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Dr. Ron Ben-David
Chairperson
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Dear Dr. Ben-David

Draft Decision – Guideline 22 – Regulatory Audits of Energy Businesses

1. Introduction

EnergyAustralia appreciates the opportunity to comment on the Draft Decision – Guideline 22 – Regulatory Audits of Energy Businesses. Although EnergyAustralia is committed to an open and honest approach to relationships with regulators we agree that a robust auditing framework will assist the Essential Services Commission (ESC) to monitor and manage compliance in those areas of the energy industry for which they have regulatory responsibility.

The following submission outlines some practical considerations on a number of the risk assessment and auditor engagement provisions.

2. The Commission’s Approach to Risk Assessment

The Draft Guideline outlines a number of risk levels which will inform how frequently an organisation may be monitored. EnergyAustralia agrees with this approach as it believes that the ESC should not be required to expend resources auditing those organisations which have demonstrated that they are low risk. We do however wish to provide some insights with regard to the risk factors outlined in the draft decision.

Sectoral Level

EnergyAustralia notes that the first sectoral risk factor listed is “when the sector was last audited (and by which regulatory agency)”. We urge the ESC to fully consider this factor and maintain dialogue with other regulators and note that although each regulator may be auditing different obligations, the results will generally provide a picture of a business’s broader compliance and should influence risk rating. We further note that even in areas where the results of a different regulator’s audit do not paint a positive view of compliance that the ESC be mindful of the workload that negative audit findings will generate and allow time for the audited entity to undertake the work required to rectify the non-conformities identified.

Licensee Level

The risk factors outlined at 13.2 of the Draft Decision appear valid, however, factors 1,2 and 4 are weighted towards larger retailers. EnergyAustralia acknowledges that clearly a retailer with a large customer base has the potential to negatively impact more customers than a

smaller retailer however, we believe that these risk factors may see smaller/new entrant retailers reduce their focus on compliance in the belief that they are less likely to be audited. Although smaller numbers of energy consumers will be directly impacted, improper behaviour at any level undermines consumer confidence in the industry and can erode the benefits of competition.

In direct contrast to the Commission's view that larger retailers represent a greater compliance risk, new entrant retailers may actually pose a greater compliance risk due to:

- Aggressive customer acquisition strategies;
- Inexperienced staff; and
- Lack of sophisticated compliance system and governance procedures.

Further to this, EnergyAustralia contends that new entrant retailers have entered the Victorian market on the basis that they would be governed by the NECF regime. Although established retailers have faced a number of challenges during the current transitional period, challenger brands have never been required to manage compliance in multiple jurisdictions and deal with the challenges that this presents.

EnergyAustralia suggests consideration of experience dealing with the Victorian regulatory framework should be considered as a factor to determine risk.

EnergyAustralia is also concerned about the use of EWOV Quarterly Reports as a factor for determining licensee risk. EWOV Quarterly reports are at best a blunt tool as they report simple statistics which do not necessarily reflect an entity's actual compliance performance. There are a number of factors which can seriously impact on the number of complaints levelled against a business which has no direct correlation with compliance. These factors include:

- The number of customers that a business has;
- The nature of the business's customer base (residential, small business, commercial and industrial);
- The level of marketing activity that each business is undertaking;
- Whether the business has recently been required to display EWOV's details on its invoices.

These contextual factors are important to consider and can paint a greater picture of an entities compliance than raw complaint numbers in isolation.

Furthermore, the EWOV quarterly reports are inherently flawed through their use of quantitative rather than qualitative analysis. Some of the limitations regard the way data is presented include:

- Lack of evidence that complaint represents an actual non-compliance. A complaint is registered against a retailer regardless of whether or not there is an actual compliance issue. A change to the way a retailer operates (ie, the introduction of a certain fee that is allowed for under regulation and can be charged according to a retailer's market terms and condition) can generate a large number of complaints, but not represent any sort of compliance issue. Furthermore EWOV acknowledges in their quarterly reports that it "is limited to hearing only the customer's 'side of the story'."¹
- Multiple complaints registered on the same issue. Many customers seek instant outcomes and raise the same complaint on multiple occasions. These complaints are double counted in quarterly reports.
- Definition of complaint. If a customer has multiple accounts and there is a single issue which impacts all accounts, multiple complaints are raised. EnergyAustralia considers that this practice distorts complaint figures.

¹ EWOV Marketing and Transfer Report 1 October 2012 to 31 December 2012

EnergyAustralia suggests that a weighting be applied to the risk factors in recognition of the acknowledged deficiencies of the EWOV reports.

3. Draft Decision – Section 2

EnergyAustralia notes the statement made in section 2.1.2 “The Commission’s audit program for 2013 is yet to be finalised, but it is expected that some or all Victorian distributors and energy retailers will be required to undertake regulatory audits in the first half of 2013.” Furthermore, the Draft Decision states that the ESC intends to publish advance notice of its audit plan. If the ESC intends to conduct audits of businesses in the first half of 2013, we would suggest that there is insufficient time to provide adequate notice and conduct audits before the end of June. EnergyAustralia would urge the ESC to be mindful of the resourcing impacts of audits and ensure that an audit plan is published in sufficient time to allow businesses to coordinate resources and schedule other audits.

Appointing the auditor

EnergyAustralia is not opposed to the establishment of an Audit Panel however wishes to point out a number of practical considerations from its experiences with this model in other jurisdictions and in Victoria under the VEET scheme.

The creation of panel of qualified auditors provides licensed entities with a resource to enable them to find a suitable auditor who has been pre-approved by the ESC. It does however provide an effective cap to the number of companies/individuals available to undertake audits and can lead to scheduling difficulties where multiple retailers are seeking to engage the same auditor. This difficulty is compounded in instances where a licensed entity has engaged one or more members of the panel to undertake unrelated work during the audit window as the pool of auditors available to them is reduced.

EnergyAustralia supports the establishment of an Audit Panel on the basis that it comprises a sufficient number of firms to avoid the risk of scheduling issues.

Conduct of Audits

EnergyAustralia is concerned about the ESC’s expectation of auditors.

The Draft Decision states that auditors will be required to assess in relation to regulatory information whether:

- Existing controls, when affected by changes in regulatory requirements, have been modified to retain their effectiveness; and
- Changes to existing systems are authorised, tested, approved, properly implemented and documented, to maintain system integrity:

In the current uncertain regulatory environment it is difficult to modify controls in a timely manner. We point to the ESC’s parallel work streams around NECF harmonisation in reporting of KPIs and broader harmonisation of the Energy Retail Code. EnergyAustralia are currently awaiting a decision from the ESC on KPI reporting but have been advised that they will have four weeks to comply with whatever decision is released. Regulatory processes such as this are unrealistic and do not provide businesses with sufficient time to modify controls as they are under extreme pressure to meet compliance obligations.

With regard to systems changes, many auditors will find it difficult to do this within the required timeframe. Audits generally stay away from systems as it is very difficult, costly and time consuming to audit a complete system, let alone systems which speak to each other. Furthermore, many retailers outsource IT changes to third parties which can make access to testing information and the like difficult to obtain.

EnergyAustralia considers this to be an unrealistic expectation which will impose additional costs on retailers. The additional work required, along with the ESC’s expectations in terms of

timeframes for completion of audits may deter audit firms from nominating for the panel and will exacerbate the scheduling difficulties faced by licensed entities and auditors.

4. Audit Deed

EnergyAustralia has some comments with regard to the amendments to the audit deed.

Variance between draft and final Audit Reports

It is important to provide further guidance on what is defined as a material amendment. There is generally a period of discussion following the development of a draft audit report. In many instances, amendments are made prior to the finalisation of the report where the auditor and the licensed entity agree that the draft does not adequately reflect the situation. Seeking ESC approval to amend the draft report will lead to delays and will frustrate the ESC's stated objective of reducing the "lengthy and unnecessary delays in the Commission's ability to finalise audits..."² EnergyAustralia considers that materiality should be defined in order to avoid these potential delays.

Records and Documents

EnergyAustralia is strongly opposed to the ESC publishing audit reports (including drafts) in their entirety. EnergyAustralia prefers the approach whereby the ESC draft a summary report of findings.

Full publication of audit reports may encourage licensed entities to be less forthcoming with information to auditors for fear of commercial or reputational damage, may encourage auditors to be less thorough in order to increase their chances of obtaining future work from the licensed entities, and would put the ESC at risk of breaching privacy provisions if it failed to adequately redact any report which contained personal information prior to publishing it on their website. Further, EnergyAustralia does not believe that there is any public benefit in publishing reports in full provided that customers who are impacted by compliance breaches are appropriately remediated and corrective action plans are developed and implemented by the auditee.


EnergyAustralia is even more strongly opposed to the publication of draft reports. These reports may contain material errors of fact arising from misunderstanding on the part of the auditor and by their very nature as drafts do not accurately reflect the auditor's final position.

5. Summary

EnergyAustralia welcomes moves to amend the auditing framework to ensure greater compliance across all sectors of the industry. I hope the ESC takes on board these comments to ensure that the framework achieves its objectives of providing greater transparency of the compliance performance of licensed entities but does so in manner which minimises costs to industry (and ultimately consumers) and interruption to day to day business operations.

If you would like to contact me about this submission, please call me on (03) 8628 1731.

Yours sincerely



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Regulatory Manager

² Draft Decision- Guideline 22 – Regulatory Audits of Energy Businesses March 2013 p2.