

South Australia

# **Electricity (General) (Retailer Energy Productivity Scheme) Variation Regulations 2020**

under the *Electricity Act 1996*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Electricity (General) (Retailer Energy Productivity Scheme) Variation Regulations 2020*.

### 2—Commencement

These regulations come into operation on 1 January 2021.

### 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 Productivity 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 or 27, 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 5 year period at the time of setting the annual energy productivity targets for the purposes of this Part.
- (3) This regulation applies subject to the operation of regulations 26(5) and 27(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—

***EPT***—see regulation 24;

***energy credit***, in relation to energy productivity activities, means the difference between the amount of normalised gigajoules actually achieved by a retailer in a year through the conduct or acquisition of energy productivity activities under this Part and the EPT that applies to the retailer for that year (if the difference is positive);

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

***priority group household*** means residential premises in which a person of a class determined by the Minister for the purposes of these regulations resides;

***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 productivity activity undertaken in accordance with this Part will be taken to have been undertaken on the day on which the activity is reported to the Commission under regulation 33.

## **Division 2—Energy productivity activities**

### **24—Energy productivity targets**

(1) The Minister must, by notice in the Gazette, set the annual energy productivity targets for the purposes of this Part, being the amount of normalised gigajoules required to be achieved by retailers through the carrying out of energy productivity activities in accordance with this Part and Part 4 of the *Gas Regulations 2012*.

- (2) The Minister must, for the purposes of subregulation (1), set annual energy productivity targets relating to each of the following 5 year periods:
  - (a) 2021 to 2025 (inclusive);
  - (b) 2026 to 2030 (inclusive).
- (3) The Commission must set an annual energy productivity target (*EPT*) for each retailer by apportioning the relevant annual target set by the Minister between retailers in accordance with any requirements of the Minister.

## **25—Primary and secondary subtargets**

- (1) The Minister may, by notice in the Gazette, determine that a percentage or specified amount of an annual energy productivity target is to be achieved by any 1 or more of the following (a *primary subtarget*):
  - (a) the provision of energy productivity activities to a class of customers specified in the notice;
  - (b) the undertaking of a kind of energy productivity activity specified in the notice.
- (2) For the purposes of this Part, the Minister—
  - (a) must determine a primary subtarget in relation to priority group households; and
  - (b) may determine other primary subtargets.
- (3) A notice under this regulation may specify that a percentage or specified amount of a subtarget is to be achieved by any 1 or more of the following (a *secondary subtarget*):
  - (a) the provision of energy productivity activities to a class of customers specified in the notice;
  - (b) the undertaking of a kind of energy productivity activity specified in the notice.

### **Example—**

The Minister determines (under subregulation (1)) that 50% of an annual energy productivity target must be achieved by retailers through the carrying out of energy productivity activities in households (the *household primary subtarget*). The Minister determines (under subregulation (3)) that 50% of the household primary subtarget must be achieved by retailers through the carrying out of "demand-response" energy productivity activities (specified by the Minister) (the *demand-response secondary subtarget*).

- (4) The Commission must, in accordance with any requirements of the Minister—
  - (a) set primary subtargets for each retailer by apportioning each primary subtarget determined by the Minister in accordance with any requirements of the Minister; and

- (b) set secondary subtargets for each retailer by apportioning each secondary subtarget determined by the Minister (if any) in accordance with any requirements of the Minister.

## **26—Energy productivity activities**

- (1) A retailer must, subject to subregulation (2), undertake energy productivity activities sufficient to achieve the EPT that applies to the retailer for that year (as adjusted to take into account any shortfall added under subregulation (3)).
- (2) A retailer will be taken not to have failed to achieve the EPT that applies to the retailer for a year if the retailer undertakes energy productivity activities in the year sufficient to achieve at least 90% of the EPT.
- (3) Despite subregulation (2), where a retailer fails to achieve its EPT in a year, the energy productivity shortfall must be added to a EPT that applies to the retailer in a subsequent year.
- (4) An energy productivity activity undertaken by a retailer for the purposes of achieving a primary subtarget or secondary subtarget under regulation 27 is taken to be included as an energy productivity activity undertaken by a retailer for the purpose of achieving its EPT under this regulation.
- (5) If—
  - (a) a retailer undertakes energy productivity activities in a year sufficient to achieve at least 90% of its EPT for that year but does not achieve its EPT; 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 productivity activities in the subsequent year to account for its energy productivity shortfall from the previous year.
- (6) If—
  - (a) a retailer fails to achieve its EPT 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 productivity shortfall to which the shortfall penalty or prosecution relates will no longer apply to the retailer.

(7) In this regulation—

***energy productivity shortfall*** means the difference between the EPT that applies to the retailer for a year and the amount of normalised gigajoules actually achieved (in accordance with this Part) by that retailer in that year through the conduct of energy productivity activities.

## **27—Energy productivity activities—subtargets**

- (1) A retailer must, subject to subregulation (2), undertake energy productivity activities sufficient to achieve each primary subtarget and secondary subtarget applying to the retailer for a year (as adjusted to take into account any shortfall added under subregulation (3)).
- (2) A retailer will be taken not to have failed to achieve a primary subtarget or secondary subtarget applying to the retailer for a year if the retailer undertakes energy productivity activities in the year sufficient to achieve at least 90% of the primary subtarget or secondary subtarget (as the case requires).
- (3) Despite subregulation (2)—
  - (a) if a retailer fails to achieve a primary subtarget in a year, the Commission must ensure that the energy productivity shortfall is added—
    - (i) if an equivalent primary subtarget applies to the retailer in the subsequent year—to that primary subtarget; or
    - (ii) in any other case—to the EPT that applies to the retailer in a subsequent year; and
  - (b) if a retailer fails to achieve a secondary subtarget in a year, the Commission must ensure that the energy productivity shortfall is added—
    - (i) if an equivalent secondary subtarget applies to the retailer in the subsequent year—to that secondary subtarget; or
    - (ii) in any other case—to the EPT that applies to the retailer in a subsequent year.
- (4) If—
  - (a) a retailer undertakes energy productivity activities in a year sufficient to achieve at least 90% of a primary subtarget or secondary subtarget for that year but does not achieve the primary subtarget or secondary subtarget (as the case requires); 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 productivity activities in the subsequent year to account for its energy productivity shortfall (for the relevant the primary subtarget or secondary subtarget) from the previous year.

- (5) If—
- (a) a retailer fails to achieve a primary subtarget or secondary subtarget that applies to the retailer for a 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 productivity shortfall to which the shortfall penalty or prosecution relates will no longer apply to the retailer.

- (6) In this regulation—

***energy productivity shortfall*** means—

- (a) in the case of a failure by a retailer to achieve a primary subtarget applying to the retailer in a year—the difference between the primary subtarget and the amount of normalised gigajoules actually achieved by that retailer in that year by undertaking energy productivity activities to achieve that primary subtarget; or
- (b) in the case of a failure by a retailer to achieve a secondary subtarget applying to the retailer in a year—the difference between the secondary subtarget and the amount of normalised gigajoules actually achieved by that retailer in that year by undertaking energy productivity activities to achieve that secondary subtarget.

## **28—Determination of activities or measures that constitute energy productivity 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 productivity 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 productivity activity, including—
  - (a) a description of the activity or measure that constitutes the energy productivity activity; and
  - (b) the minimum specification in accordance with which the activity or measure that constitutes the energy productivity activity must be performed; and
  - (c) the amount of normalised gigajoules taken to be achieved, or the method of calculating such an amount, if the activity or measure that constitutes the energy productivity 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—Other matters**

#### **29—Administration**

- (1) The Commission has such functions and powers as are necessary or expedient to give effect to the retailer energy productivity 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;
  - (d) to include the following information in its annual report under the *Essential Services Commission Act 2002*:
    - (i) information relating to energy productivity activities and measures being undertaken under this Part, including the kind, number and average cost of such activities and measures;
    - (ii) any other information required by the Minister or considered relevant by the Commission.



- (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).

### 30—Notification and adjustment of targets

- (1) The Commission must, in relation to each calendar year in which the retailer energy productivity scheme is to apply, notify in writing each retailer of any annual—
  - (a) EPT; and
  - (b) primary subtarget; and
  - (c) secondary subtarget,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 energy productivity shortfall under regulation 26 or 27 from a previous year that must be added to the target in accordance with regulation 26 or 27 (as the case requires).
- (3) The Commission may, in accordance with any requirements of the Minister, also adjust a target that would otherwise apply to a retailer in 2021 to reflect any amount to be added to the target under a notice published by the Minister under old regulation 35A (approving an alternative arrangement relating to the retailer).
- (4) 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.

- (5) 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.
- (6) Subject to subregulation (7), if a retailer accrues an energy credit in a year and does not transfer the credit under regulation 31, 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.
- (7) The Minister may, by notice in the Gazette, determine the maximum energy credit that a retailer may apply to have taken into account in determining whether the retailer has met a target that applies to the retailer in the subsequent year.
- (8) The Minister must publish a notice under subregulation (7) in the Gazette on or before 31 December in the year preceding the year in which the energy credit may be accrued.

**Example—**

The Minister publishes a notice in December 2021 determining the maximum energy credit that a retailer may apply in 2023 to have taken into account in determining whether the retailer has met a target applying to the retailer (in 2023).

- (9) In this regulation—
- old regulation 35A* means regulation 35A of these regulations as in force immediately before 1 January 2021.

**31—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 energy productivity activities on its behalf.

- (3) Despite any arrangement entered into under subregulation (2), a retailer remains liable for any offence or penalty arising from a failure to meet an EPT, primary subtarget or secondary subtarget that applies to the retailer under this Part.

### **32—Energy productivity activities acquisition scheme**

- (1) The Minister may adopt a scheme providing for—
  - (a) energy productivity activities to be performed by persons or bodies in accordance with the scheme; and
  - (b) retailers to acquire energy productivity activities performed by such persons or bodies under the scheme in connection with achieving targets under this Part; and
  - (c) procedural and other matters related to the operation of the scheme.
- (2) A scheme adopted under this regulation must be published by the Minister in the manner determined by the Minister.
- (3) A reference in this regulation to an *energy productivity activity* includes a reference to any activity or measure relating to energy productivity determined by the Minister for the purposes of this regulation (in addition to an activity or measure determined by the Minister under regulation 28).

### **33—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.

### **34—Energy productivity 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) or 27(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 productivity activities under regulation 26 sufficient to achieve the relevant EPT; and
  - (b) to undertake energy productivity activities under regulation 27 sufficient to achieve any relevant primary subtarget or secondary subtarget,

constitute the activities relating to energy productivity 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) or 27(2) (as the case requires).

- (3) For the purposes of section 94B(13)(b) of the Act, the extent of an energy productivity shortfall with respect to a particular year—
  - (a) will be determined in relation to each of the activities referred to in subregulation (2)(a) and (b); and
  - (b) will be as follows:
    - (i) in relation to energy productivity activities under regulation 26—an amount equal to the energy productivity shortfall applying to the retailer for that year;
    - (ii) in relation to energy productivity activities under regulation 27 relating to a primary subtarget or secondary subtarget—an amount equal to the energy productivity shortfall for the primary subtarget or secondary subtarget (as the case requires) applying 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 an energy productivity shortfall under subregulation (3)(b)(i)—the amount constituting the energy productivity shortfall (expressed in normalised gigajoules) multiplied by \$21.45; or
  - (b) in the case of an energy productivity shortfall under subregulation (3)(b)(ii)—the amount constituting the energy productivity shortfall for the relevant primary subtarget or secondary subtarget (expressed in normalised gigajoules) multiplied by \$21.45.

### **35—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 2029.
- (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.

### 36—Expiry

This Part will expire on 31 December 2030.

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

Regulation 44A(b)—delete "efficiency" and substitute:

productivity

## 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

- (1) Despite the revocation of old Part 4 by these regulations, energy credits accrued by a retailer before that revocation (other than a credit transferred under regulation 33 of old Part 4) up to an amount equivalent to 20% of the energy efficiency target applying to the retailer for 2020 (under 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.
- (2) The Commission must, in accordance with any requirements of the Minister, apply an energy credit referred to in subclause (1) to a retailer's EPT, or (if relevant) a primary subtarget or secondary subtarget applying to the retailer, under new Part 4.

### 3—Energy efficiency shortfalls from 2020

For the purposes of regulation 30(2) of new Part 4, the Commission may adjust a target that would otherwise apply to a retailer in 2021 after taking into account any energy efficiency shortfall of a retailer under regulation 26 or 27 of old 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 26 November 2020

No 304 of 2020