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Dear Paul

INCIDENT REPORTING MANUAL FOR ELECTRICITY, GAS AND WATER LICENCES

I refer to the notice issued by the Economic Regulation Authority (the Authority) on Friday 6 February 2009 seeking comments on its draft Incident Reporting Manual for licensees in the electricity, gas and water industries. This letter sets out the views of Alinta Sales Pty Ltd, Alinta Cogeneration (Pinjarra) Pty Ltd and Alinta Cogeneration (Wagerup) Pty Ltd (collectively referred to as Alinta), which are variously the holders of retail, generation and transmission licences.

Background

The draft Incident Reporting Manual indicates that its purpose is to set out the basis on which information would be provided to the Authority in relation to *major* or *significant* incidents that had caused, or had the potential to cause, significant damage, loss or disruption to customers, or that had endangered, or threaten to endanger, the safety or health of a person or the environment.

The draft Incident Reporting Manual defines a *major* incident as an incident that "...has caused:

- *serious injury to persons;*
- *serious environmental harm or pollution;*
- *serious risk to public health; and*

the licensee has a legislative obligation to immediately notify a regulatory authority, other than the Authority, of the incident as soon as the licensee becomes aware of the incident or event"

In contrast, a *significant* incident is defined in the draft Incident Reporting Manual as an incident that:

- *"has caused serious damage to property;*
- *has caused significant interruption to customer supply;*
- *has consequences that materially impact the effectiveness of the licensee's operations;*

- *has adversely affected the operations of other licensees or customers;*
- *requires the licensee to notify a regulatory authority, other than the Authority, within 24 to 72 hours after becoming aware of the incident.”*

The obligations imposed by the draft Incident Reporting Manual would be in addition to those already imposed by each licence and by the related industry Compliance Reporting Manual. The Compliance Reporting Manual already classifies a number of licence obligations as ‘Type 1’ obligations, where non-compliance must be notified to the Authority immediately the licensee becomes aware of a breach on the basis that non-compliance would:

- cause major damage, loss or disruption to a customer; or
- endanger, or threaten to endanger, the safety or health of a person.

Licensees are also required to annually submit a compliance report to the Authority for all ‘Type 2’ licence obligations confirming it has complied with all relevant licence conditions, or otherwise identifying the nature of any breach. The draft Incident Reporting Manual suggests that, despite compliance with ‘Type 1’ licence obligations, major or significant incidents could similarly cause major damage, loss or disruption to a customer; or endanger, or threaten to endanger, the safety or health of a person.

The purpose of the draft Incident Reporting Manual is to prescribe such major or significant incidents, which it argues is:

...consistent with good regulatory practice. This is because it is important that the Authority, and the public, understand the causes and impacts of major or significant incidents in the business that the Authority regulates...[and because the Authority]...should consider all relevant aspects of the operations of the businesses that it licences in order to form a complete picture of the compliance culture of the business and identify issues that might indicate an increased risk of non-compliance by the businesses.

Alinta’s views

Overview

The licensing frameworks established by the *Electricity Industry Act 2004*, the *Energy Coordination Act 1994* and the *Water Services Licensing Act 1995* already impose significant regulatory obligations on license holders. For example, licence holders are required to comply with the requirements of each industry’s respective Compliance Reporting Manual. The Electricity Compliance Reporting Manual identifies some 452 obligations that variously apply to holders of retail, transmission, distribution, generation and integrated regional licences.



As noted earlier, licence holders have a number of 'Type 1' obligations, and a breach of any of these must be immediately notified to the Authority. Further, licence holders are required to annually submit a report advising of the extent to which the licensee has complied with all 'Type 2' licence obligations during the year. In addition, there is also a periodic independent audit of the compliance by licensees with all licence conditions.

It is clearly necessary for regulatory frameworks to be prescriptive in requiring certain information to be provided that allows the regulator to verify compliance by licence holders with licence conditions. Alinta also believes regulatory frameworks should encourage the ongoing exchange of information between regulated industry participants and the regulator, as this is likely to facilitate the efficient and effective regulation of the industry in question. However, Alinta is concerned that establishing a relationship between the regulator and regulated entities that ultimately supports the sharing of potentially sensitive commercial information is not encouraged by being prescriptive about the type of incidents that should be reported to the Authority (where these are not demonstrably related to compliance with licence obligations).

Specifically, Alinta is concerned that in many cases the draft Incident Reporting Manual does not demonstrate that the incidents that would be required to be reported to the Authority, would cause, or have the potential to cause, significant damage, loss or disruption to customers, or would endanger, or threaten to endanger, the safety or health of a person or the environment (that is, are *major* or *significant* as defined in the draft Incident Reporting Manual).

Alinta also notes that in May 2008 the Authority invited comments from industry participants on an earlier version of the draft Incident Reporting Manual. In response, Alinta identified a number of areas where it considered further clarification of the obligations imposed by that version of the draft Incident Reporting Manual was required, but also requested advice on how information provided with respect to reportable incidents would be used and reported. Alinta notes that the Authority has not acknowledged or responded directly to the concerns that were raised by it.

Rather than attempt to prescribe all of those incidents that the Authority considers may result in *major* or *significant* outcomes, an alternative approach might be to require licensees to report all incidents that did, or could reasonably be expected to, result in a *major* or *significant* outcome (as defined in Table 1).

Finally, good regulatory practice would also require that the Authority demonstrate, through a regulatory impact assessment, that the additional regulatory obligations that would be imposed by the Incident Reporting Manual are in the public interest. It would appear that such an assessment has not yet been conducted.

Scope of the Incident Reporting Manual

Alinta notes that there continues to be some uncertainty with respect to the incidents that are intended to be captured by the draft Incident Reporting Manual. For example, although the classification of incidents as *major* or *significant* in Table 1 implies that the incidents must be demonstrated to have resulted in certain outcomes, the draft Incident Reporting Manual (Section 1, Scope and Purpose) also suggests that incidents that have the *potential* to cause outcomes that would be categorised as *major* or *significant* should also be reported.

Alinta also considers that imposing a timeframe for the reporting of discretionary incidents (that is, other than those specified in sections 6 to 8) through assigning such incidents as either a Priority 1 or Priority 2 incident is likely to discourage licensees from reporting such incidents.

Priority rating of obligations

Table 1 of the draft Incident Reporting Manual sets out the classification criteria that is purported to have been used in classifying each of the incident reporting obligations.

Alinta considers that in many cases incidents that have been classified as Priority 1 incident reporting obligations could not reasonably be expected to cause:

- serious injury to persons;
- serious environmental harm or pollution; or
- serious risk to public health.

For example, the draft Incident Reporting Manual classifies the unplanned outage of a retailer's customer information system for more than 1 hour in aggregate during normal business hours as a Priority 1 incident (Table 6 and Table 8), which would be required to be notified to the Authority within 24 hours of the incident occurring. Alinta does not agree that the unplanned outage of a retailer's customer information system for more than 1 hour in aggregate during normal business hours could reasonably be considered to be a *major* incident that would be expected cause serious injury, serious environmental harm or pollution, or serious risk to public health.

Similar observations apply with respect to those incidents deemed to be *significant* incidents. For example, the forced outage of generation plant for a period longer than 24 hours continuously is deemed to be a Priority 2 incident in the draft Incident Reporting Manual, and would be required to be reported within 72 hours. Unplanned outages occur for a variety of reasons, and it is not apparent that such outages could reasonably be considered to cause damage to property, significantly disrupt supply to customers, impact on the effectiveness of the licensee's operations, or adversely affect other licensees or customers.

Linkage to compliance culture and licence obligations

The draft Incident Reporting Manual indicates that the Authority has the power to insert into licences a condition requiring licensees to provide information on any matter that is relevant to the enforcement of the licence, the operation of the licensing scheme, or the performance of the Authority's functions under the legislation.

Alinta is concerned in the case of many of the reportable incidents in the draft Incident Reporting Manual, the linkage with the Authority's powers is not clear. For example, electricity retail and gas trading licences do not impose any specific technology requirements on retailers with respect to the manner in which they choose to serve customers and meet their licence obligations. Specifically, there is no requirement that retailers operate customer service centres based on computer-telephony integration (CTI) technology. Consequently, it is unclear why the draft Incident Reporting Manual should draw a distinction between the incident reporting obligations of retailers that choose to apply this technology and those that choose not to.

Similarly, Alinta notes that an electricity generation licence does itself not impose any generation reliability obligations on the licence holder. The obligations of generators with respect to reliability (and availability) are covered in detail in the Wholesale Electricity Market Rules. The draft Incident Reporting Manual does not clearly articulate the basis on which the Authority considers that forced outages would be related to its functions under the *Electricity Industry Act 2004*, or how these could be considered to relate to the licence holder's 'compliance culture'.

Reporting

Alinta notes that the draft Incident Reporting Manual is intended to assist the Authority, "*...and the public, understand the causes and impacts of major or significant incidents in the business that the Authority regulates*" (emphasis added). This statement implies that at least some, if not all, of the information that would be required to be provided by licensees to the Authority by the draft Incident Reporting Manual would be made public.

The extent to which the Authority intends to make any of the information that might be provided under an approved Incident Reporting Manual public should be expressly stated. Additionally, Alinta considers that the Authority should demonstrate that the information to be made public is relevant to the enforcement of the licence, the operation of the licensing scheme, or the performance of the Authority's functions under the legislation.

Electricity Generation Incidents

Type of Incident	Priority	Comments
Impact on the operations of other licensees or end users	1	<p>Alinta's overall concern is that the nature of the incidents intended to be captured by this incident category is not clearly defined, and hence uncertain.</p> <ul style="list-style-type: none"> • The term 'end user' is not defined in the draft Incident Reporting Manual. This term is used only once in the <i>Electricity Industry Act 2004</i> (in the definition of 'network infrastructure facilities'), but is not itself defined. The term also appears not to be used or defined in either the Access Code or the Metering Code. • In the absence of a specific definition, the reference to 'end user' could potentially be taken to include any (and every) consumer of electricity in Western Australia. • It is also understood, but not clearly established by the draft Incident Reporting Manual, that the obligation to report incidents would not include the outcomes of 'normal' actions that might be taken by a generator (or as a consequence of a generator's actions). For example, it would exclude the reporting of incidents that have a significant impact on other licensees or end users where the generator takes actions that it is permitted to take under contractual agreements, or that are not inconsistent with the Wholesale Electricity Market Rules (Market Rules). <p>The description of this type of incident makes references to a '<i>significant adverse impact on other licensees and end-users</i>', which indicates it should be rated as a Priority 2 incident (consistent with the classification criteria in Table 1).</p>
Notification of an incident to another regulatory authority	1	<p>Following discussion with Authority staff, it appears that the reference to Regulation 35 of the <i>Electricity (Licensing) Regulations 1991</i> may be in error:</p> <ul style="list-style-type: none"> • The regulation states that "A person who is an employee of an electrical contractor, or, of the holder of an in-house electrical installing work licence referred to in regulation 37, who falsely represents that particular electrical work is carried out by or on behalf of his or her employer commits an offence." • It is unclear that the regulation imposes an obligation on a party to immediately notify another party where an offense under Regulation 35 has occurred.
Forced unavailability of generation plant	2	<p>Alinta's overall concern is that the basis for including the forced outage of generation facilities as a <i>significant</i> incident is unclear.</p> <ul style="list-style-type: none"> • The bilateral nature of the Wholesale Electricity Market

		<p>(WEM), combined with the separate Reserve Capacity Mechanism, means that a Forced Outage (or extended Forced Outage) will not:</p> <ul style="list-style-type: none"> - affect the supply of electricity to retail customers; or - adversely affect customers or other licensees. <ul style="list-style-type: none"> • It is not clear that a Forced Outage (or an extended Forced Outage) is in anyway connected with compliance with licence conditions, a licensee's technical capability or with the effectiveness of its asset management systems.
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Electricity Retail Incidents

Type of Incident	Priority	Comments
Incidents affecting a retailers' customer billing system		<p>Following discussions with Authority staff, Alinta understands that the nature of the incidents intended to be captured by this incident category <u>exclude</u>:</p> <ul style="list-style-type: none"> • manually produced bills; and • instances where bills cannot be issued due to a retailer not having been provided with meter data by the network services provider. <p>However, it is also understood that the 'due date' is intended to refer to the date that the bills would <i>normally</i> be issued by the retailer, and not the date in Clause 4.1 of the Code of Conduct for the Supply of Electricity to Small Use customers (Code of Conduct).</p> <p>As a result, it appears that the draft Incident Reporting Manual does not adequately describe the nature of the incidents intended to be captured by this incident category.</p> <p>Nevertheless, Alinta's concern is that the basis for including failure to issue bills more than 5 business days after the due date as a significant incident is unclear:</p> <ul style="list-style-type: none"> • as such an incident could not reasonably be considered to meet the criteria for classification as a significant incident set out in Table 1; • there is unlikely to be an adverse impact for a party other than the retailer; and • provided the retailer complies with Clause 4.1 of the Code of Conduct, there has been no breach.
Incidents affecting a retailers' customer service centre	1	<p>Following discussions with Authority staff, Alinta understands that the nature of the incidents intended to be captured by this incident category include the unavailability of the retailer's:</p>

		<ul style="list-style-type: none"> • customer service telephone service; <u>and</u> • customer service representatives. <p>As a result, it appears that the draft Incident Reporting Manual does not adequately describe the nature of the incidents intended to be captured by this incident category.</p> <p>However, the basis for categorising such incidents as a <i>major</i> incident is unclear as they could not reasonably be considered to meet the criteria for classification as a <i>major</i> (or significant) incident using the criteria in Table 1.</p>
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Gas Trading Incidents

Type of Incident	Priority	Comments
Incidents affecting a trader's customer billing system		As per electricity retail incidents.
Incidents affecting a retailers' customer service centre		As per electricity retail incidents.
Termination of agreement to supply gas		<p>Following discussions with Authority staff, Alinta understands that the nature of the incidents intended to be captured by this incident category do <u>not</u> include terminations that result from the expiry of contracts. Rather, it is intended to capture instances where a notice of termination might be given as a result of the actual, or probable, default by a gas trader with its financial obligations under the contract.</p> <p>As a result, it appears that the draft Incident Reporting Manual does not adequately describe the nature of the incidents intended to be captured by this incident category.</p>



Alinta would welcome the opportunity to discuss any of the above comments in more detail with the Authority. If you require further information, or wish to arrange to meet on this matter, I can be contacted on 9486 3749.

Yours sincerely



Corey Dykstra
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