

ANNUAL COMPLIANCE REPORT

A summary of Compliance Reports received by the Utilities Commission from licensees for the 2018-19 year

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Overview

Each year licence holders are required to maintain and report on their compliance framework. This report documents licence holders' Annual Compliance Reports to the commission.

In the interests of transparency and to be consistent with the practices of other jurisdictions, the commission publishes a summary of the Compliance Reports received, a description of breaches reported by each licensee and remedial action proposed or taken by the licensee in order to resolve the breach, and enforcement action taken by the commission, if any.

Inquiries

Any questions regarding this report should be directed in the first instance to the Utilities Commission.

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CHAPTER 1

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 supply, water supply and sewerage services industries and declared ports in the Northern Territory.
- 1.2 The commission's primary objective in undertaking its work is encapsulated in the Utilities Commission's Strategic Plan 2019-2021¹:

The Utilities Commission seeks to protect the long-term interests of Territory consumers of services provided by regulated industries with respect to price, reliability and quality.
- 1.3 The commission has functions under various Acts (and associated regulations) including the UC Act, *Electricity Reform Act 2000* (ER Act), *Water Supply and Sewerage Services Act 2000* and the *Ports Management Act 2015*.
- 1.4 Section 14(3) of the ER Act and 14(1) of the *Water Supply and Sewerage Services Act 2000* provides that a licence is required for relevant operations. Note that while the private port operator is taken to be a licensed entity for the purpose of the application of the UC Act², and the commission regulates prescribed services at the Port of Darwin through a pricing and access regime, there are different compliance requirements, and there is no associated licensing regime.
- 1.5 A condition of the licences issued by the commission is for each licensee to submit a Compliance Report, at reasonable intervals determined by the commission, describing the measures taken by the licensee to ensure compliance with its regulatory obligations under the licence or by applicable legislation.
- 1.6 In February 2016, the commission issued Compliance Framework and Reporting Guidelines. The Guidelines provide additional details on the commission's requirements.
- 1.7 In particular, the Guidelines note that the annual compliance reporting and declaration requirements do not apply to Independent Power Producer (IPP) licence holders.
- 1.8 The commission requires an annual Compliance Report from licence holder's by 31 August each year with a declaration of responsibility from the Board of the licensee:

¹ https://utilicom.nt.gov.au/__data/assets/pdf_file/0003/745167/UC-Strategic-Plan-FINAL-2019.pdf, page 4

² Section 119(4) of the *Ports Management Act 2015*.

- a) that the licensee maintains an appropriate compliance framework that complies with the requirements of its licence as set out in the Compliance Framework and Reporting Guidelines
- 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.³

1.9 The information sought by the commission as part of the annual Compliance Report is consistent with the type of information that the business should be providing to its Board, with further information supplemented by an audit process from time to time.

Commission's Approach to Compliance

1.10 The commission's compliance monitoring program comprises of three main elements:

- risk identification and risk assessment
- ensuring compliance
- enforcement.

1.11 Regulated entities must systematically identify compliance obligations and the way in which they impact on activities, products and services, which may include a register of compliance obligations (for example, a Compliance Register). The identification and ranking of risks is the responsibility of the licensee.

1.12 A licensee is to report any material compliance breaches to the commission as soon as reasonably possible after the breach is identified.

1.13 The commission considers a breach to be 'material' when it has the following attributes:

- 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.⁴

1.14 Should a licensee be in doubt as to whether or not a breach is material, it would be advisable and prudent to notify the commission. Licensees must also consider the impact of repeated individual non-material breaches and the possibility that, in totality, these lead to a material breach.⁵

1.15 Where a regulated entity has not been compliant, the commission expects a breach notification provided to the commission to contain the following:

³ [Compliance Framework and Reporting Guidelines, Final, February 2016](#), page 15, para 3.42

⁴ Ibid, page 12, para 3.23

⁵ Ibid, page 12, para 3.24

- brief statement explaining the circumstances and reasons for the breach
- brief statement explaining any delay in reporting the breach
- relevant regulatory provision(s)
- consequences of non-compliance
- remedial measures.⁶

1.16 The licensee's compliance framework must contain a process for escalating and reporting breaches to executive/senior level management, the Board of the licensee and the commission. The Chief Executive Officer (or equivalent) and the Board of the licensee must be made aware of any material breaches without delay and the process for remediation of a breach.⁷

1.17 The commission expects regulated entities to establish, implement, and maintain a compliance process or compliance framework that reflects industry best practice (that is, ISO 19600:2015 Compliance management systems – Guidelines or equivalent).

Risk Identification and Risk Assessment

1.18 The commission considers that the compliance obligations of regulated entities include relevant compliance requirements within legislation, statutory obligations, codes and licences.

1.19 The register of regulatory compliance obligations of the licensee must be sufficiently robust and detailed in identifying the licensee's compliance obligations from the abovementioned instruments.

1.20 A licensee should have processes in place to identify new and changed laws, regulations, codes and other compliance obligations to ensure ongoing compliance. Licensees should have in place processes to evaluate the impact of the identified changes and implement any changes in the management of the compliance obligations.⁸

⁶ Ibid, page 13, para 3.25

⁷ Ibid, page 13, para 3.26 and 3.27

⁸ Ibid, page 11, para.3.9

Compliance Reports

1.21 Table 1 below lists the compliance reports received by the commission for the 2018-19 reporting period by licensee.

Table 1

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

CHAPTER 2

Breaches Reported 2018-19

- 2.1 Where breaches have been reported, the commission provides comment on whether or not it considers the breaches to be material, the commission's overall assessment of the licensee's compliance and any mitigating factors.
- 2.2 In assessing whether breaches are material, the commission also considers the licensee's remedial actions, factors behind each breach, level of cooperation and initiative in being forthcoming and open to reporting breaches, and the licensee's self-assessment of the materiality of the breach.

Batchelor Solar Farm Pty Ltd (BSF)

- 2.3 BSF was issued its generation licence part way through the 2018-19 compliance reporting period, on 1 October 2018, and reported no instances of non-compliance.

EDL NGD (NT) Pty Ltd (EDL)

- 2.4 EDL reported one non-material breach to its retail licence and three non-material breaches to its generation licence during the 2018-19 compliance reporting period.
- 2.5 EDL was four business days late in notifying the commission of the cessation of its Company Secretary for both its retail and generation licence. The commission agrees this breach of clause 12 of its licences is not material and notes that EDL has updated its internal processes to ensure future compliance with this obligation.
- 2.6 Two reported non-material breaches to EDL's generation licence are in relation to System Control Technical Code (SCTC) obligations, specifically clauses 5.7.2(c) and 6.10.1, being to submit to the Power System Controller Black System Procedures for approval and a maintenance programme for each generator by 15 May each year. The commission is comfortable with EDL's commitment to submit the outstanding documents within three months and one month respectively.
- 2.7 The Commission notes that identification of the breaches to the SCTC by EDL, rather than from System Control reminding EDL of outstanding obligations, may be an indication that System Control is not actively monitoring the compliance of electricity entities with its code.

Eni Australia Limited (Eni)

- 2.8 Eni became a generation licensee on 11 January 2019, part way through the 2018-19 compliance reporting period, on the transfer of Katherine Solar Pty Ltd's associated generation licence.
- 2.9 Eni's Annual Compliance Report for 2018-19 lists at Schedule A what it considers to be its relevant obligations for the reporting period, being only its generation licence.

Further, Eni states that 'other obligations will become applicable once the plant has finished construction'.

- 2.10 The commission does not agree that Eni's obligations are currently limited to those in its generation licence. For example, even without operational plant, as a licensee, Eni has relevant obligations under the ER Act in relation to, among other things, licence fees and returns.
- 2.11 Eni reported one non-material breach of its obligations for 2018-19, in relation to its clause 21(a) generation licence obligation to submit a Safety Management and Mitigation Plan (SMMP) within three months of issue of the licence. In relation to this issue, the commission notes that following a reminder from the commission some months after the SMMP due date, Eni acknowledged the oversight, indicating it thought the obligation would only commence once the generation plant is generating electricity.
- 2.12 Following this, the commission formally wrote to Eni to make clear its expectations, including that, at a minimum, if it believes it may not meet an obligation, it should formally seek guidance from the commission.

Jacana Energy (Jacana)

- 2.13 Jacana reported breaches to its retail licence, the ER Act and SCTC during 2018-19, and provided a progress update on previously reported compliance breaches. Further, Jacana proactively identified potential risks of non-compliance and advised its remedial actions to mitigate the risks.

Breach of clause 23 of its Retail License

- 2.14 Jacana reported 12 instances in 2018-19 where a customer was wrongfully disconnected, with six of these due to customer care agent process errors and three due to failure by a customer care agent to cancel a Disconnection Service Order where a connection request for the same property is received for a date that precedes the disconnection date.
- 2.15 Jacana advises that it is continuing to develop and enhance its customer care agent training so that process errors do not result in wrongful disconnections. In relation to wrongful disconnections due to connection/disconnection timing for the same property, Jacana advises that it has implemented an automated system change to address the issue. The Commission considers Jacana's remedial actions reasonable.

Breach of section 91(4) of the ER Act

- 2.16 In March 2019, Jacana drafted a revised Customer Charter, being a summary of its terms and conditions governing the sale of electricity to relevant customers and sought the commission's advice in relation to its planned non-compliance with section 91(4) of the ER Act, which requires the distribution of this summary to each of its customers.

- 2.17 In considering Jacana's section 91(4) obligation and associated compliance issues, such as Jacana not having postal or email addresses to send the summary to many prepayment meter customers, the commission worked with Jacana to identify a pragmatic approach to advising its customers of the revised Customer Charter.
- 2.18 Accordingly, on 9 April 2019, the commission wrote to Jacana advising that it would take no action in relation to this instance of non-compliance, noting that Jacana's proposed distribution approach, including publishing a notice in the NT News, was a reasonable solution.
- 2.19 Jacana's proactive approach of early engagement with the commission in relation to this expected compliance breach is commended.

Breach of clause 6.15 of SCTC

- 2.20 Jacana, in reviewing its SCTC obligations identified that it does not collect or maintain information on embedded generators in the premises of customers, noting these details must be provided to the Power System Controller under clause 6.15.
- 2.21 Jacana advises the commission that it has sought guidance from the Power System Controller on this obligation, however nothing has been forthcoming, so it is developing an associated process based on its assumption of System Control's requirements.
- 2.22 The Commission notes that identification of the breaches to the SCTC by Jacana, rather than from System Control reminding Jacana of outstanding obligations, may be an indication that System Control is not actively monitoring the compliance of electricity entities with its code.

Progress with remediation of previously reported breaches

- 2.23 Jacana reported partial compliance issues in 2017-18 in relation to the processes required under clauses 11.1(a) and 11.1(b) of its retail licence following an audit by Merit Partners. Jacana states it is now fully compliant with these obligations.
- 2.24 Jacana states that it implemented a business process to address a 2017-18 breach to clause 3.11.4 of the SCTC in relation to advising the Power System Controller immediately of any substantial change in customer load pattern or behaviour. Accordingly, Jacana reported no breaches of this clause during 2018-19.
- 2.25 In Jacana's 2017-18 Compliance Report it reported breaches to clause 17.3 of its retail licence in relation to a one month delay in moving Commercial and Industrial (C&I) customers from contracted pricing to the Pricing Order, as their consumption trended under 750MWh per annum. Jacana advise, on review, it does not consider its process a breach. Nonetheless, it is redesigning its processes, including the addition of two set annual review points, being March and October. This is a good approach.
- 2.26 Jacana continues to consult with the commission on its inability to report on all performance indicators and provide four years of historical data, as required under

clause 5.1.1 of the Electricity Industry Performance Code (EIPC) due to system limitations. As part of its 2017-18 Compliance Report it had committed to undertake a project to develop its system reporting to enable it to meet its obligations in future years. Jacana's 2018-19 Compliance Report states that due to more urgent issues, this work has been delayed. The commission acknowledges that Jacana is working hard to meet its reporting obligation through manual means and is in regular dialogue with commission staff to ensure the commission's annual electricity retail review to the minister is not negatively impacted.

Next Business Energy Pty Ltd

- 2.27 No breaches were reported by Next Business Energy Pty Ltd for the 2018-19 compliance reporting period. However, the commission notes that its 2018-19 Annual Compliance Report and Declaration was submitted late following a reminder from the commission.

Power and Water Corporation (PWC)

- 2.28 PWC's 2018-19 Compliance Report and Declaration was submitted by the due date. However, an initial review of the report by the commission identified that while PWC reported no material breaches and 11 non-material breaches for various business units, not one breach was reported for the System Control business unit. As the commission is aware of on-going non-compliance by the Power System Controller of the SCTC in relation to incident reporting, it recommended that PWC reconsider its 2018-19 Compliance Report.
- 2.29 PWC submitted its revised 2018-19 Compliance Report on 25 September 2019, which reported 12 non-material breaches across the Power Services (seven), Market Operations (three), System Control (one) and Water Services (one) business units.
- 2.30 The commission was aware of most of PWC's reported non-material breaches prior to receiving its 2018-19 Compliance Report through regular meetings with PWC's Compliance and Quality team, and notes that a number of these are due to PWC's highly manual and outdated or unsuitable billing, settlement and other systems. The commission understands that PWC is planning to replace many of these systems in the medium term, noting PWC is still expected to fully comply with its regulatory obligations, even if manual processes are needed in the interim.
- 2.31 In relation to the Power System Controller's reported non-material breach of clause 7.4.3 of the SCTC, the commission is concerned that PWC did not include this in its original 2018-19 Compliance Report, noting System Control's non-compliance with this obligation has been an on-going concern of the commission's, with numerous meetings held to discuss and formal correspondence to the PWC Chief Executive Officer on the issue.
- 2.32 Clause 7.4.3 of the SCTC states that the Power System Controller is to provide the Utilities Commission with an initial report within 14 days of a reportable incident, containing key details of the event and incident, and the scope of the investigation.

Notably, clause 7.4.4 of the SCTC states that the Power System Controller is to provide a major reportable incident investigation report to system participants and the commission as soon as reasonably practical after the event occurred.

- 2.33 As at 30 June 2019, System Control had 38 outstanding final incident reports, with 29 of the reports also having an overdue initial report.
- 2.34 The commission's view is that this incident reporting is vital to ensure that System Control is identifying and addressing problems with relevant system participants, and learning lessons from this to, among other things, ensure ongoing reliability and quality of electricity services and supply.
- 2.35 PWC's 2018-19 Annual Compliance Report states that the impact of this non-material breach of the SCTC by the Power System Controller is 'fairly minimal' and that 'informally events are investigated technically and System Control works with relevant System Participants for immediate and short term rectifications of root and symptomatic causes'. However, the commission does not consider an informal process appropriate, particularly given this approach may increase the risk of negatively impacting the reliability and quality of electricity services and supply. Further, where informal processes may have been reasonable prior to the legal separation of PWC into three separate businesses, they are not appropriate where there are multiple market participants.
- 2.36 System Control has committed to clear outstanding incident reports greater than six months old by the 2019 calendar year and provide these to the commission and relevant market participants. Achievement of this, or otherwise, will be reported in the commission's Annual Compliance Report for 2019-20.

QEnergy Limited

- 2.37 No breaches were reported by QEnergy Limited for the 2018-19 financial year.

Rimfire Energy Pty Ltd (Rimfire)

- 2.38 Rimfire reported breaches of the EIPC (clause 5.1.1) and the Compliance Framework and Reporting Guidelines (clause 3.42) during 2018-19 in relation to its performance and compliance reporting obligations to the commission. Specifically, the timeframe to submit the reports by 31 August 2018.
- 2.39 Rimfire advises that its non-compliance was due to administrative oversight and that it has made improvements to its compliance systems to avoid oversight of timeframes in the future. The commission notes that customers and other entities (other than the commission) were not impacted by this non-material breach.

Territory Generation

- 2.40 No breaches were reported by Territory Generation for the 2018-19 financial year.

Trutinator NT Pty Ltd (Trutinator)

- 2.41 Trutinator was issued its generation licence part way through the 2018-19 compliance reporting period, on 21 December 2018, and reported no instances of non-compliance.