

22 October 2021

Essential Services Commission  
Level 8, 570 Bourke Street  
Melbourne, Victoria 3000

Submitted via:

<https://engage.vic.gov.au/updating-compliance-and-performance-reporting-framework>

## **Updating the Compliance and Performance Reporting Guideline 2021 – Tango Energy submission**

Tango Energy thanks the Essential Services Commission (ESC) of Victoria for the opportunity to comment on the above consultation.

Tango Energy is the wholly owned subsidiary retail arm of Pacific Hydro Australia (PHA). PHA was founded in 1992, and is a leading owner, operator and developer of renewable energy assets. It operates a high quality, diversified portfolio of wind, hydro and solar assets with an installed capacity of 665 MW; it also has a development pipeline of substantial projects totaling over 1100 MW of potential capacity, as well as over 300 MW of energy storage solutions.

We are a relatively new and growing retailer with approximately 124,000 small and large customers as of October 2021. While our customer base is predominantly in Victoria, Tango Energy also recently started selling to small customers in New South Wales, Queensland, and South Australia and expects to grow our presence in those jurisdictions.

### **Breach Reporting**

Tango Energy appreciates that the ESC has taken on stakeholder feedback from the first round of consultation in early 2021.

#### *Breach classifications*

We support adoption of the Type 1 category, and classification under that category of the most urgent, time critical, and serious obligations (i.e. life support provisions where life is endangered). However, the type 2 category continues to appear significantly bloated and contains 166 items in the draft Energy Retail Code of Practice, out of 192 clauses in the draft Code of Practice, where breaches are required to be reported on a “running” 30 day basis. It is not clear that such an onerous requirement is necessary, particularly relative to the Australian Energy Regulator’s Compliance Procedures and Guidelines<sup>1</sup>.

We also note that the ESC has also included a new requirement to report “*breaches that may give rise to a material adverse impact*” on p.7 of the proposed Guideline.

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<sup>1</sup> <https://www.aer.gov.au/retail-markets/guidelines-reviews/compliance-procedures-and-guidelines-september-2018>

Conceptually, it is not clear how this requirement operates with the Type 1 and Type 2 requirements and whether there is any intended overlap or duplication. There is a lack of clarity in how any intended duplication in reporting would be administered. It appears that any breaches that would have a “*material adverse impact*” would appear to have already been covered by the Type 1 requirement. We therefore request that the ESC provide clearer guidance on the definition of “*material adverse impact*”, how this requirement is intended to operate practically, and how it will operate together with the reporting requirements for Type 1 and 2.

A potential solution may be that the Type 2 category be further narrowed down to key clauses to allow it to be manageable administratively, and for the blanket “*material adverse impact*” requirement for all other clauses not included in Type 1 or 2 be reported within 30 days calendar days of detection (or in the same timeframe as Type 2, as we discuss in the next paragraph). The breaches reported under the “*material adverse impact*” category would meet the definition of “*material adverse impact*” as defined by the ESC, as discussed above. This would potentially reduce duplication between the reporting classifications and result in clearer, consistent and complete information being provided to the ESC where a breach has occurred.

Another potential administrative solution we ask the ESC to consider, based on the proposed inclusion of the majority of the ERCP as a Type 2 breach, is that rather than require “running” reports, the Guideline should require Type 2 breaches to be reported in a monthly report at the end of every month, for breaches occurring or detected in the preceding month. For example, a breach identified in September, would be reported on in a consolidated report lodged at the end of October with respect to the September reporting period. This is not only consistent with the current reporting regime for wrongful disconnections, but would also make the reporting, management, investigation and remediation for the voluminous Type 2 obligations more manageable and result in more complete and accurate information being provided to the ESC.

### *Wrongful disconnections*

In the proposed guideline, wrongful disconnections are required to be reported:

- In the Type 2 breach report;
- Monthly wrongful disconnection report; and
- Monthly wrongful disconnection payment reports.

There appears to be duplication in several areas, and rather than the same information appearing in 3 different reports, we suggest that these be reported in the Type 2 breach report alone.

## **Performance Indicators**

### *Comments on overall approach*

The ESC is proposing the addition of new performance indicators, and several detailed changes to the way existing indicators are counted in this round of consultation. We note version 6 of the Guideline was changed in April 2021 and there have been 3

iterations since 2018, meaning there have been substantive changes to the reporting indicators in every year except 2020, where voluntary provision of information on COVID-19 was sought from retailers. We understand that the volume of additions of regulatory obligations to the Energy Retail Code over that period required the ESC to include additional indicators specific to those regulatory obligations; the current changes being proposed do not relate to new obligations.

As mentioned above, data on issues of interest to the ESC such as customer arrears and COVID-19 reporting, was requested, and has been provided on a voluntary basis by most retailers throughout 2020 and 2021. Further data is expected to be collected through ad-hoc information requests made using the ESC's powers for gathering information in relation to specific consultations undertaken by the ESC (such as the review of the Payment Difficulty Framework, and the Victorian Default Offer).

It is not clear to us at this stage that there has been holistic consideration of performance indicator needs, and there appears to be a piecemeal approach leading to significantly onerous and frequently changing requirements, which in our opinion, do not add value to the ESC's analysis or insights. To collect meaningful, accurate, relevant and auditable data in an efficient way that does not result in unnecessary costs for consumers, organisations require certainty and stability of an agreed set of indicators that are understood by both industry, regulators, and other users of the data such as Government departments and policymakers. Tango Energy fully understands the value of data, if collected appropriately. However, before putting in place onerous data collection requirements, particularly those that are subject to frequent changes, it is in the best interests of all parties involved to agree on principles for the measurement and collection of data.

We therefore suggest that the ESC use this opportunity to review other information already being provided, and to undertake holistic consideration of the existing indicators. Subject to this process we recommend that the ESC commit to a period of at least 3 to 5 years where no further changes to the indicators are made unless they relate to new regulatory obligations. Importantly, this will allow any statistical trends occurring to be analysed in a robust and statistically rigorous manner.

We also make a number of detailed comments and observations below:

- AS061, AS062, AS070 and AS080 are clarified as being mutually exclusive. It should be noted that the same customer can exit (and subsequently re-enter, then exit again) tailored assistance multiple times within a month for the different reasons above, and this would be counted multiple times under the different indicators, but it is not strictly double counting. Any attempted reconciliation should be done with caution and take into account these differences.
- The updated definition for indicators AR041 and AR042 will result in a customer that has a fluctuating level of arrears (which is typical) moving from one sub-category to another within multiple reporting periods, and is likely to cause a trend that fluctuates significantly between the sub-categories.
- We note the frequency of reporting call centre indicators has now changed to be on a monthly basis. With the increased adoption of other communication technology tools such as email, online chat and self-service, the relevance of

call centres and telephone is diminishing. It appears counter-intuitive that greater frequency of reporting is being requested about call centre indicators.

If you would like to discuss this submission please contact me at the details provided with the submission.

Yours sincerely,

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Tango Energy Pty Ltd