



Energy

Guideline



Compliance Systems and Reporting Energy Industry Guideline No. 4

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1 Introduction

1.1 Role of the Guideline

- 1.1.1 The **Commission** is established under the *Essential Services Commission Act 2002 (SA)* (**ESC Act**) as a regulator of certain essential services in South Australia, with a primary objective of protecting the long-term interests of South Australian consumers with respect to the price, quality and reliability of those essential services.
- 1.1.2 Under the **ESC Act**, the **Commission** is given specific functions, including:
- (a) to monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts (section 5(b)), and
 - (b) in appropriate cases, to prosecute offences against the **ESC Act** or a relevant industry regulation Act (section 5(i)).
- 1.1.3 In furtherance of those functions, pursuant to section 8 of the **ESC Act** the **Commission** has made this Guideline to specify requirements for **licensees** in relation to:
- (a) the establishment and maintenance of appropriate and robust compliance systems and processes in respect of standards and conditions of service and supply in the electricity and gas supply industries
 - (b) the reporting of information to the **Commission** to assist in the performance of its compliance and enforcement statutory functions under the **ESC Act**, the *Electricity Act 1996 (SA)* (**Electricity Act**) and the *Gas Act 1997 (SA)* (**Gas Act**), and
 - (c) operational and compliance audits in respect of the operations carried out by **licensees** under the authority of their **licences**.

1.2 Application

- 1.2.1 This Guideline applies to all **licensees** issued with a **licence** pursuant to Part 3 of the **Electricity Act** or **Gas Act** unless the **Commission** has agreed to alternative reporting arrangements.
- 1.2.2 This Guideline is a minimum requirement and the obligation of a **licensee** to comply with this Guideline is additional to:
- (a) any obligation imposed under any other law applying to a **licensee's** business and does not derogate from such an obligation, and
 - (b) a **licensee's** obligation to report any breach of an obligation under its **licence** within the stipulated time and in the manner required.

1.3 Confidentiality

- 1.3.1 The confidentiality provisions set out in Part 5 of the **ESC Act** (“Collection and Use of Information”) will apply to any information collected by the **Commission** in accordance with this Guideline.

1.4 Processes for Revision

- 1.4.1 The **Commission** may, at its absolute discretion, amend or vary this Guideline from time to time when it considers such action necessary in order to meet the needs of a **licensee**, South Australian energy customers or the **Commission**.
- 1.4.2 The **Commission** will undertake appropriate consultation with relevant **licensees** and other stakeholders as necessary in accordance with the Commission’s Charter of Consultation and Regulatory Practice before making any significant revisions to this Guideline.¹
- 1.4.3 For all revisions to this Guideline, a commencement date will be nominated on the Amendment Record on the inside front page. The **Commission** will generally give **licensees** not less than 45 days prior notice of the commencement of any significant revisions of this Guideline. If the amendments are of a routine nature, or required by law, the **Commission** may elect to modify the Guideline without consultation.

1.5 Input from Interested Parties

- 1.5.1 The **Commission** welcomes comments, discussion, or suggestions for amendments to this Guideline from any interested party. Any contributions in this regard should be addressed to:

Essential Services Commission of South Australia
GPO Box 2605
Adelaide SA 5001
E-mail: escosa@escosa.sa.gov.au

¹ The Charter can be viewed at www.escosa.sa.gov.au

2 General Principles

2.1 Regulatory Framework

- 2.1.1 Under the legislation and licensing regime, each **licensee** is required to undertake compliance audits and report on its compliance with applicable legislative and regulatory instruments.
- 2.1.2 The **Commission** has implemented a compliance auditing and reporting system which:
- (a) minimises costs and disruption to **licensees**, and
 - (b) provides assurance to the **Commission** that **licensees** have implemented appropriate and robust compliance systems that operate efficiently and effectively.
- 2.1.3 The requirement for **licensees** to demonstrate compliance with applicable legislative and regulatory conditions derives primarily from the obligation placed on the **Commission** by the **Electricity Act** and the **Gas Act** to insert certain mandatory conditions into **licences**.
- 2.1.4 In the **Electricity Act**:
- (a) the key mandatory **licence** conditions relating to compliance auditing and reporting are set out in sections 21(1)(a), (b), (e) and (g)
 - (b) section 22(1)(c)(iv) mandates a condition requiring generation **licensees** to audit compliance for safety and technical matters, as does section 23(1)(c)(iv) for network **licensees**, and
 - (c) sections 23(1)(n)(v) and 24(2)(i) also mandate conditions requiring network and retail **licensees** respectively to monitor and report on levels of compliance with standards of service.
- 2.1.5 In the **Gas Act**:
- (a) the key mandatory **licence** conditions relating to compliance auditing and reporting are set out in sections 25(1)(a), (b), (d) and (f)
 - (b) section 26(1)(b)(iv) mandates a condition requiring distribution **licensees** to audit compliance for safety and technical matters, and
 - (c) section 26A(2)(f) also mandates a condition requiring retail **licensees** to monitor and report on levels of compliance with standards of service.
- 2.1.6 Many regulatory instruments specify minimum requirements regarding the monitoring of compliance with those instruments. For example:
- (a) distribution, retail and transmission **licences** require monitoring by **licensees** in relation to compliance with minimum standards for customers prescribed by applicable **Industry Codes**
 - (b) **Industry Codes** require the **licensees** to maintain sufficient records as to permit the **Commission** to monitor **licensee's** performance in respect the obligations and requirements specified by those **Industry Codes**

- (c) the **Safety, Reliability, Maintenance and Technical Management Plan** requires monitoring of safety and technical compliance, condition of infrastructure and vegetation clearance, and
- (d) retail **licensees** that are obliged to participate in the Residential Energy Efficiency Scheme are required to maintain sufficient records so that the Commission can monitor compliance with the requirements of Residential Energy Efficiency Scheme Code, including the Ministerial Specifications relating to energy audits and energy efficiency activities.

2.2 Alternative Approaches

- 2.2.1 There are alternative approaches to compliance monitoring that are available to the **Commission** such as:
 - (a) adopting a positive assurance regime which would require **licensees** to report to the **Commission** on its compliance with all regulatory obligations rather than simply reporting non-compliance, and
 - (b) requiring **licensees** to undertake external compliance audits each reporting year.
- 2.2.2 The **Commission** is of the view that if the **Compliance Reporting Scheme** is implemented effectively by **licensees**, there will be a reduced need to adopt alternative approaches or for costly and resource intensive external audits to be undertaken.

3 Compliance Systems

3.1 The Objectives of Compliance Reporting

- 3.1.1 The **Compliance Reporting Scheme** requires that **licensees** have, and rigorously adhere to, a sound and robust compliance system. By submitting **Compliance Reports**, **licensees** warrant to the **Commission** on a periodic basis to that effect. The Commission relies on those warranties in the performance of its statutory functions arising under the **ESC Act**, the **Electricity Act** and the **Gas Act**.
- 3.1.2 The **Compliance Reporting Scheme** established under this Guideline reduces the need for costly and resource intensive external audits and large scale reviews of **licensee** compliance.

3.2 Expectations in relation to the Compliance Reporting Scheme

- 3.2.1 A sound compliance system should be based on the Australian Standard on Compliance Programs, AS 3806-2006 (as amended from time to time), or on another credible compliance standard.
- 3.2.2 **Compliance Reports** are to provide assurance to the **Commission** that a **licensee** has a credible compliance system in operation which records the results of that compliance system by way of “exception reporting” – that is, compliance with all obligations is assumed unless breaches are reported to the **Commission**.
- 3.2.3 As a matter of policy, the **Commission** will be inclined to exercise its enforcement powers in respect of a regulatory non-compliance more favourably where a **licensee** has actively co-operated in relation to the non-compliance and reported the non-compliance in a prompt manner.

3.3 Categorisation of Reporting Obligations

- 3.3.1 The **Commission** has adopted a multi-tiered approach to compliance reporting, based on the **Commission’s** assessment and categorisation of obligations arising under applicable regulatory instruments.
- 3.3.2 Annexure A shows the allocation of indicative obligations for key electricity and gas **licences** between:
- (a) Type 1: those regulatory obligations which are identified as being of such importance that a breach of one gives rise to an immediate requirement to provide to the **Commission** a **Material Breach Compliance Report** in accordance with clause 3.4
 - (b) Type 2: those regulatory obligations which are identified as being of an importance that a breach of one must be identified to the **Commission** in the **Quarterly Compliance Report** in accordance with clause 3.5, and
 - (c) Type 3: all regulatory obligations other than those identified as Type 1 or Type 2, a breach of which must be identified to the **Commission** in the **Annual Compliance Report** in accordance with clause 3.6.
- 3.3.3 **Licensees** should note that Annexure A is only an indicative, not an exhaustive, list of all regulatory obligations that may apply to a **licensee**. **Licensees** are required, for the purposes of this Guideline, to review all applicable regulatory obligations and

advise the **Commission** of the categorisation through Schedule A to each **Annual Compliance Report**.

- 3.3.4 The **Commission** may change the categorisation of regulatory obligations at any time (or for any **licensee** if circumstances require it do so). Unless the public interest or the exigencies of a particular case require otherwise, any such change will be dealt with in the manner referred to in paragraph 1.5.
- 3.3.5 If a **licensee** has no applicable obligations of a certain Type, then the **licensee** is not required to submit a **Compliance Report** for the reporting period for that Type of obligation. For example, if a retail **licensee** has no Type 2 obligations, then it is not required to submit a **Quarterly Compliance Report**.
- 3.3.6 If the **Commission** imposes new or varied conditions on **licensees**, for example through a **licence** variation or the making or variation to an **Industry Code**, then each **licensee** must report compliance against those new or varied conditions as advised by the **Commission**, even if the **Commission** has not amended this Guideline to reflect the new conditions.

3.4 Material Breach Reporting

- 3.4.1 **Material Breach Compliance Reports** must be provided to the **Commission** in the form set out in Annexure B if a **licensee** breaches a Type 1 obligation or an obligation that the **Commission** or a **licensee** otherwise considers to be “material” as soon as the **licensee** becomes aware of the breach and, in any event, no later than 3 days after becoming aware that the breach has occurred.
- 3.4.2 An indicative list of Type 1 obligations are set out in relevant section of Annexure A. In determining whether other obligations are “material” and therefore Type 1 obligations, a **licensee** should consider:
- (a) the impact of the breach of that obligation on consumers
 - (b) whether the breach of the obligation has a financial impact on consumers;
 - (c) the number of consumers affected, and
 - (d) the potential (and actual) impact on safety and risk to the public.
- 3.4.3 A **Material Breach Compliance Report** must be approved and signed by:
- (a) the Chief Executive Officer of the **licensee**
 - (b) a person holding an equivalent position to Chief Executive Officer of the **licensee**
 - (c) a person to whom the Board of the **licensee** has formally delegated the exercise of the powers and functions of the **licensee** at a level equivalent to that held by a Chief Executive Officer, or
 - (d) the person acting as Chief Executive Officer or equivalent position during an absence of the substantive office-holder.

3.5 Quarterly Compliance Reporting

- 3.5.1 **Quarterly Compliance Reports** must be provided to the **Commission** by all **licensees** required to report on Type 2 obligations within two calendar months of the last day of the relevant quarter (i.e. 28 February, 31 May, 31 August and 30 November) in the form set out in Annexure C.
- 3.5.2 A **Quarterly Compliance Report** must be approved and signed by:
- (a) the Chief Executive Officer of the **licensee**
 - (b) a person holding an equivalent position to Chief Executive Officer of the **licensee**
 - (c) a person to whom the Board of the **licensee** has formally delegated the exercise of the powers and functions of the **licensee** at a level equivalent to that held by a Chief Executive Officer, or
 - (d) the person acting as Chief Executive Officer or equivalent position during an absence of the substantive office-holder.

3.6 Annual Compliance Reporting

- 3.6.1 **Annual Compliance Reports** must be provided to the **Commission** by all **licensees**, by no later than 31 August immediately following the end of each regulatory year, in the form set out in Annexure C.
- 3.6.2 An Annual Compliance Report must contain:
- (a) details of all non-compliances (Types 1, 2 and 3) which occurred during the reporting year, including details of any non-compliances with Type 1 or Type 2 obligations that may have already been reported in a **Material Breach Compliance Report** or a **Quarterly Compliance Report** during that reporting year and non-compliances which occurred in a previous regulatory year but remain unrectified, and
 - (b) in respect of each non-compliance, sufficient information to allow the **Commission** to understand the timing, nature and scope of the non-compliance, how it was addressed and rectified, the impact of the non-compliance on consumers, the systems and processes which have been put in place to ensure the same non-compliance are not repeated in future years and the implications of the non-compliance on the effectiveness of the **licensee's** compliance system.
- 3.6.3 **Annual Compliance Reports** must be approved and signed by:
- (a) 2 Directors of the **licensee**, one of whom must be an "External Director" (see clause 3.11)
 - (b) 2 Members of the Compliance Committee of the **licensee**, one of whom must be an "External Member" (see clause 3.7 and clause 3.11)
 - (c) an external and independent auditor approved by the **Commission**, provided that such approval must be sought in writing by the **licensee** by no later than 30 June, or a date otherwise agreed by the Commission, in respect of a regulatory year

- (d) an internal auditor, provided that the **licensee's** internal audit function is undertaken by an independent and expert auditor and the **Commission** approves that auditor for the purposes of signing **Annual Compliance Reports** (see clause 3.8 below)
 - (e) 2 Directors of the **licensee's** parent company (see clause 3.9), or
 - (f) an alternative method approved by the **Commission** (see clause 3.10), provided that such approval must be sought by the **licensee** in writing by no later than 30 June, or a date otherwise agreed by the Commission, in respect of a regulatory year.
- 3.6.4 In addition to **Annual Compliance Reports** being signed by the appropriate persons in accordance with clause 3.6.3, **Annual Compliance Reports** must also be approved by the **licensee's** Board, reflecting the importance that the Commission attaches to the credibility of the **Compliance Reporting Scheme** as an alternative to external, independent audits.
- 3.6.5 Approval must be recorded as a formal decision taken by the Board, which must be noted on the **Annual Compliance Report**, including the date of the Board's decision.

3.7 Compliance Committee sign off for Annual Compliance Reports

- 3.7.1 Where a **licensee** seeks to use 2 Members of the Compliance Committee of the **licensee** for the purposes of signing an **Annual Compliance Report** in accordance with clause 3.6.3(b), the **licensee** must, at the time the **Annual Compliance Report** is submitted, provide the **Commission** with sufficient information to establish that the Committee satisfies the following criteria:
- (a) it must be a Committee comprised of at least two persons appointed by the Board, but it is not necessarily composed of Directors
 - (b) at least 50% of the Members of the Compliance Committee must be "External Members" of that Committee (see 3.11), and
 - (c) the Committee must have its Terms of Reference approved by the Board and must be given functions and powers as if it was a Compliance Committee composed of Board members (the function of having ultimate responsibility for the **licensee's** compliance with electricity and gas industry obligations, and sufficient powers to enable it to ensure compliance with those obligations).

3.8 Internal Auditor sign off for Annual Compliance Reports

- 3.8.1 A **licensee** seeking to use an internal auditor (which must be an independent and expert auditor) for the purposes of signing an **Annual Compliance Report** in accordance with clause 3.6.3(d) is required to obtain the **Commission's** approval annually, prior to the end of the reporting year for which this option is intended to be used.
- 3.8.2 If the **Commission** approves a **licensee's** request to use an internal auditor to sign off an **Annual Compliance Report**, the annual internal audit report:
- (a) must be specifically addressed to the **Commission** as well as to the **licensee**, and

- (b) need not rely precisely on the form of **Annual Compliance Report** described at Annexure C, provided that the internal audit report at least:
 - (i) certifies that the **licensee** has an efficient and effective compliance scheme in operation
 - (ii) lists all applicable Type 1, Type 2 and Type 3 obligations that the **licensee** is required to comply with by Act section, **licence** clause and **Industry Code** clause number and by summary description, and
- 3.8.3 lists all non-compliances that occurred within the reporting period and provides sufficient information on how such non-compliances were addressed and rectified.

3.9 Parent company Director(s) sign off for Annual Compliance Reports

- 3.9.1 Where the **licensee** does not have any “External Directors” (as defined in clause 3.11) on its Board, the **licensee** may apply to the **Commission** prior to the end of the reporting year for which this option is intended to be used to use “External Director(s)” of an Australian incorporated company that has a **substantial shareholding** (meaning: controlling and of a considerable size) in the **licensee** as a substitute for the “External Directors” of the **licensee**.
- 3.9.2 If the **Commission** agrees in writing, such Director(s) will be accepted by the Commission as “External Director(s)” of the **licensee** solely for the purpose of signing **Annual Compliance Reports** in accordance with clause 3.6.3(e).
- 3.9.3 The **Commission** will only give approval for such an arrangement if satisfied that the proposed Director(s) have relevant expertise, and independence from the **licensee**.

3.10 Alternative Options for sign off of Annual Compliance Reports

- 3.10.1 The **Commission** will consider other reasonable options proposed by **licensees** for the signing off an **Annual Compliance Report**, provided that such options must be submitted in writing for the **Commission's** approval not less than 1 month prior to the end of the relevant regulatory year.
- 3.10.2 Any such option must be based on the **licensee** having a sound and effective compliance system and on providing the **Commission** with expert and independent assurance of those matters.
- 3.10.3 **Licensees** that have not had an alternative sign off option approved by the **Commission** under this clause must ensure sign off complies with one of the alternative sign off requirements specified in clause 3.6.3 of this Guideline, otherwise the **Annual Compliance Report** will not be accepted by the **Commission**.

3.11 External Directors or Members

- 3.11.1 A Director is an “External Director” if the Director:
 - (a) is not, and has not been in the previous 2 years, an employee of the **licensee** or a related body corporate
 - (b) is not, and has not been in the previous 2 years, an executive officer of a related body corporate

- (c) is not, and has not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the **licensee** or a related body corporate
 - (d) is not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the **licensee** or a related body corporate
 - (e) does not have a material interest in the **licensee** or a related body corporate, and
 - (f) is not a relative or *de facto* spouse of a person who has a material interest in the **licensee** or a related body corporate.
- 3.11.2 A member of the Compliance Committee is an “External Member” if that member:
- (a) is not, and has not been in the previous 2 years, a non-executive Director, an executive officer or an employee of the **licensee** or a related body corporate
 - (b) is not, and has not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the **licensee** or a related body corporate
 - (c) is not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the **licensee** or a related body corporate
 - (d) does not have a material interest in the **licensee** or a related body corporate, and
 - (e) is not a relative or *de facto* spouse of a person who has a material interest in the **licensee** or a related body corporate.

3.12 Compliance Auditing by the Commission

- 3.12.1 The Compliance Audit framework is outlined in the **Commission’s** “Electricity Compliance Audit Framework” Final Decision of September 2004.
- 3.12.2 For any **licensee**, the **Commission** reserves the right to require, at any time, an external, independent audit, of some or all of the **licensee’s** obligations if the **Commission** considers that such a course is necessary.
- 3.12.3 The **Commission** may require that compliance audits be undertaken in respect of a **licensee** on the basis of:
- (a) the **Commission’s** determination of areas of regulatory concern (howsoever identified), based on a risk-based approach that broadly reflects the principles and processes of the Australian and New Zealand Standard on Risk Management, AS/NZ 4360-2004 (as amended)
 - (b) the **Commission’s** assessment of the adequacy of a **licensee** compliance system
 - (c) the level and nature of non-compliances by the **licensee**, or
 - (d) any relevant matter disclosed in the **Compliance Reports** provided by the **licensee**.
- 3.12.4 The **Commission** may require, in its absolute discretion, that compliance audits be paid for by a **licensee**.

Annexure A - Indicative Obligations

A1 Obligations under relevant legislation: Electricity Licences

Note: It is a condition of all electricity **Licences** that **Licensees** comply with all applicable laws including, but not limited to, the **Electricity Act** and regulations under that Act. The list below refers exclusively to the **Electricity Act** and is a **non-exhaustive** list of general obligations under that Act.

The description of obligations is intended as a guide only. Accordingly, **Licensees** are expected to examine all relevant Acts, **Industry Codes** and regulations to identify all applicable obligations that may apply and list these obligations in the **Compliance Reports** provided to the **Commission**.

The sections that follow in this annexure provide lists of additional indicative obligations that apply to electricity **Licensees** based on the specific type of **Licence** held. Obligations are categorized as Type 1, Type 2 or Type 3.

A.1.1 Type 3

Electricity Act	Summary Description
S.20(2)(a)	Lodgement of annual returns
S.35	Confidentiality of information held by a system controller
S.36	Standard terms and conditions for sale or supply of electricity
S.36AA	Sale of electricity to small customers understanding contracts
S.36AB	Sale of electricity to small customers under default contracts
S.36AD	Feeding-in of electricity to networks by domestic customers
SS.41 to 44	Electricity officers
SS.45 to 52	Powers and duties relating to infrastructure
S.53	Cutting off of electricity supply to avert danger to persons or property
Part 5	Duties in relation to vegetation clearance
S.60	Technical and safety requirements related to infrastructure
S.63	Reporting of accidents
S.69(2)	Authorised officers and evidence
S.70	Disconnection of electricity supply
S.81	Compliance with conditions of exemption

A.2 Relevant Obligations: Electricity Distribution Licence

Note: Obligations for this type of **Licence** are categorized as Type 1 and Type 3.

The description of obligations is intended as a guide only. Accordingly, Licensees are expected to examine all relevant Acts, Industry Codes and regulations to identify all applicable obligations that may apply and list these obligations in the Compliance Reports provided to the Commission.

In addition, **Licensees** are expected to examine their particular **Licence** to confirm clause numbering and the summary description of each obligation.

A.2.1 Type 1

Licence Clause	Summary Description
Varies	Notify a 'material' breach of any applicable regulatory instrument [also, in the annual compliance report provide a summary of all 'material' breaches for the 12 month period].
Varies	National Electricity Market registration and compliance with conditions
Varies	Unfit or unable to continue operations
Varies	Public safety and system security

Electricity Distribution Code Clause	Summary Description
2.8	Country Lines

A.2.2 Type 3

Licence Clause	Summary Description
Varies	Access to Distribution Network
Varies	Dispute Resolution
Varies	Audits
Varies	Compliance with Applicable Regulatory Instruments
Varies	Safety, Reliability, Maintenance and Technical Management Plan
Varies	Switching Manual
Varies	Provision of Information
Varies	National Electricity Market
Varies	Demand Management
Varies	Information to the Commission
Varies	AEMO and System Controller
Varies	Access for Telecommunications Purposes
Varies	Location of Powerlines Underground
Varies	Confidentiality
Varies	Community Services
Varies	Compatibility of Network
Varies	insurance

Electricity Distribution Code Clause	Summary Description
2	Service Obligations
3	Connection of Embedded Generation Units

Electricity Metering Code Clause (Where Applicable)	Summary Description
1.4	Obtaining a Copy of this Industry Code
2	Metering Provision Services for Connection Points not in the National Electricity Market
3	Metering Provision Services for all Connection Points
4	Metering Data Services for Connection Points not in the National Electricity Market
5	Metering Data Services for all Connection Points

Electricity Transmission Code Clause	Summary Description
6.3	Network Options and Security
8.1	Access to the Network

A.3 Relevant Obligations: Electricity Generation Licence

Note: Obligations for this type of **Licence** are categorised as Type 1 and Type 3.

The description of obligations is intended as a guide only. Accordingly, Licensees are expected to examine all relevant Acts, Industry Codes and regulations to identify all applicable obligations that may apply and list these obligations in the Compliance Reports provided to the Commission.

In addition, **Licensees** are expected to examine their particular **Licence** to confirm clause numbering and the summary description of each obligation.

A.3.1 Type 1

Licence Clause	Summary Description
Varies	Notify a 'material' breach of an Industry Code [also, in the annual compliance report provide a summary of all 'material' breaches for the 12 month period].
Varies	Unfit or unable to continue operations
Varies	Public safety and system security

A.3.2 Type 3

Licence Clause	Summary Description
Varies	Access
Varies	Dispute Resolution – Rights of Use
Varies	Compliance with Codes
Varies	Safety, Reliability, Maintenance and Technical Management Plan
Varies	System Controller and AEMO
Varies	National Electricity Market
Varies	Information to the Commission
Varies	Operational and Compliance Audits
Varies	Confidentiality
Varies	Community Service
Varies	Compatibility
Varies	Insurance
Varies	Compliance with Laws
Varies	Switching Manual

A.4 Relevant Obligations: Electricity Transmission Licence

Note: Obligations for this type of **Licence** are categorised as Type 1 and Type 3.

The description of obligations is intended as a guide only. Accordingly, **Licensees** are expected to examine all relevant Acts, **Industry Codes** and regulations to identify all applicable obligations that may apply and list these obligations in the **Compliance Reports** provided to the **Commission**.

In addition, **Licensees** are expected to examine their particular **Licence** to confirm clause numbering and the summary description of each obligation.

A.4.1 Type 1

Transmission Licence Clause	Summary Description
Varies	Separation of Business
Varies	Unfit or unable to continue operations
Varies	Public safety and system security

Electricity Transmission Code Clause	Summary Description
2.17	Country Connection Points

A.4.2 Type 3

Transmission Licence Clause	Summary Description
Varies	Access to Transmission Network
Varies	Dispute Resolution – Rights of Use
Varies	Compliance with Codes
Varies	Safety, Reliability, Maintenance and Technical Management Plan
Varies	Provision of Information
Varies	Ombudsman
Varies	Accounts and Separate Businesses

Varies	National Electricity Market
Varies	Information to the Commission
Varies	System Controller and AEMO
Varies	Operational and Compliance Audits
Varies	Operational and Compliance Audit Plan
Varies	Access for Telecommunications Purposes
Varies	Location on Powerlines Underground
Varies	Confidentiality
Varies	Community Service
Varies	Compatibility
Varies	Insurance
Varies	Compliance with Laws
Varies	Switching Manual

Electricity Transmission Code Clause	Summary Description
1.7	Obtaining a copy of this Industry Code
2	Service Standards
3	Interruptions
4	Design Requirements
5	Technical Requirements
6	General Requirements
7	Access to Sites
8	Telecommunication Access
9	Emergencies

A.5 Relevant Obligations: Electricity System Control Licence

Note: Obligations for this type of **Licence** are categorised as Type 1 and Type 3.

The description of obligations is intended as a guide only. Accordingly, **Licensees** are expected to examine all relevant Acts, **Industry Codes** and regulations to identify all applicable obligations that may apply and list these obligations in the **Compliance Reports** provided to the **Commission**.

In addition, **Licensees** are expected to examine their particular **Licence** to confirm clause numbering and the summary description of each obligation.

A.5.1 Type 1

System Control Licence Clause	Summary Description
4.1(b)	Separation of Business
6.1(a)	Unfit or unable to continue operations
7.1(c)	Notify a 'material' breach of an Industry Code

A.5.2 Type 3

System Control Licence Clause	Summary Description
4	Accounts and Separate Businesses
5	System Controller and AEMO
6	Information to the Commission
7	Compliance with codes
8	Operation and compliance audits
9	Confidentiality
10	Community Service
11	Compliance with Laws
12	Switching Manual

A.6 Obligations under relevant legislation: Gas Licences

Note: It is a condition of all gas **Licences** that **Licensees** comply with all applicable laws including, but not limited to, the **Gas Act** and the regulations under that Act. The list below refers exclusively to the **Gas Act** and is a **non-exhaustive list** of general obligations under that Act.

Licensees are expected to examine all relevant Acts, **Industry Codes** and regulations to identify *all* applicable obligations that may apply to them (such obligations are categorised as Type 3 obligations) and list these obligations in the **Compliance Reports** provided to the **Commission**.

The sections that follow in this annexure provide lists of additional indicative obligations that apply to gas **Licensees** based on the specific type of **Licence** held. Obligations are categorised as Type 1, Type 2 or Type 3. The description of obligations is intended as a guide only.

A.6 Type 3

Gas Act	Summary Description
S.24(2)(a)	Lodgement of annual returns
S.34	Standard terms and conditions for retailing of gas
S.34A	Sale of gas under standing contracts
S34B	Sale of gas under default contracts
SS.42 to 45	Powers and duties of gas officers
SS.49 to 51	Powers and duties relating to infrastructure
S.53	Cutting off of gas supply to avert danger to persons or property
SS.55, 57, 57A	Technical and safety requirements related to infrastructure
S.58	Reporting of accidents
S.78	Compliance with conditions of exemption

A.7 Relevant Obligations: Gas Distribution Licence

Note: Obligations for this type of **Licence** are categorised as Type 1 and Type 3.

The description of obligations is intended as a guide only. Accordingly, **Licensees** are expected to examine all relevant Acts, **Industry Codes** and regulations to identify *all* applicable obligations that may apply and list these obligations in the **Compliance Reports** provided to the **Commission**.

In addition, **Licensees** are expected to examine their particular **Licence** to confirm clause numbering and the summary description of each obligation.

A.7.1 Type 1

Licence Clause	Summary Description
4.2 & 4.3	Notify a 'material' breach of any applicable regulatory instrument [also, in the annual compliance report provide a summary of all 'material' breaches for the 12 month period].
5	Compliance with Good Gas Industry Practice
7.1	Unfit or unable to continue operations
7.3	Notify any significant reduction in financial capacity

A.7.2 Type 3

Licence Clause	Summary Description
4	Compliance with Applicable Regulatory Instruments
5	Compliance with Good Gas Industry Practice
6	Audits
7	Information to the Commission
8	Safety, Reliability, Maintenance and Technical Management Plan
9	Customer Concessions and Community Service Obligations
10	Confidentiality

Gas Distribution Code Clause	Summary Description
2	Operation of Distribution System

Gas Metering Code Clause (Where Applicable)	Summary Description
1.5	Obtaining a copy of this Gas Metering Code
2	Provision of Metering Installations
3	Metering Installation Testing
4	Meter Reading and Data
5	Gas Measurement Management Plan

Annexure B – Material Breach Compliance Report

To: Essential Services Commission of South Australia
Level 1
151 Pirie Street
ADELAIDE SA 5000

[Name of Licensee] reports as follows:

- (a) This Report is a Material Breach Compliance Report and has been prepared in a manner that meets the requirements of the Compliance Systems and Reporting Energy Industry Guideline No. 4 (**“the Guideline”**).
- (b) This Report has been approved by the Chief Executive Officer (or equivalent in accordance with clause 3.4.3 of the Guideline).
- (c) The **Licensee** reports a breach of the obligations listed in Schedule A of this Report.

Dated the _____ day of _____ 20_____

SIGNED, in accordance with clause 3.4.3 of the Guideline, by:

Print Name:

Designation:

(Sign-off must be pursuant to clause 3.4.3 of the Guideline. Please indicate: Chief Executive Officer (CEO), person holding position equivalent to CEO, formal delegate exercising powers and functions of CEO, person acting as CEO).

Signed:

B.1 Schedule A

<p>NON-COMPLIANCES</p> <p>NOTE: ALL NON-COMPLIANCES MUST BE SEPARATELY LISTED</p>	<p>LICENSEE COMMENTS ON THE NON-COMPLIANCE</p> <p>Provide information on how the non-compliance:</p> <ul style="list-style-type: none"> ▶ occurred; ▶ was addressed; ▶ has been (or will be) rectified and the timeframes around this process; and ▶ impacted: <ul style="list-style-type: none"> – consumers and other entities; and – on the effectiveness of the Licensee’s compliance system.

Annexure C – Quarterly*/Annual* Compliance Report

* Delete if inapplicable.

To: Essential Services Commission of South Australia
Level 1
151 Pirie Street
ADELAIDE SA 5000

[Name of **Licensee**] reports as follows:

- (d) This Report is a Quarterly* / Annual* Compliance Report for the period [insert] and has been prepared in a manner that meets the requirements of the Compliance Systems and Reporting Energy Industry Guideline No. 4 (“**the Guideline**”).
- (e) The **Licensee**, having made appropriate and due enquiry, is not aware of any breach of any of the obligations listed in Schedule A to this Report (“**Applicable Obligations**”), other than as detailed in Schedule B.
- (f) The **Licensee** has maintained a robust compliance program during the relevant period that ensures that:
 - (i) it has identified all Applicable Obligations that apply to the **Licensee** (and not simply reported against the indicative list of obligations set out in Schedule A)
 - (ii) it has a “Responsible Officer” who has operational control over the activity or work area where each of the relevant Applicable Obligations arise
 - (iii) it has ensured that the “Responsible Officer” has programmed the relevant Applicable Obligation into the operational procedures for the relevant activity or work area, and is accountable to the Board of Directors* / Compliance Committee of the Board of Directors* through the Chief Executive Officer for ensuring compliance with that Applicable Obligation
 - (iv) the Chief Executive Officer (or equivalent) and, where relevant the Board, of the **Licensee** will be made aware of any breaches of Applicable Obligations without delay and the process for the remediation of a breach
 - (v) remedial action is taken as soon as possible to rectify breaches of Applicable Obligations, and that the breach of the Applicable Obligation, and the completion of the remedial action, is reported to the Board* / Compliance Committee of the Board of Directors*
 - (vi) the compliance system is reviewed every two years with a view to improve it, and also where:
 - o continued breaches indicate systemic failure to ensure that the compliance system is effective and relevant, and
 - o there is a significant change to the regulatory regime, in order to update the system to accommodate the change.
- (g) The **Licensee** has established a process for signing this Compliance Report that is in accordance with clause 3.5.2/3.6.3* of the Guideline.
- (h) Both Directors/ External Directors/ parent company External Directors/ Member of Compliance Committees/ External Members of Compliance Committee* who have signed the Report below state that:

"We certify that we have made all necessary inquiries of appropriate officers in this organisation to confirm that management has developed a robust compliance system that meets the regulatory arrangements relating to the electricity / gas industry in South Australia, and that the system has been implemented and is being appropriately used by the organisation."

[*Only relevant for Annual Compliance Reports]

Dated the day of 20

SIGNED, in accordance with clause 3.5.2/3.6.3* of the Guideline, by:

..... Signature Signature
..... Name (Please Print) Name (Please Print)
..... Designation (Please Print) Designation (Please Print)

(Sign-off must be pursuant to clause clause 3.5.2/3.6.3*of the Guideline. Please indicate who has signed the report. (eg: Director, External Director, parent company External Director, Member of Compliance Committee, External Compliance Committee member etc*).

- (i) This signed **Quarterly Compliance Report** has been approved by the Chief Executive Officer (or equivalent) in accordance with clause 3.5.2 of the Guideline* / This signed **Annual Compliance Report** has been approved by the Board of Directors of the **Licensee** at its meeting on (insert date) as required by clause 3.6.3 of the Guideline*.

C.1 Schedule A – Relevant Obligations

[Licensees are to list all TYPE 1, TYPE 2 or TYPE 3 obligations that are applicable]

C.2 Schedule B

<p>Non-Compliances</p> <p>Note: All Non-Compliances for the Relevant Reporting Period Must Be Separately Listed</p>	<p>Licensing Comments on the Non-Compliance</p>
<p>TYPE 2 (Quarterly Compliance Report); or TYPE 1 and TYPE 2 and TYPE 3 (Annual Compliance Report).</p>	<p>Provide information on how the non-compliance:</p> <ul style="list-style-type: none"> ▶ occurred ▶ was addressed ▶ has been (or will be) rectified and the timeframes around this process, and ▶ impacted: <ul style="list-style-type: none"> – consumers and other entities, and <p>the effectiveness of the Licensee's compliance system.</p>

Schedule 1 – Definitions

In this Guideline:

Annual Compliance Report means a report in the form set out in Annexure C, to be submitted by a **Licensee** in accordance with the requirements of this Guideline

Commission means the Essential Services Commission of South Australia established under the **ESC Act**

Compliance Audit framework means the framework outlined in the **Commission's** "Electricity Compliance Audit Framework" Final Decision of September 2004

Compliance Report means a **Material Breach Compliance Report**, a **Quarterly Compliance Report** and/or an **Annual Compliance Report**

Compliance Reporting Scheme means the reporting scheme established under this Guideline

Electricity Act means the *Electricity Act 1996 (SA)*, as in force from time to time and, where the context allows, includes all regulations made under that Act

ESC Act means the *Essential Services Commission Act 2002 (SA)*, as in force from time to time and, where the context allows, includes all regulations made under that Act

Gas Act means the *Gas Act 1997 (SA)*, as in force from time to time and, where the context allows, includes all regulations made under that Act

Industry Codes means the Codes in force from time to time made under the **ESC Act** relating to the conduct or operations of the electricity and gas supply industries or of **Licensees**

Licence means a licence issued to a person pursuant to either Part 3 of the **Electricity Act** or Part 3 of the **Gas Act** and, where an Exemption from the requirement to hold such a licence has been granted to a person containing a condition that requires that person to report compliance with certain obligations, includes that Exemption

Licensee means a person for whom a **Licence** is in force and for whom there is no Exemption under section 80 of the **Electricity Act** or section 77 of the **Gas Act** in force alleviating that person from the requirement to report the results of the audit of the person's operations in the electricity or gas supply industries to the **Commission**

Material Breach Compliance Report means a report in the form set out in Annexure B, to be submitted by a **Licensee** in accordance with the requirements of this Guideline

National Electricity Rules means the Code, as defined in the *National Electricity Law*

Quarterly Compliance Report means a report in the form set out in Annexure C, to be submitted by a **Licensee** in accordance with the requirements of this Guideline, and

Substantial Shareholding means a substantial holding as defined in the *Corporations Act 2001 (Cth)*.

Schedule 2 – Interpretation

In this Guideline, unless the context otherwise requires:

- (a) words and phrases presented in a bold italic font such as this are defined in the Glossary
- (b) a word or and phrase not defined in the Glossary will have the meaning given by the Electricity Act, the Gas Act, the ESC Act, the Industry Codes (as the case may be) or any other relevant regulatory instrument
- (c) a reference to this Guideline includes its appendices, annexures and schedules
- (d) words importing the singular include the plural and vice versa
- (e) any heading, index or table of contents is for convenience only and does not affect the construction or interpretation of this Guideline
- (f) a reference to any legislation or regulatory instrument includes:
 - (i) all regulations, orders or instruments issued under the legislation or regulatory instrument, and
 - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or regulatory instrument
- (g) a reference to a licensee includes, without limitation, that licensee’s administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns, and
- (h) where an act is required to be done pursuant to this Guideline on, or by, a stipulated day which is not a **business day**, the act may be done on the following **business day**.

Explanations in this Guideline as to why certain information is required are for guidance only. They do not, in any way, limit the Commission’s objectives, functions or powers.



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