

South Australia

Electricity (General) Variation Regulations 2014

under the *Electricity Act 1996*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Electricity (General) Variation Regulations 2014*.

2—Commencement

These regulations will come into operation on 1 January 2015.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Electricity (General) Regulations 2012*

4—Substitution of Part 4

Part 4—delete the Part and substitute:

Part 4—Retailer Energy Efficiency Scheme

Division 1—Preliminary

22—Application

- (1) The following provisions apply in relation to the application of this Part to a regulated entity authorised to sell electricity by retail (whether or not the entity is required to hold a licence under the Act):
 - (a) this Part applies in a calendar year to a regulated entity if, as at 30 June in the preceding year, the regulated entity sold electricity as a retailer to a number of residential customers within South Australia equal to or greater than the threshold set for the purposes of this paragraph;
 - (b) without derogating from paragraph (a), this Part, other than regulations 25, 27 and Division 3, applies in a calendar year to a regulated entity if, during the preceding financial year, the regulated entity purchased a quantity of electricity, excluding designated electricity purchases, equal to or greater than the threshold set for the purposes of this paragraph for retailing to customers within South Australia.
- (2) For the purposes of subregulation (1)(a) and (b), the Minister must, by notice in the Gazette, set the relevant thresholds for a 3 year period at the time of setting the annual energy efficiency targets and energy audit targets for the purposes of this Part.
- (3) This regulation applies subject to the operation of regulations 26(5), 27(4) and 30(4).

(4) In this regulation—

designated electricity purchase means a purchase of electricity of a kind determined by the Minister by notice in the Gazette;

residential customer means a small customer—

- (a) who acquires electricity primarily for domestic use; and
- (b) who satisfies other criteria (if any) determined by the Commission for the purposes of this definition.

23—Interpretation

(1) In this Part, unless the contrary intention appears—

EAT—see regulation 29;

EET—see regulation 24;

energy audit means an audit of a priority group household undertaken by a retailer in accordance with the minimum specification published by the Minister by notice in the Gazette;

energy credit means the following (if the relevant differences are positive):

- (a) in relation to energy audits, the difference between the number of energy audits actually undertaken by a retailer in a year and the EAT that applies to the retailer for that year;
- (b) in relation to energy efficiency activities, the difference between the actual amount of energy taken to have been saved by a retailer in a year through the conduct of energy efficiency activities and the EET that applies to the retailer for that year;
- (c) in relation to energy efficiency activities for priority group households, the difference between the actual amount of energy taken to have been saved by a retailer in a year through the conduct of energy efficiency activities for priority group households and a PGEET that applies to the retailer for that year;

energy efficiency activity means an activity or measure determined by the Minister under regulation 28 to be an energy efficiency activity for the purposes of this Part;

PGEET—see regulation 25;

priority group household means residential premises in which a person resides who—

- (a) is the holder of a current pensioner concession card issued by the Commonwealth Government; or
- (b) is the holder of a current TPI Gold Repatriation Health Card issued by the Commonwealth Government; or

- (c) is the holder of a current War Widows Gold Repatriation Health Card issued by the Commonwealth Government; or
- (d) is the holder of a current Gold Repatriation Health Card (EDA) issued by the Commonwealth Government; or
- (e) is the holder of a current Health Care Card (including a Low Income Health Care Card) issued by the Commonwealth Government; or
- (f) is a recipient of the *South Australian Government Energy Concession*; or
- (g) falls within a class of persons who are experiencing hardship determined or approved by the Minister or Commission for the purposes of these regulations;

relevant electricity retailer means a regulated entity within the ambit of regulation 22(1);

relevant gas retailer means a relevant gas retailer within the meaning of Part 4 of the *Gas Regulations 2012*;

retailer means a relevant electricity retailer or a relevant gas retailer.

- (2) For the purposes of this Part, an energy efficiency activity or energy audit undertaken in accordance with this Part will be taken to have been undertaken on the day on which the activity or audit is reported to the Commission under regulation 34.

Division 2—Energy efficiency activities

24—Energy efficiency targets

- (1) The Minister must, by notice in the Gazette, set the annual energy efficiency targets for the purposes of this Part.
- (2) The targets are to be expressed as the annual amount of energy savings that must be achieved by retailers through the carrying out of energy efficiency activities in accordance with this Part and Part 4 of the *Gas Regulations 2012*.
- (3) The Minister must, for the purposes of subregulation (1), set annual energy efficiency targets relating to each of the following 3 year periods:
 - (a) 2015, 2016 and 2017;
 - (b) 2018, 2019 and 2020.
- (4) The Commission must set an annual energy efficiency target (**EET**) for each retailer by apportioning the relevant annual target set by the Minister between retailers in accordance with any requirements of the Minister.

25—Energy efficiency targets for priority group households

- (1) The Minister must, by notice in the Gazette, determine that a percentage or a specified amount of an annual energy efficiency target is to be achieved by the provision of energy efficiency activities to priority group households.
- (2) The priority group energy efficiency target (*PGEET*) for a retailer is—
 - (a) if the Minister sets a percentage under subregulation (1)—the target that results from multiplying the EET for that retailer by the percentage set by the Minister under subregulation (1); or
 - (b) if the Minister sets a specified amount under subregulation (1)—the target set by the Commission for the retailer by apportioning the amount (set by the Minister) between retailers in accordance with any requirements of the Minister.

26—Energy efficiency activities

- (1) A retailer must, subject to subregulation (2), undertake energy efficiency activities sufficient to achieve the EET that applies to the retailer for that year (as adjusted to take into account any shortfall added under subregulation (3)).
- (2) It is not a breach of subregulation (1) if a retailer undertakes energy efficiency activities in a year sufficient to achieve at least 90% of the EET that applies to the retailer for that year.
- (3) Despite subregulation (2), where a retailer fails to achieve its EET in a year, the energy efficiency shortfall must be added to a EET that applies to the retailer in a subsequent year.
- (4) An energy efficiency activity undertaken by a retailer for the purposes of achieving a PGEET under regulation 27 is taken to be included as an energy efficiency activity undertaken by a retailer for the purpose of achieving its EET under this regulation.
- (5) If—
 - (a) a retailer undertakes energy efficiency activities in a year sufficient to achieve at least 90% of its EET for that year but does not achieve its EET; and
 - (b) in the subsequent calendar year this Part no longer applies to the retailer as a result of the operation of regulation 22(1),the retailer must undertake energy efficiency activities in the subsequent year to account for its energy efficiency shortfall from the previous year.
- (6) If—
 - (a) a retailer fails to achieve its EET with respect to any year; and

- (b) the retailer—
 - (i) pays a shortfall penalty in accordance with the requirements of section 94B of the Act with respect to that failure; or
 - (ii) is subject to a penalty on account of a prosecution in respect of that failure,

the energy efficiency shortfall to which the shortfall penalty or prosecution relates will no longer apply to the retailer.

- (7) In this regulation—

energy efficiency shortfall means the difference between the EET that applies to the retailer for a year and the actual amount of energy taken to have been saved (in accordance with this Part) by that retailer in that year through the conduct of energy efficiency activities.

27—Energy efficiency activities for priority group households

- (1) A retailer must, subject to subregulation (2), undertake energy efficiency activities sufficient to achieve any PGEET that applies to the retailer for a year (as adjusted to take into account any shortfall added under subregulation (3)).
- (2) It is not a breach of subregulation (1) if a retailer undertakes energy efficiency activities in a year sufficient to achieve at least 90% of a PGEET that applies to the retailer for that year.
- (3) Despite subregulation (2), where a retailer fails to achieve a PGEET in a year the energy efficiency shortfall for priority group households must be added to a PGEET that applies to the retailer in a subsequent year.
- (4) If—
 - (a) a retailer undertakes energy efficiency activities in a year sufficient to achieve at least 90% of a PGEET for that year but does not achieve the PGEET; and
 - (b) in the subsequent calendar year this Part no longer applies to the retailer as a result of the operation of regulation 22(1),the retailer must undertake energy efficiency activities in the subsequent year to account for its energy efficiency shortfall for priority group households from the previous year.
- (5) If—
 - (a) a retailer fails to achieve its PGEET with respect to any year; and
 - (b) the retailer—
 - (i) pays a shortfall penalty in accordance with the requirements of section 94B of the Act with respect to that failure; or

- (ii) is subject to a penalty on account of a prosecution in respect of that failure,

the energy efficiency shortfall for priority group households to which the shortfall penalty or prosecution relates will no longer apply to the retailer.

- (6) In this regulation—

energy efficiency shortfall for priority group households means the difference between a PGEET that applies to the retailer for a year and the actual amount of energy taken to have been saved by that retailer in that year through the conduct of energy efficiency activities for priority group households.

28—Determination of activities or measures that constitute energy efficiency activities

- (1) The Minister may, by notice in the Gazette, on the Minister's own initiative or by application, determine 1 or more activities or measures that may be undertaken by retailers to be energy efficiency activities for the purposes of this Part.
- (2) An application under subregulation (1) must be made in a manner and form determined by the Minister.
- (3) A determination may be of general application or limited (according to criteria determined by the Minister) in its application to a particular retailer or particular retailers.
- (4) A notice published under this regulation must set out relevant information relating to an activity or measure that constitutes an energy efficiency activity, including—
 - (a) a description of the activity or measure that constitutes the energy efficiency activity; and
 - (b) the minimum specification in accordance with which the activity or measure that constitutes the energy efficiency activity must be performed; and
 - (c) the amount of energy taken to be saved, or the method of calculating such an amount, if the activity or measure that constitutes the energy efficiency activity is undertaken; and
 - (d) any other matter the Minister thinks fit.
- (5) The Minister may, by notice in the Gazette, vary or revoke a determination made under this regulation.

Division 3—Energy audits

29—Energy audit targets

- (1) The Minister must, by notice in the Gazette, set the annual energy audit targets for the purposes of this Part.

- (2) The targets are to be expressed as the annual number of energy audits required to be undertaken by retailers in accordance with this Part and Part 4 of the *Gas Regulations 2012*.
- (3) Energy audits will relate to priority group households.
- (4) The Minister must, for the purposes of subregulation (1), set annual energy audit targets relating to each of the following 3 year periods:
 - (a) 2015, 2016 and 2017;
 - (b) 2018, 2019 and 2020.
- (5) The Commission must set an annual energy audit target (*EAT*) for each retailer by apportioning the relevant annual target set by the Minister between retailers in accordance with any requirements of the Minister.

30—Energy audits

- (1) A retailer must, subject to subregulation (2), undertake the annual number of energy audits in accordance with the EAT that applies to the retailer for that year (as adjusted to take into account any shortfall added under subregulation (3)).
- (2) It is not a breach of subregulation (1) if a retailer undertakes in a year at least 90% of the energy audits required to be undertaken in that year in accordance with any EAT that applies to the retailer for that year.
- (3) Despite subregulation (2), if a retailer fails to achieve its EAT in a year, the energy audit shortfall must be added to a EAT that applies to the retailer in a subsequent year.
- (4) If—
 - (a) a retailer undertakes energy audits in a year sufficient to achieve at least 90% of its EAT for that year but does not achieve its EAT; and
 - (b) in the subsequent calendar year this Part no longer applies to the retailer as a result of the operation of regulation 22(1),the retailer must undertake energy audits in the subsequent year to account for its energy audit shortfall for priority group households from the previous year.
- (5) In this regulation—

energy audit shortfall means the difference between the EAT that applies to the retailer for a year and the number of energy audits actually provided by that retailer in that year.

Division 4—Other matters

31—Administration

- (1) The Commission has such functions and powers as are necessary or expedient to give effect to the retailer energy efficiency scheme including the following functions:
 - (a) to administer the scheme;
 - (b) to ensure that retailers comply with the relevant requirements of this Part;
 - (c) to report to the Minister—
 - (i) at the end of each year as to the administration of the scheme and the progress of retailers in achieving the targets set by this Part; and
 - (ii) from time to time on any other matter relating to this Part as required by the Minister.
- (2) The Commission (in the case of a relevant electricity retailer required to hold a licence under the Act)—
 - (a) is required to impose a condition on the licence of the retailer under the Act that the retailer comply with the relevant provisions of this Part, pursuant to section 21(2) of the Act (so that a failure to comply with a relevant provision of this Part will constitute a contravention of a condition of the licence); and
 - (b) is to vary conditions of the licence of the retailer under the Act to ensure that the retailer complies with the relevant provisions of this Part as required from time to time, pursuant to section 27(1) of the Act (so that a failure to comply with a relevant provision of this Part will constitute a contravention of a condition of the licence).

32—Notification and adjustment of targets

- (1) The Commission must, in relation to each calendar year in which the retailer energy efficiency scheme is to apply, notify in writing each retailer of any annual—
 - (a) EAT; and
 - (b) EET; and
 - (c) PGEET,that applies to the retailer for that year.
- (2) The Commission may adjust a target that would otherwise apply to a retailer after taking into account any—
 - (a) energy audit shortfall; and
 - (b) energy efficiency shortfall; and

- (c) energy efficiency shortfall for priority group households, from a previous year that must be added to the target in accordance with regulation 26, 27 or 30, respectively.
- (3) If the customers of 1 retailer (in this regulation referred to as the ***first retailer***) are transferred during a year to another retailer (in this regulation referred to as the ***acquiring retailer***) by the sale, transmission or assignment of the whole or part of the business or undertaking of the first retailer, the Commission may adjust the targets of both the first retailer and the acquiring retailer for that year on a pro rata basis taking into account the date on which the customers were transferred.
- (4) If—
 - (a) this Part and Part 4 of the *Gas Regulations 2012* did not apply to the acquiring retailer before the transfer of customers to the acquiring retailer as a result of the operation of regulation 22(1); and
 - (b) as a result of the transfer of customers the acquiring retailer has at least the threshold number of customers set for the purposes of regulation 22(1)(a) or the threshold amount set for the purposes of regulation 22(1)(b),this Part and Part 4 of the *Gas Regulations 2012* apply with immediate effect to the acquiring retailer and the Commission must—
 - (c) in accordance with subregulation (1), notify the acquiring retailer of its targets under this Part; and
 - (d) adjust the targets that apply to both the first retailer and the acquiring retailer for that year on a pro rata basis taking into account the date on which the transfer of customers occurred.
- (5) If a retailer accrues an energy credit in a year and does not transfer the credit under regulation 33, the Commission must, on application by the relevant retailer, take the credit into account in determining whether the retailer has met a target that applies to the retailer in any subsequent year.

33—Retailers may enter into arrangements

- (1) If a retailer accrues an energy credit, the retailer may, at any time, transfer the credit to another retailer.
- (2) A retailer may enter into an arrangement with another person (including another retailer) for that person to undertake on its behalf either or both of the following:
 - (a) energy audits;
 - (b) energy efficiency activities.

- (3) Despite any arrangement entered into under subregulation (2), a retailer remains liable for any offence or penalty arising from a failure to meet its EAT, EET or a PGEET under this Part.

34—Compliance and reporting

- (1) A retailer must, as required from time to time by the Commission, submit to the Commission a compliance plan for the purposes of this Part in accordance with a code published by the Commission under Part 4 of the *Essential Services Commission Act 2002*.
- (2) A retailer must, as required from time to time by the Commission, report on compliance with this Part in accordance with a code published by the Commission under Part 4 of the *Essential Services Commission Act 2002*.
- (3) A code published under this regulation must comply with any requirements of the Minister.

35—Energy efficiency shortfalls

- (1) For the purposes of section 94B of the Act, a **relevant electricity retailer** is a retailer who is subject to the application of this Part (including on account of regulation 26(5), 27(4) or 30(4)).
- (2) For the purposes of section 94B(13)(a) of the Act, the requirements imposed under this Part on a retailer—
- (a) to undertake energy efficiency activities under regulation 26; and
 - (b) to undertake energy efficiency activities for priority group households under regulation 27; and
 - (c) to undertake energy audits under regulation 30,
- constitute the activities relating to energy efficiency in which a relevant electricity retailer must engage, and for the purposes of that section the retailer must engage in those activities to the extent necessary to achieve compliance with regulation 26(2), 27(2) or 30(2) (as the case requires).
- (3) For the purposes of section 94B(13)(b) of the Act, the extent of an energy efficiency shortfall with respect to a particular year—
- (a) will be determined in relation to each of the activities referred to in each of the paragraphs in subregulation (2); and
 - (b) will be as follows:
 - (i) in relation to energy efficiency activities under regulation 26—an amount equal to the energy efficiency shortfall that applies to the retailer for that year;

- (ii) in relation to energy efficiency activities for priority group households under regulation 27—an amount equal to the energy efficiency shortfall for priority group households that applies to the retailer for that year;
 - (iii) in relation to energy audits under regulation 30—an amount equal to the energy audit shortfall that applies to the retailer for that year.
- (4) For the purposes of section 94B(2)(a) of the Act, the prescribed base penalty is \$10 000 for each category of shortfall identified under subregulation (3).
- (5) For the purposes of subsection (2)(b) of section 94B of the Act, the amount payable under that subsection will be—
 - (a) in the case of a REES shortfall under subregulation (3)(b)(i)—the amount constituting the energy efficiency shortfall (expressed in gigajoules) multiplied by \$17.40;
 - (b) in the case of a REES shortfall under subregulation (3)(b)(ii)—the amount constituting the energy efficiency shortfall for priority group households (expressed in gigajoules) multiplied by \$17.40;
 - (c) in the case of a REES shortfall under subregulation (3)(b)(iii)—the number of energy audits constituting the energy audit shortfall multiplied by \$500.

36—Review

- (1) The Minister must cause a review of the operation of this Part to be conducted and a report on the results of the review to be submitted to the Minister before 31 December 2019.
- (2) The review must consider whether the scheme should continue and any other matter the Minister considers should be considered in the review.
- (3) The Minister must, within 12 sitting days after receiving the report, cause copies of the report to be laid before both Houses of Parliament.

37—Expiry

This Part will expire on 31 December 2020.

5—Variation of regulation 44A—NERL retailers to comply with code provisions and other requirements

Regulation 44A(b)—delete "residential"

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule

new Part 4 means Part 4 of the *Electricity (General) Regulations 2012* (as substituted by these regulations);

old Part 4 means Part 4 of the *Electricity (General) Regulations 2012* as in force immediately before the commencement of these regulations.

2—Energy credits

Despite the revocation of old Part 4 by these regulations, an energy credit accrued by a retailer before that revocation (other than a credit transferred under regulation 33 of old Part 4) will, on the commencement of new Part 4, be taken to be an energy credit for the purposes of new Part 4.

3—Energy efficiency activities and energy audits

An energy efficiency activity or an energy audit undertaken by a retailer immediately before the commencement of new Part 4 will only be taken to be an energy efficiency activity or an energy audit for the purposes of new Part 4 if the activity or audit is reported to the Commission before a day designated by the Commission by notice in the Gazette.

4—Commission to convert energy savings

- (1) For the purposes of clauses 2 and 3, the Commission must, in accordance with any requirements of the Minister, determine the manner in which—
 - (a) an energy efficiency activity undertaken by a retailer; or
 - (b) an energy credit accrued by a retailer,before the revocation of old Part 4 by these regulations and expressed in tonnes of carbon dioxide equivalent will be converted into an amount of energy taken to have been saved by the retailer for the purposes of new Part 4.
- (2) In addition, the Commission must, in accordance with any requirements of the Minister, determine the manner in which any—
 - (a) energy efficiency shortfall; or
 - (b) energy efficiency shortfall for priority group households,which—
 - (c) applied to a retailer immediately before the revocation of old Part 4; and
 - (d) must be added to a target under new Part 4 (as a result of the operation of regulations 26(3) and 27(3)); and
 - (e) is expressed in tonnes of carbon dioxide equivalent,will be converted into an amount of energy required to be saved by the retailer for the purposes of new Part 4.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 6 November 2014

No 262 of 2014

MMRE14/11CS