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COMPLIANCE REPORTING MANUAL (ENERGY RETAIL BUSINESSES)

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AMENDMENT RECORD

Part	Issue No.	Date	Summary of changes
	1	20 July 2007	Original issue
	2	30 March 2009	Retail obligations updated to reflect ESC Regulatory Review (2008) Distribution obligations removed
	3	31 March 2010	Retail obligations updated to include Guidelines 13, 19, 21; minor text corrections
	4	6 September 2012	New retail obligations included Gas Market Retail Rules removed Minor text corrections

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1 | INTRODUCTION

The Essential Services Commission (the Commission) published a *Compliance Policy Statement* in November 2006.¹ The statement sets out the way that licensed electricity and gas distribution businesses ('distributors'), and energy retail businesses ('retailers') should monitor and report compliance with their regulatory obligations.

The businesses are expected to comply with all obligations at all times, and to have systems and procedures to monitor their compliance. However, from time to time, a breach of the obligations will arise. The classification of regulatory obligations in this compliance reporting manual provides guidance to the businesses on the frequency of reporting breaches of these obligations to the Commission on a systematic basis after the event. It is important to note that each breach will be investigated immediately on a case-by-case basis to determine the appropriate enforcement response.

This *Compliance Reporting Manual* (the Manual) is developed from the framework set out in the Final Decision: Energy Businesses' Compliance Reporting issued in July 2007. It identifies the key regulatory obligations against retailers must report non-compliance events to the Commission and provides the procedures for how energy distributors and retailers should report breaches of their regulatory obligations.

1.1 The Commission's approach to compliance and enforcement

The Commission's approach to compliance and enforcement is based on the Organisation for Economic Co-operation and Development's framework that outlines three conditions for effective compliance.² For a regulated business to comply with regulation, the three conditions that must be satisfied are:

- condition 1 — it must know and understand its obligations
- condition 2 — it must be able to comply — that is, regulatory design must take account of the technological possibility of compliance, and ongoing compliance must be possible in light of the full range of legal and regulatory obligations imposed on the regulated body
- condition 3 — it must be willing to comply.

¹ Essential Services Commission 2006, *Compliance Policy Statement for Victorian Energy Businesses*, November

² Organisation for Economic Co-operation and Development 2000, *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance*, OECD, Paris, www.oecd.org, pp. 14–23.

The overall approach by the Commission is to encourage a culture of compliance by the regulated businesses. To this end, it supports the voluntary adoption by businesses of the *Australian Standard AS3806-2006 Compliance Programs*, which provides principles and guidance for implementing a flexible and effective compliance program within a business.

The Commission has identified eight key elements of good compliance practice required to facilitate satisfaction of the three conditions for compliance. The elements are:

- Good regulatory design — regulation needs to be simple, clear, meet its stated objectives, have benefits that outweigh costs and minimise compliance costs
- Integration of compliance and other regulatory activities — compliance issues should inform the regulation design stage and the compliance strategy should adjust as the nature of regulation changes
- High quality engagement with regulated businesses — regulated businesses need to be consulted both during the development of regulation and once it is in place; communication needs to be straightforward, occur regularly, and be ‘culturally’ appropriate
- Provision of information — regulated businesses need to understand the purpose and objectives of the regulation, know what their obligations are and be informed of the consequences of non-compliance
- Practical obligations — requirements must be suitable for the particular regulated businesses and be able to be complied with in the time available and to the required standard
- Monitoring of compliance — compliance is unlikely unless the regulator monitors whether it occurs
- Procedural fairness — processes and decisions need to be consistent, impartial and ethical to build trust with the regulated businesses and encourage voluntary compliance, and
- Escalating levels of interference and sanctions in response to non-compliance—responses to non-compliance generally begin with co-operative approaches to maximise voluntary compliance, with action escalating as far as is needed to achieve compliance; sanctions must be credible threats.

The Commission is committed to adopting a co-operative and persuasive enforcement approach because when this approach is successful it works better than punitive sanctions in accomplishing long-term compliance. However, compliance cannot be based solely on encouraging voluntary compliance, because some businesses may not comply. Sanctions are necessary for those who do not comply voluntarily.

1.2 Purpose of the compliance performance manual

This manual sets out the reporting obligations and provides guidance on the manner in which the reports should be made to the Commission. The Manual is structured as follows:

- Chapter 2 sets out the administrative procedures and frequency of reporting obligations.

- Chapter 3 summarises the classification of the types of regulatory obligations to which the reporting obligations apply.
- Chapter 4 sets out the reporting process for the regulated retail energy businesses where they become aware of breaches of regulatory obligations.
- Appendix A details the reporting requirements for the different regulatory obligations.
- Appendix B sets out the pro-forma reports and checklists for reporting breaches by the regulated energy businesses.

1.3 Amendments to the compliance performance manual

In 2011-12, the Commission:

- undertook public consultation on smart meter related issues concerning capacity control products and verifying bills and
- reviewed the Energy Retail Code in order to clarify for retailers their obligations to offer instalment plans and reconnect smart meter customers within specified timeframes.

These consultation processes resulted in amendments to the Commission's regulatory instruments. These amendments are reflected in the revised Manual and include amendments to:

- clause 12A allowing retailers to offer customers capacity control products for non-credit management purposes
- clause 26.4 requiring retailers to give smart meter customers 20 business days' notice of a variation in tariffs.
- clause 11.2 prohibiting retailers from requiring a customer to pay some of the amount owing as a condition of providing a Utility Relief Grant application form.

Minor corrections have also been made to the Manual such as the removal of repealed clauses and amendments to either the clause title or the explanation of the obligations to better reflect what is contained in the regulatory instruments. References to the VENCORP Gas Market Retail Rules have been deleted.

2.1 Application

The manual applies to all Victorian electricity and gas retail businesses licensed by the Commission.

2.2 Reporting period

Unless advised by the Commission, the reporting period is 1 July of the year to 30 June of the following year.

2.3 Frequency of reporting

The classification of each obligation for reporting purposes determines the frequency with which regulated energy businesses must report known non-compliance with obligations.

Each obligation is categorised as Type 1, 2 or 3. A breach of Type 1 obligations is required to be reported immediately. Breaches of Type 2 obligations are to be reported each 6 months although they may be required to be reported less frequently in some circumstances, and Type 3 breaches are required to be reported annually. All breaches will be required to be reported on an annual basis regardless of whether the breach has already been reported.

2.4 Notification

The Commission will advise each relevant business of the businesses' reporting requirements prior to the commencement of the reporting period.

2.5 Review

The appropriate reporting requirements for each obligation may vary over time, reflecting previous compliance performance of the businesses as well as changes in regulatory environment. Changes to this *Compliance Reporting Manual*, including amendments to the classification of the types of regulatory obligations, may be required:

- to reflect amendments to existing obligations
- to improve the effectiveness of the reporting process.

3 CLASSIFICATION OF REGULATORY OBLIGATIONS

The licence conditions of retailers require that these businesses must comply with all the relevant regulatory obligations set under the relevant licences, codes and guidelines published by the Commission and other relevant Acts and Orders published by the Government. It is also a licence requirement that licensees report any breaches of the obligations. This manual is designed to provide guidance on the procedures and timing for reporting breaches.

3.1 Classification of regulatory obligations

Type 1 regulatory obligations

Type 1 regulatory obligations are considered to be those regulatory obligations where non-compliance would have a critical impact on customers and where the impact of that non-compliance increases over time if it is not rectified quickly. All actual or potential breaches of Type 1 obligations must be reported to the Commission immediately.

Type 2 regulatory obligations

Type 2 regulatory obligations are those where:

- non-compliance would seriously impact on customers; and/or
- the obligation is 'new' or has not been complied with in previous years; and/or
- the impact of that non-compliance increases over time.

A breach of a Type 2 regulatory obligation is to be reported on a six monthly basis. However, the Commission may reduce the frequency for reporting breaches of Type 2 obligations if specific distributors or retailers have demonstrated a high level of compliance with these obligations.

Type 3 regulatory obligations

Type 3 regulatory obligations are all other obligations and a breach of a Type 3 obligation is to be reported annually.

Appendix A sets out the regulatory obligations and their classifications as Type 1, 2 or 3.

The reporting process for breaches of regulatory obligations by the regulated energy businesses are set out below.

4.1 Type 1 obligation breaches

All breaches of Type 1 obligations must be reported to the Commission immediately by a verbal or email report of the event. A follow-up report must also be provided with full details of the breach and its implications. The Commission may also require regular updates on the status of breaches.

4.1.1 Immediate report

The pro-forma at Appendix B1 should be used as guidance for the information to be provided. The following steps should be implemented.

- When a business becomes aware that a breach of a Type 1 obligation has occurred, the business must make an initial report of the breach to the Commission.
- In the case of potential breaches the likelihood of occurrence must be judged on a reasonable consideration of probabilities, taking into account:
 - the policies, procedures and other circumstances that have given rise to the expectation of a breach
 - the ability and commitment of the business to change the relevant policies, procedures and other circumstances.
- The compliance manager or similar employee of the business must make the initial report to the CEO (or delegated officer) of the Commission as soon as reasonably practicable by telephone, e-mail or other similar means.

4.1.2 Follow-up reports

The business must submit a formal written report on the breach including the following:

- the extent, nature and impact of the non-compliance (including whether and how many customers and/or other regulated energy businesses have been affected)
- reasons for non-compliance
- actions taken or planned to be taken to rectify the non-compliance and to prevent it reoccurring, and
- actual/anticipated date of full compliance.

Appendix B2 provides the pro-forma for such reports.

The follow-up report must be submitted within five business days of the initial Type 1 obligation breach report and:

- should reference the initial Type 1 obligation breach (verbal or e-mail) report to which it relates.
- must be signed by the CEO (or delegated officer) of the business to the CEO (or delegated officer) of the Commission.

4.2 Type 2 obligation breaches

If the Commission has advised a retailer that it is to report breaches of Type 2 obligations on a six-monthly basis, a report must be provided on 28 February or the next business day on any known breaches of Types 1 and 2 obligations for the first six months of the reporting period showing all breaches of those obligations that have occurred since the start of the reporting period.

The six-monthly report of breaches must include:

- extent and nature of the non-compliance (including whether and how many customers and/or other regulated energy businesses have been affected)
- reasons for non-compliance
- actions taken or planned to be taken to rectify the non-compliance and to prevent it reoccurring, and
- actual/anticipated date of full compliance.

Appendix B3 provides the pro-forma for such reports.

The report must be signed by the CEO (or equivalent) of the business to the CEO (or his delegated officer) of the Commission.

4.3 Type 3 obligation breaches

All regulated energy businesses are to submit an annual statement reporting compliance against Type 1, Type 2 and Type 3 regulatory obligations.

The report must be submitted on 31 August or the next business day showing all breaches of types 1, 2 and 3 obligations that have occurred since the start of the reporting period.

The report must be signed by the CEO (or equivalent) and the Chairman of the Board (or duly authorised Director other than the CEO) of the reporting business.

Appendix B4 provides the pro-forma for such report.

APPENDIX A – REGULATORY OBLIGATIONS FOR REPORTING BY ENERGY BUSINESSES

Table A.1 **Energy retailers' obligations**

Important: the descriptions on the pages that follow are intended as a brief indication of the context of the retailers' obligations. Compliance monitoring and reporting must be based on the relevant regulatory instruments themselves.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
TYPE 1		
Electricity Retail Licence [Note: Licences may require amendments following the Commission's proposed retail licensing review]		
RB0020	Clause 6.1 & 6.2 - Use of system agreements (Alinta – Cl. 9)	A Licensee must have Use of System Agreements with each distributor that its customers are located in. The UoSA must be in writing. The Licensee must not unreasonably refuse a new form of DUoS from a distributor under clause 4.8 of its distribution licence.
RB0030	Clause 8.1 - Obligation to offer to sell	A Licensee must offer to supply electricity to any domestic or small business customer at tariffs published by the Licensee and on terms and conditions approved by the Commission and published by the Licensee in the Government Gazette and a newspaper.
RB0040	Clause 12.2 & 12.5 - Retailer of last resort (ROLR) (Alinta – Cl. 16)	The sale of energy can only be on ESC approved tariffs and terms. Outlines the information requirements for customers in the event of a ROLR.
RB0050	Clause 21 - Compliance with laws (Alinta, Dodo, Click, Neighbourhood, APG - Cl. 22)	The retailer must comply with all applicable laws
Gas Retail Licence [Note: Licences may require amendments following the Commission's proposed retail licensing review]		
RB0060	Clause 5.1 & 5.3 - Reliability of supply Momentum, Dodo, Red, APG,	Compliance with reliability of supply standards; a Licensee must demonstrate how it will meet its supply obligations on a peak demand day in accordance with Commission standards.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
	Alinta – Cl. 7	If a Licensee is notified by the distributor of an interruption of supply, it must use reasonable endeavours to ensure that its customers comply with any reasonable requirement set out in the notice.
RB0070	Clause 7.1 - Obligation to offer to sell Momentum, Dodo, Red, APG – Cl. 9	A Licensee must offer to supply and sell gas at tariffs and on terms & conditions approved by the Commission and published in the Government Gazette.
RB0080	Clause 13.2 & 13.5 - Retailer of last resort (ROLR) Momentum, Dodo, Red, APG – Cl. 14 Alinta – Cl. 16	The Licensee must sell gas at tariffs & terms and conditions approved by the Commission under s.34 of the Gas Industry Act 2001. The Licensee must notify customers a last resort event has occurred.
RB0090	Clause 23 - Compliance with laws Momentum, Dodo, Red, APG – Cl. 25 Alinta – Cl. 20	The retailer must comply with all applicable laws.

Code of Conduct for Marketing Retail Energy in Victoria Energy Retail Code (Version 11)

RB0100	Clause 19(1) – Responsibilities of designated retailers in response to request for sale of energy 3.2 to 3.6 – Information, cooling off and conduct	Designated R retailers must not mislead consumers, provide certain information to consumers in connection with standard retail contracts. and allow a cooling off period. The Retailer's obligations in relation to the conduct of marketing representatives and the provision of offer information to consumers.
	Clause 61 to 64 – Providing information to small customers	Retailers must provide the required information to consumers in connection with market retail contracts in the prescribed form.
	Clause 47(5) – Cooling off period and right of withdrawal – market retail contracts	Retailers must include, in each market retail contract it enters into with a small customer, express provisions setting out the rights and obligations in relation to the cooling off period and right of withdrawal.
RB0110	Clause 4.1 & 4.3 – Consumer consent ³	Retailer must obtain explicit informed consent (EIC) of consumer and the rules regarding sales to minors and authorised consumers.

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³ Division 10 of the ERC v.11 is drafted substantially differently to the Code of Conduct for Marketing Retail Energy in Victoria (Marketing Code). This clause was not included in ERC v.11 because the structure and drafting of the NERR provisions were adopted instead with respect to this issue.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB0120	Clause 6 – Marketing and Consumer Information ⁴	Retailers must abide by the Privacy Act and not misrepresent their intentions as market research and not selling. Retailers must comply with the National Privacy Principles and any relevant guidelines issued by the Commission.
Energy Retail Code		
RB0130	Clause 11.2 33 & 11.4(b)72A - Payment difficulties and debt recovery	Outlines the process of assessment and assistance to domestic customers experiencing financial difficulties. Invoking legal proceedings in relation to debt collection.
RB0140	Clause 12.1 & 12.2 72 - Instalment Payment plans	The retailer's options and requirements when offering an instalment a payment plan.
RB0141	Clause 12A-76A - Supply capacity control product	Not to offer a supply capacity control product for any credit management purpose before 1 January 2014.
RB0150	Clause 13 (except 13.5) – 111 to 115 Grounds for disconnection Retailer initiated de-energisation of premises	The process which must be followed prior to disconnecting de-energising of a customer's premises under certain circumstances: <ul style="list-style-type: none"> – a retailer's obligations to customers prior to being able to disconnect their services under certain circumstances – instances where the retailer may not disconnect a customer's service under any circumstances; and – a retailer's obligations to reconnect customers that it has disconnected.
RB0160	Clause 14 – No disconnection 116 and 117 – When retailer must not arrange de-energisation	When a retailer may not disconnect de-energise a customer's premises .
RB0170	Clause 15 – Reconnection 121 and 122A – Re-energisation of premises	Retailer's obligation to arrange re-energisation of a A customer's right of reconnection premises and timing of reconnection re-energisation.
RB0180	Clause 20(a)- Variations require customers consent 46(3) and 46(4)– Notice of any variation to tariffs and charges	Variations in tariffs and terms and conditions of an energy contract may only be varied by agreement in writing, unless it is a gazetted term or condition. <p>Notice must be given of any variation to tariffs and charges that affects the customer</p> <p>A retailer must give notice to a customer as soon as practicable, and in any event, in the case of customers with smart meters 20 business days prior to the variation, and otherwise no later than the customer's next bill, of any variation to the tariff that affects the customer.</p>
RB0190	Clause 21.1(b) – Gazette	A varied tariff may not exceed the corresponding gazetted tariff at that time.

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⁴ Ibid.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
	based variations⁵	
RB0210	Clause 24.1(d), 24.2(a) & 24.3(a) – Termination of market retail contracts and agreed damages	When a retailer may terminate a market retail contract When a retailer may impose an early termination fee. Terms, conditions and amount of agreed damages payable to the retailer by a customer breaching their contract. When a retailer may terminate a contract for a customer's breach. Information provided to a customer prior to the expiry of fixed term contract.
	Clause 70 – Termination of standard retail contracts	When a retailer may terminate a standard retail contract No termination charge can be imposed
RB0215	Clause 26.4(b), 26.7 – Information on tariff changes and 124 – life support equipment.	A retailer must give notice to a customer as soon as practicable, and at least 20 business days in advance for smart meter customers, of any variation to the tariff that affects the customer. As soon as practicable, a retailer must provide details to the distributor of an address where life support or continued supply is necessary. As soon as practicable, a retailer must report a fault at such an address to the distributor, if supplied by the customer. Outlines the obligations on a retailer when a customer provides a retailer with confirmation from a registered medical practitioner that a person residing at the customer's premises requires life support equipment.
RB0220	Clause 28.3 – Energy and Water Ombudsman Victoria 110(2)(f) – Energy Ombudsman Victoria	The EWOV phone number must be shown existence, operation and contact details of the energy ombudsman must be shown on any disconnection warning notices.
RB0230	Clause 30.35A - Additional retail charges	Outlines the circumstances where a retailer may impose additional retail charges.
RB0240	Clause 31 – Agreed damages⁶	Terms, conditions and amount of agreed damages payable to the retailer by a customer breaching their contract.
RB0250	Clause 33(a) & (b) – Assignment 57(1) – Customer Transfers	A retailer may only assign its contract with a customer with the customer's consent A retailer must not submit a request for the transfer of a small customer under the relevant Retail Market Procedures unless the retailer has obtained explicit informed consent from the customer to enter into the relevant customer retail contract and the retailer has a customer retail contract in

⁵ This clause has not been included in ERC v.11 because the structure and drafting of the NERR was adopted instead and the NERR does not provide for gazette based variations.

⁶ This clause is now covered by clause 49 and 49A of the ERC v.11 as outlined above at ESC ref RB0210.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
		<u>place to enable the sale of energy to the customer at their premises.</u>
Guideline No. 19 – Energy Price and Product Disclosure		
RB1310	Clause 2.1(b) <u>15A(1)(b) – Internet publication of standing tariffs</u>	A retailer must provide details of its standing <u>offer tariffs</u> to the Commission in a prescribed form.
Guideline No. 21 – Energy Retailers' Financial Hardship Policies		
RB1200	Clause 2.2(a) <u>71B(1) - Equitable access</u>	The retailer must provide domestic customers in hardship with equitable access to appropriate options in the policy.
TYPE 2		
Electricity Retail Licence <u>[Note: Licences may require amendments following the Commission's proposed retail licensing review]</u>		
RB0270	Clause 9.1 to 9.3 & 9.5 - Information to customers Alinta – Cl. 12	A Licensee is obliged to provide information to customers: <ul style="list-style-type: none"> – include certain information on bills issued to customers – notify customers of changes to terms and conditions – give notice to a customer who becomes a party to a deemed contract – notify customers of expiry of fixed term contracts.
RB0280	Clause 16 - Dispute resolution Dodo, Click & APG - Cl. 17 Alinta Energy – Cl. 19	A Licensee is to submit to the Commission for approval a dispute resolution scheme which must contain and comply with stated terms and conditions. If approved by the Commission, the Licensee must implement the scheme.
Gas Retail Licence <u>[Note: Licences may require amendments following the Commission's proposed retail licensing review]</u>		
RB0290	Clause 17 – Dispute resolution Momentum, Dodo, Red, APG - Cl. 20 Simply, Lumo - Cl. 18 Alinta – Cl. 19	The Licensee must submit to the Commission a dispute resolution scheme for dealing with disagreements between itself and customers or other aggrieved persons (and implement if approved).
Code of Conduct for Marketing Retail Energy in Victoria <u>Energy Retail Code (Version 11)</u>		
RB0300	Clause 2.1 to 2.365 and 66 - Contact with Consumers <u>No contact lists and no canvassing or advertising signs</u>	Times at which retailers may contact consumers, information to be provided to consumers, # Requirements to keep 'no contact lists' and observe them; <u>and</u> requirement to observe 'no canvassing' signs.
RB0310	Clause 7.59A – Dispute resolution process (internal and external)	Retailers shall <u>must develop, make and publish on its website have a set of procedures detailing the retailer's, distributor's or responsible person's procedure for handling small customer complaints and dispute resolution procedures. The procedures must be a dispute resolution process</u>

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ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
		complying with <u>reviewed regularly, kept up to date and be substantially consistent with</u> Australian Standards, and refer complainants to EWOV.
Energy Retail Code		
RB0320	Clause 2-19(2) - Retailer's obligation to connect <u>energise</u>	A retailer must connect , as soon as practicable <u>(but not later than the end of the next business day) after the request for the sale of energy is properly made, forward relevant details of the customer to the distributor for the premises concerned, for the purpose of:</u> <ul style="list-style-type: none"> - <u>updating the distributor's records, if the premises are energised; or</u> - <u>arranging for the energisation of the premises by the distributor, if the premises are not energised.</u>
RB0330	Clause 3.1 – Billing cycles <u>24(1) – Frequency of Bills</u>	Retailer obligations in relation to the frequency of issuing bills to customers; the contents of the bill, the basis for bills (i.e., on meter readings), procedures in the event of over/undercharging and the application of late payment fees. <ul style="list-style-type: none"> - Electricity - issued <u>at least</u> every three months - Gas - issued <u>at least</u> every two months. - Dual – issued as agreed between retailer and customer (given Explicit Informed Consent).
RB0340	Clause 4.2 & 4.4 – Information and Graphs <u>25(1)(a) to (y) - Contents of bills</u>	Rules governing the minimum information to be included on a customer's bill, and the rules requiring consumption graphs to be included on all bills.
RB0350	Clause 5.1 to 5.3 <u>20, 21 and 23</u> , - Basis <u>for</u> bills	The bill must be based on actual meter readings at least once every 12 months or based on estimations as per prescribed conditions. Estimated bills may be applied under a bill smoothing arrangement.
RB0355	Clause 6.2 & 6.3 – 30 and 31 <u>– Undercharging and Overcharging</u>	Sets out conditions under which a retailer may recover money from a customer who has been undercharged, unless this is due to an unlawful act by the customer, and conditions under which the retailer must repay a customer who has been overcharged.
RB0360	Clause 7.1 (b) & (c) & 7.2 – Payment of a bill <u>26 and 32 – Pay-by date and payment methods</u>	The pay-by date is not less than <u>12-13 business</u> days from date of despatch <u>which is the date of the bill unless specified</u> the bill issue date. <u>Outlines the methods for the payment of a bill by a customer that a retailer must accept.</u>
RB0370	Clause 8.1, 8.2 & 8.3 – Refundable advances <u>40, to 45 – Security deposits</u>	The conditions under which a retailer may require <u>and use a refundable advance security deposit.</u> from a customer, apply shortened collection cycles and deal with a customer who is having difficulty paying.
RB0380	Clause 9.1 <u>34</u> - Shortened collection cycle	The retailer's right to apply a shortened collection cycle.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB0400	Clause 26.6 – Energy efficiency advice⁷	On request, a retailer must provide advice on energy efficiency to the customer.
RB0410	Clause 28.1 – Complaint handling 50 – Small customer complaints and dispute resolution information	Outlines the minimum requirement in relation to the terms and conditions of a market retail contract regarding complaints and dispute resolution information. All complaints must be handled according to prescribed Australian Standard the retailer's complaints and dispute resolution procedures. or otherwise. Information on the process must be included in the charter. The retailer must inform the small customer of the outcome of the complaint. The retailer must advise the customer that the customer has a right to refer the complaint or dispute to the energy ombudsman.
RB0420	Clause 28.2 – Advice on customer's rights⁸	The information that a retailer must provide to a customer raising a complaint.
Guideline No. 13 – Greenhouse Gas Disclosure On Electricity Customers' Bills		
RB1110	Clause 2 – Minimum content requirement 25A Greenhouse Gas Disclosure on electricity customers' bills	Content of the information to be disclosed includes emissions calculated as specified for current period and past year, with a graph and other matter <u>an adequate explanation of the graph.</u> Format of the information to be approved by the Commission.
Guideline No. 19 – Energy Price And Product Disclosure		
RB1300	Clause 2.1(a) & 2.2 – Internet publication 15A – Internet publication of standing offer tariffs	A retailer must publish its <u>Sstanding Ooffer</u> on its website. The home page must link easily and logically to the <u>Sstanding Ooffer</u>.
RB1320	Clause 3.1 & 3.2 – Process to access published details & Link to Commission's YourChoice website 15B(1) to 15B(4) – Relevant published offers (price and product information statements)	Retailers must provide a link on the home page of their internet site so that a customer can easily and logically access the retailer's price and product information statements. A retailer's website home page must link easily and logically to the Price and Product Information Statements (PPISs) and not require a customer to provide personal or technical information. A retailer must assist the Commission to link from the Commission website to related information on the retailer's website. <u>Detailed requirements for the content and format of a retailer's Price and Product Information Statement.</u> <u>An alternative format may be used with the Commission's prior approval.</u>

⁷ Clause 26.6 of ERC v.10 is substantially covered by clause 56 of the ERC v.11 as outlined below at ESC ref RB0880. There is no direct equivalent to clause 26.6 of ERC v.10 because the structure and drafting of the NERR was adopted instead.

⁸ Clause 28.2 is now covered by Clause 50 of the ERC v.11 as outlined above at ESC ref RB0410.

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ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
		A retailer must update a price and product information statement within 5 business days of changing any information in it.
RB1335	Clause 3.4 & 3.5 – Information and Format requirements⁹	Detailed requirements for the content and format of a retailer's PPIS. An alternative format may be used with the Commission's prior approval.
RB1340	Clause 3.6 – Timing of update¹⁰	A retailer must update a PPIS within 5 business days of changing any information in it.
RB1370	Clause 15D(1) - Other requirements	A PPIS price and product information statement or an Offer Summary must be in plain understandable English and comply with applicable legislation and regulation.
Guideline No. 21 – Energy Retailers' Financial Hardship Policies		
RB1210	Clause 2.2(b) – Contents of the policy, 71B – Minimum requirements for customer hardship policy	Detailed the minimum requirements for a retailer's customer's hardship policy of a retailer .
TYPE 3		
Electricity Industry Act 2000		
RB0470	Part 2, Section 47 to 49 - Community Services Agreements	If an electricity retailer and the State enter into a community service agreement, the Secretary to the Department of Human Services may specify concessional rates and terms and conditions on which the electricity retailer will provide electricity to specified classes of domestic customer.
RB0480	Part 6, Section 96 & 97 - Electricity supply emergency provisions	The Governor in Council can declare that emergency provisions of the Act apply if an event has or is about to occur which will materially affect the safe, economical or effective supply of electricity or the available supply of electricity is likely to become less than the reasonable requirements of the community. While this part is in force the Minister may give any directions the Minister thinks necessary.
Electricity Retail Licence [Note: Licences may require amendments following the Commission's proposed retail licensing review]		
RB0490	Clause 4 - Electricity purchase arrangements Alinta – Cl. 8	Licensees must be registered with AEMO as a customer under the National Electricity Code. Licensees must have arrangements in place for the purchase of electricity through the wholesale electricity market.
RB0500	Clause 5 - Energy only contracts	A licensee can only provide an 'energy only' contract if a customer has entered into an agreement with a distributor for distribution services.

⁹ Clauses 3.4 and 3.5 are now covered by clause 15B of the ERC v.11 and are dealt with above at ESC ref RB1320

¹⁰ Clause 3.6 is now covered by clause 15B of the ERC v.11 and is dealt with above at ESC ref RB1320

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB0510	Clause 6.4 - Use of system agreements Alinta – Cl. 9	If a Licensee is both a retailer and distributor, retail business must have UoSA with distribution business.
RB0520	Clause 7.2 - Contracts with customers Alinta – Cl. 11	Contracts with customers must be consistent with the Energy Retail Code. A Licensee cannot enter into a contract for the sale of electricity with a customer at a tariff that is different to the Licensee's published tariffs unless the terms and conditions of the contract are materially different to those connected to the published tariff.
RB0530	Clause 9.4 & 9.6 - Information to customers Alinta – Cl. 12	The retailer's requirement to publish tariff information. The obligations of a retailer to provide information to vacant energised premises.
RB0540	Clause 10.2 - Payment methods Alinta – Cl. 14	Licensees must notify the Commission prior to termination of arrangements with where customers may pay bills.
RB0550	Clause 11 - Community service obligation agreements Alinta – Cl. 15	Licensee must enter into an agreement with the State for the provision of community services if directed by the Secretary to the Department of Human Services.
RB0560	Clause 12.1, 12.3 & 12.6 - Retailer of last resort (ROLR) Alinta – Cl. 16	The Licensee must submit tariffs and terms and conditions to the Commission on which it would act as a retailer of last resort and to notify and provide customers with electricity in the case of a last resort event. The Commission may approve terms & conditions of supply for ROLR that vary from the Energy Retail Code. Outlines the timeframe for publication of ROLR tariffs, terms and conditions.
RB0580	Clause 17 - Separate accounts Dodo, Click & APG - Cl. 18 Alinta Energy – Cl. 13	A Licensee must ensure that separate accounts are prepared for its retail business.
RB0590	Clause 18 - Provision of information to the Commission Dodo, Click & APG - Cl. 19	A Licensee must provide information required by the Commission from time to time.
RB0600	Clause 19 - Payment of licence fees Dodo, Click & APG - Cl. 20 Alinta Energy – Cl. 5	A Licensee must pay licence fees and fees and charges as determined under section 22 of the Electricity Industry Act 2000.
RB0610	Clause 20 - Administrator Dodo, Click & APG - Cl. 21	An administrator appointed under section 34 of the Electricity Industry Act 2000 must act in a manner specified by the Commission but the Licensee remains responsible.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
	Alinta Energy – Cl. 24	
Gas Retail Licence [Note: Licences may require amendments following the Commission's proposed retail licensing review]		
RB0620	Clause 3 – Obligation to purchase gas Momentum, Dodo, Red, APG - Cl. 4	A Licensee must use its best endeavours to purchase or obtain a supply of gas on reasonable terms and conditions to meet its customer requirements.
RB0630	Clause 5.2 - Reliability of supply Momentum, Dodo, Red, APG, Alinta - Cl. 7.2	A Licensee must notify the distributor and AEMO of the Licensee's contractual arrangements with its customers relating to interruption of supply.
RB0640	Clause 9 - Hot water metering Momentum, Dodo, Red, APG - Cl. 11 Alinta – Cl. 12	Provision, replacement, installation, repair and maintenance of hot water metering installation. Timeframe for provision of service. Retailer interactions. Commission to decide fairness and reasonableness of terms and conditions of offer.
RB0650	Clause 11.2 - Payment methods Momentum, Dodo, Red, APG - Cl. 12.2 Alinta – Cl. 14	The Licensees must advise the Commission within 20 business days of changes to any payment outlet or agency through which its customers may pay bills.
RB0660	Clause 12 - Community service obligation agreements Momentum, Dodo, Red, APG - Cl. 13 Alinta – Cl. 15	If directed by the Secretary of the Department of Human Services, the Licensee must enter into an agreement with the State for the provision of community services on terms and conditions in accordance with section 49 of the Gas Industry Act 2001.
RB0670	Clause 13.1 & 13.6 - Retailer of last resort (ROLR) Momentum, Dodo, Red, APG - Cl. 14 Alinta – Cl. 16	The Licensee must submit tariffs and terms and conditions to the Commission on which it would act as a retailer of last resort and to notify and provide customers with electricity in the case of a last resort event. The Licensee must publish tariffs, terms & conditions in the Government Gazette as soon as practicable.
RB0690	Clause 18 - Separate accounts Momentum, Dodo, Red, APG - Cl. 21 Simply, Lumo - Cl. 19 Alinta – Cl. 13	The Licensees must ensure that separate accounts are prepared for their retail businesses in accordance with any guideline published for this purpose.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB0700	Clause 19 - Provision of information to the Commission Momentum, Dodo, Red, APG - Cl. 22 Simply, Lumo - Cl. 20	The Licensee must provide information required by the Commission from time to time.
RB0710	Clause 20 - Licence fee Momentum, Dodo, Red, APG - Cl. 23 Simply, Lumo - Cl. 21 Alinta – Cl. 5	The Licensee must pay as directed by the Commission a licence fee determined in accordance with section 30 of the Gas Industry Act 2001.
RB0720	Clause 21 – Administrator Momentum, Dodo, Red, APG, Alinta - Cl. 24 Simply, Lumo - Cl. 22	If an administrator is appointed to the Licensee’s business, the administrator must act in accordance with directions from the Commission but the Licensee remains responsible.
<u>Code of Conduct for Marketing Retail Energy in Victoria Energy Retail Code (Version 11)</u>		
RB0730	Clause 1 – Marketing representatives¹¹	Marketing representatives must receive adequate training and testing on specified matters. Copies of training records and manuals to be retained for at least 1 year following training and made available for independent audit as required.
RB0740	Clause 2.4 & 2.5.68 – Contact with Consumers <u>Record keeping</u>	Content of personal visit and telephone contact records, and retention for audit. Retailers must ensure that records are kept of all energy marketing activities carried out by it or on its behalf by retail marketers for a period of 12 months or for the period that a complaint or dispute remains unresolved.
RB0750	Clause 3.163(1) – Information <u>Form of disclosure</u>	Retailers must provide consumers with information in plain English <u>Required information provided to a small customer before the formation of the market retail contract may be provided electronically, verbally or in writing.</u>
<u>Energy Retail Code</u>		
RB0770	Clause 3.2.20A - Bulk hot water charging	A retailer’s bills for bulk hot water must be calculated in accordance with appendix 2 must issue bills to a customer for the charging of the energy used in the delivery of bulk hot water in accordance with Schedule 6 of the Code and provide the prescribed minimum information.

¹¹ Division 10 of the ERC v.11 is drafted substantially differently to the Marketing Code and this clause was not included in ERC v.11 because the structure and drafting of the NERR was adopted instead.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB0780	Clause 4.1 – Form of bill 25(1) – Contents of bills	The format of the bill must allow for verification of energy contract. A retailer must prepare a bill so that a small customer can easily verify that the bill conforms to their customer retail contract.
RB0790	Clause 4.3 – Bundled charges¹²	The Retailer must provide any information relating to sale or supply of energy as shown on the bill on request.
RB0800	Clause 4.5 to 4.6 – Payments 25(2) and 27(1) – Apportionment	A retailer must apply any payment to electricity and/or gas charges as directed by the customer or in proportion to the respective values. Retailers must include amounts billed for goods and services (other than the sale and supply of energy) in a separate bill or as a separate item in an energy bill. If a bill includes amounts payable for goods and services other than the sale and supply of energy, any payment made by a small customer in relation to the bill must be applied firstly in satisfaction of the charges for the sale and supply of energy unless the customer directs or another apportionment arrangement is agreed to by the customer.
RB0810	Clause 5.5 & 5.7 – Basis of bill 21(5) and 22 – Additional charges and proportionate billing	Outlines when a retailer may impose additional charges permissible for reading of previously inaccessible meter. Outlines the rules when a retailer wishes to proportionally bill for a period other than the usual billing cycle.
RB0820	Clause 7.3 & 7.5(b) – Payment of a bill 32(5) and 35B – Payment methods and Merchant Service Fees	On request, a retailer must accept payments in advance. Merchant fees are only recoverable under a market retail contract. Where a residential customer pays the retailer's bill using a method that results in the retailer incurring a merchant service fee, the retailer may recover the amount of that fee from the residential customer.
RB0830	Clause 9.2 34(3) - Shortened collection cycle	Minimum notice requirements for a customer being placed on a shortened collection cycle.
RB0840	Clause 10.1 – Shorter billing cycle, 24(2) – Frequency of bills	Rules governing different recurrent periods for bills from the retailer's usual recurrent period, the customer's right to a shorter billing cycle.
RB0850	Clause 12.3 72(2A) – Payment instalment plans	Retailer's obligations upon a request for a payment plan for a small customer who is not a residential customer business instalment plan.
RB0860	Clause 13.5 118 - Grounds for disconnection Request for de-energisation	On request, a retailer must de-energise disconnect a customer and finalise the account.

¹² Clause 4.3 is not covered in the NERR. However clauses 25(1)(g) and (h) will achieve the same effect as clause 4.3. These clauses are covered above in relation to the content of the bill outlined at ESC ref RB0340.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB0870	Schedule 1, Clause 18-20 - Force majeure	Outlines the effects of a force majeure event and requires the affected party to give prompt notice of the event and its best endeavours to remove, overcome or minimise the effects of that event as soon as practicable. Force majeure: -sets out the conditions on which a retailer may or may not limit its liability for breaches or negligence by the retailer -prevents retailers from seeking compensation from customers for breaches in excess of what it would be entitled to under common law or statute -provides for a suspension of a retailer or customer's obligations in the case of a force majeure event and notification obligations.
RB0880	Clause 26.2, 26.3, 26.4(a) & 26.5-56 - Provision of information to customers	Retailer's obligation to: - publish on its website a summary of the rights, entitlements and obligations of small customers; - provide the information relating to the rights, entitlements and obligations as requested. - have a charter, the information to be contained in the charter and to supply the charter to customers - provide a copy of the Code to customers on request - on request, supply reasonable information on tariffs - provide information on concessions
RB0890	Schedule 1, Clause 27.1 & 27.2-9.4 - Historical billing information	A Retailer must retain all historical billing data for a minimum of two years. A Retailer must supply historical billing data within 10 days at request of current and previous customers. If this information is for the purpose of a complaint, this must be free of charge, unless the information has already been provided within the previous 12 months or information is required going back more than two years.
RB0900	Schedule 1, Clause 32 (a) & (b)17 - Notices and Bills	Communication Notices and bills by a retailer under a contract must be in writing unless otherwise stated in the contract or the Energy Retail Code.
Guideline No. 13 – Greenhouse Gas Disclosure on Electricity Customers' Bills		
RB1100	Clause 1.5 – Copies of this guideline¹³	A retailer must publish the Guideline on its website, provide copies on request and reference in customer charter
Guideline No. 19 – Energy Price and Product Disclosure		

¹³ Guideline No 13: Greenhouse Gas Disclosure on Electricity Customers' Bills is now covered by clause 25A of the ERC v.11. The obligation to provide copies of Guideline 13 are not incorporated in clause 25A.

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB1330	Clause 3.3 15B(5) - More than one tariff applicable	Where the retailer cannot determine which <u>PPIS-price and product information statement</u> applies to a customer, the retailer must <u>either present a price and product information for one of the potentially applicable tariffs or present a price and product information statement for each of the potentially applicable tariffs. supply at least one PPIS with an explanation.</u> <u>The retailer must electronically communicate to the customer that it is not clear which of more than one price and product information statement applies.</u>
RB1350	Clause <u>4.1-15C(1)</u> - Offer summary to be provided	A retailer must provide a customer with a written <u>offer s</u> summary on request, when marketing and when providing any other information about the terms of a new contract.
RB1360	Clause <u>4.2 & 4.3 15B(6) and (7)</u> - Information and Format requirements	Detailed requirements for the content and format of a retailer's <u>PPIS-price and product information statement.</u> An alternative format may be used with the Commission's prior approval.
<u>Guideline No. 21 – Energy Retailers' Financial Hardship Policies</u>		
RB1220	Clause 2.3 71(2) and (3) - Details of the financial hardship policy	The retailer must publish details of the hardship policy in a form easily accessible to customers and provide details to customers and financial counsellors on request.
RB1230	Clause 2.4 71A - <u>Changes to hardship policy Approval and variation of customer hardship policy</u>	The retailer must provide certain information when submitting a policy to the Commission for approval.
<u>Guideline No. 22 - Regulatory Audits of Retail Energy Businesses: Electricity and Gas Industries</u>		
RB0955	Clause 1.1.3 & Appendix A - Consent audit	The retailer shall contact a random sample of customers who have entered a contract, and confirm their understanding and consent, independently of the sales representatives making the original contact and take corrective action as necessary, in the manner prescribed.
RB0960	Clause 3.1 & 3.3 - Appointing the auditor	Auditors must have appropriate skills and knowledge. Auditors must ensure there are no conflicts of interest. The Commission must approve a Licensee's choice of audit firm. The audit team must be led by a partner and the audit leader must sign all audit reports.
RB0965	Clause 4.1, 4.4 & 4.5 - Approving the audit scope	The Commission will nominate obligations for inclusion in the minimum audit scope on the basis of an assessment of the risks of non-compliance. The licensee should add and high-risk obligations to be audited.
RB0970	Clause 6.4 – Reporting procedures	The Licensee must ensure that its board considers the auditor's report.
Information Specification (Service Performance) for Victorian Energy Retailers		

ESC REF	REFERENCE	BRIEF DESCRIPTION OF OBLIGATION
RB1020	Purpose and background	The purpose of the specification is to set out the cyclic reporting requirements to be met by Victorian energy retailers (both gas and electricity) to the Commission. The Commission has the power to require information from distributors under licence conditions.
RB1030	Reporting framework	The Commission requires a bi-annual report as specified in the Information Specification. The information reported under this information specification is open to independent audit in accordance with the Commission's audit framework.
DEFERRED		
Electricity Retail Licence		
RB1040	Clause 12.4 - Retailer of last resort (ROLR)	The conditions of supply after a ROLR event.
Gas Retail Licence		
RB1050	Clause 13.4 - Retailer of last resort (ROLR) Momentum, Dodo, Red, APG - Cl. 14	The terms and conditions of supply after a last resort event.

APPENDIX B – PRO-FORMA REPORTS AND CHECKLISTS

B1 – Pro-forma for immediate notification of breaches of Type 1 obligations

Business name

Person reporting – Name & Position

Obligation breached:

- Reference number from the Compliance Reporting Manual,
- regulatory instrument title and clause number

Date breach started (and date breach ended, if different)

Nature and cause of breach

Identification (or number) of customers or other businesses affected

Total dollar impact

Action taken / planned

Date (expected or actual) for completion of corrective action

Status: investigation / in progress / complete

B2 – Pro-forma follow-up report of breaches of Type 1 obligations

From: [Name]
Chief Executive Officer
[Business]

To: [Name]
Chief Executive Officer
Essential Services Commission
Level 2, 35 Spring Street
Melbourne 3000, Victoria

[Business] advises the Commission of a breach of a regulatory obligation classified as Type 1 in the Commission's Compliance Reporting Manual.

Obligation breached – Reference number from the Compliance Reporting Manual, and regulatory instrument and clause number

The particulars of this breach, previously reported on [Date of first report] by [Person reporting – Name & position] are established as follows.

- Date breach started (and date breach ended, if different)
- Nature and cause of breach
- Identification (or number) of customers or other businesses affected
- Total dollar impact
- Action taken / planned
- Date (expected or actual) for completion of corrective action
- Status: investigation / in progress / complete

B3 – Pro-forma report for six-monthly reporting

From: [Name]
 Chief Executive Officer
 [Business]

To: [Name]
 Chief Executive Officer
 Essential Services Commission
 Level 2, 35 Spring Street
 Melbourne 3000, Victoria

Period: [from / to]

Six-monthly report of breaches of regulatory obligations

[Business] advises the Commission of compliance with regulatory obligations classified as Types 1 and 2 obligations in the Commission’s Compliance Reporting Manual.

[Business] had an effective system for monitoring compliance throughout the period covered by the report. In this period, [Business] has not identified any breaches of Types 1 and 2 obligations other than those shown in the attached schedule.

The present report has been prepared with all due care and skill and in accordance with the Commission’s Compliance Manual.

Date:

Signed

Chief Executive Officer

Attachment: Schedule of non-compliance

List of obligations breached, identifying each by its reference number from the <i>Compliance Reporting Manual</i>	Description of: <ul style="list-style-type: none"> ▪ Dates that breaches occurred ▪ Nature and extent of non-compliance ▪ Reasons for non-compliance ▪ Remedial actions taken ▪ Actual/anticipated date for completion of corrective action ▪ Other information — such as ‘customers / other businesses affected’ , ‘Total dollar impact’

Note: it is the intention of the Commission to provide businesses with Microsoft® Excel® templates for the purpose of reporting non-compliance events.

B4 – Pro-forma report of annual Status and Compliance Reports

From: [Name]
 Chief Executive Officer
 [Business]

To: [Name]
 Chief Executive Officer
 Essential Services Commission
 Level 2, 35 Spring Street
 Melbourne 3000, Victoria

Period: [from / to]

Full year report of breaches of regulatory obligations

[Business] wishes to advise the Commission of compliance with regulatory obligations classified as Types 1, 2 and 3 obligations in the Commission’s Compliance Reporting Manual (version 1).

[Business] had an effective system for monitoring compliance throughout the period covered by the report. In this period, [Business] has not identified any breaches of obligations other than those shown in the attached schedule.

The present report has been prepared with all due care and skill and in accordance with the Commission’s Compliance Manual.

Date: _____ Date: _____
 Signed _____ Signed _____

 Chief Executive Officer Chairman

Attachment: Schedule of non-compliance

List of obligations breached, identifying each by its reference number from the <i>Compliance Reporting Manual</i>	Description of: <ul style="list-style-type: none"> ▪ Dates that breaches occurred ▪ Nature and extent of non-compliance ▪ Reasons for non-compliance ▪ Remedial actions taken ▪ Actual/anticipated date for completion of corrective action ▪ Other information — such as ‘customers / other businesses affected’ , ‘Total dollar impact’

Note: it is the intention of the Commission to provide businesses with Microsoft® Excel® templates for the purpose of reporting non-compliance events.