Annual compliance report

A summary of Compliance Reports received by the Utilities Commission from licensees for the 2017-18 year

**Overview**

Each year licence holders are required to maintain and report on their compliance framework. This report documents licence holder’s Annual Compliance reports to the Utilities 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. The Utilities Commission is an independent statutory body established by the *Utilities Commission Act* (UC Act) with defined roles and functions for economic regulation in the electricity, water and sewerage industries and declared ports in the Northern Territory.
	2. The Commission’s objectives and matters it must consider in undertaking its work is encapsulated in the Commission’s Strategic Statement:

*The Utilities Commission seeks to protect the long term interests of consumers of services provided by regulated industries with respect to price, reliability and quality.*

*The Commission will seek to ensure consumer requirements are met by enhancing the economic efficiency of regulated industries through promoting competition, fair and efficient market conduct and effective independent regulation.*

* 1. The Commission has functions under various Acts (and associated regulations) including the UC Act, *Electricity Reform Act* (ER Act), *Water Supply and Sewerage Services Act* and the *Ports Management Act*.
	2. Section 14(3) of the ER Act and 14(1) of the *Water Supply and Sewerage Services* *Act* provides that a licence is required for relevant services. Note that while the Commission regulates the port industry, the Darwin Port’s operations are not licensed and there is a different compliance process and reporting requirements.
	3. 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.
	4. In February 2016, the Commission issued Compliance Framework and Reporting Guidelines. The Guidelines provide additional details on the Commission’s requirements.
	5. In particular, the Guidelines note that the annual compliance reporting and declaration requirements do not apply to Independent Power Producer (IPP) licence holders.
	6. 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. 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
2. 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]](#footnote-2)
	1. 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. The Commission’s compliance monitoring program consists of three main elements:
* risk identification and risk assessment
* ensuring compliance
* 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
* public health and safety is threatened.[[2]](#footnote-3)
	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.[[3]](#footnote-4)
	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
* remedial measures.[[4]](#footnote-5)
	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.[[5]](#footnote-6) 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.[[6]](#footnote-7)
	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).

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.
	2. 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.
	3. 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.[[7]](#footnote-8)

Compliance Reports

* 1. For 2017-18, the Commission received Compliance Reports, with a declaration by its Board (or alternative) in respect to the following titles and licences.

**Table 1.1**

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

CHAPTER 2

Breaches Reported 2017-18

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. 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.

EDL NGD (NT) Pty Ltd

1. No breaches were reported by EDL NGD (NT) Pty Ltd for the 2017-18 financial year.

ERM Power Retail Pty Ltd

1. No breaches were reported by ERM Power Retail Pty Ltd for the 2017-18 financial year.

Jacana Energy

1. Jacana Energy reported two breaches to its retail licence and one breach to the System Control Technical Code (SCTC). Further, Jacana advised of two compliance issues for noting.
2. In July 2017, Jacana Energy reviewed its customer data following the implementation of its new Retail Operating System (ROS) and identified 14 Commercial and Industrial (C&I) customers that needed to move from contracted pricing to the Pricing Order, as their consumption trended under 750MWh for three consecutive months. Due to complications with the application of network charges for these customers, they were charged contracted pricing instead of applicable Pricing Order charges for one month. Breaches to clause 17.3 of Jacana Energy’s Retail Licence continued for the remainder of the reporting period at an average of one customer per month. Jacana Energy indicates that the issue is being addressed through data improvements through the ROS and new processes.
3. Through its customer complaints process, Jacana Energy identified six instances of disconnections made in error (Wrongful Disconnections is a breach of clause 23 of Jacana Energy’s Retail Licence), and is aware of a number of other Wrongful Disconnections that did not progress through the customer complaints process due to speedy reconnection. Jacana Energy states that customer care agent error is the main reason for Wrongful Disconnections and that it is working with its agents, through training and performance management, to reduce the occurrence of Wrongful Disconnections. Jacana Energy states that if power cannot be restored for these customers on the same day, it may offer payment of up to $150 per day without power or reimbursement of up to $200 per day for hotel accommodation.
4. Jacana Energy states that it is looking to develop its system reporting to record Wrongful Disconnection events, rather than relying on a review of customer complaints to identify this type of breach. The Commission agrees that a better system is needed.
5. Jacana Energy states that it was informed by a large C&I customer in August 2017 that it had ceased operations. The C&I customer provided its revised consumption forecast for 2017-18 to Jacana Energy, which showed a substantial reduction in consumption. However, this information was not provided to PWC System Control in accordance with clause 3.11.4 of the SCTC. Jacana Energy states that no customers were impacted as a result of this breach and that it is developing a business process to ensure that System Control is advised as appropriate in the future.
6. Jacana Energy advises that it is continuing to address partial compliance issues identified through the Merit Partners audit of Jacana Energy’s compliance processes and systems. Actions still underway during 2017-18 included a comprehensive review of Jacana Energy’s compliance framework, policy and procedure (including the processes for breach identification and reporting) and the roll-out of new training on Jacana Energy’s compliance obligations to employees.
7. Jacana Energy has been actively consulting with the Commission on its inability to report on all performance indicators on a quarterly and regional basis 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. Jacana Energy has committed to report against further performance indicators as soon as possible and undertake a project to develop its system reporting to enable it to meet its obligations in future years.

Power and Water Corporation

1. PWC reported no material breaches for the current reporting period in its report and declaration dated 29 August 2018.
2. However, the Commission notes separate advice provided by PWC on 4 August 2018 of a breach of the 2014 Network Price Determination (NPD) that occurred between 1 April 2018 and 31 July 2018, which spans over two annual compliance reporting periods. The breach occurred during the transition of Jacana Energy from PWC’s billing system whereby PWC incorrectly levied Alternate Control Charges to Jacana Energy for greenfield sites.
3. On 17 October 2018, PWC advised that a joint investigation by PWC and Jacana Energy of the NPD breach found that 139 incorrect transactions occurred, 59 ‘end use’ customers received an invoice including the charge and have subsequently received a refund and 80 ‘end use’ customers were not invoiced for the charge, as the invoice was delayed and corrected prior to sending to the relevant customers.
4. PWC advises that it is undertaking improvements to ensure no further breaches occur, including a review of its Business to Business process and additional training.
5. Responsibility for the regulation of electricity networks was transferred from the Commission to the Australian Energy Regulator (AER) on 1 July 2015 under the *National Electricity (Northern Territory) (National Uniform Legislation) Act*. PWC states that it has advised the AER of this breach. The Commission is not privy to what enforcement action the AER may take as a result of this breach.
6. 45 non-material non-compliance events were reported, including 12 for non-compliance with internal controls and a number of events/issues not of relevance to the Commission, such as safety related asset condition and hazard issues reported to Northern Territory Worksafe, the Department of Health and/or the Northern Territory Environmental Protection Authority as appropriate.
7. The Commission notes that PWC’s compliance declaration detailed further improvements to its Compliance Management System in order to meet the Commission’s Compliance Framework and Reporting Guidelines, which build on those reported in 2016-17.
8. The Commission acknowledges PWC’s serious efforts in developing adequate compliance systems and processes.

QEnergy Limited

1. No breaches were reported by QEnergy Limited for the 2017-18 financial year.

Rimfire Energy Pty Ltd

1. No breaches were reported by Rimfire Energy for the 2017-18 financial year.

Territory Generation

1. No breaches were reported by Territory Generation for the 2017-18 financial year.
1. [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-2)
2. Ibid, page 12, para 3.23 [↑](#footnote-ref-3)
3. Ibid, page 12, para 3.24 [↑](#footnote-ref-4)
4. Ibid,page 13, para 3.25 [↑](#footnote-ref-5)
5. Ibid,page 13, para 3.26 [↑](#footnote-ref-6)
6. Ibid,page 13, para 3.27 [↑](#footnote-ref-7)
7. Ibid, page 11, para.3.9 [↑](#footnote-ref-8)