

Ref:20241219DW:HP

19 December 2024

Andrew Nicholls
Chief Executive Officer
Independent Pricing and Regulatory Tribunal

Submitted electronically via ipart.nsw.gov.au

Subject: IPART Review of Electricity Network Operators Critical Infrastructure Licence Conditions

Dear Mr Nicholls,

Essential Energy welcomes the opportunity to provide feedback on the Independent Pricing and Regulatory Tribunal's (IPART) Review of Electricity Network Operators' Critical Infrastructure Licence Conditions Draft Report – November 2024 (Draft Report).

As the owner and operator of one of the largest electricity distribution networks in Australia, Essential Energy is acutely aware of the need to protect its network, supporting systems and sensitive data. The draft Critical Infrastructure Licence Conditions (CILC) represent an improvement on the current version in that they provide more clarity in key areas and address some of the regulatory overlaps with the *Security of Critical Infrastructure Act (2018)* (SOCI Act) and the *Privacy Act (1988)* (Privacy Act). The draft CILC, when combined with adequate risk management procedures required under the SOCI Act and compliance with the Privacy Act, will see appropriate protections are in place for electricity networks, their Information Technology and Operational Technology systems and sensitive information.

Please find attached additional detail as to Essential Energy's views:

- ▶ Appendix 1 provides responses to specific questions raised in the Draft Report
- ▶ Appendix 2 identifies several definitions in the draft CILC for which Essential Energy seeks clarification as part of any final revision of the CILC

If you have any questions in relation to this submission, please contact [REDACTED]

Yours sincerely,

[REDACTED]

Appendix 1: Essential Energy's responses to the specific questions in the Draft Report

1. Do you consider the applicable critical infrastructure reporting manual and audit guidelines contain significant issues in complying the requirements in these documents, and if so, what are these issues?

Essential Energy does not foresee any significant issues in complying with the critical infrastructure reporting manual and audit guidelines as a result of the proposed changes to the Critical Infrastructure Licence Conditions (CILC). Essential Energy considers that the draft CILC are clearer than the current version and clarify ambiguities in several areas. This will simplify meeting the reporting and audit requirements outlined in the manual, noting that IPART intends to conduct a review of the reporting manual and audit guideline prior to the commencement of the amended CILC

2. Do you agree with our proposal to retain the maintenance of the distribution/transmission system conditions?

Yes, Essential Energy agrees that the maintenance CILC help ensure that adequate protections are in place for distribution and transmission networks, whilst Protocols will allow for some flexibility and discretion.

3. Do you agree with our proposal to retain the exception to the maintenance condition allowing for a protocol to be agreed with the CISC?

Essential Energy agrees that an exception needs to be available for the maintenance CILC as most network operators will, at times, require support from vendors based overseas. The use of Protocols agreed with CISC is reasonable.

4. Do you agree with our proposal to maintain the requirements for operation and control of the transmission/distribution system?

Essential Energy agrees that retention of the operational and control requirements is reasonable provided Protocols are allowed for emergencies where direct vendor support may be necessary as a last resort.

We do have a question around the inclusion of the word "access" in draft condition 2.3(2). Under the comparable current condition (1.2(a)), the word "accessed" is not included in the second part of the condition, meaning that the distribution system could be accessed from overseas provided it is not connected in such a way it could be controlled or operated. Does the inclusion of the word "access" in draft condition 2.3(2) mean that the distribution system must not be connected to any infrastructure or network in such a way that not only can it not be controlled or operated, but also not accessible or accessed at all? Given that access could mean a "read-only" position, to impose this further obligation could create inefficiencies in ensuring network reliability.

Essential Energy understands the criticality that operation and control of its network is undertaken only from within Australia or in line with a Protocol agreed with the Commonwealth Representative. We would appreciate clarification as to the introduction of the word "access" and the risk that IPART is seeking to mitigate through its introduction.

We also request that more clarity is provided in the definitions of the terms "System" and (associated) "ICT infrastructure" as detailed in Appendix 2.

5. Do you agree with our proposal to amend the security clearance requirements by allowing a network operator to choose between NV1 security clearance or the background checks under the AusCheck scheme?

Essential Energy agrees this is a positive change that will simplify and shorten the security clearance process. Essential Energy observes that the proposed definition of *National Security Clearance* is a bit misleading in that it states that “clearance of not less than NV-1 (or equivalent) is issued by the NSW Government on advice from AGSVA”. NV-1 clearance is issued directly by AGSVA, not the NSW Government, so we recommend that this definition is reviewed.

6. Do you agree with our proposal to retain the data security requirements?

Essential Energy agrees but again notes networks will require Protocols for some systems and data.

7. Do you agree with our proposal to remove the Bulk Personal Data (BPD) requirements?

Yes, this is an important and, in our opinion, appropriate change. Essential Energy currently has a number Protocols in place for IT systems because the data is either stored or accessed from overseas. Reliance on Protocols to continue to use these systems raises uncertainty for the business to the point that Essential Energy was seeking to replace several systems at significant expense to its customers. The proposed changes to the CILC Bulk Personal Data requirements mean that some planned system replacements may not be needed.

In Appendix 2, Essential Energy has identified that some clarification is needed as to the definition of Third-Party Data and Sensitive Information.

8. Do you agree with our proposal to replace the data agreement provisions with a new provision enabling the Commonwealth Representative to agree to a Protocol?

Yes, this effectively confirms the practice Essential Energy already has in place with the Cyber and Infrastructure Security Centre (CISC).

9. Do you agree with our proposal to retain the compliance reporting and auditing requirements?

Yes.

10. Are there any additional comments you wish to make on the draft licence conditions or the draft report?

Subject to some of the definitions being revisited as detailed in Appendix 2, Essential Energy supports the proposed changes to the CILC and appreciates the practical and sensible approach taken by IPART in this process.

Appendix 2 – Definitions requiring clarification

TERM	CURRENT PROPOSED DEFINITION	CLARIFICATIONS SOUGHT
System	means the [Distribution System OR Transmission System] referred to in this Licence	<ul style="list-style-type: none"> Essential Energy requests that the reference to “System” is more specifically defined as the network infrastructure used to convey electricity and the specific ICT equipment that is used to operate and control that system.
ICT Infrastructure	means the information and communications technology equipment, systems, firmware and software for handling information and managing communication processes.	<ul style="list-style-type: none"> See above. Adding the word “Associated” would provide extra clarity to this term. Essential Energy believes this would benefit from a tightening of the definition so that it is clearer that the ICT infrastructure referred to in this definition is only “software and systems used in the operation and control of the network infrastructure used for the conveyance of electricity.” This clarification could also be managed through a specific exclusion, ie “and does not include software and systems not used directly in the operation and control of network infrastructure used for the conveyance of electricity.”
Third Party Data	<p>includes:</p> <p>a) Communications, within the meaning of the Telecommunications (Interception and Access) Act 1979 (Cth), and</p> <p>(b) personal information, within the meaning of the Privacy Act 1998 (Cth), and</p> <p>(c) closed-circuit television footage</p>	<ul style="list-style-type: none"> Essential Energy notes that the current CILC related to Bulk Personal Data Records only applies to those records that are “relating to or obtained in connection with the operation of the <i>distribution system</i> by a <i>Relevant Person</i>”. Was it intended that Third Party Data be all Third Party Data or Third Party Data that is obtained in connection with the operation of the distribution system? Does the word “includes” mean the definition is not limited to (a), (b) and (c)? Does Third Party Data include customer and other external (suppliers etc) data?

TERM	CURRENT PROPOSED DEFINITION	CLARIFICATIONS SOUGHT
Sensitive Information	<p>means:</p> <p>(a) Operational Technology Information,</p> <p>(b) Load Data relating to, or obtained in connection with, the operation of the System by a Relevant Person, and</p> <p>(c) Third Party Data that the Licence Holder obtains or accesses indirectly because a Carrier or another person transferred the Third Party Data using the Licence Holder's infrastructure.</p>	<ul style="list-style-type: none"> Is Third Party Data limited to data carried over our infrastructure by a Carrier or other third person? Can "indirectly" as used in point (c) be clarified. What does this mean? For example: Does it include external people joining an Essential Energy Zoom call or external consultants logging onto an Essential Energy "guest" Wi-Fi network? Would customer information obtained from a Retailer be covered by Third Party Data? Does (c) Third Party Data include customer and other external data? Essential Energy assumes that employee data is <u>not</u> covered by this definition, but please confirm.
National Security Clearance	<p>means a clearance of not less than Negative Vetting Level 1 (or equivalent) issued by the NSW Government on advice from the Australian Government Security Vetting Agency (AGSVA).</p>	<ul style="list-style-type: none"> NV-1 clearance is issued by AGSVA, not the NSW Government.
Relevant Person	<p>means the:</p> <p>(a) Licence Holder, and</p> <p>(b) a network operator of the System, and</p> <p>(c) any person who is contracted or subcontracted, and approved, by the Licence Holder to work on the System.</p>	<ul style="list-style-type: none"> What is the difference between a "Relevant Person who has been authorised" and a "person who has been authorised", as used in conditions 3.1(3) and 3.1(4)? No individual could be (a) (b) and (c) so please confirm the use of the word "AND". Should it be "OR"? Does this apply to some other definitions as well?
Includes	<p>Clarification of the word "includes" used in multiple definitions</p>	<ul style="list-style-type: none"> "Includes" implies that the definition is not limited to the terms specified. Should this be changed to "means" in some cases?