation claims regime.

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¹¹ ESCV, *Electricity Industry Guideline no. 11: Voltage Variation Compensation Version 1*, April 2001, section 1.4.