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

Dear Sir/Madam

TRUenergy welcomes the opportunity to provide the following comments in relation to the Australian Energy Regulator's (AER) Approach to Compliance with the National Energy Retail Law, Rules and Regulations Issues Paper (the Paper).

Compliance Monitoring & Reporting

TRUenergy supports the establishment of a suitable compliance regime to underpin the operation of the National Energy Customer Framework. TRUenergy considers that the proposed approach to compliance should provide guidance to regulated entities about the behaviour the AER is seeking to promote. In developing such a regime TRUenergy believes it is fundamental that the AER considers the cost and compliance burden of regulation and the objective of the requiring regulated entities to report on a particular obligation. To this end, TRUenergy would also encourage the AER not to simply adopt elements of the current compliance regimes, but to take the time to develop a compliance scheme which recognises the cost of adhering to the legislative framework underpinning the operation of the retail market. TRUenergy would also argue that there must be a clear purpose behind requiring regulated entities to report on particular obligations, to ensure businesses are not simply reporting for the sake of reporting.

In establishing the new compliance regime TRUenergy would note that most businesses are conscious about the detrimental impact non compliant behaviour can have on their brand. Because of this, most companies have developed comprehensive compliance programs to support their business activities. TRUenergy is of the view that in the immediate period after the implementation of the NECF there is likely to be a higher instance of breaches of the National Energy Retail Law, Rules and Regulations as companies come to understand the new framework. TRUenergy expects that higher likelihood of compliance problems in the early years is going to be compounded by the fact that the NECF is likely to be implemented over a number of years across the retail markets. TRUenergy would therefore be concerned if the AER was to take a heavy handed approach to enforcing the National Energy Retail Law, Rules and Regulations without extensive evidence of non compliant behaviour.

TRUenergy considers that requiring retailers to report quarterly is too frequent and likely to place regulated entities under significant administrative pressure. TRUenergy is concerned that it will be very resource intensive for both the AER

and regulated entities. TRUenergy expects that the amount of data from all the retail markets will most likely result in resources being permanently engaged for the quarterly reporting process. TRUenergy also believes that such reporting is unlikely to create any additional benefits and simply result in higher cost for end customers.

TRUenergy is of the view that the AER should be actively encouraging retailers to report compliance breaches and not be waiting to discover them the compliance report. As such, TRUenergy sees the role of compliance reporting as a way of verifying market intelligence at the end of the reporting period. TRUenergy therefore would support the AER devoting more of its resources to stakeholder engagement than quarterly compliance reporting, given that this is more likely to uncover compliance breaches.

TRUenergy therefore holds the belief that an effective compliance regime depends upon the AER engaging regularly with stakeholders. TRUenergy would endorse the development of regular AER publications and briefings with retailers, distributors and consumers about the operation of the new legislative framework and where necessary the convening of meetings with the relevant stakeholder groups to discuss specific industry issues. TRUenergy would also encourage the AER to meet regularly with the peak industry bodies, such as the Energy Retailers Association or the Energy Networks Association to provide feed back about practices in the market. In cases where businesses are found to be non compliant TRUenergy would urge the AER to discuss the matter directly with the relevant company to satisfy itself that the company has or has not breached the National Energy Retail Law, Rules and Regulations.

TRUenergy is comfortable with the proposed indicators of the impact of a breach provision however would also consider the volume of customers affected by a breach being significant as well.

TRUenergy considers it appropriate for the AER to be collecting market intelligence for the purposes of monitoring compliance from different stakeholder groups. However, TRUenergy also believes any such information must be considered on its merits and in cases where a breach is suspected, the AER arranges direct discussions with the relevant company. TRUenergy has been particularly concerned by past practices of some stakeholders to disclose perceived compliance breaches to the media without either discussing the matter with the relevant company, or an investigation being completed.

Where necessary, TRUenergy supports the use of targeted compliance reviews but would suggest that the AER carefully considers the timing and frequency of such reviews.

TRUenergy does not support the AER specifying the systems and procedures retailers should implement to ensure compliance with the National Energy Retail Law, Rules and Regulations. As the cost of all systems and procedures are worn by the companies and eventually by the customers, TRUenergy is of the view that the individual company is best placed to determine the necessary compliance systems for their business.

TRUenergy does not endorse the requirement that compliance reporting and breaches are signed off by the regulated entity's Chief Executive Officer. TRUenergy would argue that such requirements are unnecessary will also slow down the exchange of information with the AER. TRUenergy believes that retail businesses are suitably place to know which issues require the attention of senior management. TRUenergy maintains that any information given to the AER by a retailer is accurate whether it is provided by the Chief Executive Officer or anyone other employee delegated by that company.

TRUenergy supports a reporting regime which minimises regulatory burden and therefore end costs on customers. To this end, TRUenergy believes annual reporting achieves this objective. However, where systemic compliance breaches are identified, TRUenergy would support the AER imposing more frequent reporting obligations on the relevant entity until it is satisfied that it is compliant. TRUenergy believes this approach rewards compliance while suitably penalises those entities found to be non compliant.

Equally, TRUenergy is of the view that the performance reporting should provide the AER with insight into the way regulated entities operate within the legislative framework. TRUenergy does not support regulated entities being required to report on operations in their businesses if such indicators provide no feedback on compliant behaviour. TRUenergy has been disappointed with aspects of the current compliance regimes where in spite of there being no demonstrated evidence that reporting on certain compliance obligations add any benefit, retailers continue to have to provide data.

Compliance Audits

TRUenergy believes that regular general audit activities whether undertaken by the AER or an external contractor should be covered by the licence fees entities pay to operate in the relevant market. Any additional audit should be required only in cases where there is evidence of non compliance. TRUenergy is of the view that any additional audits should be funded by the party in question.

In considering whether an audit should be undertaken by either the AER or a contractor, TRUenergy considers this decision should be based on cost, the timing of the audit and the resources the AER has available at the time. TRUenergy believes the costs of any audit whether undertaken 'in house' or by an external consultant should be covered by the AER with the appropriate businesses then invoiced for their respective share of the audit's total cost.

TRUenergy supports the release of information about AER investigations subject to commercial confidentiality. The reporting of such investigations provides businesses appropriate feedback about compliant market conduct.

Enforcement

In enforcing the National Energy Retail Law, Rules and Regulations TRUenergy is concerned that some of the priorities are too broadly defined and may be used by other stakeholders to encourage the AER to conduct unnecessary investigations. TRUenergy considers that giving priority to matters which are 'of significant public interest or concern' and 'priority issues affecting disadvantaged or vulnerable groups or significant new or emerging market issues' need to be more tightly defined.

TRUenergy supports the combining of compliance and performance audits where it leads to lower costs for regulated entities.

In terms of the way investigations are communicated to the market, TRUenergy believes that the AER should only communicate the results of investigations which produce demonstrable evidence that a regulated entity or entities have significantly breached the Retail Law, Regulations or Rules. TRUenergy does not support the AER communicating information about all its investigations given that such information may be market or commercially sensitive. TRUenergy believes that releasing the results of such investigations can both provide guidance to regulated entities about compliant behaviour and also act as an incentive to retailers not to breach the Retail Law, Regulations or Rules.

Compliance Policies & Procedures

TRUenergy is compliant with AS 3806 and believes this should be adopted by the AER as the appropriate standard for compliance with the Retail Law, Regulations or Rules.

Should you have any questions in relation to this submission please feel free to give me a call on (03) 8628 1185.

Yours sincerely

Alastair Phillips
Regulatory Manager
TRUenergy