



ICRC

independent competition and regulatory commission

**Guidelines on prudential and
technical criteria for licence
applications under the
Utilities Act 2000 (ACT)**

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Introduction

The *Utilities Act 2000* (ACT) provides a regulatory framework for utilities in the ACT. The Act establishes industry and technical codes which apply to utilities operating in the ACT.

The Independent Competition and Regulatory Commission (the Commission) is responsible for administering the framework, with technical regulation provided by the Environment and Sustainable Development Directorate and complaints handled by the ACT Civil and Administrative Tribunal. In relation to utility licences, the Commission has responsibility particularly for:

- granting, varying, transferring and revoking licences
- determining and monitoring compliance with licence conditions
- granting exemptions from compliance with licence conditions
- determination of the energy industry levy and licence fees.

The Utilities Act requires that anyone providing a utility service in the ACT must hold an appropriate operating licence.¹ Utility services include:

- the distribution and connection of electricity
- the transmission, distribution and connection of gas
- the collection and/or treatment of water for distribution through a water network, and the distribution of water through the network
- the conveyance, collection, treatment and disposal of sewage and sewerage connection services
- the provision of water and sewerage networks for the supply of water and sewerage connection services.

As required by the Utilities Act², the Commission has adopted technical and prudential criteria for determining whether a licensee, or an applicant for a utility licence, has the capacity:

- to comply with licence conditions
- to operate a viable business as a licensee.

Disclaimer

These guidelines outline the criteria adopted by the Commission, and provide guidance on the minimum information against which an application for a utility licence will be assessed. It is the responsibility of the applicant to ensure that its application provides adequate and accurate information, including supporting documents, legal, financial and other technical advice as appropriate. The Commission may

¹ Section 21.

² Section 26.

conduct its own research and/or seek external advice in the course of assessing an application for a utility licence.

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Utilities Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Objectives under the Utilities Act

The Utilities Act defines objectives for the Commission in the performance of its functions under that Act.³

The Commission's objectives under the Act are:

- to encourage the provision of safe, reliable, efficient and high-quality utility services at reasonable prices
- to minimise the potential for misuse of monopoly power in the provision of utility services
- to promote competition in the provision of utility services
- to encourage long-term investment, growth and employment in utility services industries
- to promote ecologically sustainable development in the provision of utility services
- to protect the interests of consumers
- to ensure that advice given to the Commission by the ACT Civil and Administrative Tribunal or the Director General under Part 5 (Technical Regulation), is properly considered
- to ensure that the Government's programs about the provision of utility services are properly addressed
- to give effect to directions of the Minister under section 19 of the Act.⁴

The Commission will make its decision in relation to a licence application in the context of these objectives. When applying for a utility licence an applicant must include information in support of its application that addresses the Commission's objectives.

³ Section 3.

⁴ A direction under section 19 can be given only to ensure the achievement of the Commission's objects as set out in section 3. The Minister may, for example, give a written direction to the Commission about the objects it must achieve by licence conditions or industry codes. A direction may be given generally or in relation to a particular matter.

Applicants licensed in other jurisdictions

Where an applicant or a related party is licensed in another Australian jurisdiction, the applicant must inform the Commission of that licence. Although utility licence requirements are similar throughout Australian jurisdictions, the requirements, and the criteria against which they are assessed, may vary. While an applicant's experience in another jurisdiction and confirmation from the relevant regulator that the applicant has satisfied, and continues to meet, the conditions of its licence will provide the Commission with considerable confidence in an applicant, the Commission will still conduct its own assessment of an applicant's capacity.

In assessing an application, the Commission will contact economic and technical regulators in other jurisdictions in which the applicant operates to ascertain whether:

- action has been taken against the applicant for breach of a utility licence in another jurisdiction
- the applicant's levels of compliance and performance in other jurisdictions has been found by the relevant regulator(s) to be satisfactory.

Making an application

To assist those applying for the grant of a utility licence, the Commission has developed a document setting out the application procedures to be followed. The document, *Applying for a utility services licence in the ACT: procedures and checklist*, tells applicants what form the application should take and how to lodge it. It provides a checklist of the required information with reference to the sections in this guidelines document that explain the information requirements in detail. The document is available on the Commission's website (www.icrc.act.gov.au). When preparing their applications, applicants should provide the required information in the order set out in the checklist, using the same headings and providing text and details of the documentary evidence they have provided as attachments.

The applicant should provide two copies of the application—one hard copy and one electronic copy. In the event of variation between the two documents, the hard copy will be taken to be the formal application.

The hard copy of the completed application should be sent to the Commission at either of the addresses below:

Independent Competition and Regulatory Commission

PO Box 161

Civic Square ACT 2608

Level 8, 221 London Circuit

Canberra City ACT 2601

The electronic copy of the completed application should be sent to the Commission at icrc@act.gov.au.

The Commission may be contacted at the above addresses, by telephone on (02) 6205 0799, or by fax on (02) 6207 5887. The Commission's website is at www.icrc.act.gov.au.

Before preparing an application, the applicant should be familiar with the following:

- *Applying for a utility services licence in the ACT: procedures and checklist*
- *Regulatory framework for licensing utilities in the ACT*
- the Utilities Act and associated regulations and statutory instruments
- the applicable industry and technical codes and guidelines developed under the Utilities Act
- the standard form of licences granted under the Utilities Act.

The documents can be accessed from the Commission's website (www.icrc.act.gov.au). The Utilities Act and associated regulations and statutory instruments are available at [www.legislation.act.gov.au/a/2000-65/default .asp](http://www.legislation.act.gov.au/a/2000-65/default.asp).

In its application to the Commission, the applicant is to nominate a contact person to whom the Commission may direct queries in relation to the application and/or requests for supplementary information.

Application fee

The applicant should note that an application fee is payable (\$1,500 for the consideration of one licence type and \$250 for the consideration of the grant of an additional licence as part of a single application). The application fee is exempt from GST. The applicant should contact the Commission and the Commission will issue an invoice with details on how the application fee can be paid.

An application will not be considered until the application fee has been received.

Note on information requirements

The applicant and its officers

In determining the capacity of an applicant to comply with licence conditions and operate a viable business as a licensee, the Commission will have regard both to the applicant and to its officers.⁵

Before the Commission grants a licence, applicants need to demonstrate that it has the organisational competence for the services it is asking to be authorised for under the licence.

To do this, applicants need to nominate in its application the people it will depend on for its organisational competence (officers). Applicants must provide details about their role, qualifications, training and experience. Applicant's officers must have the necessary knowledge and skills to carry out their roles. The applicant must demonstrate that persons in a position to influence the management or operations of an entity are of good fame and character and are appropriately experienced and qualified. This should ensure that their actions are not likely to undermine the sound and prudent management of the applicant.

Applicants must also have processes in place for maintaining its organisational competence, as well as measures to ensure its responsible managers are of good fame and character. The Commission expects that applicants will have documented processes in some form which can be readily audited.

Using a documented process can help you show that you know whether or not you are complying with your obligations. How often you review your compliance will depend on how often your business changes and on staff turnover.

Where information is sought in relation to officers of the applicant, as distinct from the applicant itself, this will be specified.

⁵ *Corporations Act 2001* (Cth), section 9.
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Required information

An applicant should provide documented evidence in support of its application to show that the application meets the criteria. The evidence should as a minimum address the issues identified in these guidelines.

It is the responsibility of the applicant to provide sufficient information in support of its application to satisfy the Commission that a licence should be granted. In order to satisfy the Commission that a licence should be granted, an applicant should demonstrate how its experience relates to its capacity to comply with the conditions of an ACT utility licence, and to operate a viable business as a utility licensee in the ACT.

If insufficient information is provided, the Commission may, by written notice given to an applicant, require the applicant to give the Commission further stated information or documents that the Commission reasonably requires to determine the application. The Commission is not required to determine an application until the applicant complies with the requirement.⁶

Throughout these guidelines, the Commission has indicated what evidence an applicant should provide in support of its application in addressing particular criteria. Further examples of documents and information that an applicant might provide in support of its application are provided in Attachment A.

In particular, the Commission recognises that different applicants will have different policy frameworks, so that the policy and procedural documents mentioned may take a number of different forms. It is the content and substance of any documents provided that the Commission will consider in its assessment of a licence application. An applicant can, but is not required to, provide the Commission with copies of the applicant's actual policy and procedural documents. If the documents are not provided, an applicant should provide the Commission with sufficient detail of the relevant policies and procedures to allow the Commission to assess the applicant's practices against the relevant criteria.

Accuracy of information

Failure to disclose relevant information or misrepresentation of facts or circumstances to the Commission may result in refusal to grant, or revocation of, a utility licence.

⁶ Utilities Act, section 35.

The Commission will, where appropriate, verify information provided by an applicant with the relevant external body (for example, another jurisdictional regulator or the Australian Securities and Investments Commission).

It is an offence under the *Criminal Code 2002* (ACT) for a person to give to the Commission, whether orally or in writing, information that is known to that person to be false or misleading in a material particular, unless the person informs the commission of that fact. The maximum penalty for such an offence is 100 penalty units, imprisonment for one year, or both.

Public notice of licence application

Consistent with section 36 (Public consultation) of the Utilities Act, it is the Commission's practice to give public notice of the receipt of an application and to invite submissions. The closing date for submissions will be at least 28 days after the day the notice is published. Applicants will be given a reasonable opportunity to examine submissions lodged with the Commission in accordance with the public notice, and to make representations to the Commission on matters raised.

Confidentiality of information

An applicant should be aware that the Commission will make applications and supporting information available for inspection to members of the public, unless there is a specific claim for information to be treated as confidential and the Commission agrees with that claim.⁷ Where it is necessary for the Commission to seek advice from another agency (for example, the technical regulator) in relation to information agreed to be confidential, the confidential information will be provided to that agency subject to the same undertakings of confidentiality as between the Commission and the applicant.

Subject to the above, applications and supporting information will be made available for inspection at the Commission's offices at Level 8, 221 London Circuit, Canberra City, ACT, during normal business hours and on the Commission's website.

⁷ The Commission's powers and obligations in relation to confidential information are set out in Part 7 of the *Independent Competition and Regulatory Commission Act 1997*. An applicant should note that, in certain circumstances, the Commission is authorised to disclose information even though it is provided on the basis that it is confidential information.

Contacting the Commission

Applications, correspondence and other enquiries may be directed to the Commission at the addresses below:

Independent Competition and Regulatory Commission
PO Box 161
Civic Square ACT 2608

Level 8, 221 London Circuit
Canberra City ACT 2601

The Commission can be contacted by telephone on (02) 6205 0799, or by fax on (02) 6207 5887. The Commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au.

1 Preliminary information requirements

1.1 Legal identity of the applicant

The applicant is the person⁸ in whose name the utility licence, if granted, will be issued, and business as a licensee will be conducted. To properly assess an application for a licence, the Commission must be sure of the applicant's legal identity.

An applicant for a utility licence must:

- not be under administration—as defined in section 9 of the *Corporations Act 2001* (Cth)—or under a similar form of administration under any comparable legislation applicable to it in any other jurisdiction
- be capable of being sued in its own name in a court of Australia.

Section 1.1: Required information

The applicant must provide:

- its full legal name, including company extensions
- the trading name in which the licence is sought (if different from the above)
- its ACN (if applicable) or ARBN
- its ABN
- its registered office address
- its address for correspondence and contact details (if different from the above).

The Commission will verify this information with the Australian Securities and Investments Commission.

1.2 Nature of application

The conditions of, and the requirements and obligations imposed under, a utility licence may vary considerably depending on the utility service for which a licence is sought, the type of customer the applicant intends to supply (for example, large or small, domestic or non-domestic), the nature and scope of the proposed operations or networks and the date on which the applicant intends to enter the market.

⁸ A 'person' includes a body corporate, office, commission, authority, committee, tribunal, board, institute, organisation or other body however described. Section 33 also allows for partnerships and other groups.

These matters are relevant to the assessment of the applicant's technical and financial capacity to comply with licence conditions and operate a viable business as a licensee.

Any application for a licence must address the technical and prudential criteria outlined in these guidelines with reference to the particular requirements to which that licence will be subject. An applicant must therefore provide sufficient detail in response to these preliminary questions to allow the Commission to assess the application appropriately.

Section 1.2: Required information

The applicant must provide details of:

- the utility service or services for which the licence is sought
- the nature and scope of proposed operations or networks
- the type of customer it intends to supply; for example, domestic or non-domestic, small or large
- the date on which it intends to enter the market.

1.3 Equity structure of the applicant

The equity structure of an applicant will, to a considerable extent, affect its capacity to comply with the conditions of a utility licence and to operate a viable business as a licensee.

For example, where an applicant is part of a group of related companies⁹, resources may be shared between members of the group. Industry codes and guidelines, such as the Ring Fencing Guidelines for Gas and Electricity Network Service Operators in the ACT (November 2002), place obligations on related companies to separate, or 'ring fence', the operation of 'related businesses'.¹⁰ Compliance with those guidelines is a condition of utility licences in the ACT.¹¹

The equity structure of an entity will also affect an applicant's financial resources and obligations and technical capability.

⁹ As defined in the *Corporations Act 2001* (Cth), section 50.

¹⁰ As distinct from the definition of 'related bodies corporate' in the *Corporations Act 2001* (Cth), the ACT's Ring Fencing Guidelines apply to providers of electricity and gas distribution services, and define a related business as 'The business of producing, purchasing or selling natural gas or electricity services, as the case may be, but does not include the purchase or selling of gas to the extent necessary: (a) for the safe and reliable operation of a gas network (or of a gas distribution system); or (b) to enable a utility to provide balancing services in connection with a gas network (or a gas distribution system)'.

¹¹ A utility licensee may also be subject to the ring fencing obligations in the National Gas Law and Rules and the National Electricity Law and Rules.

In its assessment of an applicant's capacity to meet the requirements of, and obligations under, a utility licence, and to operate a viable business as a licensee, the Commission will have regard to the structure of, and relationships within, any group of companies of which the applicant is a part.

Section 1.3: Required information

Where the applicant is part of a group of related companies, and/or party to a partnership, joint venture or alliance agreement with another company, the applicant must provide details of:

- the ownership structure of the group, including proportions of equity held. This should be traced through to the individual, natural persons who are the ultimate beneficial owners of the company
- the contractual arrangements (for example, alliance contracts, associate contracts, establishment contracts) that define relationships within the group (such as shared resources, guarantees, revenue flows, obligations and/or responsibilities)
- consolidated audited financial statements for the group.

2 Prudential criteria

The prudential criteria adopted by the Commission for the determination of licence applications are designed to address whether the applicant:

- is a fit and proper person to hold a utility licence in the ACT
- has the financial capacity to meet its reasonably foreseeable obligations under a utility licence and to operate a viable business as a utility licensee
- where the applicant is a government entity, it has policies and procedures to meet the Australian Capital Territory's legal and policy framework on competitive neutrality.

The considerations underlying these questions of capacity, and the information on which assessment against the criteria will be based, are discussed below.

2.1 Applicant's fitness to hold a utility licence

2.1.1 Good character

The applicant must demonstrate its honesty and integrity in current and previous commercial dealings, and in particular in current and previous operations as a utility licensee and/or provider of utility services.

Section 2.1.1: Required information

The applicant must provide:

- details of any offences or successful prosecutions under any territory, state or Commonwealth legislation, including the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Competition and Consumer Act 2010* (Cth), that are relevant to the applicant's capacity as a utility licensee, or written confirmation that the applicant has not committed any such offences against, or been prosecuted under, any such legislation
- details of any concurrent applications by the applicant, or a company related* to it, for utility licences in other Australian jurisdictions
- details of utility licences held by the applicant, or a company related* to it, in other Australian jurisdictions, including details of:
 - any additional/special licence conditions
 - any suspensions/revocations of a licence
 - any past/present administrative or legal actions in relation to a licence
- details of any unsuccessful utility licence application by the applicant, or a company related* to it, in other Australian jurisdictions, including details of the reasons given for refusal of the utility licence.

The Commission will contact the relevant jurisdictional regulators independently to verify information provided in response to this question.

* As defined in the *Corporations Act 2001* (Cth), section 50.

Section 2.1.1: Additional information

The applicant is encouraged to provide any additional information that will assist the Commission in its consideration of the applicant's character and past performance.

2.1.2 Probity and competence of officers of the applicant

Officers of the applicant must have the degree of probity and competence commensurate with their responsibilities.

The applicant should have policies and procedures in place to address the probity and competence of its officers. All new persons filling key positions, and existing staff, should be assessed under these policies and procedures. Provision should be made in the relevant policies and procedures for ongoing monitoring of compliance with the requirements.

In particular, the following issues should be addressed:

- A director of the applicant must not have been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001* (Cth).
- An officer of the applicant should not have committed any offence against, or have been prosecuted in any jurisdiction under, any state, territory or Commonwealth legislation relevant to the operation of the applicant's business as a utility licensee (including, the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Competition and Consumer Act 2010* (Cth), the *Utilities Act 2000* (ACT), the *Independent Competition and Regulatory Commission Act 1997* (ACT) and equivalent legislation in other jurisdictions).
- Officers of the applicant should have no actual or potential conflicts of interest that are likely to influence their ability to carry out their role and function relating to the applicant's utility licence with appropriate probity and competence.
- Officers of the applicant should have adequate experience and demonstrated competence and integrity in the conduct of business duties, and should not be of bad repute within the business community.

Section 2.1.2: Required information

The applicant must provide:

- full names and current contact details of all officers of the applicant (the Commission will check these details against the Australian Securities and Investments Commission's register of banned and disqualified persons)
- details of policies and procedures addressing the probity and competence of officers of the applicant.

Section 2.1.2: Additional information

The applicant is encouraged to provide any additional information that will assist the Commission in its consideration of the character and past performance of the applicant's officers.

2.1.3 Risk management strategy

The applicant should have in place a risk management strategy that is operated and maintained in accordance with the current Australian Standard, AS/NZS ISO 31000:2009: Risk Management – Principles and Guidelines.

The applicant's risk management strategy should identify the policies and procedures, processes and controls that comprise the applicant's risk management and control systems. Comprehensive policies and procedures should be in place to identify, manage, monitor and continually assess and report on the key risks to which the applicant is exposed. In particular, the applicant's risk management strategy should look to the applicant's ongoing capacity to provide safe, reliable, efficient and high-quality utility services at reasonable prices, and with regard to the interests of consumers.

The responsibility of instilling a strong risk control culture throughout the applicant entity lies with its board. Risk management and control systems should be approved by the board, and should provide the board (and the Commission) with a reasonable assurance that the applicant's business is appropriately controlled and that its risks are being prudently and soundly managed. The risk management strategy should define and document, in detail, the applicant's objectives and strategy for risk management and internal control, and should be approved by the board.

The Commission recognises that the scope of risk management systems will vary among applicants depending on these factors, and will take this into account in making its assessment.

The applicant should also have insurance cover appropriate to its size and operations.

Section 2.1.3: Required information

The applicant must provide:

- a written declaration from the Chief Financial Officer (or Chief Executive Officer) stating that the applicant has in place a risk management strategy that is maintained and operated in accordance with AS/NZS ISO 31000:2009: Risk Management – Principles and Guidelines, covering the applicant’s operations within the ACT and in any other jurisdictions in which the applicant operates. Where elements of the applicant’s risk management strategy are controlled by another company within the group, these elements should be identified.
- a certificate of currency from the applicant’s insurer stating that the applicant has insurance appropriate to its size and operations.

Section 2.1.3: Additional information

The applicant is encouraged to provide any additional information in support of its ability to manage risk and operate in accordance with the Commission’s objectives under the *Utilities Act 2000* (ACT).

2.2 Applicant’s financial capacity to meet licence obligations

2.2.1 Financial resources

The applicant should demonstrate that it has financial resources sufficient to meet the requirements of a utility licence, and to satisfy any reasonably foreseeable obligations under a utility licence. The financial resources available to an applicant may come from a number of different sources. In making its assessment the Commission will have regard to all sources of income, and to forecasts of income over the initial period of the licence.

Section 2.2.1: Required information

The applicant must provide:

- a written declaration from the Chief Financial Officer (or Chief Executive Officer) stating that the applicant is a going concern and that the officer is not aware of any factor that would affect the applicant's ability to securely finance the activities to be performed under the proposed licence over the next 12 months
- a written declaration from an independent auditor or the applicant's principal financial institution stating
 - that the applicant has not been deregistered, wound up or dissolved, is not in receivership or under external administration, and has not made arrangements with creditors
 - that it is not aware of any factor that would affect the applicant's ability to securely finance the activities to be performed under the proposed licence over the next 12 months
 - that the applicant's current financial commitments are appropriate to its size and reserves
- audited financial statements of the applicant for the last three years (or, if the applicant has been in existence for less than three years, all statements released to date) including¹²
 - balance sheet
 - profit and loss statement
 - statement of cash flows (short- and medium- term)
 - notes to financial statements (disclosure required by the regulations, notes required by the accounting standards, and any other information necessary to give a true and fair view)
 - director's declaration that the financial statements comply with accounting standards, give a true and fair view, and have been made in accordance with the *Corporations Act 2001* (Cth), and that there are reasonable grounds to believe the company entity will be able to pay its debts when they fall due and are payable
 - director's report
 - auditor's report.

An applicant that has been in existence for less than 12 months (and has not yet released audited financial statements) must provide:

¹² As required by the *Corporations Act 2001*, sections 295, 298-300A, 301 and 308.

- budgeted financial statements for the next three years
- a comprehensive business plan, including its strategic direction and objectives, identified opportunities in the market place, forecast results, benchmarks, and the impact of differing assumptions or scenarios on its financial position.

Section 2.2.1: Additional information

An applicant is encouraged to provide any additional information that will assist the Commission in its consideration of the applicant's financial capacity to meet the requirements of, and its reasonably foreseeable obligations under, the proposed licence.

2.2.2 Additional considerations supporting financial capacity

2.2.2.1 External ratings agencies

The Commission will take note of an applicant's credit rating as determined by an external ratings agency (eg Standard & Poor's, Moody's Investors Services).

A long-term credit rating of 'BBB' or above from Standard & Poor's, or of 'Baa' from Moody's, will be taken as an indication in support of an applicant's financial capacity to comply with licence requirements and meet its reasonably foreseeable obligations under a licence.

A short-term credit rating of 'A-1' from Standard & Poor's, or 'P-1' from Moody's, will also be considered favourably.

Evidence of external credit ratings will not of itself be sufficient for the Commission to determine an applicant's financial capacity. The Commission will still require the financial information requested in section 2.2.1.

Section 2.2.2.1: Required information

Where available, the applicant must provide evidence of long- and/or short-term credit ratings from Standard & Poor's or Moody's Investors Services.

2.2.2.2 Registration with the Australian Energy Market Operator

An applicant's registration with the Australian Energy Market Operator (AEMO) for participation in the National Electricity Market (NEM) is an important demonstration of financial soundness in light of the stringent prudential requirements of the National Electricity Rules (NER). Satisfaction of those requirements is strong evidence of an applicant's financial capacity, and will be considered favourably by the Commission.

Evidence of the AEMO registration will not of itself be sufficient for the Commission to determine an applicant's financial capacity. The Commission will still require the financial information requested in section 2.2.1.

Section 2.2.2.2: Required information

Where applicable, the applicant must provide evidence of registration with the Australian Energy Market Operator (AEMO).

3 Technical criteria

The technical criteria adopted by the Commission for the determination of licence applications are designed to address whether the applicant has the technical capacity to operate a business in compliance with:

- the conditions of the licence sought
- requirements under the *Utilities Act 2000* (ACT), industry and technical codes approved under that Act, and guidelines relevant to the proposed business.

The issue of technical capacity is not confined to matters within the jurisdiction of the technical regulator under Part 5 of the Utilities Act. For the purposes of an application for a utility licence, technical capacity will be determined with regard to the applicant's technical and human resources and experience in the industry and its strategies for compliance with the conditions of the proposed licence. The considerations underlying these questions, and the information on which assessment against the criteria will be based, are considered below. Examples of additional material that an applicant may provide in support of its application are provided in Attachment A.

In assessing an applicant's capacity to operate a business as a utility licensee, the Commission will have regard not only to the applicant's capacity to commence operations as a licensee, but also to their capacity to maintain those operations in compliance with the relevant regulatory requirements. The Commission and the technical regulator will monitor ongoing compliance under the Commission's annual compliance and performance reporting program.

In presenting evidence of its experience, an applicant should clearly identify the relevance of that experience to the conditions of an ACT utility licence, and the requirements under the Utilities Act, industry and technical codes approved under that Act, and guidelines that are relevant to the proposed business.

3.1 Licence conditions

All licences are subject to a number of conditions with which utilities must comply. An applicant for a utility licence must demonstrate to the Commission that it has knowledge and understanding of those conditions, and that it is able to satisfy them.

General licence conditions are set out in the Utilities Act,¹³ and include a requirement that the utility comply with:

- any requirement under the Utilities Act or the *Independent Competition and Regulatory Commission Act 1997* (ACT)
- a requirement under any other law in force in the Territory that applies to the utility in relation to the provision of a utility service
- each industry code that applies to the utility (see section 3.2)
- each technical code that applies to the utility (see section 3.2)
- a direction given to the utility by the Commission under the Utilities Act¹⁴ or a related law
- a direction given to the utility by the Chief Executive of the ACT Planning and Land Authority.¹⁵

A licensee must maintain the capacity, as determined in accordance with the relevant technical and prudential criteria outlined in these guidelines, to comply with the conditions of its licence and to operate a viable business as a licensee.

A licensee must keep all records and documents necessary to enable it to meet any reporting requirement, or any requirement to produce a record or document, under the Utilities Act or a condition of its licence.

A licensee must give the Commission, in accordance with any written requirements by the Commission, an annual report for each financial year in relation to the exercise of its functions under the Utilities Act and its compliance with the conditions of its licence.

The Act also imposes a number of special licence conditions on providers of particular utilities services.¹⁶

3.2 Statutory and code requirements and guidelines

In addition to complying with the requirements placed on licensees under the Utilities Act, licensees must comply with industry and technical codes approved under that Act, which impose requirements and obligations on holders of utility licences in the ACT. Under the

¹³ Section 25.

¹⁴ For example, a direction about licence conditions under section 48, or a direction about accounts and records under section 49.

¹⁵ For example, a direction about technical codes under section 70 of the Utilities Act.

¹⁶ Sections 27 to 31.

conditions of a utility licence, licensees may also be required to comply with various guidelines approved by the Commission¹⁷.

An applicant for a utility licence must demonstrate to the Commission that it has knowledge and understanding of the applicable legislation, industry and technical codes, and guidelines, and that it is able to satisfy the applicable requirements.

Section 3.1: Required information

The applicant must provide details of its compliance plan:

- demonstrating its knowledge and understanding of the applicable licence conditions, including all statutory, industry and technical requirements
- outlining how it will meet all applicable licence conditions, including all statutory, industry and technical requirements
- stating the extent to which its operational functions and activities (including, for example, complaints handling, engineering services, monitoring and testing services, network operations and maintenance facilities) will be established within the ACT; if it will have no presence in the ACT or if it will conduct only some aspects of its operations within the ACT, how it proposes to ensure that it provides adequate levels of service and asset maintenance. Where functions are to be established partly in the ACT and partly in another jurisdiction (for example, where the operations of a small ACT call centre whose operations are to be supplemented by larger interstate call centres), this should be explained.

Section 3.2: Additional information

Where applicable, the applicant must state what network asset management system it proposes to employ and what systems improvement it will undertake if its current system does not meet the requirements.

3.3 Experience of the applicant

In assessing an applicant's technical capacity to operate a business in compliance with licence conditions and the requirements of industry and technical codes and guidelines, the Commission will have regard to the applicant's experience in operating a business, of

¹⁷ Guidelines may be developed by the Commission under statutory authority or as an exercise of the Commission's executive power.

comparable size and degree of complexity, as a utility licensee and/or an agent of a utility licensee in another jurisdiction. The applicant should demonstrate to the Commission how its experience is relevant to its capacity to comply with the conditions of an ACT utility licence, and to operate a viable business as a utility licensee in the ACT.

Section 3.3: Required information

The applicant must provide, as applicable:

- dates and locations of all utility operations
- type of utility service provided (electricity, gas, water and/or sewerage, transmission, distribution, connection and/or supply)
- scale of operation (number of customers, network size and capacity)
- details of involvement in network planning, network design, total asset management, network operation and/or other relevant specialist services (for example, testing services), and whether those activities were undertaken in relation only to pipe or cable assets, or also included special or complex network components (for example, substations, pump stations, treatment plants, dams)
- an explanation of which activities and functions were conducted in-house, and which were undertaken under contract to another entity acting as an agent of the applicant
- details of any current quality assurance accreditations held by it.

The relevance of the applicant's experience to the requirements of the *Utilities Act 2000* (ACT), applicable industry and technical codes, guidelines and the conditions of an ACT utility licence should be clearly demonstrated.

3.4 Human resources

In assessing an applicant's technical capacity to comply with licence conditions and the requirements of legislation and industry and technical codes and guidelines, the Commission will have regard to the level of relevant knowledge and experience of officers¹⁸ and employees of the applicant.

¹⁸ As defined by the *Corporations Act 2001* (Cth), section 9.

Section 3.4: Required information

The applicant must provide:

- a summary of technical skills and experience of officers of the applicant, and the relevance of those skills and experience to meeting the requirements of the licence
- the number of employees
- details of human resources policies governing technical qualifications, including
 - experience and technical qualifications of employees in such operations
 - relevant industry licences or qualifications
 - training policies and programs.

3.5 External resources

In certain circumstances, the Commission may agree to a participant managing competencies acquired externally, for example through independent contractors. In such cases, the Commission will need to be satisfied of the technical competence of each external party to provide the contracted services to the same standard required of a licensee.

Section 3.5: Required information

Where an applicant is to rely on another entity to provide staff and resources to meet the technical requirements of the applicant's licence, the applicant must provide:

- a statement of all functions and activities it proposes to outsource
- details of any formal agreement to provide services, including confirmation that the relevant technical competencies will be available to the applicant at all times
- a summary of the other entity's experience in and knowledge of the relevant industry
- evidence of the other entity's technical capacity to meet the relevant requirements of the licence, including any relevant accreditations.

Where an applicant's business plan involves outsourcing functions that attract licensing obligations (for example, billing and marketing), the ability of the external company or companies that will provide those services should be addressed in the applicant's compliance plan.

Applicants intending to make use of external technical resources (for example, by subcontracting obligations under a utility licence) should note that, while a person who

provides a utility service as an *agent* of a licensed utility is not required to hold a utility licence, a person who provides a utility service on behalf of a licensed utility in the absence of an agency relationship will not be exempt from that requirement, and must hold a licence in its own right.

Attachment A

This attachment provides further suggestions as to what evidence an applicant might provide, in addition to the information listed throughout these guidelines, in support of its application for an ACT utility licence. While the Commission encourages an applicant to supply this information, the items listed are by way of example only.

- where the applicant's operations (or parts of those operations) in other jurisdictions have quality assurance accreditation at a national or international standard, details of those accreditations and the conclusions from the most recent audits.
- details of the applicant's participation in any ongoing benchmarking scheme or benchmarking study relevant to utility services, including:
 - recent benchmarking scheme reports and study reports as relevant
 - conclusions on the applicant's performance with respect to the benchmarks
- an indicative organisation chart for the proposed ACT operation(s) indicating:
 - senior management personnel
 - staff devoted to monitoring and reporting on compliance with the *Utilities Act 2000* (ACT) (indicate what other duties, if any, these staff would have)
 - numbers of in-house technical and professional engineering staff (showing allocations to network planning, design, asset management and operations functions)
 - numbers of in-house field personnel and supervisors (showing allocations to network maintenance and operations functions)
 - numbers of in-house staff involved in managing any outsourced functions.
- draft expenditure budget for the first five years of operations under the proposed licence¹⁹ for:
 - systems improvement (quality assurance, asset management system)
 - network operations (engineering services),
 - network operations (monitoring and testing services),
 - network operations (field services)

¹⁹ Draft expenditure budgets submitted in support of a utility licence application will be treated as indicative only. The practicality and reasonableness of any draft budget will be considered in the course of assessing an application, and information submitted will be retained by the Commission on the applicant's file. However, the Commission's approval of a utility licence application should not be taken to be an endorsement by the Commission of the applicant's forecast expenditure as submitted in support of a utility licence application.

- network operations (buildings, plant and equipment)
- network maintenance / rehabilitation / replacement (including both ongoing items and items regarded as capital expenditure)
- new works (outline any major project items).