

25 May 2016

Essential Services Commission of Victoria

Level 37, 2 Lonsdale St
MELBOURNE VIC 3000

Via email: energy.submissions@esc.vic.gov.au

Re: Draft Energy Compliance and Enforcement Policy, April 2016

To Whom It May Concern:

Australian Gas Networks (AGN) welcomes the opportunity to make a submission to the Essential Services Commission's (the Commission's) Draft "*Energy Compliance and Enforcement Policy*". AGN understands that the Commission will review submissions received on the draft policy and publish a final policy by the end of June 2016.

AGN is supportive of the Commission's actions in order to clarify its new obligations in relation to monitoring and reporting on the compliance of energy licence holders. AGN understands that the Commission intends to adopt a collaborative approach to monitoring compliance and will work with industry to ensure positive outcomes for energy consumers.

In particular, AGN understands and supports the Commission's overarching principles as set out in its draft policy:

- 1 *Responsiveness*: the Commission will undertake work in a timely manner, ensuring it limits uncertainty for affected stakeholders;
- 2 *Proportionality*: the Commission will seek to ensure that their response is commensurate with the extent of non-compliance identified;
- 3 *Consistency*: the Commission will respond to similar situations with a consistency that provides predictability for regulated businesses as to their approach; and
- 4 *Accountability*: the Commission will be transparent by making public the outcomes of their compliance and enforcement actions in accordance with their statutory reporting obligations.

AGN's particular comments in relation to the draft policy are detailed in the following sections.

Scope of Compliance Audits

AGN understands that the Commission is seeking to introduce compliance audits as a method of identification of potential breaches of licence obligations:

"We will identify potential breaches through:

- a Self-reporting by regulated businesses;*
- b The findings of compliance audits and the results of investigations;*
- c Referrals and systemic issue reports from EWOV; and*
- d Reports of breaches from other external stakeholders (e.g. consumer representatives, other regulatory agencies, whistle blowers, members of the public and the media)."¹*

The Commission has also commented that audits will be conducted in relation to licence holders' licence obligations, which are specifically identified in each business' individual licence.

Currently, AGN's licence states that AGN must comply with:

- a "The Distribution System Code;*
- b The Retail Code;*
- c All other codes, standards, rules and guidelines which are specified by the Commission to apply to the Distributor; and*
- d Customer-related standards and procedures..."²*

Following discussions with the Commission, AGN understands that the focus of the compliance audits will be in relation to the Distribution System Code, unless there is a history of non-compliance with other related licence obligations. AGN is supportive of this approach, particularly given the breadth of licence obligations set out in AGN's licence.

Further Guidance on Administration of Compliance Audits

AGN encourages the Commission to consult further with industry in order to clarify the scope and procedures in relation to the introduction of compliance audits.

As a particular example, AGN refers the Commission to the Australian Energy Regulator's (AER's) "*Compliance and Enforcement Statement of Approach*".³ AGN considers that in this document, the AER has provided industry with:

- Clear advice regarding the scope and prompt for a compliance audit;
- The information the AER will request throughout a compliance audit;
- The objectives of enforcement action; and
- Reporting on compliance and enforcement activities.

Additionally, the AER has also produced the "*AER Compliance Procedures and Guideline*"⁴ document, which details the AER's process for consultation with businesses regarding the audit terms of reference, including the scope, coverage and timeline. AGN acknowledges that audits can be costly for businesses, although this cost impact can be minimised with effective processes and communication between all parties.

¹ ESCV, "*Draft Energy Compliance and Enforcement Policy*", April 2016, page 2.

² ESCV, Australian Gas Networks Energy Distribution Licence, December 2002, page 2.

³ AER, "*Compliance and Enforcement Statement of Approach*", April 2014, <https://www.aer.gov.au/system/files/AER%20Compliance%20and%20Enforcement%20-%20Statement%20of%20Approach%20-%20April%202014.pdf>.

⁴ AER, "*AER Compliance Procedures and Guideline, National Energy Retail Law, retail Rules and Regulation Version 3*", September 2014.

AGN also notes that varying regulatory requirements across different jurisdictions adds to compliance costs incurred by businesses operating across jurisdictions, such as AGN. As such, AGN supports the adoption of already established practices in relation to the implementation of compliance audits and considers this in the long-term interests of energy consumers.

Administration of Compliance Audits

Based on discussions with the Commission, AGN understands that the Commission will adopt an approach to compliance audits similar to the approach recently implemented regarding energy retailers. In particular:

- The Commission will develop a “forward schedule” of audits in order to provide clarity and certainty to licence holders in terms of resourcing and budgeting requirements in relation to conducting a compliance audit.
- The Commission will provide a short list of suitable independent auditors to conduct the audit, from which the licence holder will select one.

AGN is supportive of the above approach. AGN notes that currently, energy retailers are required to incur the costs of the audit, and as such, AGN seeks clarification from the Commission on whether this will be the case for distribution businesses. AGN can then consider the cost impact of these audits when preparing its Access Arrangement (AA) Proposal for the 2018 to 2022 AA period, which is due to be provided to the AER by 1 January 2017.

In summary, AGN is supportive of the overarching principles and need for the Commission’s draft policy, however encourages the Commission to ensure:

- Industry is provided with further guidance on the procedures, scope and extent of the proposed compliance audits; and
- The program of compliance audits aligns with the principles as set out in the AER’s *“Compliance and Enforcement Statement of Approach”* to minimise varying regulatory requirements across jurisdictions.

Please contact either Ashley Muldrew or myself if you would like to discuss this submission further.

Yours sincerely,

Craig de Laine
General Manager - Regulation