

19 May 2017

David Young
Director, Energy
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Lodged via email: energy.submissions@esc.vic.gov.au

Dear Mr Young

Re: PROPOSED UPDATE TO THE INTERIM COMPLIANCE AND PERFORMANCE REPORTING GUIDELINE (CPRG)

CitiPower Pty Ltd (**CitiPower**) and Powercor Australia Ltd (**Powercor**) welcome the opportunity to provide a submission on the Essential Services Commission 2017, *Interim Compliance and Performance Reporting Guideline for Energy Distribution Licence Holders, Draft Decision*, April 2017 (**draft decision**) released for consultation on 26 April 2017.

Background

The Essential Services Commission (**Commission**) published its *Interim Compliance and Performance Reporting Guideline for Energy Retail Licence Holders (interim CPRG)* in July 2016 (an updated version was published in November 2016). The interim CPRG included reporting requirements for energy retailers, but not energy distributors. Accordingly, CitiPower and Powercor did not make a submission on the interim CPRG in June 2016.

The purpose of the draft decision is to set out proposed amendments to the interim CPRG to incorporate proposed compliance reporting obligations for energy distribution businesses.

Current compliance reporting framework

CitiPower and Powercor take our responsibility to comply with regulatory obligations seriously. Material breaches are reported to the Commission in accordance with clause 22.3 of our Electricity Distribution Licences. As requested by the Commission, CitiPower and Powercor have actively participated in the Commission's information gathering exercise in relation to failures to provide at least 4 business day's written notice of planned interruptions to supply, clause 5.5.1 of the Electricity Distribution Code (**EDC**), since June 2016.

In addition, in response to the directive from the Australian Energy Regulator (**AER**) on 22 May 2009, CitiPower and Powercor annually submit compliance reporting to the AER in accordance with the Commission's *Compliance Reporting Manual (Energy Distribution and Retail Businesses)*, May 2009 (**Compliance Manual**). This Compliance Manual contains regulatory obligations from the EDC, as well as other Victorian regulatory instruments. Refer to Appendix A for a copy of the AER email. On 3 August 2010, a further email from the AER reiterated the compliance reporting requirement. Refer to Appendix B for a copy of the email. To date, this compliance reporting obligation has not been formally rescinded by the AER.

Future compliance reporting framework

CitiPower and Powercor are supportive of the re-introduction of a formal compliance reporting framework by the Commission.

In addition to clearly articulating the requirements for monitoring and reporting non-compliances with nominated regulatory obligations, the compliance reporting framework should be efficient and reporting requirements commensurate with the impact of non-compliance with the regulatory obligation on consumers and the market.

Nominated regulatory obligations

The *Energy Legislation Amendment (Consumer Protection) Act 2015 (the Consumer Protection Act)* commenced operation on 1 January 2016. The Consumer Protection Act introduced a new energy industry penalty scheme to the *Essential Services Commission Act 2001*. This scheme allows the ESC to issue an 'energy industry penalty notice' in relation to an 'energy industry contravention'.

'Energy industry contraventions' are contraventions of regulatory obligations which must be complied with by retailers and distributors under energy industry licence conditions. These contraventions must be prescribed by regulations. The relevant regulations, the *Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016 (Regulations)* were made on 24 May 2016 and commenced operation on 1 June 2016¹.

The draft decision proposes to include all regulatory compliance obligations classified as 'energy industry contraventions' in the interim CPRG.

CitiPower and Powercor wish to highlight:

1. the Regulations include clause 5.6.1(c) of the EDC in relation to special needs. However, section 2.1.1 of the draft decision includes the entire clause 5.6.1 of the EDC; and
2. whilst very limited industry consultation occurred in 2015 on the draft Regulations, the draft Regulations circulated for consultation did not include clause 5.5.1 of the EDC in relation to planned interruptions.

CitiPower and Powercor propose the interim CPRG only include the regulatory compliance obligations classified as 'energy industry contraventions' for distributors. As such, clauses 5.6.1(a) and 5.6.1(b) of the EDC should not be included in the interim CPRG.

Classification of regulatory obligations

The classification of a regulatory obligation determines the frequency with which the licensed business must report non-compliance with the regulatory obligation.

Under the current interim CPRG, there are three classifications as summarised in table A:

Table A – compliance obligation classification

Classification	Description
Type 1	Regulatory obligations where non-compliance would have a critical impact on customers and where the impact of non-compliance increases over time if it is not rectified quickly.
Type 2	Regulatory obligations where: <ul style="list-style-type: none">• 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.
Type 3	All other obligations

The draft decision proposes to classify all the energy industry contraventions for distributors as Type 1.

CitiPower and Powercor disagree with this proposed classification and propose alternative classifications as summarised in table B:

¹ the draft decision incorrectly refers to the Regulations commencing operation in January 2016, refer to page 3.

Table B – CitiPower and Powercor proposed classification of regulatory obligations

Classification	Instrument	Regulatory obligation
Type 1	EDC Clause 5.6.1(c)	The licensee fails to comply with clause 5.6.1(c), <i>Electricity Distribution Code</i> by: <ul style="list-style-type: none"> (a) failing to give a life support customer at least 4 business days notice (or such longer period of notice as requested by the customer) of a planned supply interruption. (b) failing to give the life support customer advice to assist them to prepare a plan of action in case of an emergency supply interruption. (c) failing to give the customer its emergency telephone contact number.
Type 2	EDC clause 5.5.1	<ul style="list-style-type: none"> • EDC clause 5.5.1 The licensee fails to comply with clause 5.5.1, <i>Electricity Distribution Code</i> , by failing to provide customers with 4 business days written notice, containing specified information, of a planned interruption.
Type 3	-	<ul style="list-style-type: none"> • All other distributor-related 'energy industry contraventions'.

Classification rationale

Type 1

CitiPower and Powercor agree with the classification of clause 5.6.1(c) of the EDC as Type 1. The immediate breach reporting of non-compliances with life support customer obligations aligns with the previous classification by the Commission in their Compliance Manual and, in the Regulations, this regulatory obligation attracts the highest financial penalty, namely \$20,000.

Type 2

CitiPower and Powercor disagree with the Commission regarding the classification of clause 5.5.1 of the EDC as Type 1. Previously, this obligation was classified by the Commission as Type 3 and the compliance status continues to be reported on an annual basis, albeit since 2009 to the AER rather than ESC. Since the introduction of the Regulations on 1 June 2016, CitiPower and Powercor have been reporting breaches of this obligation on an immediate basis for the purposes of the Commission's information gathering exercise.

Our understanding of the purpose of the information gathering exercise was to inform the Commission in its consideration of the appropriateness of each distributor's approach to reducing the rate of contraventions of clause 5.5.1 and, additionally, the appropriateness of the current reporting arrangements.

As per our information request response dated 31 March 2017, extensive remediation activities have been undertaken by the Business to reduce the risk of non-notification breaches. A key preventative control is our recently implemented detective control capability which utilises data analytics to visually identify customers who have not been notified of a planned outage. Our detective control capability continues to be refined and remediation activities are underway to improve the accuracy of our network connectivity data in our Geographic Information System (GIS).

Table C summarises the breach reporting statistics for April 2017 in relation to clause 5.5.1 of the EDC.

Table C – April 2017 breach reporting statistics

Business	Total customer jobs	Average jobs per weekday	Instances of not notifying	No. of customers impacted	Total customers notified	Instance accuracy	Customer accuracy
CitiPower	32	2.2	0	0	1,438	100.0%	100.00%
Powercor	256	13.2	3	4	12,131	98.8%	99.97%

Given the significant focus and effort expended to date on reducing the number of breaches of clause 5.5.1 of the EDC, CitiPower and Powercor propose this obligation be classified as Type 2.

Type 3

The remaining nominated regulatory obligations should be classified as Type 3.

Whilst these regulatory obligations have been identified as energy industry contraventions, the financial penalties associated with these regulatory obligations are lower than the financial penalty for a life support regulatory obligations.

In addition, a number of these regulatory obligations are performed on an annual basis, for example, the calculation of reliability Guaranteed Service Level (**GSL**) payments, clause 6.3.2 of the EDC.

Reporting timeframes

The draft decision proposes amending the interim CPRG to reflect reporting timeframes for the nominated regulatory obligations.

Table D summarises the interim CPRG and draft decision reporting frequency and timing.

Table D – Reporting frequency and timing

Classification	Reporting frequency	Interim CPRG timing	Draft decision timing
Type 1	Initially reported no less than 2 business days after the breach has been identified, other than wrongful disconnections which are reported on the last day of the month following identification. Upon receipt of the initial report, the Commission will advise whether additional information is required or whether further reporting can be deferred to the licensee’s quarterly report.	Initial notification <ul style="list-style-type: none"> • Within 2 business days of identification Full report – quarterly <ul style="list-style-type: none"> • For the period 1 July to 30 September – on or before 31 October • For the period 1 October to 31 December – on or before 29 February • For the period 1 January to 31 March – on or before 30 April • For the period 1 April to 30 June – on or before 31 August 	Clause 5.5.1 breaches: <ul style="list-style-type: none"> • Initial notification <ul style="list-style-type: none"> ○ Within 2 business days of identification • Summary report <ul style="list-style-type: none"> ○ Provided by last day of the month All other Type 1 breaches: <ul style="list-style-type: none"> • Initial notification <ul style="list-style-type: none"> ○ Within 2 business days of identification
Type 2	Reported bi-annually.	<ul style="list-style-type: none"> • For the period 1 July to 31 December – on or before 29 February • For the period 1 January to 30 June – on or before 31 August 	n/a
Type 3	Reported annually.	<ul style="list-style-type: none"> • For the period 1 July to 30 June – on or before 31 August 	n/a

As previously stated, CitiPower and Powercor propose the interim CPRG be amended to classify distributor-related nominated regulatory obligations as Type 1, 2 and 3. Therefore, the applicable reporting frequency and timing to be reflected in the updated interim CPRG is summarised in Table E.

Table E – Proposed reporting frequency and timing for distributors

Classification	Regulatory obligation	Reporting frequency	Proposed CPRG timing
Type 1	EDD, clause 5.6.1(c)	Initially reported no less than 2 business days after the breach has been identified	Initial notification <ul style="list-style-type: none"> • Within 2 business days of identification
Type 2	EDC, clause 5.5.1	Reported bi-annually	<ul style="list-style-type: none"> • For the period 1 July to 31 December – on or before 29 February

Classification	Regulatory obligation	Reporting frequency	Proposed CPRG timing
			<ul style="list-style-type: none"> For the period 1 January to 30 June – on or before 31 August
Type 3	All other distributor-related 'energy industry contraventions'	Reported annually	<ul style="list-style-type: none"> For the period 1 July to 30 June – on or before 31 August

As previously stated, CitiPower and Powercor take our responsibility to comply with regulatory obligations seriously. We have continuously demonstrated our adherence with regulatory compliance reporting obligations and we believe our proposed recommendations in response to the Commission's draft decision reflect our aim of a fit for purpose, effective and efficient regulatory compliance framework going forward.

Where breaches of regulatory obligations have been identified, CitiPower and Powercor have worked proactively with the Commission in determining the root cause and in implementing robust and sustainable remediation activities.

We strongly support our proposed classification of the Commission's nominated regulatory obligations as we believe the effort, both on the Commission and the Business, of breach reporting needs to be balanced with the impact of the non-compliance.

Achieving optimal regulatory outcomes for all parties concerned is our focus and priority.

If you have any questions in relation to this submission, please do not hesitate to contact me

Yours sincerely



Hannah Williams
Manager Compliance & Projects

Appendix A

Cotton, Wendy

From: Chan, David
Sent: Friday, 22 May 2009 2:34 PM
To: CitiPower Regulation; | Powercor Regulation;
sp-ausnet.com.au; | ausnet.com.au; | jemena.com.au; Jemena-ENVESTRA.com.au
Cc:
Subject: Reporting of non-compliance with distribution licence conditions [SEC=UNCLASSIFIED]
Attachments: ESCV Compliance Reporting Manual (Energy Distribution And Retail Businesses) 2007.doc

To: Regulatory contacts of Victorian electricity and gas distribution businesses

As you are aware, the Essential Services Commission of Victoria (ESCV) published a *Compliance Policy Statement* in November 2006. 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.

A *Compliance Reporting Manual* was developed by the ESCV from the framework set out in the "*Final Decision: Energy Businesses' Compliance Reporting*" published in July 2007. It identifies the key regulatory obligations against which distributors must report non-compliance events to the ESCV and provides the procedures for how energy distributors should report breaches of their regulatory obligations.

The latest reporting manual relevant to energy distribution is the "*Compliance Reporting Manual (Energy Distribution and Retail Businesses); May 2009*" published by the ESCV. A copy is attached for your reference.

As the enforcement of non-compliance with licence condition function has been transferred to the AER from 1 January 2009, please submit your relevant compliance reports to the AER as required by the *Compliance Reporting Manual* from now on.

Reports should be sent to Mr Chris Pattas, General Manager, Network Regulation South (email

<<ESCV Compliance Reporting Manual (Energy Distribution And Retail Businesses) 2007.doc>>

Regards

David Chan
Director
Network Regulation South
Australian Energy Regulator

Appendix B

Cotton, Wendy

From: Chan, David
Sent: Tuesday, 3 August 2010 10:25 AM
To: @jemena.com.au; CitiPower Regulation; Powercor Regulation; @sp-
ausnet.com.au; @ue.com.au; Envestra-
Subject: Reporting of non-compliance with distribution licence conditions for the 2009/10 financial year [SEC=UNCLASSIFIED]
Attachments: ESCV Compliance Reporting Manual (Energy Distribution And Retail Businesses) 2007.doc

To: Regulatory contacts of Victorian electricity and gas distribution businesses

May I remind that, as per last year's arrangement (refer last year's email below), please submit your business' relevant compliance reports to the AER as required by the ESC's *Compliance Reporting Manual* to Mr Chris Pattas, General Manager, Network Regulation South (email

Regards

David Chan
Director
Network Regulation South
Australian Energy Regulator

From: Chan, David
Sent: Friday, 22 May 2009 2:34 PM
To: @citipower.com.au;
PowercorRegulation @sp-ausnet.com.au; |
@jemena.com.au;
Envestra @ENVESTRA.com.au)
Cc: Pattas, Chris; ESC- Andrew Chow
Subject: TRIM: Reporting of non-compliance with distribution licence conditions [SEC=UNCLASSIFIED]

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Regards

David Chan
Director
Network Regulation South
Australian Energy Regulator