

# Annual Compliance Monitoring Report 2021-22

A summary and assessment  
of compliance reports  
received from licensees for  
the 2021-22 financial year

November 2022

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## Abbreviations and acronyms

Assure Energy	Assure Energy Asset Pty Ltd
BSF	BSF Co Pty Ltd as trustee for the BSF Unit Trust
CEO	Chief Executive Officer
Commission	Utilities Commission of the Northern Territory
EDL Jabiru	EDL Jabiru Pty Ltd
EDL NGD	EDL NGD (NT) Pty Ltd
Eni	Eni Australia Limited
ER Act	<i>Electricity Reform Act 2000</i>
ERSC	Electricity Retail Supply Code
Guidelines	Utilities Commission Compliance Framework and Reporting Guidelines
HCPS	HCPS Co Pty Ltd as trustee for the HCPS Unit Trust
IPP	independent power producer
Jacana	Power Retail Corporation trading as Jacana Energy
Merricks	Merricks Capital Pty Ltd
PWC	Power and Water Corporation
QEnergy	QEnergy Limited
Rimfire	Rimfire Energy Pty Ltd
SCTC	System Control Technical Code
SMMP	safety management and mitigation plan
TGen	Power Generation Corporation trading as Territory Generation
UC Act	<i>Utilities Commission Act 2000</i>
WSSS Act	<i>Water Supply and Sewerage Services Act 2000</i>

## Overview

The supply of electricity, water and sewerage services is essential for the comfort, health and productivity of Territory households and businesses. The Utilities Commission (Commission) is the economic regulator responsible for oversight of licensed providers of these services.

Licensees are required to comply with the conditions of their licence and relevant laws, codes and other regulatory instruments. Obligations under these instruments provide important protections for customers and help ensure services are reliable, safe, efficient and cost-effective.

The Commission monitors licensees' compliance with regulatory obligations primarily based on information reported by licensees, audits and complaints by stakeholders. As part of reporting requirements, licensees submit an annual compliance report to the Commission, which declares, among other matters, instances of non-compliance (also referred to as breaches) in the immediately preceding year.

This compliance monitoring report provides a summary of non-compliance in 2021-22 reported by electricity, water and sewerage supply licensees. The report also provides the Commission's assessment of, and any enforcement action it has taken in relation to, those breaches. The report seeks to provide transparency on the compliance performance of licensees and promote accountability by licensees for rectifying non-compliances.

### Key points from the report are:

- 13 licensees submitted compliance reports for 2021-22.
- Two licensees reported no instances of non-compliance (material or non-material).
- One licensee reported material and non-material breaches of requirements relating to life support provisions under the Electricity Retail Supply Code. A second licensee reported non-material breaches of the life support provisions.
- While the conduct and remedial actions of licensees in responding to breaches of the life support provisions met the Commission's expectations, the Commission emphasises the seriousness of non-compliance with life support provisions. These obligations provide important protections for vulnerable customers and retailers and network providers need to proactively identify and address any weaknesses in their systems and processes that could lead to non-compliance.
- Eight licensees failed to report changes in office holders, as required under their licences, a disappointing outcome. The Commission will communicate with all licensees to clarify and remind them of the importance of compliance with notification requirements.
- Remaining instances of non-compliance reported in 2021-22 were non-material.
- The Commission has placed additional requirements on, and increased oversight of, some licensees in order to be reassured of the robustness of their compliance process.

# 1 | Introduction

The Commission is an independent statutory body established by the *Utilities Commission Act 2000* (UC Act) with defined roles and functions for economic regulation in the electricity, water and sewerage supply industries and declared ports in the Northern Territory. As part of its functions, the Commission is responsible for administering licensing of the electricity supply industry under the *Electricity Reform Act 2000* (ER Act) and water supply and sewerage services under the *Water Supply and Sewerage Services Act 2000* (WSSS Act).

A licence is required for the following operations under the ER Act and associated regulations and the WSSS Act:

- the generation of electricity
- owning or operating an electricity network or a dedicated connection asset
- selling electricity (retail)
- monitoring and controlling the operation of a power system (system control)
- operating a wholesale market
- water supply services
- sewerage services.

A private port operator is taken to be a licensed entity for the purpose of the application of the UC Act, and the Commission regulates prescribed services at the Port of Darwin through a pricing and access regime, but there is no associated licensing regime. Compliance reporting by private port operators is excluded from this report, but private port operators are subject to separate reporting obligations under the *Ports Management Act 2015* and related regulatory instruments. Reports produced by the Commission relating to the port access and pricing regime can be found on the Commission's website at <https://utilicom.nt.gov.au/ports/reporting>.

## Licensing and compliance reporting

Each year, holders of electricity, water and sewerage supply licences are required to report to the Commission on compliance with requirements of their licence, relevant legislation, codes and other regulatory instruments as well as their framework to support compliance.

The reporting interval for compliance reports is set by the Commission through its Compliance Framework and Reporting Guidelines (Guidelines), which are available on the Commission's website (<https://utilicom.nt.gov.au/>). The Guidelines require relevant licence holders to submit an annual compliance report by 31 August each year. The Guidelines also require inclusion in the report of a declaration of responsibility from the Board of the licensee on the following:

- that the licensee maintains an appropriate compliance framework that complies with the requirements of its licence and
- the licensee has complied with all licence obligations during the immediately preceding financial year, with the exception of those non-compliances listed in its compliance report.

The information sought by the Commission as part of the annual compliance report is consistent with the type of information that the licensee should be providing to its Board, with further information supplemented by an audit process from time to time.

Annual compliance reporting obligations may not extend to all licensees, for example, the Commission exempts Independent Power Producer (IPP) licence holders from annual compliance reporting requirements as their operations have relatively limited impact on consumers. IPP licence holders are, however, still required to comply with all applicable laws and regulatory instruments and report material breaches to the Commission, consistent with their licence conditions. Further, to avoid there being any doubt, the Commission requires relevant exempted licensees to provide annual confirmation

that there have been no material breaches of licence conditions or other applicable regulatory instruments.

## Material non-compliance

Instances of non-compliance are classified as either material or non-material breaches. While a licensee's annual compliance report lists all instances of non-compliance (material and non-material), in the case of material breaches, there are additional reporting requirements.

The Commission considers a breach to be material when it has the following attributes:

- the incident adversely affects customers (financially and/or service provision)
- a significant number of customers are affected
- regulated entity's ability to provide services is compromised or
- public health and safety is threatened.

Licensees must also consider the impact of repeated individual non-material breaches and the possibility that, in totality, these lead to a material non-compliance.

A licensee is required to notify the Commission of any material breach as soon as reasonably practicable after becoming aware that the breach has occurred. The Commission's requirements in relation to the reporting of material breaches are outlined in the Guidelines. These requirements include that the licensee's compliance framework must contain a process for escalating and reporting breaches and that the licensee must make its Chief Executive Officer (CEO or equivalent) and Board aware of any material breaches without delay and the process for remediation of the breach.

If a licensee is in doubt as to whether or not a non-compliance is material, it is advisable for the licensee to immediately notify the Commission of the compliance breach.

## The Commission's approach to compliance

The Commission aims to foster a culture of compliance by granting licences on the condition that regulated entities:

- establish a compliance process that is maintained, regularly updated and auditable
- report on identified material breaches as soon as reasonably possible
- undertake external compliance audits when required by the Commission
- submit an annual compliance report to the Commission.

The Commission requires licensees to establish, implement and maintain policies, procedures and systems to ensure compliance (a compliance framework) and that the compliance framework reflects industry best practice with this standard being, as of April 2021, ISO 37301 Compliance management systems.

The Commission considers the requirement for a licensee to develop and maintain an adequate compliance framework and compliance reporting processes assists licensees to manage risk in a systematic and proactive manner and when non-compliance occurs, it is detected and licensees take action to address actual and potential impacts, rectify the problems that gave rise to the breach and implement measures to avoid further occurrence of similar breaches.

### Risk identification and risk assessment

The Commission expects licensees to systematically identify compliance obligations and the way in which they impact on activities, products and services, for example, through a register of compliance obligations (compliance register). The identification and rating of the risk of breaching obligations is the responsibility of each licensee and is an integral part of a licensee's compliance framework.

A licensee is also expected to have processes in place to identify new and changed laws, regulations, codes and other compliance obligations to ensure ongoing compliance and processes to evaluate the impact of the identified changes and implement any changes in the management of the compliance obligations.

### Monitoring and enforcement

As discussed previously, the Commission primarily monitors the compliance of licensees through breach and compliance reporting and audit requirements.

The Commission exercises judgement and discretion in determining what enforcement measure to take in response to a breach. In determining its response, the Commission considers the nature and impact of the breach, the compliance attitude and history of the licensee, the licensee's remedial actions and other factors relevant to the breach.

When a licensee identifies non-compliance, the Commission expects licensees to address matters promptly and proactively, taking steps to remedy the impact of a breach and prevent reoccurrence of similar breaches. However, where the Commission is not satisfied with the sufficiency of the licensee's actions, the Commission will request additional steps be taken. Should the licensee fail to respond to such a request, the Commission's response to the matter will escalate and could include taking disciplinary action.

The statutory enforcement instruments available to the Commission under legislation are limited and tend to be punitive such as a fine or recovery of amounts equal to any benefit to the licensee of contravening a licence condition. The Commission may also suspend or cancel a licence. These measures would typically only be applied in the most serious cases where other enforcement measures have not resulted in compliance, are not considered to be sufficient or there is significant public benefit from applying statutory enforcements, for example, to deter others from engaging in similar conduct.

More generally, the Commission believes reputational damage provides a good incentive for licensees to comply with obligations and rectify breaches. To this end, the Commission publishes information on breaches in documents such as this report, to inform the public of licensees' compliance performance. Reporting is not, however, intended to be solely of a negative nature with the Commission seeking to also highlight positive outcomes where remedial action results in better protection and/or greater benefits for consumers.

## Purpose and structure of this report

The purpose of this report is to provide transparency on the compliance performance of electricity, water and sewerage supply licensees and to promote accountability by licensees for rectifying breaches. It also informs on how the Commission implements its approach to compliance. Following this introductory chapter, the report consists of four chapters:

- Chapter 2 provides detail on the licensees who provided annual compliance reports for 2021-22
- Chapter 3 informs on material breaches reported for 2021-22
- Chapter 4 discusses failures to notify the Commission of changes in key officeholders
- Chapter 5 summarises other reported instances of non-compliance.



## 2 | Compliance reports

### Licensees

One new licence was issued in 2021-22 with the Commission issuing a generation licence on 15 October 2021 for EDL Jabiru Pty Ltd to generate electricity for the town of Jabiru.

Thirteen licensees provided compliance reports to the Commission for the 2021-22 reporting period (**Table 1**). All reports were received by the due date of 31 August 2021.

**Table 1 Reporting licensees, 2021-22**

Licensee	Licence held
Assure Energy Asset Pty Ltd (Assure Energy)	Generation
BSF Co Pty Ltd as trustee for the BSF Unit Trust (BSF)	Generation
Department of Defence	Retail
EDL Jabiru Pty Ltd (EDL Jabiru)	Generation
EDL NGD (NT) Pty Ltd (EDL NGD)	Generation, Retail
Eni Australia Limited (Eni)	Generation
HCPS Co Pty Ltd as trustee for the HCPS Unit Trust (HCPS)	Generation
Next Business Energy Pty Ltd	Retail
Power and Water Corporation (PWC)	Network, System Control, Generation, Retail, Water Supply, Sewerage Services
Power Generation Corporation trading as Territory Generation (TGen)	Generation, Retail
Power Retail Corporation trading as Jacana Energy (Jacana)	Retail
QEnergy Limited (QEnergy)	Retail
Rimfire Energy Pty Ltd (Rimfire)	Retail

The Commission notes that the conditions of the Commonwealth Department of Defence's retail licence only require the Department of Defence to report instances of material non-compliance. However, as the Department of Defence is a relatively new licensee (the licence was issued in July 2020), the Commission requested an annual compliance report to confirm the Department of Defence had established a compliance system and was aware of its licence obligations and that it had no material instances of non-compliance in 2021-22.

### IPPs and isolated system licence holders

As noted in Chapter 1, IPPs are exempt from the requirement to provide annual compliance reports; however, the Commission requested IPPs confirm that there had been no material breaches of licence conditions or other applicable regulatory instruments. All five IPPs confirmed there had been no material breaches in 2021-22.

The Groote Eylandt Mining Company Pty Ltd holds an isolated system licence and is only required to declare material non-compliance. Groote Eylandt Mining Company Pty Ltd also confirmed that there had been no material breaches in 2021-22.

The Commission has not received any advice from other sources (such as complaints) to indicate that there has been instances of material compliance by these licensees.

## Compliance report declarations

As part of a licensee's annual compliance report, the Commission requires a declaration that a licensee has maintained an appropriate compliance framework that complies with the requirements of its licence. The requirements for annual reports are set out in the Commission's Guidelines and include a template declaration, which most licensees adopted. In the case of new licensees, this declaration provides confirmation that they have met their licence obligation to establish (and maintain) a compliance process within three (3) months of the issue of their licence, as required by their licence.

The Commission also requires a declaration of responsibility and sign-off of the annual compliance report by the CEO and Chairman of the Board (or other persons with powers at a similar level) of the licensee. In recognition of other corporate structures, a licensee can propose reasonable alternative arrangements for sign-off for the Commission to consider and approve. Licensees typically adopted the standard declaration provided as part of the reporting template in the Commission's Guidelines.

## Schedule A – relevant obligations

Schedule A to each licensee's compliance report should list legal instruments and other documents containing relevant obligations. These include licences, legislation, regulation, codes, pricing orders and guidelines. Regardless of what licensees choose to list in Schedule A of their annual compliance report, it is their responsibility to identify and maintain a current and comprehensive list of relevant instruments. Failure to do so increases the risk of non-compliance. Deficiencies in a licensee's Schedule A, combined with other factors, may also indicate to the Commission that the licensee does not sufficiently understand its obligations and/or have an appropriate compliance framework in place.

All licensees should regularly review their Schedule A list to ensure that it captures all obligations and remains up-to-date with any changes in obligations.

### 3 | Non-compliance relating to life support customers

In 2019, the Commission varied its Electricity Retail Supply Code (ERSC) to include, among other things, strengthened protections for customers requiring life support equipment at their premises (life support customers). This addressed the lack of formal protections under the ER Act or other legislation, which posed a significant risk to these vulnerable customers.

The obligations under clause 10 of the ERSC are based on rules introduced in 2017 by the Australian Energy Market Commission for jurisdictions in the National Electricity Market subject to the National Energy Retail Rules<sup>1</sup>. Clause 10 places obligations on retailers and network providers to advise each other of life support customers, keep updated registers of these customers and undertake specific actions designed to protect life support customers in relation to interruptions and disconnection.

For the purposes of the provisions under clause 10, life support customers are persons who have medical confirmation that a person residing or intending to reside at the customer's premises requires any of the following equipment:

- an oxygen concentrator
- intermittent peritoneal dialysis machine
- a kidney dialysis machine
- a chronic positive airways pressure respirator
- crigler najjar syndrome phototherapy equipment
- a ventilator for life support and
- in relation to a particular customer – any other equipment that a registered medical practitioner certifies is required for a person residing at the premises for life support.

Any non-compliance with the life support provisions in the ERSC is a serious matter as the failure to comply with these obligations could have detrimental and even fatal consequences.

#### Material non-compliance

##### Jacana Energy

In February 2022, Jacana notified the Commission that there had been a material breach against obligations under clause 10 of the ERSC with a life support customer disconnected because their premises had not been registered despite advice to Jacana that a person who required life support equipment resided at the property.

Senior executives from Jacana notified the Commission of the event and confirmed that its Board and the Minister for Essential Services had also been informed. Jacana advised the Commission that no harm was caused to the customer and electricity supply had been reconnected. Jacana also advised that its initial investigation of the incident identified another similar breach although in that instance the disconnection did not proceed when the network provider was alerted that a customer requiring life support equipment was residing at the premises.

Following its initial notification, Jacana kept the Commission informed of investigatory and remedial action being undertaken in relation to the breaches. Remedial action undertaken by Jacana included:

- independent external investigation to enable Jacana to understand the interactions between the customers and Jacana's employees and the elements of Jacana's compliance procedures and their implementation that led to the breaches

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<sup>1</sup> The National Electricity Market (NEM) supplies consumers in five eastern and southern states and the Australian Capital Territory. The Northern Territory and Western Australia are not connected to the NEM and have their own electricity systems and regulatory arrangements. The National Energy Retail Rules apply in the Australian Capital Territory, New South Wales, Queensland, South Australia and Tasmania.

- a temporary cessation of residential disconnections for non-payment until relevant business rules were reviewed and changes documented and communicated to employees
- communication to, and training of, employees, collectively and individually, to reinforce the priority and importance of compliance obligations and the correct life support registration processes
- improvements to training materials, processes and practices and
- disciplinary action.

The Commission confirms that Jacana acted in accordance with clause 11.5 of Jacana's retail licence, which requires a material breach to be reported to the Commission as soon as reasonably possible. Jacana also acted in accordance with clause 3.27 of the Commission's Guidelines, which requires the CEO and the Board of the licensee to be made aware of any material breaches without delay.

The Commission considers Jacana correctly identified that these breaches were material. Specifically, the breaches are that Jacana did not follow registration and provision of information obligations stipulated in clause 10.3 of the ERSC following advice from a customer that life support equipment is required at their premises. Jacana also failed to comply with the requirement under clause 10.4A.1(c) to not arrange for the de-energisation (disconnection) from the date that life support requirement will be required at premises.

The Commission observed the priority and gravity that Jacana's senior executives gave to the breaches and in taking action to address them. This included Jacana's CEO leading the organisation's remedial response, commencing with immediate briefing of all employees to emphasise the importance of compliance and the processes that must be followed to ensure life support obligations are met.

The Commission considers that there was suitable independent assessment to establish the facts and causes of the breaches. Further, Jacana's remedial actions in response to the breaches were appropriately targeted and timely. The Commission also notes Jacana's long standing commitment to protecting life support customers including that Jacana voluntarily maintained a life support register prior to the introduction of formal requirements in the ERSC.

The Commission required Jacana to provide regular updates on the implementation of its remedial actions and with these now complete, the Commission requires no further action from Jacana. The Commission does not propose to take disciplinary action in relation to the breaches; however, this does not imply that the Commission accepts or tolerates Jacana's breaches. Rather, Jacana's attitude toward compliance and the nature and expediency of Jacana's remedial actions has met the Commission's expectations. Further, the inclusion of the breaches in this report provides transparency on, and holds Jacana to account for, the actions that it has taken to prevent further occurrence of similar breaches.

## Non-material breaches

### Jacana Energy

Jacana reported non-material breaches in relation to clause 10.3A.1(b) of the ERSC, which requires a retailer to provide a medical confirmation form and associated information in writing to a customer no later than five business days after receipt of advice that a person residing or intending to reside at the customer's premises requires life support equipment. Jacana identified 16 incidents where the materials were not sent within the required timeframe. Five incidents were due to customer care agent error and 11 due to system errors. Jacana advised that although the forms were not sent in the required timeframe, other registration processes were followed, which means the customers were registered, including with PWC (the network provider) and covered under life support processes.

The Commission notes Jacana's advice that it continues to identify and remedy problems with its system and has processes, reporting and checks in place to identify where materials have not been sent and a manual solution is needed. The Commission also notes Jacana's advice that it provided refresher training and reviewed and updated relevant business process instructions in response to staff related errors. The Commission will monitor trends in Jacana's performance to confirm that its remedial actions have been effective.

## Power and Water Corporation

PWC reported a non-material breach of clause 10.7 of the ERSC with amended life support equipment procedures not being provided to the Commission for approval prior to publication. The amended procedures were subsequently provided to the Commission and approved without change.

PWC also reported non-material breaches against requirements under clauses 10.3, 10.4 and 10.5 of the ERSC, which relate to the registering and deregistering of life support customers. PWC advised that system limitations affect the 'visibility' of the life support status flag when a life support customer requests a final meter reading for the purpose of exiting and relocating to different premises. As a result, for three life support customers this issue led to the life support status flag not being applied to the new premises and accompanying deregistration and registration processes not being followed. The error was detected through reconciliation processes between PWC and retailers, which check for consistency in their records of life support customers.

PWC advised that there were no planned works during the period when the three customers were unregistered, but acknowledged that the customers were at risk during the time as their account did not have a life support status flag. That is, they did not have the security of notification of planned outages or procedures for unplanned notifications that are in place for life support customers. PWC advised that its process for final/transfer reads has been reviewed and amended to ensure visibility of the life support status flag is not lost and the customer's next premises are appropriately flagged (and relevant processes under the ERSC followed). PWC also advised that enhancements have been made to improve the level of assurance of exception reporting.

The Commission considers that PWC understands the risk to vulnerable customers caused by failures in its systems and notes PWC's advice that it has changed its processes to address the limitations of its systems. The Commission is also reassured that fail-safe measures established by PWC and retailers are detecting where there are anomalies in the registration of life support customers.

The Commission reiterates the importance of compliance with life support obligations in the ERSC. The obligations protect vulnerable customers and the Commission expects PWC and retailers to regularly audit their compliance and undertake other checks to proactively identify and address any weaknesses in their systems and processes. The Commission may also require licensees to appoint an independent auditor to undertake an audit of compliance with life support obligations.<sup>2</sup>

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<sup>2</sup> As provided for under clause 11.3 of network and retail licences.

## 4 | Non-compliance relating to advice of changes in key officer holders

### Purpose of requirement to notify of changes

Section 24(1)(e) of the ER Act and section 42(1)(k) of the WSSS Act require the Commission to make an electricity, water or sewerage supply licence subject to the condition that the licensee notify the Commission about changes to officers and, if applicable, major shareholders of the licensee. Typically this requirement is operationalised through clause 12 in electricity licences and clause 14 in water and sewerage licences. The licence condition requires licensees to notify the Commission of changes in officers and major shareholders within 20 business days after the change.

Advice of changes in officers and major shareholders is important because the Commission may only grant a licence if it is satisfied that the applicant is a suitable person to hold the licence (suitable person test).<sup>3</sup> In considering whether an applicant is a suitable person, the Commission considers (among other things) *“the officers and, if applicable, major shareholders of the applicant and their previous commercial and other dealings and the standard of honesty and integrity showing in those dealings (including breaches of statutory and other legal obligations)”*.<sup>4</sup> The Commission also considers the *“financial, technical and human resources available to the applicant”*.<sup>5</sup>

The granting of a licence means that the Commission has assessed the applicant (now licensee) as having met these requirements at the time when their application for a licence was approved. The Commission needs, however, to ensure that a licensee continues to remain a suitable person to hold the licence. If a licensee were to fail the suitable person test, it could be grounds for suspension or cancellation of the licence.<sup>6</sup>

### Non-compliance with clause 12 of licences

In 2021-22, eight licensees failed to provide the Commission with a notification of changes in officers in accordance with clause 12 of their licence. The licensees were:

- Assure Energy
- BSF
- Department of Defence
- Eni
- HCPS
- Jacana
- Next Business Energy Pty Ltd
- Rimfire

In some cases, notification was provided, but outside the required 20 business day timeframe. In other cases, licensees advised of changes as part of their annual licence return when the Commission seeks advice on turnover among personnel including those at a more operational level who commonly interact with Commission staff.

The Commission is concerned by this high rate of non-compliance among licensees, which may indicate shortcomings in licensees' understanding of licence obligations, compliance processes or their attitude toward compliance. Nonetheless, as it may also signal that there is uncertainty regarding what

<sup>3</sup> ER Act, and WSSS Act, section 16(2).

<sup>4</sup> ER Act and WSSS Act, section 16(3)(c)

<sup>5</sup> ER Act and WSSS Act, section 16(3)(b)

<sup>6</sup> ER Act, section 36(1)(d) and WSSS Act, section 24(1)(d)

positions require notification of changes given diversity in ownership, leadership and managerial structures among licensees, the Commission's initial approach is to write to all licensees to reiterate the importance of complying with notification requirements, provide guidance on relevant positions for which notifications are required and clarify processes for notifications. Should there be further instances of non-compliance, the Commission will consider its enforcement response on an individual basis.

## 5 | Other non-compliance reported for 2021-22

This chapter provides information on other key instances of non-compliance reported by licensees in 2021-22 including factors behind the breach, remedial action and the Commission's assessment of the non-compliance.

### Licenses reporting no breaches

Two licensees, EDL Jabiru and TGen, reported no instances of non-compliance in 2021-22.

### BSF Co Pty Ltd and HCPS Co Pty Ltd

Merricks Capital Pty Ltd (Merricks), an Australian based investment manager, is the manager for BSF and HCPS and prepares and submits the annual compliance report for both licensees. At the time of this report, the generation plant owned by BSF and HCPS has yet to complete commissioning and testing processes in order to supply electricity commercially into the Darwin-Katherine power system.

Merricks reported that BSF and HCPS were non-compliant with clauses 21 and 11 of their licences as both licensees were still working toward finalisation of their Safety Management and Mitigation Plan (SMMP) and Compliance Management Plan. Both licensees should have provided their SMMP to the Commission within three months of the issue of the licences (that is, by 27 January 2021).<sup>7</sup> By the same date, both licensees should have also established their compliance process.<sup>8</sup>

The Commission is aware of these non-compliances and has been engaging with Merricks to ensure that they are rectified. To this end, a SMMP covering both power stations was approved by the Commission on 1 September 2022.

The Commission notes that Merricks evidenced hazard and operational studies and the occurrence of risk workshops and risk review meetings in relation to the two power stations as part of its annual licence return and compliance reports. While this indicates some elements of a compliance process may be in place, the Commission considers the attention Merricks has given to establishing a compliance process is deficient. The Commission will continue to engage and closely monitor Merricks until the Commission is satisfied that Merricks has evidenced completion of its compliance process. Furthermore, in accordance with the conditions of its licences, Merricks must comply with its compliance process, which includes having auditable internal policies, procedures and systems to ensure Merricks complies with all its regulatory obligations.

### EDL NGD (NT) Pty Ltd

EDL NGD reported a non-material breach of clause 3.44 of the Commission's Guidelines, which requires the annual reports of licensees to be approved and signed by the CEO and Chairman of the Board (or similar). The non-compliance related to annual compliance reports for the period 2017-18 to 2020-21. The Commission had approved alternative signatories for EDL NGD's 2016-17 report (as provided for under clause 3.45 of the Guidelines); however, the approval was only for that report. This non-compliance has now been rectified through an ongoing approval by the Commission of alternative signing arrangements and no further action is required on this matter.

EDL NGD also reported that, as a retailer, it had not entered into a coordination agreement with PWC (as network provider), which is a requirement under clause 4.1.1 of the ERSC. This non-compliance was reported and discussed in the Commission's 2020-21 report. The Commission notes that EDL NGD has no retail customers, and therefore it has no need for a coordination agreement with PWC

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<sup>7</sup> BSF and HCPS generation licences, clause 21(a)

<sup>8</sup> BSF and HCPS generation licences, clause 11.1(a)



other than to comply with the ERSC. The application of clause 4.1.1 in these situations is considered in the Commission's draft decision for the ERSC review.<sup>9</sup>

## Jacana Energy

In addition to non-compliance discussed in previous chapters, Jacana reported two further non-material breaches in 2021-22. These relate to non-compliance with the Electricity Pricing Order in relation to application of the multipurpose tariff and failure to comply with disconnection requirements under clause 23 of Jacana's retail licence (wrongful disconnections).

### *Non-compliance with the Electricity Pricing Order – multipurpose tariffs*

Jacana reported that 111 sites assigned to the multipurpose tariff did not meet the annual consumption threshold for that tariff specified in the Electricity Pricing Order (16,425 kilowatt hours per annum). This resulted in the customers being billed at a higher rate for electricity consumed above the daily charging threshold (45 kilowatt hours), a collective overcharge of \$22,413. Jacana advised that determining whether a multipurpose customer's consumption is below the annual threshold can only be determined at year's end and as such, non-compliance cannot be prevented, only rectified.

The Commission notes Jacana's advice that it has implemented an annual process to identify and rectify these non-compliances, which includes refunding any overcharging. As the circumstances causing the non-compliance are beyond Jacana's control, the Commission does not require Jacana to annually report on this non-compliance unless there is a delay in rectify any overcharging following Jacana's annual review.

### *Wrongful disconnections*

Clause 23 of Jacana's retail licence states Jacana must not discontinue electricity supply to a customer except when it is in accordance with the customer's contract or disconnection procedures in the System Control Technical Code (SCTC). Jacana reported 27 customers were wrongfully disconnected (none of these were life support customers) in 2021-22, up from 22 in 2020-21. Despite the increase, Jacana advised that in proportionate terms, the level of disconnections remains stable and only comprises 0.3%<sup>10</sup> of total disconnections.

Ten of the wrongful disconnections related to errors by customer care agents with system and process errors causing the remainder of wrongful disconnections. Jacana advised that it has made improvements to training modules and undertook targeted coaching on disconnection processes. Jacana has also identified and implemented system enhancements to reduce the risk of manual error, increased exception reporting to identify incorrect disconnection dates and continues to undertake regular quality assurance monitoring. Jacana advised that reducing wrongful disconnections will continue to be a key focus area for 2022-23.

Jacana provided information on the duration of the wrongful disconnections and whether compensation was paid to customers. The data provided by Jacana shows 20 customers were reconnected on the same day and the longest duration was 10 days (in this instance the customer had exited and the premises were vacant). Jacana advised that all customers were offered the opportunity to claim compensation, but none of the customers took this option.

The Commission notes Jacana's commitment to and ongoing focus on reducing wrongful disconnections and that where instances do occur and reconnection is not possible on the same day, customers can submit a claim for compensation, for example, for a night's stay in a hotel or refrigerated food lost. The Commission will continue to closely monitor Jacana's performance and may consider, as part of its staged review of the Electricity Industry Performance Code, whether retail standards relating to wrongful disconnections are required.

<sup>9</sup> Available at <https://utilicom.nt.gov.au/projects/projects/electricity-retail-supply-code-review2>.

<sup>10</sup> In the Commission's 2020-21 report, the proportion for 2020-21 was stated as 0.2%. This was incorrect with Commission examination of underlying data from Jacana showing that the proportionate amount for both 2020-21 and 2021-22 is 0.3%.

## Power and Water Corporation

In addition to breaches discussed in Chapter 3, PWC reported eight further non-material breaches.

### *System Control non-compliance*

PWC reported four instances of non-compliance with the SCTC during 2021-22 as follows:

- System Control did not publish a Schedule of Audit and Inspection of compliance of network and system participant equipment for 2021-22 by 1 July 2021 as required under clause 6.22.1(e) of the SCTC. The Commission notes that the delay arose due to the COVID-19 lockdown and the schedule was published on 7 July 2021 when staff returned to work.
- System Control does not provide quarterly reports to system participants as required under clause 8.4.2 of the SCTC instead providing half yearly reports (which under clause 8.4.1 are only required to be provided to the Commission). PWC advised the half yearly report which was due by 31 January 2022 was provided three days late as a result of delays in finalising the distribution list. Non-compliance in relation to the provision of half yearly reports was reported in 2020-21 and the Commission is aware that PWC proposes to amend the SCTC to delete clause 8.4.2 and amend clause 8.4.1, noting quarterly reports have not been provided since 2013. A review of stakeholder submissions to PWC's 2021 consultation on proposed SCTC amendments found no system participant concerns regarding these two proposed amendments. Nonetheless, the Commission will consult with system participants as part of considering approval of PWC's proposed amendments.
- System Control did not provide a final incident report to the Commission within its target timeframe. The Commission notes that this is a failure to meet an internal standard rather than a non-compliance under the SCTC. The Commission observes, however, that PWC should have reported non-compliance in relation to the reporting of minor reportable incidents even though the Commission has agreed to take no enforcement action while System Control works on redefining these incidents as part of proposing amendments to the SCTC for the Commission's approval.
- an internal audit was unable to evidence that System Control had reviewed and approved a black start procedure for Channel Island power station (a non-compliance against clause 5.7 of the SCTC). PWC has advised the Commission that the procedure has now been reviewed and approved.

### *Water Services non-compliance*

PWC reported potential non-compliance with section 58 of the WSSS Act, which requires service officers to produce identification before exercising a power in relation to another person. More specifically, the Commission understands that PWC's service officers failed to show identification when attending to change a water meter including when requested to do so by the customer. As identification was not produced, the customer denied access to the meter. The meter was changed after PWC made another appointment and attending officers produced identification to the customer. PWC advised that a reminder of the requirement to show identification was communicated to its service delivery team following this incident.

The service officers' actions were, however, only identified as (potential) non-compliance following the customer making a complaint to the Commission and a subsequent investigation by PWC. PWC's investigation uncovered a number of issues including discrepancies between requirements in the WSSS Act and PWC's customer charter, weaknesses in PWC's induction training system and gaps in the customer complaints process in relation to reporting non-compliance.

The Commission is disappointed that the incident occurred and had to be brought to the Commission's attention before PWC undertook a thorough investigation of the matter. However, the Commission considers PWC's remedial actions should reduce the likelihood of further breaches. These actions include the introduction of new requirements in PWC's induction processes for new staff and contractors. The Commission expects PWC to schedule an audit within the next two years to confirm these have been successfully imbedded and are effective at reducing the risk of future non-compliance. The Commission also expects PWC's review of its customer charter to check more

broadly to confirm there are no other discrepancies between the charter and obligations in regulatory instruments and PWC's licences.

#### *Other non-compliance matters*

PWC reported there were two planned power outages where PWC failed to notify all affected customers (that is, breaches against clause 21 of PWC's network licence), with the failure to notify affecting four customers in total. PWC advised that it settled a claim with a commercial customer affected in one of the outages and guaranteed service level payments would be made to remaining customers. PWC advised it has rectified incorrect information in its systems that contributed to the breaches and introduced new work processes to minimise the risk of future non-compliance. The Commission is satisfied with PWC's remedial actions.

PWC reported current and historical non-compliance against clause 8.3.8 of the ERSC, which requires PWC to provide an annual exit point report to the Commission. The report is to provide information on exit points that are energised, but there is not a retailer responsible for the electricity being consumed at those exit points. PWC advised that it is assessing available information to produce an interim report and will seek feedback and confirmation on its approach to meet this requirement. The Commission expects PWC to meet this obligation in an expedient manner, and for PWC to provide regular updates to the Commission on progress toward achieving compliance.

## QEnergy

QEnergy reported three breaches in 2021-22. These related to the late return of QEnergy's annual return to the Commission (a delay of one day) and to charges relating to the operations of system control and wholesale electricity supply that were outstanding beyond terms. These are breaches of clauses 4, 8.2 and 19.1, respectively, of QEnergy's retail licence.

The Commission notes that the recovery of outstanding monies is a matter between the contractual parties. The Commission is, however, monitoring circumstances for any potential impact on customers or implications for QEnergy's suitability to continue to hold a retail licence.

## Rimfire Energy

In 2021, the Commission increased its oversight of Rimfire's compliance, including requiring Rimfire to commission an independent audit of compliance with its retail licence conditions and the Commission's Guidelines. Rimfire provided the outcomes from the audit to the Commission and non-compliances identified in the audit were referenced in Rimfire's annual compliance report for 2021-22.

The independent auditor found that although Rimfire had established policies and a compliance register, this did not constitute an adequate and systematic compliance process, as required under clause 11.1 of Rimfire's retail licence. The auditor also found eight instances of non-compliance with the Commission's Guidelines, which stemmed from Rimfire's lack of an appropriate compliance framework.

The Commission observes that following the audit, Rimfire has lifted its focus on compliance including increased resourcing for compliance activities. Rimfire is also regularly meeting with Commission staff to discuss progress on implementing the audit's recommendations and other compliance related matters. The Commission will maintain an elevated focus until it is satisfied that Rimfire's understanding and achievement of compliance meets the Commission's expectations.



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