



REES

Retailer Energy Efficiency Scheme – Code Review

Final Decision

November 2018

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Glossary of terms

Commission	Essential Services Commission, established under the ESC Act
Code	Retailer Energy Efficiency Scheme Code
Department for Energy and Mining	South Australian Government Department for Energy and Mining
Electricity Regulations	Electricity (General) Regulations 2012
ESC Act	Essential Services Commission Act 2002
Gas Regulations	Gas Regulations 2012
Issues Paper	The Commission released an Issues Paper on 11 May 2017 inviting stakeholders to provide a submission regarding the Code review
Minister	South Australian Minister for Energy and Mining
Obligated retailers	South Australian energy retailers that exceed prescribed thresholds and are set either an Energy Efficiency Target, and/or a Priority Group Energy Efficiency Target and Energy Audit Target
Priority Group Household	Households: <ul style="list-style-type: none"> ▶ with eligibility for various Commonwealth and State Government Concessions, as defined in the Electricity and Gas Regulations, or ▶ that fall within a class of persons who are experiencing hardship determined or approved by the Minister of the Commission for the purposes of the Regulations.
REES	Retailer Energy Efficiency Scheme
REES-R	REES Retailer file validation system
Regulations	Electricity (General) Regulations 2012 and Gas Regulations 2012

1 Executive summary

As the scheme administrator for the Retailer Energy Efficiency Scheme (**REES**), the Essential Services Commission (**Commission**) has made the Retailer Energy Efficiency Scheme Code (an industry code under the Essential Services Commission Act - **ESC Act**). The REES Code sets out administrative, procedural and process requirements and obligations for energy retailers, aimed at ensuring that the overarching statutory requirements of the scheme are delivered efficiently.

Under the ESC Act, the Commission must keep the operation of industry codes under review, with a view to ensuring their continued relevance and effectiveness.¹ In line with that requirement, the Commission has been conducting a review (which included public consultation) of the relevance and effectiveness of the REES Code.

The scope of this decision relates to the administration of REES and does not extend to analysing the overall effectiveness of the scheme. Further, it does not consider whether the scheme provides a net benefit to households and businesses.

As explained in this paper, while various matters have been raised with the Commission and considered through the review process, no REES Code changes have to date been identified which are considered to be essential to the current administration of REES.

As the Commission is proposing not to make changes to the REES Code, it will move directly to a final decision on this matter, rather than imposing regulatory costs through a further round of consultation. It does so noting that, consistent with the ongoing review provisions of the ESC Act, stakeholders can seek a further review of REES Code provisions at any time.

That said, some issues have been raised and reviewed and will lead to changes in administrative practice by the Commission (such as procedural requirements relating to annual compliance plans). The Commission has already commenced giving effect to those (as explained below) in consultation with stakeholders.

Other issues, such as the scheme design as a direct obligation rather than as a trading scheme, are matters outside of the scope of this review but may be taken into account by the South Australian Government in its next statutory review of REES (scheduled to occur in 2019).

¹ Refer ESC Act, section 28(8)

2 Background

REES is given statutory effect through Parts 4 of the Electricity (General) Regulations 2012 and Gas Regulations 2012 (**Regulations**) and the provisions of the ESC Act. These establish the Commission as the administrator of REES.

Under REES, the Minister for Energy and Mining sets the overall policy framework and fixes annual energy efficiency and energy audit targets. The Commission administers REES within the parameters defined by the South Australian Government's policy framework and in accordance with the Regulations and the provisions of the ESC Act.

REES applies to all South Australian energy retailers that exceed prescribed customer number and sales thresholds (**obliged retailers**). Annual targets are set for obliged retailers in relation to the delivery of energy efficiency activities to eligible households and/or business premises. In addition, obliged retailers with larger residential customer bases are set targets to deliver a prescribed number of energy audits and energy efficiency activities to priority group households.

The REES Code establishes requirements in relation to the conduct and operations of obliged retailers in satisfaction of their REES obligations. While all statutory and regulatory obligations in relation to the performance and delivery of REES activities rest on obliged retailers, all of those obliged retailers currently use third-party contractors to deliver REES activities. The Commission understands that third-party contractors use the REES Code as a tool to assist compliance with the requirements of REES.

3 Consultation

The Commission commenced this review in 2017, with the release of an Issues Paper. The Issues Paper invited stakeholder comments and views on the REES Code overall, and targeted attention to nine specific questions.

- ▶ Are there any suggested improvements to the consumer protection requirements outlined in the Code?
- ▶ What improvements could be made to the annual compliance plan process?
- ▶ Is there a need to expand or further refine the training requirements for REES installers (general or activity specific)? And how could these requirements be improved?
- ▶ Should training requirements for mandatory safety training be further specified?
- ▶ How should the REES Code address REES installations where a sub-contractor is engaged?
 - Should training requirements for sub- contractors be further defined in the Code?
 - What improvements could be made to ensure that the REES information provided to customers is adequate?
- ▶ Is it beneficial to require obliged retailers to ensure that their contractors and/or agents hold a nominated level of liability insurance? What requirement(s) could be applied?
- ▶ Are the quarterly assessments of achievement provided to obliged retailers beneficial, or does the REES Retailer Reporting System (REES-R) provide sufficient information for obliged retailers to monitor their achievement?
- ▶ Does the current REES Code present any issues or challenges to obliged retailers in complying with their obligations?
- ▶ Are there any other matters, or emerging REES-related issues, that the Commission should consider or take into account?

As noted above, those questions arose as a part of the Commission's general consideration of REES-related matters and through its discussions with participants. Stakeholders had not separately raised any of those issues as matters requiring urgent response or resolution to improve the relevance or effectiveness of the REES Code.

Submissions to the Issues Paper were received from:

- ▶ AGL
- ▶ Australian Energy Council
- ▶ Demand Manager
- ▶ EcoVantage
- ▶ EnergyAustralia
- ▶ ERM Business Energy
- ▶ MAC Energy Efficiency Group
- ▶ Origin Energy
- ▶ Red Energy and Lumo Energy (combined submission), and
- ▶ Tango Energy.

The Commission thanks respondents for their submissions and for their engagement in the review process. It has considered and reviewed matters raised in the written submissions on the matters relevant to this review.

The issues raised by stakeholders through the consultation period have been carefully considered and, where relevant, certain arguments and submissions have been mentioned in the text, either by direct quotation or by reference to themes or arguments, to assist stakeholders to understand the proposed positions that have been reached.

However, a failure to reference an argument or submission does not mean that it has not been taken into account in reaching the final positions. All submissions have informed the consideration of each of the relevant issues and the viewpoints.

4 Decision and reasons

This section sets out the issues under consideration, the submissions received on each issue and the Commission's reasons for the positions which it has reached.

Question 1: Are there any suggested improvements to the consumer protection requirements outlined in the Code?

This question sought views and positions on any general issues which might enhance the relevance and effectiveness of the REES Code, particularly with respect to consumer protection issues. Those issues generally involve the provision of timely and useful information (including as to costs), the provision of services at an appropriate quality, and the provision of services and products that are reliable.

In that context, the Commission notes that the REES Code only has a limited role in many of those areas, focusing on timely and useful information, with general consumer laws dealing with other aspects of consumer protection.

Submissions

The submissions on this question received from AGL and Energy Australia indicated that they did not think that the REES Code requires enhancement or amendment to improve consumer protections overall. AGL noted that the regulatory compliance plans already provided for under the REES Code can eliminate many consumer protection concerns.

The MAC Energy Efficiency Group did not identify any specific consumer detriment under the REES Code's existing terms, but noted that the scheme's overall effectiveness could be improved by the provision (by the Commission) of a Compliance Plan Checklist. It noted that such a checklist could be used by obliged retailers and their third-party contractor to ensure that all relevant elements of the compliance plan requirements have been addressed.

Decision and reasons

The Commission notes that stakeholders did not identify any material or systemic gaps in the REES Code which are having a detrimental impact on consumer protection. Further, it has not itself identified any areas where regulatory change would be justified. On that basis, it does not propose to amend the REES Code in relation to consumer protection at this time.

In relation to the Compliance Plan Checklist proposal put by MAC Energy Efficiency Group, the Commission considers that the relevant risk (non-compliance leading to consumer detriment) is one properly managed by obliged retailers.

The Commission also notes that a single, mandatory checklist may not properly capture all risks for all obliged retailers and, to the extent that a mandatory checklist might encourage an obliged retailer to rely on that rather than conducting its own risk and compliance assessments, it may have adverse behaviour incentives for obliged retailers. A loss of focus on risk and compliance by obliged retailers may, in turn, give rise to consumer detriment.

Nevertheless, the Commission acknowledges that its ongoing educative function can also assist in this area. It therefore will continue to meet with obliged retailers to discuss this and related issues in relation to compliance plan requirements.

Question 2: What improvements could be made to the annual compliance plan process?

This question sought to identify any changes to the annual compliance plan process that could improve the relevance and effectiveness of the REES Code, particularly with respect to balancing the administrative costs of the compliance plan process and the consumer protection benefits which arise through having such an up-front plan in place for each year.

Submissions

ERM Business Energy and EcoVantage both noted in their submissions that there is often year-on-year repetition in compliance plans in cases where activities, compliance obligations or risk profiles remain unchanged. They both suggested that, in such cases, the plans could be submitted on an iterative basis, such that a prior year plan could be assumed to be current unless a change was positively put forward by an obliged retailer.

AGL noted that it would appreciate more prompt assessment and feedback on compliance plans by the Commission.

Other submissions, for example, from Tango Energy and Demand Manager, noted that, were the scheme to be redesigned such that third-party providers rather than retailers had statutory obligations, then the compliance plan could have a stronger focus and attention on those third-party providers.

Decision and reasons

The Commission agrees with the proposal that compliance plans could, in effect, be submitted on an iterative basis where activities, compliance obligations or risk profiles have not changed year on year. This can be achieved administratively, however, rather than requiring changes to the REES Code. The Commission will discuss this administrative change with obliged retailers, with a view to 2019 compliance plans being assessed on this basis.

In terms of AGL's request for prompt response by the Commission on compliance plans once submitted, the Commission notes that the proposed administrative change discussed above will facilitate that outcome. Nevertheless, it will take AGL's position on board and look to streamline its own practices to provide a more timely response going forward.

In terms of the attention and focus on third parties, the issue of scheme design is outside of the scope of this review. The South Australian Government may wish to consider this matter in its 2019 review of the overall scheme.

Question 3: Is there a need to expand or further refine the training requirements for REES installers (general or activity specific)? And how could these requirements be improved?

This question sought views on the training of REES installers to understand whether additional or targeted training would promote customers understanding of how the scheme or particular activities operate.

Submissions

Tango Energy submitted that installers generally have training programs and those seem adequate at this stage. It also noted, however, that where a new activity is introduced or approved, the installer should provide copies of training material in their compliance plan covering this activity if this organisation undertakes those new activities.

The MAC Energy Efficiency Group suggested that the Commission could create a central template, made available from its website, which would detail minimum training information requirements.

Decision and reasons

Noting that the driver for the Commission's review in this area was due to a change in Ministerial Specifications and the responses from stakeholders, the Commission will not expand or further refine the training requirements for REES installers at this time.

That said, it agrees with Tango Energy's submission in relation to the inclusion of new or changed activities in the compliance plan. As noted above, moving forward the compliance plan will be dealt with on an iterative basis, incorporating only material changes. In that context, where a new activity is introduced or approved, the obliged retailer should provide training material to third-party contractors and include that material in its compliance plan (if it undertakes that new activity).

Question 4: Should training requirements for mandatory safety training be further specified?

This question sought views on the current position for mandatory safety training on the basis that the Victorian Energy Efficiency Target (VEET) Scheme in Victoria² and Energy Savings Scheme (ESS) in New South Wales³ requires more detailed safety training of installers.

Submissions

Tango Energy raised that additional training requirements for safety should not be specified unless there is accurate statistical data or other information that suggests that there is a need for additional training.

EcoVantage put the view that mandatory safety training requirements should be further specified. It is expected that electrical and gas licensed installers would have a certain level of training, however this would eliminate any doubt of what is required under the scheme.

AGL stated that it sees no reason to require further mandatory safety training requirements as there have been no reported incidences due to third-party contractors' adherence to AGL's existing high safety and training standards.

² Further details on this program can be found at <https://www.victorianenergysaver.vic.gov.au/save-energy-and-money/discount-energy-saving-products>.

³ Further details on this scheme can be found at <https://www.ess.nsw.gov.au/Home>.

Decision and reasons

The Commission does not consider it essential to make any changes to the REES Code with respect to this requirement to ensure the effective operation of the scheme. At this time, the Code is clear and there is no evidence-based need to further define mandatory safety requirements for sub-contractors.

Question 5: How should the REES Code address REES installations where a sub-contractor is engaged? Should training requirements for sub-contractors be further defined in the Code? What improvements could be made to ensure that the Scheme information provided to customers is adequate?

This question sought views from stakeholders on the use of sub-contractors and whether it would be beneficial to include further training requirements in the REES Code, to promote the integrity of the scheme.

Submissions

In its submission, Tango Energy noted each REES service provider should be responsible for the installations undertaken by their sub-contractors including training of any sub-contractors. This can be adequately managed by the existing audits and complaints management processes managed by the retailers and service providers. At this stage, it sees no need to further amend the Code in this regard.

AGL stated that training requirements for sub-contractors should not be further defined and that the information required by the Code and provided by its contractors is adequate.

Demand Manager noted that if the Commission has some concerns regarding these issues that a standard template document could be designed for all obliged retailers to use and leave with the customer. This would ensure consistency of information disclosure to customers within the scheme.

Decision and reasons

Noting the responses from stakeholders, the Commission will not expand the Code to define further training requirements for sub-contractors at this time.

It is noted that many obliged retailers have standard information that they require their contractors to provide customers. The Commission will continue to monitor this as part of its compliance auditing of activities to ensure that customers are provided with clear and accurate information about the scheme.

Question 6: Is it beneficial to require obliged retailers to ensure its contractors and/or agents hold a nominated level of liability insurance? What requirement(s) could be applied?

This question sought views from stakeholders to determine whether a Code requirement of this nature would be beneficial for REES, on the basis that VEET and ESS have this obligation.

Submissions

Tango Energy's submission raised that each retailer will have their own internal risk management strategies to comply with and therefore sees no benefit in mandating a minimum insurance level for all contractors. It noted that, if this was mandated, it may increase the retailer's cost of conducting REES activities and therefore further increase costs passed on to energy customers. It submitted that individual retailers are best placed to determine the liability insurance level that they require.

MAC Energy Efficiency Group noted introducing changes should not cause significant impact on existing third-party providers with many having these insurance requirements within their current contractual arrangements with obliged retailers. Insurance details could be required to be submitted with the annual compliance plan.

EnergyAustralia did not consider that specific requirements were necessary, although it suggested that the Code could be amended to include insurance requirements that are consistent with other regulatory regimes.

EcoVantage indicated a \$20 million liability insurance cover should be mandatory as this ensures a minimum standard across all contractors.

Decision and reasons

The Commission notes that both VEET and ESS require that accredited businesses (or their sub-contractors) maintain public liability insurance cover of at least \$5 million, and insurance cover for product replacement and rectification of works of at least \$5 million.

However, it is noted that, unlike REES, both the VEET and ESS credit or register providers, not obliged retailers. Obligated retailers are already required to meet credit-worthiness obligations through their overall engagement in the energy market (National Energy Market credit requirements, as well as distributor credit requirements). On that basis it would be expected that they would have sufficient credit-worthiness to provide recompense for a claim arising from a REES activity (potentially even if uninsured).

Further, as noted in submissions and in the information provided to the Commission annually through obliged retailers' compliance plans, it is current practice for obliged retailers and/or providers to hold a level of liability insurance for the purposes of REES. Obligated retailers in some cases, mandate a minimum level of insurance to be held by its contractors.

On that basis, a secondary obligation imposed through the REES Code would appear not to provide any additional consumer benefit. Obligated retailers have identified they hold the relevant insurance (and require their contractors to do so) and it is the responsibility of the obliged retailers to ensure, in a claimable event, that they are adequately insured.

Question 7: Are the quarterly assessments of achievement provided to obliged retailers beneficial, or does the REES Retailer Reporting System (REES-R) provide sufficient information for obliged retailers to monitor their achievement?

Under clause 6.1 of the REES Code, the Commission undertakes an assessment of each obliged retailer's achievement towards annual targets on a quarterly basis, and advises the obliged retailers of that assessment in writing. This clause was originally implemented prior to obliged retailers having access to this information through REES-R, as a mechanism to ensure that retailers were provided with a regular update on annual achievement.

The Commission therefore raised for consideration whether or not this was useful or helpful to obliged retailers, as by the time the quarterly assessment was conducted and provided to obliged retailers, the information was not current.

Submissions

Origin Energy noted that it relies on the data that it extracts from REES-R, rather than on the quarterly assessments provided by the Commission. On that basis it submitted that it would not have an issue were the assessments discontinued.

On the other hand, AGL put the view that the quarterly achievement assessments are useful, as it allows it to validate its progress against targets as compared with the REES-R. It noted that it found it useful if and when the Commission discovers any data aberrations, as it reduces the risk of undersupply of activities to customers (and associated risk of failure to meet targets).

ERM Business Energy also supported the current approach.

Origin Energy noted that it would like to explore the possibility of enhancements to the functionality of the REES-R but, as that matter is beyond the scope of the REES Code review, it would do so separately. Similarly, the MAC Energy Efficiency Group identified potential REES-R dashboard presentational changes.

Decision and reasons

The REES-R was upgraded in 2015 to provide obliged retailers with real time information on achievement levels, and includes data currently provided by the Commission through the quarterly assessment.

The Commission currently makes these assessments as at the last calendar day of the quarter and there is often a time lapse between the Commission making this assessment and providing this to the obliged retailers. In many cases, the assessment does not reflect current achievement by the time this is provided to the obliged retailers.

For the 2018 - 2020 REES period, there have been changes to the Minister's specification which allows obliged retailers to submit up to 10 percent of their audit target allocated to regional and remote areas. Due to limitations in the system, REES-R is unable to report this figure to obliged retailers.

As such, and noting the submissions from obliged retailers which indicated a preference to retain the current reporting by the Commission, the Commission considers it reasonable to continue to provide these assessments on a quarterly basis.

In relation to the changes proposed by Origin Energy and MAC Energy Efficiency Group, the Commission will discuss those matters further with those parties in the first instance and communicate with all relevant stakeholders prior to implementing any resultant changes.

Question 8: Does the current REES Code present any issues or challenges to obliged retailers in complying with their obligations?

This question sought views from stakeholders to understand if there were any compliance challenges faced by obliged retailers that were unknown to the Commission.

Submissions

Tango Energy made reference to the cost of this scheme which is ultimately passed onto customers. It stated that with electricity prices rising in South Australia every opportunity should be taken to streamline and simplify the scheme. It suggested that it is the most complex energy efficiency scheme of all the state schemes and that Tango Energy is exposed, as a nationally licensed electricity retailer, while only serving a relatively small number of customers.

AGL noted that the recent decrease in value for commercial lighting activities due to the change in the ESS calculator has significantly affected REES values where a conversion is required from megawatt hours to gigajoules to match the requirements of REES. AGL suggests the REES Code could be modified in line with the ACT Energy Efficiency Improvement Scheme Code, to allow the South Australian Government to change the abatement values of other State schemes which may otherwise adversely affect REES values.

ERM Business Energy's submission notes that the scheme places compliance obligations on retailers for activities that often do not form part of their core business. A retailer must establish and closely manage detailed compliance processes and controls of a third party, and activity delivery against REES targets. This is managed through the compliance plan, which is often a duplication. If the regime moved to activity service provider accreditation within a certificate scheme, the efficiency benefits would be significant. Compliance delivered through the surrender of certificates, created from efficiency activities is a far superior approach.

Decision and reasons

While the issues raised in the submissions relate to the policy of REES, they do not affect the current operation of the REES Code. Retailers may choose to raise this with the South Australian Government for their consideration.

Accordingly, the Commission does not consider it essential to make changes the current obligations under the REES Code at this time.

Question 9: Are there any other matters, or emerging REES related issues, that the Commission should consider or take into account?

This question was posed to provide stakeholders with the opportunity to provide the Commission with details of other matters for consideration when determining if REES Code changes are warranted.

Submissions

Origin Energy took the opportunity to request the Commission provide clarity in the REES Guideline on whether total gas purchases in the wholesale market should include unaccounted for gas. It noted the Guideline is beyond the scope of the REES Code review and will raise this with the Commission as part of the annual REES Roadshow.

ERM Business Energy expressed concerns with the calculation to exclude large customers. It seeks a competitively neutral approach, so REES does not interfere with customers' retail contracting decisions. It urges the Commission and the South Australian Government to look to change the Regulations to enable the identification of business customers as being exempt from REES. ERM Business Energy has previously highlighted the inefficiencies of REES and it proposes that this would be an opportune time to redesign the scheme. It suggests REES changes to a certificate-based scheme and the development of a registry. It proposes that changing REES to a tradeable certificate scheme would provide competition and efficiency benefits and reduces the cost burden on South Australian customers.

Australian Energy Council also suggested that REES should be a certificate-based scheme to avoid the duplication of audit and administration of both the contractor and retailer. It also raises that a greater benefit to South Australian customers would come from the harmonisation of all current and future state and national energy efficiency schemes being certificate-based.

A combined submission from Red Energy and Lumo Energy suggested that the REES Code creates an unnecessary regulatory burden on energy retailers. They see a broad range of benefits in REES moving towards a tradable certificate scheme to align with other jurisdictions schemes. They propose that this would reduce the compliance burden, deliver more efficient outcomes and ensure the least amount of cost is passed onto South Australian consumers.

Decision and reasons

The Commission notes that these submissions relate to the scheme design and are not administrative changes that can be made through the REES Code.

Changes to the Regulations are matters outside of the scope of this review. It is noted that the current scheme is due to expire on 31 December 2020 and the Commission understands that the South Australian Government will commence a review of REES in 2019.

While the Commission will provide these submissions to the South Australian Government, it encourages stakeholders to engage in that review.

5 Next steps

The Commission will continue its ongoing consumer engagement with obliged retailers in relation to the administrative changes identified in the Final Decision. This will be facilitated through direct communication with obliged retailers and through the annual REES roadshow.



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