



BULLETIN

REES BULLETIN NO. 18
REES COMPLIANCE FRAMEWORK

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Key Messages:

- ▲ The Commission takes a 'risk based' approach towards REES compliance.
- ▲ Obligated retailers' compliance systems and processes should allow retailers to adequately identify and appropriately respond to their obligations and report any breaches to the Commission at the earliest opportunity.
- ▲ Obligated retailers are required to submit a compliance plan at the beginning of each REES year (due by 31 March).
- ▲ REES obligations are directly placed on obligated retailers – not third party providers.

This Residential Energy Efficiency Scheme (**REES**) Bulletin provides an outline of the Essential Services Commission of South Australia's (the **Commission's**) compliance framework for REES.

The Commission takes a 'risk based' approach towards REES compliance. This approach balances the need for a strong culture of compliance against the associated costs for regulated entities and relies on obligated retailers having robust compliance systems and processes in place (based on the Australian Standard on Compliance Programs, AS 3806-2006). Obligated retailers' compliance systems and processes should allow retailers to adequately identify and appropriately respond to their obligations and report any breaches to the Commission at the earliest opportunity.

The Commission's REES compliance regime consists of:

- ▲ requiring obligated retailers to develop annual compliance plans;
- ▲ compliance reporting;
- ▲ conducting compliance audits in response to identified areas of risk; and
- ▲ administering the penalty regime.

The compliance approach taken by the Commission for REES is similar to the Commission's approach to compliance in general; however, given the nature of the risks inherent in the REES design, the Commission has taken a stronger up-front approach to compliance, actively seeking information and assurance on retailers' activities and actions.

In undertaking its compliance role, the Commission is guided by its legislative objectives in particular the need to protect the long-term interests of South Australian consumers. The Commission has published an [Enforcement Policy](#), providing guidance on the criteria and processes it uses in determining the type of enforcement action required on a case by case basis.

While obligated retailers may elect to engage third parties to assist in the achievement of REES targets, retailers cannot 'out-source' their REES compliance obligations contained in the Ministerial specifications or other regulatory instruments. The Regulations clearly place the obligations directly on retailers.

Compliance Plans

Obligated retailers are required to submit a compliance plan at the beginning of each REES year (due by 31 March) outlining at least the following information:

- ▲ a statement from the Chief Executive Officer (or other authorised person) acknowledging the retailer's REES obligations and responsibilities, including those under the REES Code;
- ▲ detailed information about the obligated retailer's complaint and dispute resolution procedures in relation to REES;

- ▲ a description of training systems and processes provided to obliged retailers' contractors and or agents;
- ▲ a description of the systems and processes in relation to mandatory training requirements;
- ▲ a description of the systems and processes in place to ensure those persons undertaking an energy audit or energy efficiency activity in a residential customer's premises are fit and proper;
- ▲ a description of the retailer's internal allocation of responsibilities under the obliged retailer's REES obligations and responsibilities; and
- ▲ a description of the resources, systems and processes which the retailer intends to use to ensure that the retailer's REES obligations and responsibilities will be met.

Retailers are required to advise the Commission of any material changes to the information provided in their compliance plans (such as a change in the activities it intends to undertake) within 20 business days of such a change occurring.

The Commission reviews these plans to assess the extent to which obliged retailers have put into place mitigation and management strategies aimed at ensuring that they are able to meet their REES obligations and manage various risks.

A comprehensive compliance plan reduces the risk that activities reported towards annual REES targets, will be precluded by the Commission for failing to comply with the REES Code or other relevant legal requirement.

Compliance Reporting

In accordance with its reporting obligations under the Regulations, the Commission reports annually on energy retailers' compliance with REES and the terms of any relevant Code established by the Commission for the purposes of REES. This annual report outlines the outcomes of the given REES year and is publicly released in June of each year.

The Commission may also, from time to time, publish ad hoc reports of compliance issues on its website.

Compliance Audits

In addition to compliance plan requirements the Commission monitors retailers' compliance with the REES Code by undertaking projects such as (but not limited to):

- ▲ undertaking targeted audits on obliged retailers' compliance systems from time to time, to ensure compliance with the REES Code provisions;
- ▲ undertaking targeted audits on identified areas of risk for non-compliance or where specific issues are brought to the Commission's attention;
- ▲ follow-up calls to customers to ensure that activities/audits have been implemented according to the relevant specification in response to complaints received; and
- ▲ 'mystery shopping' telephone calls to ensure that call centre staff are providing customers with basic information about REES.

As the administrator of the scheme, the Commission has functions and powers for the collection of information necessary to inform these compliance audits.

Penalty Regime

The REES penalty regime, which is aimed at ensuring compliance with REES targets. The penalty regime is set out in both the Electricity Act 1996 and Gas Act 1997 and in the Regulations.¹ The Acts provide the Commission with discretion in the case of a shortfall of greater than 10% of a target, to require the shortfall to be met in the following year rather than seeking to recover a shortfall penalty from the relevant retailer by issuing a shortfall notice.

Where the Commission seeks to impose a penalty the shortfall notice must specify the amount of the shortfall, the manner of calculation of the shortfall, the penalty amounts payable, and advice that the retailer may opt to be prosecuted rather than pay the penalty amounts sought.²

Under the Regulations, the penalty amounts are:

- ▲ a base penalty of \$10,000 for failing to meet a target; and
- ▲ \$70 per tCO₂-e not abated by undertaking energy efficiency activities; and
- ▲ \$500 per audit for audits not undertaken.

Any monies recovered by the Commission under this penalty regime must be applied under a scheme established by the Commission for one or both of the following purposes:

- ▲ to assist persons who may have failed to benefit from activities relating to energy efficiency on account of any retailer's energy efficiency shortfall; and
- ▲ to support other programs or activities to promote or support energy efficiency or renewable energy initiatives within South Australian households.

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¹ The Acts make provision for the recovery of shortfall penalties by the Commission, while the Regulations set the specific penalty amounts. Refer section 94B of the *Electricity Act 1996* and section 91A of the *Gas Act 1997*; and Regulation 35 of the *Electricity (General) Regulations 2012* and Regulation 29 of the *Gas Regulations 2012*.

² In the case of energy audits, in addition to any penalty amount paid, the relevant retailer must also make up the audit shortfall amount in the subsequent REES year. In the case of energy efficiency activities, however, a retailer need not make up any shortfall in the subsequent REES year where that retailer has paid a penalty amount in respect of the shortfall. Refer *Electricity (General) Regulations 2012*.

