

ANNUAL COMPLIANCE REPORT 2019-20

A summary of compliance reports received by the Utilities Commission from licensees for the 2019-20 year

November 2020

Disclaimer

This Annual Compliance Report has been prepared by the Utilities Commission in accordance with the *Utilities Commission Act 2000*. To the maximum extent permitted by law, the commission disclaims and excludes all liability for any loss, claim, demand, damages, costs and expenses of any nature (whether or not foreseeable and whether direct, indirect or consequential and whether arising from negligence or otherwise):

- suffered or incurred by any person relying or acting on any information provided in, referred to or omitted from, this document or
- arising as a result of, or in connection with, information in this document being inaccurate or incomplete in any way or by reason of any reliance on it by any person, including by reason of any negligence, default or lack of care.

Inquiries

Any questions regarding this report should be directed to the Utilities Commission at any of the following:

Utilities Commission
GPO Box 915
DARWIN NT 0801

Telephone: +61 8 8999 5480

Email: utilities.commission@nt.gov.au

Table of Contents

| | |
|--|----------|
| Introduction..... | 1 |
| Licensing and compliance..... | 1 |
| The commission’s approach to compliance | 2 |
| Compliance Reports | 4 |
| Schedule A – Relevant obligations | 5 |
| Non-compliance reported in 2019-20..... | 7 |
| Licensees reporting no breaches | 7 |
| EDL NGD (NT) Pty Ltd..... | 7 |
| Jacana Energy | 8 |
| Power and Water Corporation..... | 9 |
| Territory Generation..... | 12 |

Introduction

- 1.1 The Utilities Commission (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 and sewerage services under the *Water Supply and Sewerage Services Act 2000* (WSSS Act).
- 1.2 A licence is required for the following operations under the ER and WSSS Acts:
- the generation of electricity
 - owning or operating an electricity network
 - selling electricity (retail)
 - monitoring and controlling the operation of a power system (system control)
 - water supply services
 - sewerage supply services.

Licensing and compliance

- 1.3 Each year, holders of these licences are required to report to the commission on compliance with requirements of their licence, relevant legislation, codes and other instruments as well as their framework to support compliance.
- 1.4 Annual compliance reporting obligations may not extend to all licensees, for example, the commission exempts Independent Power Producer (IPP) licence holders from annual reporting requirements. 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.
- 1.5 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. Accordingly, compliance reporting by private port operators is excluded from this report.
- 1.6 For compliance reports, the reporting interval is set by the commission through its Compliance Framework and Reporting Guidelines (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:
- a) that the licensee maintains an appropriate compliance framework that complies with the requirements of its licence as set out in the Guidelines and
 - b) the licensee has complied with all licence obligations during the immediately preceding financial year, with the exception of those non-compliances listed in the compliance report.
- 1.7 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.

- 1.8 For the purpose of transparency, and to be consistent with the practices of other jurisdictions, this report provides a summary of the compliance reports received and instances of non-compliance reported by licensees, associated remedial action to resolve the breach and any enforcement action taken by the commission.

The commission's approach to compliance

- 1.9 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
 - undertake external compliance audits
 - submit an annual compliance report to the commission.
- 1.10 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 (that is, AS ISO 19600:2015 Compliance management systems – Guidelines or equivalent).
- 1.11 The commission considers the requirement for licensees to develop and maintain adequate compliance frameworks and compliance reporting processes protects the long-term interests of Territory consumers by ensuring services are reliable, safe, efficient and cost-effective. It also assists licensees to manage risk in a systematic and proactive manner and provides potential investors with the confidence that laws, regulations, rules and other instruments are being monitored effectively and applied consistently to ensure a level playing field for all market participants.

Compliance monitoring

- 1.12 The commission's compliance monitoring program comprises of three main elements:
- risk identification and risk assessment
 - ensuring compliance and
 - enforcement.

Risk identification and risk assessment

- 1.13 Licensees must 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 ranking of risks is the responsibility of each licensee.
- 1.14 A licensee is 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.

Ensuring compliance

- 1.15 The commission monitors the compliance of licensees through compliance and breach reporting and audit requirements. In particular, licensees are required to report any 'material' compliance breaches as soon as reasonably possible after the breach is identified and the remedial measures being taken to rectify the breach. 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
- public health and safety is threatened.

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

1.17 Non-material breaches are reported through the annual compliance reporting process.

Enforcement

1.18 The commission has discretion to undertake appropriate action in response to a breach. In most cases, the commission expects to be able to resolve matters by requesting active steps be taken to remedy the breach, but should the licensee fail to respond to such requests, the matter may be escalated to disciplinary action.

1.19 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. An alternative is for the commission to consider suspension or cancellation of the licence.

1.20 More generally, however, the commission believes reputational damage provides a good incentive for licensees to comply with obligations and promptly rectify a breach. To this end, it publishes information on material breaches and documents such as this report, to inform the public of licensees' 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.

Compliance Reports

- 2.1 One new licence was issued in 2019-20, being a retail licence for Territory Generation to sell and retail electricity to the Commonwealth Department of Defence at the Joint Defence Facility Pine Gap on 29 November 2020.
- 2.2 Ten licensees provided compliance reports to the commission for the 2019-20 reporting period (**Table 1**). All reports were received by the due date of 31 August 2020.

Table 1 Reporting Licensees

| Licensee | Licence Held |
|--|--|
| Batchelor Solar Farm Pty Ltd | Generation |
| EDL NGD (NT) Pty Ltd | Generation, Retail |
| Eni Australia Limited | Generation |
| Next Business Energy Pty Ltd | Retail |
| Power and Water Corporation | Network, System Control, Generation, Retail, Water Supply, Sewerage Services |
| Power Generation Corporation trading as Territory Generation | Generation, Retail |
| Power Retail Corporation trading as Jacana Energy | Retail |
| QEnergy Limited | Retail |
| Rimfire Energy Pty Ltd | Retail |
| Trutinor NT Pty Ltd | Generation |

- 2.3 As part of an annual compliance report, the commission requires a declaration of responsibility from the licensee's Board. Most licensees' reports adopted the declaration provided as part of the reporting template in the commission's Guidelines. The declaration is that signatories of the report (the Chief Executive Officer (CEO) and Chairman of the Board or alternative equivalent persons approved by the commission) state:

"We certify that we have made all necessary inquiries of appropriate officers of this organisation to confirm that management has developed a robust and effective compliance system that meets the regulatory arrangements relating to the electricity industry in the Northern Territory, and that the system has been implemented and is being appropriately used by the organisation. Further, we warrant the accuracy of data and information provided in all reports and submissions to the Commission."

- 2.4 Eni Australia Limited's (Eni's) annual compliance report included appropriate declarations, but the report signatories and reporting period did not meet the requirements set out in the Guidelines. Eni has advised that it will align its reporting to

the financial year and evaluate alternative signatory arrangements to ensure the report meets requirements for 2020-21.

- 2.5 While Territory Generation's (TGen's) annual compliance report certified that a robust and effective compliance system existed and was being used, there was no warranty regarding the accuracy of data and information provided to the commission. The commission notes, however, that TGen (and other relevant licensees) must comply with clauses 6.1.1 and 6.2.1 of the Electricity Industry Performance (EIP Code), which require the collection and maintenance of data, and for it to be subject to independent audit to verify the integrity and accuracy of data collected and reported, at least once every three years.¹
- 2.6 The first audit period is from 2017-18 to 2019-20², with only one of these years to be independently audited as a transitional provision although the commission recommends that it be undertaken for the 2019-20 financial year. The audits are to be completed by 31 January 2021³ and the independent auditor's final report is to be submitted to the commission by 28 February 2021⁴.
- 2.7 Where the independent audit identifies instances of non-compliance, the licensee must work towards compliance as soon as reasonably practical and provide an update to the commission every two months on the progress of achieving compliance.
- 2.8 The commission may discuss the findings of licensees' independent EIP Code compliance audits in its next annual compliance report.

Schedule A – Relevant obligations

- 2.9 Schedule A to each licensee's compliance report should list instruments and other documents containing relevant obligations. These include licences, legislation, regulation, codes, pricing orders (e.g. the Electricity Pricing Order) and guidelines.
- 2.10 A number of issues were identified regarding Schedule A in the reports:
- omission of instruments and documents
 - inclusion of superseded legislation
 - inclusion of non-applicable legislation.
- 2.11 It is licensees' responsibility to identify and maintain a current and comprehensive list of relevant instruments. Failure to do so increases the risk of non-compliance.
- 2.12 An omission from Schedule A in a number of reports was the Compliance Framework and Reporting Guidelines. Guidelines and other such documents should be included as they specify requirements referred to in legislation or other instruments. For example, clause 11.2 of a generation licence requires the provision of a compliance report, but the Guidelines specify the occurrence of the report and therefore, the obligation to be met.

¹ Note an electricity entity, which has nil performance during the auditing period, such as a retail entity with no small customers, is not required to undertake an independent audit.

² Refer clause 6.2 of EIP Code

³ Refer clause 2.2.3, EIP Code Independent Compliance Audit Guidelines

⁴ Refer clause 3.2.1, EIP Code Independent Compliance Audit Guidelines

- 2.13 The commission encourages all licensees to regularly review their Schedule A list to ensure that they are capturing all obligations in their compliance framework and to remain up-to-date with any changes in obligations.

Non-compliance reported in 2019-20

- 3.1 Breaches are self-assessed by licensees. In 2019-20, licensees reported no material breaches, but advised of 36 non-material breaches. The following sections provide information on the number of breaches and discussion on key instances of non-compliance including factors behind the breach, remedial action and the commission's assessment of the non-compliance.

Licensees reporting no breaches

- 3.2 Six licensees reported no instances of non-compliance in 2019-20:
- Batchelor Solar Farm Pty Ltd
 - Eni
 - Next Business Energy Pty Ltd
 - QEnergy Pty Ltd
 - Rimfire Energy Pty Ltd
 - Trutinor NT Pty Ltd
- 3.3 While several of these licensees have yet to become operational in the Northern Territory electricity supply industry, as noted in last year's annual compliance report, licensees need to be aware that there are non-operational obligations that they must meet including timely payment of licence fees, timely submission of licence returns and compliance reports and requirements for reporting content (as discussed in the previous section).

EDL NGD (NT) Pty Ltd

- 3.4 EDL NGD (NT) Pty Ltd (EDL) reported four non-material breaches during 2019-20 – two relating to its retail licence and two relating to its generation licence. Two of the breaches relate to EDL being five days late in paying the annual fee for both licences (non-compliance with clause 8.1 of the licences). The commission notes that EDL promptly addressed the issue once it became aware of the oversight.
- 3.5 EDL advised that it was in breach of clause 4.1.1 of the Electricity Retail Supply Code (ERSC), which requires a retailer to enter into a coordination agreement with the network provider. As EDL has no retail customers, the breach is not material; however, EDL has been advised by the commission that if non-compliance will be on-going, it should formally write to the commission outlining the issue and its implications and request the commission take no action given the circumstances.
- 3.6 EDL's remaining instance of non-compliance was a non-material breach of clause 6.10.1 of the System Control Technical Code (SCTC) where EDL submitted forecast maintenance programs for a 19 month period rather than the full three year period required by the clause. EDL advised that it has now submitted the relevant programs to the Power System Controller (System Control) and will update its internal processes to ensure future compliance.
- 3.7 The commission agrees that the breach is non-material and notes EDL's steps to rectifying the issue. The commission considers, however, that System Control should be taking an active role in ensuring generators submit indicative maintenance programs for the full three year period.

Jacana Energy

3.8 Jacana Energy (Jacana) reported non-compliance of seven obligations in its 2019-20 annual compliance report.

Non-compliance with clause 23 of Jacana's retail licence

3.9 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 SCTC. Jacana reported that there were seven customers in 2019-20 that were wrongfully disconnected, down from 12 in 2018-19. Jacana advised that none of the customers wrongfully disconnected were life support customers.

3.10 The commission notes the improvement and Jacana's advice that it is continuing to develop and enhance its training of customer care agents to reduce the occurrence of wrongful disconnections.

Non-compliance with Electricity Retail Supply Code

3.11 Jacana reported five breaches related to obligations under the ERSC:

- For a period of three days, Jacana did not have a coordination agreement in place with Power and Water Corporation (PWC) (non-compliance with clause 4.1.1). Jacana advise that this was resolved by extending the current agreement for 12 months while both parties continue to negotiate a new agreement. Jacana has kept the commission informed on the progress of negotiations.
- For a two month period until system changes were implemented, bills for commercial and industrial customers did not include national metering identifiers (non-compliance with clause 6.5). Jacana advised that historically these identifiers were not shown on bills for commercial and industrial customers, but were available on request; however, changes to its electronic systems have addressed this matter.
- Jacana's marketing collateral does not currently inform customers of their right to choose another retailer when that customer is a greenfield exit point or the supply contract with the customer has terminated or expired (non-compliance with clause 8.3.5). Jacana advises that a working group has been formed to address this issue and the commission expects the next annual compliance report will advise on the solution implemented to achieve compliance.
- For a short period of time in 2019-20, updates to Jacana's electronic system resulted in medical confirmation forms failing to be sent automatically where postal correspondence was selected as the preferred method (non-compliance with clause 10.3A.1). Jacana advised it implemented processes to manually issue the forms until the problem was rectified.
- Jacana did not submit life support equipment procedures for non-major centres to the commission by the due date of 1 March 2020 (non-compliance with clause 10.7.2), although procedures had been submitted for major urban centres. Jacana subsequently advised that its life support processes and procedures are the same across all geographic areas that it operates in, which the commission accepted for the purpose of compliance with clause 10.7.2.

Non-compliance with clause 5.1.1 of the Electricity Industry Performance Code

- 3.12 Jacana engaged proactively with the commission to submit, as it was able, relevant performance data under the Electricity Industry Performance Code (EIPC) for 2018-19 by the required deadline of 31 August 2020. Outstanding data was provided within three weeks following the deadline. The commission notes that system limitations mean Jacana will be unable to meet the obligation to provide four years of historical data until 2022.

Progress with remediation of previously reported breaches

- 3.13 In its 2018-19 annual compliance report, Jacana identified it was not collecting or maintaining information about the details of embedded generators of customers and providing the information to System Control (non-compliance with 6.15 of the SCTC). Jacana advised that it sought input from System Control on the detail required, but received no guidance. Subsequently, Jacana states it has established processes for obtaining, recording and maintaining details of embedded generators (excluding solar photovoltaic and backup generators) and sharing the information with System Control.
- 3.14 There is a risk that the absence of guidance from System Control may lead to differences in the data provided by retailers and/or System Control receiving less useful information than could otherwise have been obtained. The commission recommends System Control consults with retailers in order to establish a minimum information requirement in relation to embedded generators.

Power and Water Corporation

- 3.15 For the 2019-20 compliance reporting period, PWC reported 24 non-material breaches across the Power Services (two), Core Operations including System Control (sixteen), Customer, Strategy and Regulation (four) and Water Services (two) business areas. This was double the number reported in the 2018-19 compliance period, noting that nine breaches were identified through an internal audit of System Control's compliance with aspects of the SCTC (but only eight were reported by PWC in its compliance report).
- 3.16 PWC acknowledged that the operation of its compliance management system requires improvement and advised it has taken steps to improve the coverage of its obligations register, risk assessment, accountability and responsibility for compliance management, non-compliance classification and escalation and reporting processes. PWC also advised it will conduct a full review of its compliance framework in 2020-21.
- 3.17 Given the significant increase in reported non-compliance in 2019-20 compared to 2018-19, the commission supports PWC's plan to undertake a full review of its compliance framework in 2020-21. The commission also expects PWC to undertake other compliance activities during 2020-21, including internal and other audits of compliance with obligations under its various licences and rectifying identified issues and breaches as a priority, among other things.

Incorrect charging for services

- 3.18 PWC reported three instances of incorrect billing to electricity, water and sewerage services customers:
- *Breach of clause 4 of the EIPC:* Over the period 1 July 2017 to 31 January 2020, eligible prepayment meter electricity customers did not receive Guaranteed Service Level payments. A total of 79 customers were affected with the amount of

credit due totalling \$7220. PWC advised that credits were applied for those customers that are still current (64 'on' customers) and that it is seeking to trace and pay 15 customers that are no longer current ('off' customers).

- *Non-compliance with the Australian Energy Regulator's Network Pricing Determination:* During a four month period in 2019, an incorrect alternative control services charge was applied for 14 903 meters. PWC advised that it provided credits, totalling about \$0.3 million, to affected electricity retailers.
- *Non-compliance with Water Combination Contract Plan:* During a financial audit, it was found that between January 2007 and February 2019, PWC's water billing system had allocated an incorrect Water Combination Contract Plan to about 190 customers, most of which are still 'on' customers. It resulted in an overcharge totalling about \$0.6 million. PWC advised 'on' customers have been credited and that it has allocated funding to unclaimed monies where it will be held for seven years while customer service staff seek to contact and pay 'off' customers. PWC states it has also implemented a number of measures to its retail management system and exception reporting as well as conducted staff training to prevent a similar issue reoccurring.

3.19 The commission expects PWC to continue to use best endeavours to locate and pay 'off' customers.

System Control non-compliance

- 3.20 As reported in the commission's 2018-19 Annual Compliance Report, System Control's non-compliance with incident reporting obligations under the SCTC has been an on-going concern of the commission. Following numerous meetings held between the commission and PWC to discuss the issue and formal correspondence to the CEO, on 6 June 2019 PWC committed to System Control submitting to the commission all outstanding major incident reports older than six months (at that time) by 31 December 2019.
- 3.21 The commission confirms that PWC's commitment was met and it is pleased with System Control's increased priority and effort being directed toward improving the timeliness of incident reporting. The commission considers investigation of reportable incidents and associated implementation of recommendations is important for avoiding a reoccurrence of the incident and ensuring the reliability and quality of electricity services and supply.
- 3.22 Also discussed in the commission's 2018-19 Annual Compliance Report were the commission's concerns that PWC did not report System Control's non-compliance with incident reporting obligations in its initial annual compliance report, which was signed off by its Board and subsequently resubmitted when questioned by the commission. Following this, and the commission's findings in relation to the Alice Springs System Black incident on 13 October 2019, PWC undertook an internal audit of System Control's compliance with sections 5.7 (Black System) and 7 (Power System Incident Reporting) of the SCTC, with the terms of reference for the audit reviewed and agreed by the commission.
- 3.23 PWC's 2019-20 annual compliance report identifies 10 instances of non-compliance with the SCTC, of which eight are noted by PWC as found during the internal audit discussed above. The commission notes that the internal audit found nine instances of non-compliance (not eight), with non-compliance of clause 7.4.3 not included in PWC's report to the commission.

- 3.24 The key areas of non-compliance found in the internal audit relate to the absence of approved, or inadequacies in, black system and black system restart procedures and review processes; failure to provide reports on major incidents in a timely manner and a lack of follow-up with system participants in relation to incident reporting.
- 3.25 PWC's internal audit determined a key root cause of the issues was a lack of sufficient resourcing in System Control. Relevantly, the commission, in its Independent Investigation of Alice Springs System Black Incident on 13 October 2019 report, noted that a lack of system control resources (among other things) may be contributing to issues.
- 3.26 The commission is pleased to note that there has been an increased focus on and understanding of its obligations and the importance of compliance in System Control. Relevantly, the commission understands PWC is actively working to recruit staff and that it recently filled a position in System Control with a focus on compliance.

Water supply and sewerage services independent audit obligations

- 3.27 Clause 11(1) of PWC's water supply and sewerage services licences requires it to commission an independent audit of all or part of the operations authorised by the respective licence for each financial year and its compliance with associated regulatory obligations. Under clause 11(2) of the licences, PWC must report the results of the audits to the commission by the date determined by the commission.
- 3.28 PWC's 2019-20 annual compliance report states that it has never submitted the results of an audit undertaken for the purpose of clause 11(1) of the licences. The commission notes this is not an instance of non-compliance, at least in relation to 2019-20, as the commission did not request PWC to report the results of the audits by a specific date. However, based on further commission questioning, it appears PWC has never conducted an audit as required under clause 11(1) of PWC's water supply and sewerage services licences, a significant on-going non-compliance.
- 3.29 Following the commission's questioning on this matter, PWC provided assurance that independent audits of its operations and compliance will be prioritised. Further, PWC submitted a three year audit schedule to the commission for information, with an independent auditor expected to commence the audit program in late 2020.
- 3.30 The commission considers the overall risk to customers as a result of PWC not undertaking the required independent audits to be relatively low, on the basis that no minimum standards of service have been specified by the Minister under section 45(1) of the *Water Supply Licence and Sewerage Services Act 2000*. Nonetheless, the lack of independent audits to verify compliance (or non-compliance and actions to address the issue) does increase the risk of adversely affecting customers, noting important customer protections are provided for in the licences, such as obligations on PWC to establish and comply with procedures to deal with dispute resolution and other general enquiries and in relation to disconnection of water supply.
- 3.31 The commission intends to increase its focus on this matter, including requesting the results of PWC's clause 11(1) independent audits every year through the annual return process. The results will be cross-checked with PWC's annual compliance report and declaration and discussed in the commission's next and on-going annual compliance reports as appropriate.

Territory Generation

- 3.32 Territory Generation (TGen) reported one instance of non-compliance relating to clause 4.4B(c) of the SCTC, which requires generators to provide daily commitment and dispatch submissions to the Power System Controller for generators in the Darwin-Katherine Interconnected System. TGen advised there were default submissions, which operated as daily submissions and could be automatically applied.
- 3.33 PWC also reported this issue, stating TGen was non-compliant with the published Generator Offer Procedure (issued in accordance with clause 4.4B(e) of the SCTC), but that PWC had also been non-compliant in accepting TGen's requests for alternative merit order dispatch without following the Procedure. PWC advised that it has provided TGen with formal advice that these requests will no longer be accepted and TGen advises that daily dispatch submissions are now in place.
- 3.34 The commission is encouraged that System Control is identifying and addressing non-compliance with system participants in relation to the clause 4.4B(c) of the SCTC obligation. The commission understands System Control is seeking to apply this more proactive approach more broadly, which should ultimately improve the efficiency of operations and better ensure reliability and quality of electricity supply.