

South Australia

# National Energy Retail Law (Local Provisions) Regulations 2013

under the *National Energy Retail Law (South Australia) Act 2011*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *National Energy Retail Law (Local Provisions) Regulations 2013*.

### 2—Commencement

These regulations will come into operation on 1 February 2013.

### 3—Interpretation

In these regulations—

*the Act* means the *National Energy Retail Law (South Australia) Act 2011*.

### 4—Application of law—electricity (section 16(b) of Act)

For the purposes of paragraph (b) of section 16 of the Act, the *National Energy Retail Law (South Australia)* will not apply in relation to the area of the State constituted by the township of Cockburn.

## 5—Consumption thresholds (section 17 of Act)

- (1) Pursuant to section 17(1)(a) of the Act, this regulation determines the upper consumption threshold for determining whether business customers are small or large customers in relation to the consumption of electricity.
- (2) The upper consumption threshold for electricity is 160 MWh per annum.

## 6—Local area retailers

- (1) Pursuant to section 11 of the *National Energy Retail Law (South Australia)*, the following retailers are nominated as local area retailers for this jurisdiction for the purposes of that Law:
  - (a) in relation to the provision of electricity—AGL South Australia Pty Limited (ACN 091 105 092);
  - (b) in relation to the provision of gas—Origin Energy Retail Ltd (ACN 078 868 425).
- (2) A retailer nominated under subregulation (1)—
  - (a) will be the local area retailer for all small customers within the whole of the geographical area of this jurisdiction (subject to the operation of regulation 4); and
  - (b) will be responsible for both existing and new connections (in the manner and to the extent contemplated by section 22 of the *National Energy Retail Law (South Australia)*).

## 7—Minimum standards of service for customers—written and telephone enquiries

- (1) Pursuant to section 23 of the Act, this regulation imposes minimum standards of service for small customers in relation to written and telephone enquiries.
- (2) A retailer must—
  - (a) use the retailer's best endeavours to achieve any service standard referred to below during each financial year, as assessed at 30 June; and
  - (b) keep sufficient records to monitor and report on the retailer's performance levels and provide any information referred to below.
- (3) The applicable service standard under this regulation for written enquiries is as follows:

<b>Commitment</b>	<b>Standard</b>
Responding to written enquiries	95% of enquiries within 5 business days

- (4) For the purposes of subregulation (3)—
  - (a) a written enquiry will be taken to be an enquiry by email, fax or letter from a small customer to the retailer requesting information from the retailer or making a complaint about an act or omission of the retailer; and

- (b) a response to such an enquiry will include any direct or telephone contact, or a written response, in which the retailer answers the enquiry or acknowledges receipt of the enquiry and indicates the process that will be followed in dealing with the enquiry, including the time within which the retailer will deal with the enquiry.
- (5) The applicable service standard under this regulation for telephone enquiries is as follows:

<b>Commitment</b>	<b>Standard</b>
Responding to telephone enquiries	85% of telephone calls within 30 seconds of receipt of the call between 8 a.m. and 6 p.m. on a business day

- (6) For the purposes of subregulation (5), a response to a telephone enquiry must be—
  - (a) by a person answering the telephone call; or
  - (b) by the provision of a computer or telephony based interactive service which is able to process calls by providing information or directing a call to a person, but not so as to include the answering of a call by being placed in an automated queue to wait for a response under paragraph (a) or (b).
- (7) A retailer must report to the AER by 31 August in each year in relation to the service standards achieved by the retailer during the immediately preceding financial year (or part of a financial year).
- (8) A report under subregulation (7) must include—
  - (a) the percentage of compliance with the service standards set out above;
  - (b) an explanation of the reason or reasons for any non-compliance with a service standard; and
  - (c) a report on how the retailer intends to improve the retailer's performance so as to meet the service standard set out above.

## **8—Extreme weather events**

For the purposes of Part 6 of the *National Energy Retail Rules*, any day where the forecast for the Adelaide Metropolitan area issued by the Bureau of Meteorology at 4 p.m. CST indicates that the following day is the third day in a sequence of 3 days (which may occur on a rolling basis) where the average of the minimum and maximum temperature for each day equals or exceeds 28° Celsius is declared to be an *extreme weather event*.

## **9—Re-energisation after de-energisation for non-payment**

- (1) This regulation applies in relation to the re-energisation of premises of a small customer after there has been a de-energisation for—
  - (a) failing to pay a bill by the pay-by date; or
  - (b) failing to make a payment in accordance with a payment plan; or
  - (c) failing to pay an instalment due under an instalment arrangement; or
  - (d) failing to pay a security deposit.

- (2) The following standards apply in relation to the provision of electricity:
- (a) where a retailer is required to arrange for the re-energisation of a small customer's premises in accordance with the *National Energy Retail Rules* and the customer makes a request for re-energisation before 4 p.m. on a business day, the retailer must—
    - (i) in the case of premises in the Adelaide central or metropolitan areas—arrange for the re-energisation of the premises on the day of the request; and
    - (ii) in the case of any other premises—use the retailer's best endeavours to arrange for the re-energisation of the premises on the day of the request and in any event ensure that arrangements are in place by the end of the next business day for the re-energisation of the premises;
  - (b) where a retailer is required to arrange for the re-energisation of a small customer's premises in accordance with the *National Energy Retail Rules* and the customer makes a request for re-energisation at or after 4 p.m. and before 9 p.m. on a business day—
    - (i) if the premises are in the Adelaide central or metropolitan areas and the customer pays any reasonable charge determined by the retailer or the distributor for after-hours re-energisation—arrange for the re-energisation of the premises on the day requested by the customer; and
    - (ii) if the premises are not in the Adelaide central or metropolitan areas, it is reasonably practicable for the retailer to arrange for re-energisation of the premises on the day requested by the customer, and the customer pays any reasonable charge determined by the retailer or the distributor for after-hours re-energisation—arrange for the re-energisation of the premises on the day requested by the customer; and
    - (iii) if the premises are not in the Adelaide central or metropolitan areas and subparagraph (ii) does not apply—arrange for the re-energisation of the premises by the end of the next business day (and any after-hours connection fee will not apply);
  - (c) where a retailer is required to arrange for the re-energisation of a small customer's premises under the *National Energy Retail Rules* and the customer makes a request for re-energisation at or after 9 p.m. on a business day, the retailer must arrange for the re-energisation of the premises by the end of the next business day.
- (3) The following standards apply in relation to the provision of gas:
- (a) where a retailer is required to arrange for the re-energisation of a small customer's premises in accordance with the *National Energy Retail Rules* and the customer makes a request for re-energisation before 3 p.m. on a business day, the retailer must arrange for the re-energisation on the day of the request;

- (b) where a retailer is required to arrange for the re-energisation of a small customer's premises in accordance with the *National Energy Retail Rules* and the customer makes a request for re-energisation at or after 3 p.m. and before 9 p.m. on a business day—
  - (i) if the customer pays any reasonable charge determined by the retailer or the distributor for after-hours re-energisation—the retailer must arrange for the re-energisation of the premises on the day requested by the customer; or
  - (ii) in any other case—the retailer must arrange for the re-energisation of the premises by the end of the next business day;
- (c) where a retailer is required to arrange for the re-energisation of a small customer's premises under the *National Energy Retail Rules* and the customer makes a request for re-energisation at or after 9 p.m. on a business day, the retailer must arrange for the re-energisation of the premises by the end of the next business day.
- (4) For the purposes of this regulation, but subject to subregulation (5), the Adelaide central or metropolitan areas will be constituted by areas determined by the Minister from time to time by notice published in the Gazette.
- (5) Any area where a small customer is supplied with electricity through a 19 kV SWER line will be taken to be outside the Adelaide central and metropolitan areas.

**10—Immunity in relation to failure to supply electricity (section 25(2)(a) of Act)**

- (1) For the purposes of section 25(2)(a) of the Act, an agreement under section 25(1) of the Act that limits the liability of a distributor of electricity for an act or omission associated with a failure to supply electricity done or made in bad faith or through negligence must comply with the following requirements:
  - (a) in the case of a small customer who purchases less than 30 MWh of electricity per annum—the agreement—
    - (i) must provide for liability for any loss suffered, including physical loss, consequential loss and loss of profits, due to—
      - (A) problems in the quality of the supply of electricity to the premises at which electricity is to be supplied (such as power surges and power drops); or
      - (B) interruptions to or failures of the supply of electricity to the premises at which electricity is to be supplied; and
    - (ii) must not set the amount for limitation of liability to less than \$500 000 (indexed) in relation to an event;
  - (b) in the case of a small customer who purchases at least 30 MWh of electricity per annum—the agreement—
    - (i) must provide for liability for any physical loss or damage, and for personal injury (but no other loss), due to—

- (A) problems in the quality of the supply of electricity to the premises at which electricity is to be supplied (such as power surges and power drops); or
  - (B) interruptions to or failures of the supply of electricity to the premises at which electricity is to be supplied; and
- (ii) must not set the amount for limitation of liability to less than \$1 000 000 (indexed) in relation to an event.
- (2) An amount under subregulation (1) that is expressed to be indexed will be adjusted on 1 July of each financial year commencing after this regulation comes into operation by multiplying the stated amount by a proportion obtained by dividing the Consumer Price Index (All Groups Index for Adelaide) for the March quarter of the calendar year in which the relevant financial year commences by the Consumer Price Index (All Groups Index for Adelaide) for the March quarter 2003.
- (3) A distributor must not enter into any other agreement with a small customer—
  - (a) that seeks to vary or exclude a distributor's liability for an act or omission associated with a failure to supply energy done or made in bad faith or through negligence; or
  - (b) that seeks to set a lower monetary amount in connection with such a liability that is less than an amount that applies under subregulation (1).
- (4) Rule 83 of the *National Energy Retail Rules* (insofar as those Rules apply as part of the law of South Australia) is modified to the extent of any inconsistency with section 25 of the Act or a provision of this regulation.
- (5) The *National Energy Retail Rules* (insofar as they apply as part of the law of South Australia) are also modified as if they provided that an agreement that complies with this regulation may constitute a permitted alteration under section 69(4)(c) of the *National Energy Retail Law (South Australia)*.
- (6) This regulation does not affect any immunity that applies under section 120 of the *National Electricity Law (South Australia)*.

### **11—Use of prepayment meter systems**

For the purposes of section 56(2) of the *National Energy Retail Law (South Australia)*, the sale of energy to small customers using a prepayment meter system is permitted within this jurisdiction.

### **12—Price comparator**

It is declared that section 62 of the *National Energy Retail Law (South Australia)* applies in relation to this jurisdiction on and after 1 February 2013.

### **13—Gas RoLR procedures**

If a gas RoLR event occurs before 1 January 2014, the distributor, AEMO and the designated RoLR must use reasonable endeavours to deliver information or data within the periods required by the *Retail Market Procedures (South Australia)*.

#### **14—Variation of *National Energy Retail Rules***

The *National Energy Retail Rules*, insofar as they have effect as part of the law of South Australia, apply as though the following amendments were made to those Rules:

- (a) Rule 16(2)(b)—strike out ", unless the customer is a small market offer customer";
- (b) Rule 90—after subrule (3) insert:
  - (4) A distributor of electricity is not required to comply with this rule if the duration of the interruption is less than 15 minutes.
  - (5) Subrule (4) will expire on 30 June 2015.
- (c) Schedule 2, clause 8—after paragraph (c) insert:
  - (d) We are also entitled to limit our liability for an act or omission done or made in bad faith or through negligence to \$500 000 (indexed) in respect of claims by customers who purchase less than 30 MWh of electricity per annum or to \$1 000 000 (indexed) in respect of customers who purchase at least 30 MWh of electricity per annum.
- (d) Schedule 2, clause 10.2—after paragraph (b) insert:
  - (c) We are not required to give you notice if the planned interruption is less than 15 minutes.

#### **15—Variation of *National Gas Rules* (transitional arrangements)**

The *National Gas Rules*, insofar as they have effect as part of the law of South Australia, are modified so that Part 21 of those Rules does not apply in relation to any distributor or retailer in South Australia until 1 July 2013.

#### **16—Standing offers (transitional arrangements)**

- (1) A request made to AGL South Australia Pty Limited (ACN 091 105 092) ("AGL") under section 36AA of the *Electricity Act 1996* before 1 February 2013 that, immediately before that day, is yet to be subject to a contract between AGL and the relevant customer under that Act will be taken to be a request for an offer under section 22 of the *National Energy Retail Law (South Australia)*.
- (2) A request made to Origin Energy Retail Ltd (ACN 078 868 425) ("Origin Energy") under section 34A of the *Gas Act 1997* before 1 February 2013 that, immediately before that day, is yet to be subject to a contract between Origin Energy and the relevant customer under that Act will be taken to be a request for an offer under section 22 of the *National Energy Retail Law (South Australia)*.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations

Year	No	Reference	Commencement
2013	3	<i>Gazette 31.1.2013 p171</i>	1.2.2013: r 2