



26 April 2013

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 Essential Services Commission
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Dear Ms McAuliffe

ESC Consultation - Energy Industry Guideline 22 - Regulatory Audits

Thank you for the opportunity to comment on the draft Guidelines. I have outlined some of my concerns relating to specific sections of the guidelines in the table below:

Audit Deed	
Clause 7.4	“The Auditor assigns to the Commission all present and future copyright in each Audit Report and each draft of an Audit Report”. Draft reports are working papers of the Auditor and may be subject to factual inaccuracies not yet reviewed or corrected by the licensee. The Commission should not be looking to use (publish, communicate or rely on) these potentially inaccurate representations.
Guideline 22 - Regulatory Audits of Energy Businesses	
Clause 3.2.5	It is not clear how the commission will assess the “likely” extent of non compliance. If this is going to be a subjective assessment, it would be appropriate to explain how this assessment will be undertaken.
Clause 3.2.7	“Energy licensees should make sure that all high risk obligations are audited, not only those identified by the Commission.” It is not clear whose assessment of ‘high risk’ should be used nor the basis of this assessment. It is also not clear whether this is a recommendation or a requirement and whether the audit activity should be performed independently or if it is to form part of the internal audit and assurance regime of the licensee. Retailers will conduct their own assurance on high risks as part of a broader assurance program. The ESC audits should be limited to the requirements and regulations governed by the ESC.
Clause 5.2.1	<p>“The auditors will be required to assess and report on the licensee’s compliance risk appetite.” The assessment of a compliance program and framework is a separate exercise that does not enable an auditor (or by extension, the Commission) to pass judgement on the broader risk appetite of an organisation. The role of a regulator is to regulate compliance obligations, not opine on the risk appetite of private enterprise. The assessment of risk appetite only goes to the need to audit, which is covered by clause 3.2.5. The compliance plan of a retailer is a stand-alone process that should be assessed independent of compliance with any specific obligations overseen by the ESC.</p> <p>This clause is too broad and could be the subject of a complete audit in itself before consideration of any specific regulatory obligations. Given the cost of engaging an external audit firm to conduct this assessment, limitations and conditions need to be clarified, explaining the</p>

	circumstances in which this clause should be enacted and opportunities where other activities may suffice. For example, if two audits were to be conducted in successive years, it would be excessive and unreasonable to fulfil this clause twice within the space of 2 years.
Clause 7.5.1	Traffic light reporting is useful for internal communications and presentations, but is inappropriate to present the results of complex externally assessed regulatory reporting obligations in this way. Using a three grade colour system runs the risk of over-simplifying findings, the details of which cannot be summarised by a coloured dot. Further, traffic light reporting requires subjective conclusions to be reached, whereas independent regulatory audits and the presentation of their findings should be fact based.
Clause 7.12.1(h)	The Commission may wish to publish the detailed report, but consideration must be given to the removal of commercially sensitive information in the report prior to publication. The Licensee must be given an opportunity to identify commercial sensitivities and provide (potentially with the assistance of the auditor) either a redacted or revised version of the detailed report.
Clause 7.14.1	It needs to be noted that getting the Board of the licensee to consider and forward (both the summary and full versions of) the report to the Commission may take a considerable period of time and it is not practical to require this “ <i>within 5 days before the closing meeting with the Commission.</i> ” It would be more practical (yet still challenging from a timing perspective) to allow this to be delegated to a ‘delegated officer’ as per clause 8.1.1.
Guideline 22 - Draft Decision - Regulatory Audits of Energy Businesses	
Section 2.2	It is impractical and restrictive to impose hard-coded timeframes and milestones in the audit deed without an awareness of the scope, approach and operational constraints posed in each audit engagement.

Regardless of any feedback provided to the Commission on the Deed or Guidelines in this submission, the licensee (and or the auditor) should be afforded the ability to challenge any part of the deed prior to entering into it for any specific future audit engagements.

Thank you again for the opportunity to comment on the papers distributed and we would be happy to discuss our feedback further if required.

Yours sincerely

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