

Friday, 24 May 2024

Lyndon Rowe
Utilities Commissioner
Utilities Commission of the Northern Territory
Level 3, NT House
22 Mitchell Street, Darwin NT 0800

By email: utilities.commission@nt.gov.au

Dear Commissioner,

Subject: Review of the Compliance Framework and Reporting Guidelines

Rimfire Energy ("Rimfire") welcomes the opportunity to provide its comments to the Utilities Commission ("Commission") regarding the *Review of the Compliance Framework and Reporting Guidelines*.

As per the Consultation Paper, provided with the Draft copy of the review, it is noted by Rimfire that the review is 'to ensure the Guidelines are current, relevant and reflect a targeted, risk-based approach to compliance and enforcement.'

Comments on proposed material amendments:

Topic: **General**

It is noted and we concur that the amended Guidelines should:

- clarify that the Guidelines are binding on licensed entities (clause 1.2.3),
- articulate that a licensed entity remains responsible for compliance obligations (clause S4.4),
- include a 'Compliance Policy' informing of the Commission's compliance objectives and approach,
- include an 'Enforcement Policy' making it easier for licensed entities to read and interpret applicable obligations,
- specify that self-reporting and cooperation as mitigating factors likely to be taken into account in any enforcement action – without being binding on the Commission,
- provide guidance where the Commission may decide not to take further action in relation to a complaint, referral or other notification of a breach, and
- provide guidance on when the Commission is less likely to investigate potential breaches of compliance obligations.

Topic: **Requirement to establish a compliance process**

It is noted and we concur that the amended Guidelines should:

- stipulate that a licensed entity must 'establish, implement, maintain and comply' with its compliance process. [See proposed clause 2.1.1 and 2.1.3],
- clearly articulate that a compliance register is a mandatory component of a compliance process. [See proposed clause 2.3.1.],
- list 'maintenance of a compliance register' as a requirement for a licensed entity's compliance process. [See proposed subclause 2.1.4(f).],

- redefine ‘compliance obligations’ as including only those requirements stated in applicable regulatory instruments. [See proposed clause 2.1.2.],
- replace the requirement to ‘develop a comprehensive risk assessment methodology’ with a requirement to ‘appropriately assess risks.’ [See proposed clause 2.5.1], and
- remove provisions relating to requirements on the method of risk assessment [See current clause 3.13.].

However, regarding

- clearly articulate that licensed entities are required to identify and evaluate new and changed compliance obligations. [See proposed clause 2.4.1 and 2.4.2.]

Rimfire notes that any substantial expansion in the regulatory environment and the rate at which that occurs, brings with it a not insignificant cost to licenced retailers, which can only be recovered through retailer margins that are highly regulated in the NT retail market as the Commission is well aware. Rimfire notes the importance of the Commission’s role in informing the NT Government of any increases in compliance costs must be acknowledged and adjustments made to retailer margins as set by the NT Government.

- Proposed changes to clause 2.1.4 ‘The **compliance process** must include’

Rimfire views the use of the word ‘must’ is overly prescriptive and overrides the intent of the Commission requiring licenced entities to use industry best practice based on ISO AS 37301:2023. Rimfire suggests retention of the word ‘should’ as used in the current Guidelines.

- Additional subclause 2.1.4(e) ‘Detecting and reporting to the **Commission** any breach of the **compliance obligations** in accordance with the requirements of the **Guidelines**’

Rimfire views the additional subclause as a material additional reporting obligation on licenced entities that is unnecessary in light of existing reporting obligations for material breaches, and new obligations for reporting of all breaches will impose material time and cost implications on licenced entities. Rimfire suggests this additional subclause not be used.

Topic: **Requirement to report on material breaches**

It is noted and we concur that the amended Guidelines should:

- set clear and defined timeframes for the reporting of material breaches. The proposed amendments will also differentiate between initial notification and formal notification, noting it takes time to investigate and compile information on material breaches. [See proposed clause 3.1.1, 3.1.2 and 3.1.3.],
 - o The timeframes listed for electricity entities are 2 business days for initial notification and 20 business days for formal notification. These timeframes are consistent with the Commission’s standard electricity supply licence conditions.
 - o
- specify that the timeframes for reporting are to be taken from the time the licensed entity possesses the information required to identify a potential material breach has occurred. [See proposed clause 3.1.4.],
- allow a licensed entity to propose an alternative timeframe to submit formal notification, which the Commission may agree to. [See proposed clause 3.1.5.],
- - state a licensed entity is not required to submit formal notification where it is later determined that a breach is non-material. [See proposed clause 3.2.5.].

However, regarding

- - redefine ‘material breach’ to focus on whether the breach had or may have a serious consequence on a customer or regulated entity. [See proposed clause 3.2.1.],

Rimfire views the inclusion of the word ‘disruption’ in subclause 3.2.1(c) as too broad in relation to the provision of electricity as **any** disruption to the supply of electricity would be deemed a material breach and

thus imposing upon licenced entities the fulsome and extensive reporting and investigation obligations as a result of the widening of the definition of material breach. Rimfire suggests the word 'disruption' not be used in the subclause.

- - specify a breach may be considered 'material' if it would have met the threshold but for some unplanned mitigating circumstance. [See proposed clause 3.2.3.],

Rimfire views the inclusion of a 'near miss' as a potential material breach as having the same effect as if it were a material breach and thus imposing upon licenced entities the fulsome and extensive reporting and investigation obligations as a result of the potential of a material breach for a 'near miss' that does not fall within the definition of a material breach. Rimfire understands the Commission's intent in relation to the focus on the 'consequence' of a 'near miss', however licenced entities having obligations for an appropriate risk program will no doubt treat and manage any 'near miss' with the appropriate reporting and corrective action/s within their own compliance framework.

Topic: **Requirement to undertake compliance audits**

It is noted and we concur that the amended Guidelines should:

- include an 'Audit Policy' within the proposed overarching 'Compliance Policy' outlining the Commission's approach to audit-related matters. [See proposed clause 4.1.1.],
- state that the Commission may request electricity entities provide their intended internal audit schedule, or an internal audit report, for review. [See proposed clauses 4.2.2 and 4.2.3],
- require the scope of an independent audit to be submitted to the Commission for approval. This requirement does not currently exist for Water Supply and Sewerage Services licensees. [See proposed clause 4.5.3.],
- state the Commission intends to work with electricity entities to avoid the need for an independent audit, as appropriate. [See proposed clause S5.1.],
- require a 'comprehensive audit report' rather than a 'statement of compliance' on its own. [See proposed clause 4.7.1.],
- require an audit report to detail recommendations or action items where the audit identifies a breach or potential breach. [See proposed clause 4.7.3.],
- require an audit report to identify any notable trends, areas for improvement and areas of strength or weakness. [See proposed clause 4.7.4.],
- provide guidance that for most licensed entities, 'regular internal audits' means internal audits carried out on an annual basis at a minimum. [See proposed clause S5.4.],
- require licensed entities to submit a proposed auditor to the Commission for approval (for independent audits only). This requirement does not currently exist for Water Supply and Sewerage Services licensees. [See proposed clause 4.6.2.],
- specify that where a licensed entity has appointed an auditor for an independent audit, the licensed entity is responsible for ensuring that the independent audit meets the requirements of the Guidelines. [See proposed clause 4.6.3.],
- require a licensed entity to provide a response to an audit. [See proposed clause 4.8.2.], and
- state the Commission may request progress updates from a licensed entity following an audit. [See proposed clause 4.8.4.].

However, regarding

- require a copy of an independent audit 'be provided to the **Commission** and the **licenced entity**'. [See proposed clause 4.7.1.],

Rimfire views this as imposing unnecessary additional cost to the independent audit as a result of the Commission being the receiver of the independent audit in addition to the licenced entity. Rimfire suggests the obligation should remain with the licenced entity to provide the Commission with a copy of the independent audit if so requested by the Commission.

- include 'any perceived or actual conflict of interest' as a matter the Commission may have regard to when approving an auditor. [See proposed clause S5.5.],

Rimfire notes that the specialist nature of auditors experienced in electricity market audits, and in particular the NT electricity market, means there are very few appropriately experienced auditors that licenced entities can engage on a reasonable cost basis to undertake such audits. Rimfire requests the Commission consider this when approving an auditor to avoid unnecessary time and cost implications for licenced entities.

- specify that all compliance material and non-material breaches identified during an audit must be reported, regardless of whether the finding is within the audit scope.. [See proposed clause 4.8.1.],

Rimfire views the existing reporting obligations for material and non-material breaches are adequate and the additional reporting of breaches outside of a specific audit scope is unnecessary and imposes additional time and cost implications on licenced entities.

Topic: ***Requirement to submit an annual compliance report***

It is noted and we concur that the amended Guidelines should:

- allow an additional month (to 30 September) for licensed entities to submit the annual compliance report. [See proposed clause 5.1.2.],
- clarify that all breaches must be reported in the annual compliance report, even if notification has already been provided. [See proposed clause 5.2.4.],
- require a licensed entity to provide 'reasonable advance notice and sufficient explanation' if it wishes for a person equivalent to the chief executive officer, but with a different title, to sign the annual compliance report. The Commission will no longer be required to 'approve' such an arrangement. [See proposed clause 5.1.3.],
- allow the Commission to approve, at its discretion, any other options proposed for the signing of the annual compliance report [See proposed clause 5.1.4.],
- amend some information requirements in the Annual Compliance Report template to be more specific. [See proposed clause 5.2.3 and Annexure 3.].

Topic: ***Requirement to submit an annual licence return***

It is noted and we concur that the amended Guidelines should:

- remove the list of annual licence return information requirements, noting the information required is subject to change each year and the Commission will provide reasonable advance notice in writing to the licensed entity [See current clauses 3.38 to 3.40 and proposed clause 6.1.4.],
- remove a requirement relating to the provision of regulatory financial statements, as this requirement is no longer current. [See current clause 3.40.].

Summary

In general, Rimfire is supportive of, and welcomes most of the changes arising from the Review. The standardisation of items across the various codes, frameworks, licences and codes, are indeed welcomed and agreed with.

The Audit Policy is also pleasing in that it provides a clear annunciation of the Commission's requirements, expectations and actions. S5.7 and that it states that 'audit costs can be significant' is appreciated as these costs are a significant impost as already mentioned.

The inclusion of an additional 30 days for the submission of the annual compliance report is a welcome addition. The report is required early in the new financial year at a time when much annual reporting is underway so the extra time is certainly appreciated during this busy period.



Rimfire also wishes to reiterate the important role the Commission has in not overly prescribing or unnecessarily imposing additional compliance obligations on licenced entities that increase compliance and administrative costs to licenced entities that cannot be reasonably recovered.

Should clarification of anything within this submission or any further information be required, we will be happy to do so.

Regards,

Rimfire Energy

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