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24 April 2013

Ms Michele McAuliffe
Compliance Officer
Essential Service Commission
Level 2, 35 Spring Street
Melbourne VIC 3001

By email : michele.mcauliffe@esc.vic.gov.au
elecindicators@esc.vic.gov.au
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Dear Ms McAuliffe

**RE: ESC CONSULTATION – ENERGY INDUSTRY GUIDELINE 22 –
REGULATORY AUDITS OF ENERGY BUSINESSES**

CitiPower and Powercor Australia (**Businesses**) refer to the Essential Service Commission of Victoria's (ESCV) email dated 26 March 2013 in relation to the consultation on the "Energy Industry Guideline 22 (**EIG 22**) – Regulatory Audits of Energy Businesses."

The Businesses thank the ESCV for the opportunity to be involved in the consultation, and have reviewed the:

- draft decision – Guideline 22 – Regulatory Audits of Energy Businesses,
- draft revision of the related "Energy Industry Guideline 22 – Regulatory Audits of Energy Businesses" and
- copy of the marked up version of the Draft Audit Deed.

The Businesses submit the following response for your consideration.

Role of ESCV

There is currently no clear understanding of exactly which distribution-related obligations the ESCV is responsible for performing regulatory audits on. The Businesses are aware that the *Energy Legislation Amendment (Flexible Pricing and Other Matters) Act 2013* has been proclaimed. However, the Businesses are still awaiting the draft of the Order to be made under the new Section 22A of the *National Electricity (Victoria) Act 2005*. This would provide the specified regulatory law or instrument provisions which may be ESCV

enforceable regulatory requirements. Until there is clarity on the role of the ESCV and which regulatory law or instrument provisions are applicable, there may be no requirement for distribution businesses to fall under EIG 22.

Role of the Australian Energy Regulator (AER)

The AER has significant information gathering and compliance monitoring powers under the *National Electricity (Victoria) Law (NEL)*, i.e. “*The AER has the power to do all things necessary or convenient to be done for or in connection with the performance of its function*”¹. In particular, the Businesses have recently completed their major annual audit as a requirement of an AER Regulatory Information Notice (**RIN**), which includes an audit on both financial and non-financial information. Non-financial information includes fire starts, reliability performance including outages, asset installations, customer related information (call centre, connections, disconnections, appointments, guaranteed service levels), metering and consumption. The audit of the non-financial information must assess the reliability of the processes, procedures and systems used to provide, prepare and maintain the information, and must comply with auditing standards as specified by the AER. It also requires a board resolution and is accompanied by a statutory declaration to be signed by an officer of the company.

Further more, the Businesses are required to submit compliance statements against the AER “Compliance Reporting Manual (Energy Distribution and Retail Businesses)”. The manual details the pertinent obligations to which distribution businesses must monitor compliance against, and includes the *Electricity Industry Act 2000*, *Electricity Distribution Licence*, *Electricity Distribution Code*, *Public Lighting Code*, *Electricity Industry Guideline 15* et al.

The Businesses believe that the AER has an efficient process through the RIN and through their requirement for the compliance statements. The AER also has the ability to impose ad hoc reviews. The Businesses consider any additional audits imposed by the ESCV would be duplicative and impose a substantial impost on distribution businesses and ultimately its customers. It is arguable it would also be a waste of public money given the potential duplicative nature of the AER and ESCV processes.

Comments on the documents

Auditor’s panel: The Businesses do not oppose the concept of an auditor’s panel. However, there should be an avenue for the Businesses preferred auditor (such as the auditor responsible for the Businesses statutory reporting) if they are not already represented on the panel.

Tripartite Deed: Based on previous experience, the Tripartite Deed involves a highly inefficient process creating unnecessary costs and inefficiencies on all parties. Finalisation of the previous Tripartite Deed took approximately 4 months from notification of audit to finalisation of documents. The Businesses recommend, consistent with the process the AER employs, that the auditors be engaged directly by the Businesses which would eliminate this costly exercise. Should the ESCV be uncomfortable with such arrangements, it could augment its processes similar to the AER’s processes to include, for example, a statutory declaration from the Chief Executive Officer.

¹ NEL Part 3 Division 1 Section 15(1)(g)

Conclusions

The Businesses believe it is unreasonable for the ESCV to impose additional audits on distribution businesses, which duplicate what is already required by the AER. The AER already has robust information requirement and compliance monitoring processes, which includes audits and Board resolutions, as well as statutory declarations. Additional audits serve no benefit or comfort to the community but will result in significant additional costs.

Should you have any queries, please do not hesitate to contact Wendy Cotton on 9683 4288 or wcotton@powercor.com.au.

Yours sincerely

A handwritten signature in blue ink that reads "Brent Cleave". The signature is written in a cursive, flowing style.

Brent Cleave
MANAGER REGULATION