



15 January 2021

Essential Services Commission
Level 8, 570 Bourke Street
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Updating the Compliance and Performance Reporting Guideline

Alinta Energy welcomes the opportunity to respond to the Commission's update to the *Compliance and Reporting Guideline* (Guideline) for energy retail licence holders.

Alinta Energy, as an active investor in energy markets across Australia with an owned and contracted generation portfolio of nearly 3,000MW and more than 1.1 million electricity and gas customers has a strong interest in the effectiveness and viability of the competitive retail energy market.

Alinta Energy recognises the importance of establishing a measured and consistent Guideline to enable the ESC to effectively monitor the compliance and performance of energy retailers. The Guideline is being updated by the Commission to reflect the recent regulatory reforms relating to Life support, clear and fair contract entitlements, COVID protections, back-billing, and electricity distribution code service standards.

Although we acknowledge the importance of these consumer protections and the need for mandatory reporting, we do not support the classifications assigned to non-compliances. With the majority being assigned as "Type 1". We believe the classification of the majority of non-compliances as a Type 1, will dilute the effectiveness of retailers' risk-based compliance programs and indeed the application of the Commission's Compliance and Enforcement Policy. As drafted, retailers will have to invest more resources into managing 85 individual Type 1 breaches. This investment not only captures the development of preventative compliance processes and systems but also contributes to the administrative costs of reporting of Type 1 breaches to the Commission. We believe a more measured and transparent classification process, one that is aligned with the Commission's previously published compliance matrix model, should be considered when classifying the significance of non-compliance with the provisions being introduced into the Guideline.

Risk-based assessment of compliance obligations

On 13 September 2019, the Commission released its draft decision into its previous update to the Guideline (the previous update). This update was in relation to key entitlements such as the life support protections, Victorian Default Offer (VDO), clear advice on the most appropriate offer, a best offer message on customer's bills and advanced notification of any price or benefit changes.

The previous update provided some guidance into how non-compliance with Energy Retail Code provisions were classified, seen below as Table 1 is the Commission's 'matrix model'.

As described in the previous update, the Commission's *matrix model* provided a risk-based approach to classifying non-compliances that primarily considered 'the potential customer impact of a breach and the extent to which an immediate response is required, referred to as 'time sensitivity.'

Table 1

		Time sensitivity		
		High	Medium	Low
Customer harm	Significant	Type 1		
	Moderate		Type 2	
	Minor			Type 3

Using the Commission's matrix model, we believe that only those non-compliances associated with Life Support protections and conduct that is in contravention of the Competition and Consumer Act, should be considered Type 1 breaches.

To illustrate this position, we highlight Clause 37 of the Energy Retail Code, which has been classified as Type 1 in the Guideline. Clause 37 requires retailers to transfer a customer to another tariff within 10 business days of conditions being satisfied. Applying the Commission's matrix model above, if, for example, a customer is transferred to another tariff in 20 business days instead of 10 business days, whilst we acknowledge that the customer may be inconvenienced and noting that any such inconvenience would be remedied by the retailer, we do not consider the level of harm to a customer in this instance to be as material in significance to that of a customer where their life support status has not been maintained. So would question the equitable nature of the application of the assessment when determining Type 1 breaches, and that of the use of the Commission's own matrix model.

We urge the Commission to review the assessment of the obligations consistent with the application of the Commission's matrix model.

Increased costs of compliance and the impact on customers

In accordance with the Guideline a Type 1 breach must be reported to the Commission within two business days of confirming a breach has occurred. The Commission may also request that further information be provided after receiving the initial notification. A full report of all Type 1 breaches must also be made on a quarterly basis. As noted in our submission, the Guideline now has 85 individual Type 1 reportable breaches. We believe that increasing the already exhaustive list of Type 1 classifications will impose unnecessary costs on retailers and move Victoria further away from harmonization with the National Energy Customer Framework

(NECF). Given the vast disparity between the NECF reporting obligations and the Guideline, we believe this will add complexity confusion and an increase in costs to managing compliance programs. We urge the Commission to also consider the consumer's long-term interests as an increase in compliance costs may contribute to an increase in costs associated with delivering energy retail services in Victoria.

Alinta Energy would welcome further discussion with the Commission on any of the matters raised in this response. I may be contacted on [REDACTED].

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Regulatory Manager