

Statement of Findings

Subject matter: Aurora Energy's compliance with clause 8.6.12 and clause 8.4 of the Tasmanian Electricity Code.

Purpose

The Regulator has conducted a review of Aurora Energy's compliance with clause 8.6.12 (Electromagnetic Interference) and clause 8.4 (Complaint Handling) of the Tasmanian Electricity Code.

This is the statement of findings following the review.

Background

In June 2007, the Regulator received certain information from Mr Greg Todd alleging that Aurora had breached the Code; in that it had failed to ensure that the electromagnetic interference (EMI) caused by its distribution system was below the limits set out in AS/NZS 2344-1997. Mr Todd referred in particular to the location of Mt Nelson where Broadband over Powerlines (BPL) was being trialled by Aurora's subsidiary, Aurora Energy AAPT Pty Ltd (trading as TasTel), on the distribution network.

Mr Todd also stated that Aurora had not responded to his letter of complaint dated 6 July 2006 in accordance with the complaint handling procedure prescribed in clause 8.4 of the Code.

Under the relevant electricity licence, a licensee is required to comply with, *inter alia*, the Code. Information provided by Mr Todd concerned potential breaches of the Code by a licensee. The Regulator treated the matters raised by Mr Todd as a licence compliance matter rather than a complaint resolution matter, as the relevant legislation has set up other bodies and processes to deal with and resolve customer complaints. The Regulator's primary role concerning the information from Mr Todd is to ascertain whether there has been a breach of the relevant licence conditions, the nature and impacts of the breach(es), if any, and the appropriate remedial actions in the light of the Regulator's functions and objectives as set out in the *Electricity Supply Industry Act 1995*.

Mr Todd was accordingly advised of the Regulator's primary role and approach regarding the matters raised by him.

During the review of Aurora's compliance with the Code, the Regulator wrote to Aurora on a number of occasions requiring information and responses. Aurora's responses at various times were not all conducive to the determination of the two Code compliance matters. Aurora repeatedly stated that it had no record of Mr Todd's 'complaint letter' of 6 July 2006.

The Regulator later received advice from Aurora on 26 November and 3 December 2007 that it had withdrawn its involvement with TasTel and also concluded the BPL trial initiative.

In January 2008, consistent with the principle of natural justice, the Regulator provided Aurora with a copy of the Regulator's preliminary finding on the matter of EMI affording Aurora the right of reply. The Regulator's preliminary finding was based primarily on the published report of the independent authority, the Australian Communications and Media Authority (ACMA) concerning the measurements performed in the relevant areas on 11-12 January 2007. The Regulator also provided Aurora with a copy of Mr Todd's 'complaint letter' of 6 July 2006 (provided to the Regulator by Mr Todd) and asked Aurora to review whether all relevant issues raised in the letter have been appropriately addressed and responded to in accordance with the Code.

On 8 February 2008, Aurora responded to the Regulator's preliminary findings and also undertook to review Mr Todd's 'complaint letter' forwarded by the Regulator. The Regulator received a further letter from Aurora on 15 February 2008 enclosing Aurora's letter to Mr Todd responding to the matters raised in the 'complaint letter'.

1) Aurora's compliance with clause 8.6.12: Electromagnetic Interference

Clause 8.6.12 of the Code states that a Distribution Network Service Provider must ensure that EMI caused by its distribution system is less than the limits set out in AS/NZS 2344-1997 *Limits of Electromagnetic Interference from Overhead AC Power Lines and High Voltage Equipment Installations in the Frequency Range 0.15 to 1000 MHz* and any industry guidelines in respect of waveform distortion.

Clause 8.6.12 deals with highly technical matters concerning electromagnetic interference in the electricity distribution system. It is proper for the Regulator to take account of expert opinion of the appropriate independent authority such as the ACMA, which has been established to oversight and investigate, *inter alia*, matters relating to EMI.

The ACMA Report, *Measurements of BPL Emissions performed 11-12 January 2007*, provides results of a series of emissions tests undertaken by the ACMA at the Mt Nelson location. The ACMA Report shows that emissions levels on Aurora's distribution network at the relevant time exceeded the AS/NZS 2344-1997 levels of 36 to 23 DB μ V/m (at a corridor width of 0m); for instance, Test 18 shows that the limit was exceeded even when measurements were taken 10 metres from the overhead powerlines.

Based on the test results in the ACMA Report, the Regulator stated in its preliminary finding that Aurora was not compliant with clause 8.6.12 of the Code.

In responding to the Regulator's preliminary finding, Aurora did not concede that the results of the emissions tests in the ACMA report necessarily indicate a breach of the Standard hence any breach of the Code. Aurora was of the view that 'clause 8 of the Standard which prescribes the methodology of testing compliance with the standard appears to require a long-term or periodic sampling process rather than a one-off measurement'.

Aurora noted that the monitoring authority (ACMA) ‘had no issue with the level of emissions detected by the test it conducted, perhaps influenced by the ‘trial’ and therefore transient nature of any excess emission levels detected. This brings into context the compliance (or non-compliance) definition Clause 8 referred to above. If in fact there was a breach it was unintentional and should be seen in the context of the limited nature of the trial which as previously indicated, has since been terminated.’

The Regulator notes Aurora’s view regarding the application of clause 8.6.12 and ACMA’s opinion in the context of its jurisdiction. However, clause 8.6.12 is unambiguous as to Aurora’s obligation to ensure that EMI caused by its distribution system is below the level as set out in AS/NZS 2344-1997. Clause 8.6.12 makes no provision for brief or unintentional breaches as proposed by Aurora and prescribes remedial actions to be followed by the distributor, such as:

(d) A *Distribution Network Service Provider* must investigate the source of any electromagnetic interference in its *distribution area* above the limits set in AS/NZ 2344-1997 “Limits of Electromagnetic Interference from Overhead A.C. Power Lines and High Voltage Equipment Installations” and any industry guidelines in respect of waveform distortion.

(e) If a *Distribution Network Service Provider* establishes that the source of electromagnetic interference above the relevant limits is in its *distribution system*, it must reduce the level of electromagnetic interference below those limits.

In reviewing compliance matters, the Regulator is required to make findings based on the relevant events and applicable regulatory instruments.

Finding

Based on the testing results by an independent authority, the Regulator found that at the relevant time, Aurora failed to ensure that the EMI levels caused by its distribution system were less than the limits set out in AS/NZS 2344-1997. Thus Aurora was in breach of clause 8.6.12 of the Code at the relevant time. However, since Aurora has ceased the BPL trials, no further action is proposed.

2) Aurora’s compliance with Clause 8.4: Complaint Handling

Mr Todd asserted that Aurora did not follow the complaint handling procedure prescribed in clause 8.4 of the Code in responding to his letter of complaint dated 6 July 2006. Mr Todd was adamant that Aurora had received the letter.

Clause 8.4 of the Code requires a distribution network service provider to handle customer complaints in accordance with the relevant Australian Standard, namely AS/ISO10002-2006.

This clause also provides, *inter alia*, that the entity must inform customers of their right to raise the complaint to a higher level within the entity’s management structure

and their right to refer the complaint to the Ombudsman or other external dispute resolution body if the complaint is raised to a higher level.

The intent of clause 8.4 is to ensure that customer complaints are handled appropriately and to provide the venue for merit review of the entity's decision by the Ombudsman or an external dispute resolution body. Accordingly, the Regulator's primary concern regarding this matter is whether Mr Todd's letter of complaint of 6 July 2006 had been handled appropriately in accordance with the Code.

Aurora has at various times stated that it has responded to Mr Todd's letters appropriately and in a timely manner, and it has not received Mr Todd's letter of 6 July 2006. In particular, in a letter to the Regulator on this matter, Aurora states that the relevant officer conducted a diligent search of the relevant files and could not find any record of the letter concerned.

The Regulator has noted both Mr Todd's statement that he had sent the letter and Aurora's assertion that it had not received the letter. The Regulator has no reason to doubt either party. After the letter was sent by Mr Todd, it is a question of fact whether or not Aurora received the letter concerned, hence, was in a position to reply to it. The Regulator is not in a position to make a definite determination whether or not the letter reached Aurora. The Regulator has considered it more productive to ensure that the matters raised in the letter have been appropriately reviewed and handled by Aurora in accordance with the Code. To this end, after receiving a copy of the letter from Mr Todd, the Regulator forwarded it to Aurora on 30 January 2008 and asked Aurora to review the matters raised in the letter.

Aurora subsequently wrote to Mr Todd on 15 February 2008 responding to the matters raised in the letter. In doing so, the Regulator considers Aurora has now dealt with the matters appropriately, noting that Aurora could have requested the letter itself at an earlier stage. The Regulator reiterates that clause 8.4 concerns the handling of customer complaints rather than the merits of the entity's decision which may be reviewed by the relevant external bodies such as the Ombudsman. Hence, it is open to any electricity customer to refer its complaint to the Ombudsman or other appropriate external bodies if it disagrees with the decision or action of the entity concerned.

Finding:

The Regulator is satisfied that after receiving a copy of the letter concerned from the Regulator, Aurora has handled Mr Todd's complaint letter in accordance with the Code.

Andrew Reeves
Regulator

18 March 2008