Annual compliance report

A summary of Compliance Reports received by the Utilities Commission from licensees in 2016

**February 2017**

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CHAPTER 1

Introduction

* 1. The Utilities Commission of the Northern Territory (the Commission) is an independent statutory authority responsible for the economic regulation of the electricity supply industry, which is governed by the *Electricity Reform Act*, *Utilities Commission Act*, and other associated legislation. The Commission is also responsible for the economic regulation of the water and sewerage service industries, which is governed by the *Water Supply and Sewerage Services Act* and other associated legislation.
  2. Section 14(3) of the *Electricity Reform Act* provides that a licence is required for:
* generation of electricity;
* owning or operating an electricity network;
* selling electricity;
* system control over a power system; or
* other operations for which a licence is required by the Regulations.
  1. 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. The Compliance Report and the Commission’s assessment of compliance may be made publicly available by the Commission[[1]](#footnote-2).
  2. In September 2015, following stakeholder consultation on the draft Guidelines, the Commission issued final Guidelines to supplement the Statement of Approach on Compliance.[[2]](#footnote-3) The Guidelines and Statement of Approach were amalgamated and the Commission published final Compliance Framework and Reporting Guidelines in February 2016.
  3. The Guidelines confirm the condition of licences to provide a Compliance Report to the Commission at reasonable intervals determined by the Commission.[[3]](#footnote-4)
  4. The Commission also noted in the Guidelines that:

1. the annual compliance reporting and declaration requirements in the Guidelines do not apply to Independent Power Producer (IPP) licence holders; and
2. the principles and annual compliance reporting and declaration requirements of the Guidelines apply to the water and sewerage service industries until such time as the Commission develops a fully formed Compliance Guideline and Statement of Approach for the water and sewerage sector.
   1. The Commission requires an annual Compliance Report from licence holders by 31 August with a declaration of responsibility from the Board of the licensee:
3. 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; and
4. 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.[[4]](#footnote-5)
   1. For 2015-16, licensees were required to submit reports by 31 August 2016. This was the second year licensees are required to submit a compliance report.

Commission’s Approach to Compliance

* 1. The Commission’s compliance monitoring program consists of three main elements:
* risk identification and risk assessment;
* ensuring compliance; and
* enforcement.
  1. 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.
  2. A licensee is to report any material compliance breaches to the Commission as soon as is reasonably possible after the breach is identified.
  3. 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; or
* public health and safety is threatened.[[5]](#footnote-6)
  1. 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.[[6]](#footnote-7)
  2. Where a regulated entity has not been compliant, the Commission expects a breach notification provided to the Commission to contain the following:
* 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; and
* remedial measures.[[7]](#footnote-8)
  1. 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.[[8]](#footnote-9) 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.[[9]](#footnote-10)
  2. 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).
  3. The Commission’s approach and level of regulation of licensees is determined by the level of mutual cooperation, transparency and voluntary disclosure shown by the licensee. The Commission prefers to take a voluntary reporting approach in the first instance; notwithstanding that the responsibility for compliance and assessment of risks and obligations ultimately lies with the licensee, the Commission is open to engaging with licensees on any compliance issues and providing advice where the licensee is unsure of whether an obligation has been breached.
  4. However, where a voluntary approach has not worked and there is evidence to suggest that the Commission is not able to place confidence in a licensees’ ability to manage its compliance framework, the Commission will be required to undertake a more intrusive form of regulation and oversight within its powers through audit, monitoring and review, and enforcement action to ensure licensees comply with their regulatory obligations.

Risk Identification and Risk Assessment

* 1. The Commission considers that the compliance obligations of regulated entities include both relevant compliance requirements, such as legislation, statutory obligations, codes and licences, and relevant compliance commitments such as internal policies, guidelines and voluntary standards, and that these must be adequately considered in each regulated entity’s Register of Compliance.
  2. Compliance requirements of a regulated entity are stated in relevant laws and regulations, licences, codes and guidelines.
  3. The register of regulatory compliance obligations of the licensee must be sufficiently robust and detailed in identifying the licensee’s compliance obligations from all legislative and licence obligations.
  4. 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.[[10]](#footnote-11)

Ensuring Compliance

* 1. The Commission’s compliance program oversees compliance with the regulatory framework through:
* requiring regulated entities to establish, implement and maintain policies, procedures and systems to ensure compliance (that is, compliance process or compliance framework);
* an annual declaration by the Board that there is an adequate compliance framework in place and that the licensee has complied with all licence obligations with the exception of those reported; and
* monitoring the compliance of regulated entities through compliance and breach reporting, and audit requirements.
  1. The electricity retail, network, generation and system control licences require regulated entities to establish, implement and maintain policies, procedures and systems (that is, compliance process or compliance framework) for ensuring they comply with all their obligations.

Enforcement

* 1. The Commission’s preferred approach to compliance and enforcement is to work closely with regulated businesses in the first instance, particularly in providing information and education with regard to reporting requirements. The Commission considers that a cooperative approach to compliance tends to foster a more positive response than punitive sanctions.
  2. The Commission considers that discussion and consultation with regulated entities will be a first step before any enforcement action is considered. However where there is systemic and continued non-compliance, the Commission will consider taking more intrusive regulatory actions and oversight, and ultimately, sanctions in order to get a licensee to comply with its obligations.

Compliance Reports

* 1. For 2015-16, the Commission required licensees[[11]](#footnote-12) to provide a Compliance Report with a declaration by its Board in respect to the following licences.

**Table 1.1**

|  |  |
| --- | --- |
| Licensee | Licence Held |
| ERM Power Retail Pty Ltd | Retail |
| Power and Water Corporation | Network, System Control, Generation, Retail, Water Supply Services, Sewerage Supply Services |
| Power Retail Corporation (trading as Jacana Energy) | Retail |
| Power Generation Corporation (trading as Territory Generation) | Generation |
| QEnergy Limited | Retail |
| Rimfire Energy Pty Ltd | Retail |

* 1. On 30 June 2016, the Commission granted licences for retail and generation to EDL NGD (NT) Pty Ltd. EDL was not required to submit a compliance report for the 2015-16 year.

CHAPTER 2

Breaches Reported 2015-16

1. 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.
2. 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.
3. 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.

Territory Generation

1. No breaches were reported by Territory Generation for the 2015-16 financial year.
2. The Commission notes that a compliance audit of Territory Generation was completed in early 2017, and the Commission will consider the findings and recommendations and identify if there are any issues for the licensee to consider.

Jacana Energy

1. No breaches were reported by Jacana Energy for the 2015-16 financial year.
2. Jacana Energy notified the Commission that it was in the process of investigating a potential issue relating to the Pricing Order and customer transfer timeframes. The Commission considers Jacana Energy’s engagement with the Commission in relation to a potential breach to be good regulatory practice.
3. The Commission notes that the findings and recommendations of a compliance audit of Jacana Energy to be completed in early 2017 will identify if there are any issues for the licensee to consider.
4. During 2017, the Commission will undertake an audit of Jacana Energy and Power and Water Corporation’s (PWC’s) compliance with the electricity pricing orders.

ERM Power Retail Pty Ltd

1. No breaches were reported by ERM Power Retail Pty Ltd for the 2015-16 financial year.

QEnergy Limited

1. No breaches were reported by QEnergy Limited for the 2015-16 financial year.

Rimfire Energy Pty Ltd

1. No breaches were reported by Rimfire Energy for the 2015-16 financial year.

Power and Water Corporation

1. PWC has identified six breaches of regulatory obligations in its Compliance Report.
2. PWC reported a breach of the 2014 Network Price Determination occurring when the cost of providing and installing a meter for a new connection for individual customers, which is classified as a Standard Control Service under its revenue cap, was included as a separate and additional charge as an Alternative Control Service (ACS). The Commission was made aware of the breach in late 2015, and the Commission was formally notified by PWC in March 2016. The Commission considered this breach to be material. In June 2016, the Commission undertook a detailed review of PWC’s compliance with the Determination and the compliance processes leading up to reporting of the breach.
3. PWC reported a breach of a delay in submitting its regulatory accounts for   
   2014-15. The regulatory accounts were submitted to the Commission on 31 August 2016. The Commission considers this breach to be major and notes that PWC has addressed the issue, together with actions taken in relation to its financial statements.
4. PWC reported breaches of the Electricity Retail Supply Code involving customer notification timeframes.
5. PWC reported two breaches of the Ring-fencing Code, which were reported previously in the 2014-15 declaration. While the Commission considers these breaches to be individually minor, the Commission notes that the recurrence of these breaches highlights possible issues in PWC’s processes in handling information. The Commission will continue to work with PWC to monitor compliance with this obligation.
6. PWC reported a breach of a delay in submitting its Water and Sewerage Asset Management Plan in accordance with the *Water Supply and Sewerage Services Act[[12]](#footnote-13)*. As of 31 August 2016, PWC was in breach of the requirement to submit plans for minor retail centres. The breach relating to asset plans for minor centres was rectified in late September 2016.

Annual Compliance Declaration

1. In PWC’s declaration, there were several omissions from the declaration in Appendix C, Annual Compliance Report Template, of the Commission’s Guidelines relating to PWC, specifically:
2. making appropriate and due enquiry to be aware of any breach of any other obligations other than those listed in the compliance report (para 2);
3. the compliance program developed by PWC has identified all applicable obligations that apply to the licensee (para 3(a));
4. PWC has allocated responsibilities for the obligations to a responsible officer (paras 3(b) and 3(c));
5. the Board and Chief Executive Officer will be made aware of any breaches of Applicable Obligations and the process for remediation (para 3(d));
6. remedial action is taken as soon as possible where there are breaches of obligations (para 3(e)); and
7. continual review and improvement of the compliance framework (para 3(f)).
8. At officer level, the Commission advised PWC of these omissions and will continue to work with PWC to ensure it complies with its licence conditions requiring it to establish and maintain a compliance process that, at the minimum, meets the requirements of the relevant Australian Standard 19600:2015 Compliance management systems – Guidelines[[13]](#footnote-14).

Power and Water Corporation’s Compliance with the 2014 Network Price Determination

1. PWC reported a breach of the 2014-19 Network Price Determination (NPD). The Commission was made aware of the breach from a third party and noted concerns around PWC’s reporting timeframes in relation to a material breach. The Commission’s response and its detailed review of PWC’s compliance with the 2014 NPD and compliance reporting processes relating to the reporting of the breach will be published as a separate report in early 2017.
2. The findings of the review indicate that PWC is in breach of its licence conditions to establish and maintain a compliance process[[14]](#footnote-15) and to report material breaches as soon as reasonably possible[[15]](#footnote-16), and that improvement needs to be made in the implementation and application of existing compliance policies and strategies.
3. The Commission will continue to work with PWC to assist PWC to understand and comply with its regulatory obligations.
4. The Commission will continue to work with all licensees to reinforce the Commission’s guiding principles in relation to its approach to compliance, and undertake more intrusive regulatory action such as increased monitoring of compliance through audits and reviews where necessary.

CHAPTER 3

Review of Compliance Obligations 2015-16

* 1. In Schedule A of the annual compliance report, the Commission requires licensees to list all applicable obligations to ensure licensees are aware of their regulatory obligations, and is taking steps to keep knowledge of regulatory obligations current. The Commission requested documentation from licensees to demonstrate that the obligations are monitored through a compliance risk register or equivalent document.
  2. The Commission reviewed the list of regulatory obligations provided by Territory Generation, Jacana Energy, ERM Power Retail Pty Ltd, QEnergy Limited and Rimfire Energy Pty Ltd, and made inquiries of licensees relating to updating and keeping regulatory obligations current.
  3. The Commission was satisfied that the licensees presented in Chapter 2 are aware of their regulatory obligations. The Commission considered the lists of regulatory obligations to be sufficiently detailed and adequately assessed, and will continue to work with licensees to provide assistance and clarification on relevant regulatory obligations where it considers necessary.
  4. On 30 June 2016, the Commission granted retail and generation licences to EDL NGD (NT) Pty Ltd. The licensee provided the Commission with its list of regulatory obligations and compliance process, and these will be considered in respect to its 2016-17 annual compliance report.
  5. In response to a material breach of the 2014 NPD, the Commission undertook a detailed review of PWC’s compliance with the 2014 NPD and the compliance processes leading up to the reporting of the breach in late 2016. The review included a detailed review of PWC’s compliance risk register and associated documents.
  6. The review found deficiencies in the implementation of existing compliance strategies, policies and framework in PWC, including that PWC is not adequately monitoring its regulatory obligations, taking appropriate actions to assess the risk of the obligations or putting controls in place. A detailed report of the findings will be made available separately in early 2017.
  7. In early 2016, the Commission performed a high level review of PWC’s register of obligations provided in response to Schedule A ‘Relevant Obligations’ for 2014-15 and identified potential gaps in the obligations register provided, noting that several significant regulatory instruments appeared to have not been identified or risk assessed by PWC, or that the Commission considered needed further risk assessment and identification of appropriate management controls. The results of the Commission’s review were provided to PWC in April 2016.
  8. The Commission will continue to work with PWC to ensure PWC complies with its regulatory obligations, including those in its licence requiring it to establish and maintain a compliance process.
  9. PWC responded formally to the detailed review in December 2016 and has committed to a comprehensive review of its compliance framework. The Commission will monitor PWC’s progress over the next 12 months and consider if further regulatory action is appropriate.

1. Clause 11.2(b) of the Retail, Generation and Network licences, and 12.2(b) of the System Control licence. [↑](#footnote-ref-2)
2. In February 2016, the Commission amalgamated the Guidelines with its Statement of Approach on Compliance. [↑](#footnote-ref-3)
3. Cl.11.2(a) of the retail, networks and generation licences, and cl.12.2(a) of the system control licence. [↑](#footnote-ref-4)
4. [Compliance Framework and Reporting Guidelines, Final, February 2016](http://www.utilicom.nt.gov.au/PMS/Publications/UC-COM-REP-GDL-0216.pdf), page 15, para 3.42 [↑](#footnote-ref-5)
5. Ibid, page 12, para 3.23 [↑](#footnote-ref-6)
6. Ibid, page 12, para 3.24 [↑](#footnote-ref-7)
7. Ibid,page 13, para 3.25 [↑](#footnote-ref-8)
8. Ibid,page 13, para 3.26 [↑](#footnote-ref-9)
9. Ibid,page 13, para 3.27 [↑](#footnote-ref-10)
10. Ibid, page 6, para.4.5.2 [↑](#footnote-ref-11)
11. Holders of Special Licences were not required to submit annual Compliance Reports. [↑](#footnote-ref-12)
12. Section 48 *Water Supply and Sewerage Services Act* [↑](#footnote-ref-13)
13. Australian Standard 19600:2015 Compliance management systems – Guidelines superseded the Australian Standard 3806:2006 Compliance Programs Standard. [↑](#footnote-ref-14)
14. [Cl. 11.1 of Power and Water Corporation’s Network Licence.](http://www.utilicom.nt.gov.au/PMS/Publications/UC-LIC-PWC-NET.pdf) [↑](#footnote-ref-15)
15. [Cl. 11.5 of Power and Water Corporation’s Network Licence.](http://www.utilicom.nt.gov.au/PMS/Publications/UC-LIC-PWC-NET.pdf) [↑](#footnote-ref-16)