

8/01/2021

Essential Services Commission of Victoria

Via email to: [REDACTED] / [REDACTED] / [REDACTED]

Updates to the Compliance and Performance Reporting Guideline

Thank you for the email on the 9th of December 2020 and the opportunity to comment on draft amendments to the Compliance and Performance Reporting Guideline (CPRG).

Tango Energy observes from the spreadsheet provided that there are 27 new Type 1 breach reporting obligations being proposed, and that these will make 65 out of 137 causes in the Energy Retail Code (ERC) Type 1 breaches. This suggests a need to streamline and conduct a more holistic review of administrative arrangements created from the continuous reforms and addition of regulatory obligations over the last 2-3 years.

Currently, section 2.1 of the CPRG states:

2.1. Energy retailers – Compliance reporting schedule

This section sets out retailer compliance reporting obligations.

Under the compliance reporting schedule outlined below, regulatory obligations are classified as type 1, type 2 or type 3 obligations. For energy retailers, type 1 regulatory obligations are those where:

- non-compliance has or could potentially have a significant impact on customers; and
- the impact of that non-compliance increases over time if it is not rectified quickly.

All breaches of type 1 obligations must be reported to the commission immediately.

Type 2 regulatory obligations are those where:

- non-compliance could have a moderate impact on customers; and
- the impact of that non-compliance increases over time.

Type 3 regulatory obligations are all other obligations.

Source: Essential Services Commission v5.0 Compliance and Performance Reporting Guideline p13

In our opinion, where there are obvious candidates for inclusion such as causes relating to fee support and disconnection, it does not appear that any detailed assessment or justification of the remainder of the added reporting requirements (provided to stakeholders in the pack on 9 December 2020) have been made against the above high level principles.

The current blanket approach and default inclusion of most new obligations as Type 1 breaches may also inadvertently have the effect of diluting the understanding of the importance of the obligations and the severe consequences of breach, and should be

contrasted to the Australian Energy Regulator's Compliance Procedures and Guidelines¹, which mandated reporting obligations (within two business days) to matters concerning de-energisation and safe support. There are a so key to be increased regulatory reporting costs across the industry with the additional layer of reporting required specific to Victoria.

Given that a new obligations are considered to be of high severity and impact, and the volume of obligations being added, Tango Energy suggests consideration of the following options.

Firstly, section 2.1 of the CPRG should be expanded to provide a set of clear, detailed guiding principles and criteria for the Type 1, 2 and 3 categories that can be easily understood by users of the CPRG document.

A transparent and detailed assessment, and justification of the inclusion of any new reporting requirements, would be undertaken against the detailed guiding principles and criteria. As a corollary, a review of whether the categorisation of Type 1, 2 and 3 continues to be relevant should be undertaken.

In addition, given the increasing volume of obligations in the reporting schedule, Tango Energy requests extension of the Type 1 reporting timeframe to 5 business days.

Consistency between Type 1 and 2 breaches

In our opinion, the following new Type 1 reporting obligations:

- a) Clause 3G(1) - GST inclusive pricing
- b) Clause 25(1)(za) - Contents of bills - Information about Victorian Default Offer [electronic only]

appear to be more consistent with existing Type 2 or 3 breaches of the ERC in the table below as they relate to the communication of information to a customer in a mandated manner. It is also unclear how these fit the criteria of Type 1 breaches described in section 2.1 of the CPRG discussed above.

Clause	Section of ERC	Type of breach	ESC Reference
Clause 15A Internet disclosure	Part 2, Customer retail contracts, Divisions 2A Standing offer tariffs	Type 2	RB1300
Clause 25A Greenhouse gas disclosure	Part 2, Customer retail contracts, Divisions 4 Customer retail contracts - billing	Type 2	RB1110
Clause 87 Written Communications	Part 3, Assistance for residential customers and contacting or facing payment difficulties, Divisions 5 Communications	Type 2	RB1410
Clause 89 Retailer obligations	Part 3, Assistance for residential customers and contacting or facing payment difficulties, Divisions 6 Miscellaneous	Type 2	RB1411

¹ <https://www.aer.gov.au/retail-markets/guidelines-reviews/compliance-procedures-and-guidelines-september-2018>

Cause 56 Provision of information to customers	Part 2, Customer retail contracts, Division 9 Other retail obligations	Type 3	RB0880
Cause 28 Historical Billing Information	Part 2, Customer retail contracts, Division 4 Customer retail contracts - Billing	Type 3	RB0890
Cause 86 Provision of information to customers	Part 3, Assistance for residential customers anticipating or facing payment difficulties, Division 5 Communications	Type 3	RB1220

Source: *Essential Services Commission v5.0 Compliance and Performance Reporting Guideline pp21-27*

Our views that understanding of the basis for categorisation between Type 1, 2 and 3 breaches would be aided by the adoption of clearer and more detailed principles for categorisation described above.

Wrongful disconnection – clause 107

The proposed amended CPRG includes changes to include, effectively, the entire Part 6, Division 2 of the ERC as a Type 1 immediate reportable breach. It would be useful to provide clarity on whether a breach reported under clause 107 would need to be included in the monthly wrongful disconnection requirement, given the current wording of the CPRG:

Type 1 reports

Type 1 breaches, other than wrongful disconnections, must be reported to us within two business days of detection. We may request that further information be provided after receiving the initial notification. A full report of all type 1 breaches must be made on a quarterly basis.

Wrongful disconnection reports

Wrongful disconnections do not need to be reported with type 1 breaches. Instead wrongful disconnections must be reported on a monthly basis.

Source: *Essential Services Commission v5.0 Compliance and Performance Reporting Guideline p8*

Administrative matters

It would be helpful if the schedule to the guideline (pages 14 to 27 of version 5) could be provided in a spreadsheet given the increasing volume of obligations in the reporting schedule. This would also remove minor inconsistencies and any confusion with the reporting template.

If you would like to discuss this further in detail, please contact me at [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]
Assurance and Compliance Manager
Tango Energy Pty Ltd