

## Part 1 Preliminary

### Division 1 Introduction and definitions

#### 1 Citation

These Rules may be cited as the *National Energy Retail Rules*.

#### 2 Commencement

These Rules come into operation on [insert date on which the NERL is to commence in the first participating jurisdiction].

#### 3 Definitions

##### Note—

Words and expressions used in these Rules have the same meanings as they have, from time to time, in *the Law* or relevant provisions of *the Law*, except so far as the contrary intention appears in these Rules. See clause 13 of Schedule 2 to the NGL (as applied by section 8 of *the Law*).

In these Rules—

***acceptable identification***, in relation to:

- (a) a residential customer—includes any one of the following:
  - (i) a driver licence (or driver's licence) issued under *the law* of a State or Territory, a current passport or another form of photographic identification;
  - (ii) a Pensioner Concession Card or other entitlement card, issued under *the law* of the Commonwealth or of a State or Territory;
  - (iii) a birth certificate; or
- (b) a business customer that is a sole trader or partnership—includes one or more of the forms of identification for a residential customer for one or more of the individuals that conduct the business or enterprise concerned; or
- (c) a business customer that is a body corporate—means Australian Company Number or Australian Business Number of the body corporate;

***bill issue date*** means the date, included in a bill under rule 25(1)(e), on which the bill is sent by the retailer to a small customer;

***cooling off period***—see rule 47(2);

***customer authorised representative*** means a person authorised by a:

- (a) small customer to act on its behalf under rules 56A and 56B; or
- (b) customer to act on its behalf under rule 86A.

***disconnection warning notice***—see rule 110;

***distributor planned interruption***—see rule 88;

***dual fuel market contract*** means:

- (a) one market retail contract between a small customer and a retailer for the sale of both electricity and gas by the retailer to the small customer; or
- (b) two market retail contracts with the same small customer, one for the sale of electricity and the other for the sale of gas to the customer, where the prices or conditions of one or both contracts are contingent on the customer entering into both contracts.

***e-marketing activity*** has the meaning given by section 109A of the *Telecommunications Act 1997* of the Commonwealth;

***good electricity industry practice*** has the same meaning as in the NER;

***interruption***:

- (a) in the case of Division 9A of Part 2, means a temporary unavailability or temporary curtailment of the supply of electricity to a customer's premises; and
- (b) in all other cases, means a temporary unavailability or temporary curtailment of the supply of energy to a customer's premises, but does not include unavailability or curtailment in accordance with the terms and conditions of a customer retail contract or customer connection contract, and any applicable tariff, agreed with the customer;

**Note:**

Rule 107(4) provides that Part 6 (relating to de-energisation or disconnection of premises) does not apply to *interruptions* under Division 6 of Part 4 or under Division 9A of Part 2.

***life support equipment*** means any of the following:

- (a) an oxygen concentrator;
- (b) an intermittent peritoneal dialysis machine;
- (c) a kidney dialysis machine;
- (d) a chronic positive airways pressure respirator;
- (e) crigler najjar syndrome phototherapy equipment;
- (f) a ventilator for life support;
- (g) in relation to a particular customer—any other equipment that a registered medical practitioner certifies is required for a person residing at the customer's premises for life support;

***maintenance replacement*** means the replacement of a small customer's existing electricity *meter* arranged by a retailer that is based on the results of sample testing of a *meter* population carried out in accordance with Chapter 7 of the NER:

- (a) which indicates that it is necessary or appropriate, in accordance with *good electricity industry practice*, for the *meter* to be replaced to ensure compliance with the *metering rules*; and
- (b) details of which have been provided to the retailer under Chapter 7 of the NER, together with the results of the sample testing that support the need for the replacement;

**meter**, in relation to a customer, means the device that measures the quantity of energy passing through it or records the consumption of energy at the customer's premises;

**metering coordinator**, in the case of electricity—has the same meaning as "Metering Coordinator" in the NER;

**metering data** has the same meaning as:

- (a) in the case of electricity—in the NER; or
- (b) in the case of gas—in the applicable Retail Market Procedures;

**metering data provision procedures** has the same meaning as in the NER.

**metering installation malfunction** has the same meaning as in the NER;

**metering rules**:

- (a) for electricity—means the applicable Retail Market Procedures and Chapter 7 of the NER;
- (b) for gas—means the applicable Retail Market Procedures;

**NEM Representative** means a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) of an electricity retailer that is registered with AEMO as a market customer under the NER and that, directly or indirectly, sells electricity to the retailer for on-sale to customers;

**new meter deployment** means the replacement of the existing electricity *meter* of one or more small customers which is arranged by a retailer other than where the replacement is:

- (a) at the request of the relevant small customer or to enable the provision of a product or service the customer has agreed to acquire from the retailer or any other person;
- (b) a *maintenance replacement*;
- (c) as a result of a *metering installation malfunction*; or
- (d) required under section 59(2) of *the Law*;

**pay-by date**—see rule 26;

**relevant authority** means:

- (a) AEMO; or
- (b) State or federal police; or
- (c) a person or body who has the power under law to direct a distributor to de-energise premises;

**reminder notice**—see rule 109;

**responsible person**, in the case of gas - means the person who, under the applicable Retail Market Procedures, is responsible for *meter* reading;

**retailer planned interruption**—see rule 59B;

**security deposit** means an amount of money paid or payable, in accordance with the Rules, to a retailer as a security against non-payment of a bill;

*telemarketing call* has the same meaning as in the *Telecommunications Act 1997* of the Commonwealth;

*the Law* means the National Energy Retail Law;

*unplanned interruption*—see rule 88.

*void transfer* means the transfer of a small customer from a retailer to another retailer which is void under section 41(1) of *the Law*.

*void transfer date* means the date of the *void transfer*.

### **3A Savings and Transitional Rules**

Schedule 3 applies.

## **Division 2 Consumption threshold matters**

### **4 Business premises—separate application of upper and lower consumption thresholds**

- (1) This rule has effect for the purposes of section 6 (3) of *the Law*.
- (2) The upper consumption thresholds and lower consumption thresholds respectively apply separately in relation to each of the business premises of a business customer, except as provided by rule 5.

### **5 Business premises—aggregated application of upper consumption thresholds by agreement**

- (1) This rule has effect for the purposes of section 6 (3) of *the Law*, and applies to the provision or proposed provision by a retailer of customer retail services to 2 or more business premises (the relevant premises) of a business customer, where:
  - (a) the customer is or would be a small customer in relation to at least one of the relevant premises; and
  - (b) the aggregate of the actual or estimated annual consumption level for the relevant premises is higher than:
    - (i) in the case of electricity—the upper consumption threshold prescribed by the Regulations in relation to electricity; or
    - (ii) in the case of gas—the upper consumption threshold prescribed by the Regulations in relation to gas.
- (2) The retailer and the business customer may enter into an agreement in writing to the effect that:
  - (a) the relevant premises are to be treated as aggregated for the purposes of Division 3 of this Part, Part 2 of these Rules and Part 2 of *the Law*; and
  - (b) if the parties so agree:
    - (i) Division 3 of this Part and Part 2 of these Rules; or
    - (ii) provisions of Division 3 of this Part and Part 2 of these Rules as specified in the agreement; or

- (iii) clauses 7.8.10A, 7.8.10B or 7.8.10C of the NER as specified in the agreement,  
do not apply to the relationship between the retailer and the business customer in relation to the relevant premises.
- (3) The explicit informed consent of the business customer is required for the transaction of entering into an agreement under this rule.
- (4) If the retailer and the business customer enter into such an agreement and the retailer has obtained the explicit informed consent of the customer, the agreement has effect according to its terms, and accordingly the upper consumption thresholds apply on an aggregated basis to the relevant premises.
- (5) The retailer must not of its own initiative treat the upper consumption thresholds as applying to 2 or more premises of a business customer on the basis of the aggregation of premises.

**Note**

This subrule is classified as a tier 1 civil penalty provision under the National Energy Retail Regulations. (See clause 6 and Schedule 1 of the National Energy Retail Regulations.)

- (6) To avoid doubt, this rule can apply in relation to all business premises of a business customer or to some but not all business premises of a business customer.

## **Division 3 Classification of customers**

### **6 Classification**

Customers are classified as follows:

- (a) retailer classification of a customer as:
- (i) a residential customer; or
  - (ii) a business customer;
- (b) distributor classification of a business customer as:
- (i) a small customer; or
  - (ii) a large customer;
- (c) distributor classification of a business customer who is a small customer as:
- (i) a small market offer customer; or
  - (ii) not a small market offer customer.

### **7 Retailer initial classification of customers**

- (1) A customer making a request to a retailer for the sale of energy to premises of the customer under a customer retail contract must, on request by the retailer, provide sufficient information to the retailer for the retailer to classify, on the basis of that information, the customer as a residential customer or a business customer in relation to the premises.

- (2) On receiving the information, the retailer must classify the customer accordingly.
- (3) The retailer must, as soon as practicable, notify the distributor of the classification of the customer under this rule.
- (4) The distributor must keep a record of the classification of the customer.

## **8 Retailer reclassification of customers**

- (1) The financially responsible retailer for the premises of a customer may:
  - (a) of its own initiative; or
  - (b) on application by the customer or the distributor,reclassify the customer as a residential customer or a business customer in relation to the premises after the formation of the customer retail contract for the premises.
- (2) The retailer may decline to accept a reclassification application if the retailer has classified or reclassified the customer in relation to the premises within the previous 12 month period, whether of its own initiative or on application.
- (3) The retailer must, as soon as practicable, notify the customer and the distributor of the reclassification of the customer under this rule or of the retailer's decision to refuse the reclassification application (if any) by the customer or distributor.
- (4) The distributor must keep a record of the reclassification of the customer.
- (5) The reclassification takes effect on the date of notification of both the customer and the distributor or on a later date specified in the notification.

## **9 Distributor initial classification of business customers**

- (1) This rule applies to a customer who is a business customer in relation to premises, where the customer is not currently classified (or reclassified) by the distributor in relation to the premises.
- (2) On being notified by a retailer that the customer is a business customer, the distributor for the premises must classify the customer in relation to those premises:
  - (a) as a large customer or as a small customer; and
  - (b) if a small customer, as or as not a small market offer customer.
- (3) The distributor must, as soon as practicable, notify the retailer for the premises of the classification of the customer under this rule.
- (4) The distributor must keep a record of the classification of the customer.

## **10 Distributor reclassification of business customers**

- (1) The distributor for the premises of a business customer may:
  - (a) of its own initiative; or

- (b) on application by the customer or the financially responsible retailer for the premises,  
reclassify the customer as a large customer or small customer or as not a small market offer customer in relation to the premises after the initial classification of the customer by the distributor in relation to the premises under rule 9.
- (2) The distributor may decline to accept a reclassification application if the distributor has classified or reclassified the customer in relation to the premises within the previous 12 month period, whether of its own initiative or on application.
- (3) The distributor must, as soon as practicable, notify the customer and the financially responsible retailer of the reclassification of the customer under this rule or of the distributor's decision to refuse the reclassification application (if any) by the customer or retailer.
- (4) The distributor must keep a record of the reclassification of the customer.
- (5) The reclassification takes effect on the date of notification of both the customer and the financially responsible retailer or on a later date specified in the notification.

## **11 Distributor classification and reclassification—requirements**

- (1) This rule applies where a distributor makes a classification or reclassification in relation to a customer in relation to a premises.
- (2) The distributor must have regard to the annual consumption of energy at the premises during the previous 12 month period.
- (3) The distributor may estimate the likely annual consumption at the premises for the next 12 month period if:
  - (a) consumption data is available to the distributor, but the distributor reasonably considers that the data does not accurately reflect the likely consumption at the premises during the next 12 month period; or
  - (b) no consumption data for the premises is available to the distributor for the whole of the previous 12 month period.
- (4) An estimate under this rule may be based on:
  - (a) the average usage of energy by a comparable customer over a corresponding period; or
  - (b) other information about the customer's likely consumption of energy, whether provided by the customer or the customer's retailer or in accordance with accepted industry practice.