



New South Wales

# National Energy Retail Law (Adoption) Amendment (Retail Price Deregulation) Regulation 2014

under the

National Energy Retail Law (Adoption) Act 2012

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *National Energy Retail Law (Adoption) Act 2012*.

ANTHONY ROBERTS, MP  
Minister for Resources and Energy

## Explanatory note

The objects of this Regulation are as follows:

- (a) to modify the operation of the *National Energy Retail Law (NSW)* so that the mandatory scheme in that Law requiring energy retailers to offer energy at a regulated price to certain small customers under regulated offer contracts no longer applies to the supply of electricity to those customers,
- (b) to provide for the transition of electricity customers currently on regulated offer contracts to standard retail contracts at standing offer prices and for other transitional matters,
- (c) to provide for a Market Monitor who is to monitor and report annually on the performance and competitiveness of the retail electricity market in New South Wales and, at any time on the request of the Minister for Resources and Energy, conduct a special review of retail prices and profit margins in the market or other matters,
- (d) to appoint the Independent Pricing and Regulatory Tribunal as the Market Monitor and to confer powers on the Tribunal for the purposes of carrying out special reviews.

This Regulation is made under the *National Energy Retail Law (Adoption) Act 2012*, including section 12 (the general regulation-making power).

## **National Energy Retail Law (Adoption) Amendment (Retail Price Deregulation) Regulation 2014**

under the

National Energy Retail Law (Adoption) Act 2012

### **1 Name of Regulation**

This Regulation is the *National Energy Retail Law (Adoption) Amendment (Retail Price Deregulation) Regulation 2014*.

### **2 Commencement**

This Regulation commences on 1 July 2014 and is required to be published on the NSW legislation website.

## **Schedule 1      Amendment of National Energy Retail Law (Adoption) Act 2012 No 37**

**[1]      Schedule 1 New South Wales changes and additions to National Energy Retail Law**

Insert before section 37A as inserted by item [17]:

**37AA      Application of Division**

This Division applies only to the supply of gas by a retailer.

**[2]      Schedule 1 [17]**

Omit “and may relate to electricity or gas, or both” from section 37A (3) as inserted by the item.

**[3]      Schedule 1 [17]**

Omit “energy” wherever occurring in sections 37B, 37C (3) and 37D (2) as inserted by the item.

Insert instead “gas”.

**[4]      Schedule 1 [17]**

Omit section 37C (2) as inserted by the item. Insert instead:

- (2)      The *regulated offer prices* are the prices imposed by a regulated offer retailer in accordance with any gas pricing order under Division 3 of Part 2 of the *Gas Supply Act 1996* or any voluntary transitional pricing arrangement for gas agreed between the Independent Pricing and Regulatory Tribunal and the regulated offer retailer.

**[5]      Schedule 1 [18]**

Omit “energy” from section 54 (6A) as inserted by the item. Insert instead “gas”.

**[6]      Schedule 1 [19]**

Insert “for the supply of gas” after “arrangement” in section 55 (2A) as inserted by the item.

**[7]      Schedule 1 [22]**

Omit the item.

**[8]      Schedule 1 [23]**

Omit the item. Insert instead:

**[23]      Section 145 Contractual arrangements for sale of energy to transferred small customers**

Insert after section 145 (4):

- (4A)      Despite subsection (4), the prices applicable to a RoLR deemed small customer retail arrangement for the supply of gas are the regulated offer prices of the applicable regulated offer retailer, with any variations in accordance with or consequent on the applicable RoLR cost recovery scheme determined under Division 9.

**Note**— This subsection is an additional New South Wales provision.

**[9] Schedule 1 [25A]**

Insert after Schedule 1 [25]:

**[25A] Part 9A**

Insert after Part 9:

**Part 9A—Monitoring of NSW retail electricity market**

**Note**— This provisions of this Part are additional New South Wales provisions.

**234A—Market Monitor**

- (1) In this Part, the *Market Monitor* is the person prescribed by the NSW regulations as the Market Monitor for the purposes of this Part.
- (2) The Market Monitor is to monitor the performance and competitiveness of the retail electricity market in New South Wales for small customers.
- (3) The Market Monitor is to report annually to the Minister on the performance and competitiveness of the retail electricity market in New South Wales for small customers, including on the following matters—
  - (a) the participation of small customers in the market and, if the Market Monitor thinks it appropriate, particular groups of small customers;
  - (b) prices of electricity for small customers in regional areas;
  - (c) any barriers to entry to or exit from, or expansion, in the market;
  - (d) the extent to which retailers are competing to attract and retain small customers;
  - (e) whether price movements and price and product diversity in the market are consistent with a competitive market;
  - (f) if the Market Monitor is of the opinion that it is required, steps necessary to improve the competitiveness of the market;
  - (g) whether there is a need for a detailed review of retail prices and profit margins in the market;
  - (h) any other matters the Market Monitor thinks appropriate.
- (4) An annual report is to be prepared for each year commencing on 1 July and the first annual report is to be for the year commencing 1 July 2014.
- (5) The annual report is to be provided to the Minister not later than 30 November following the end of the year to which the report relates.
- (6) The Minister is to lay the annual report or cause it to be laid before both Houses of Parliament of this jurisdiction not later than 30 days after receiving the report.
- (7) In preparing an annual report, the Market Monitor is to have regard only to the following—
  - (a) information provided by the AEMC and the AER;
  - (b) any publicly available information;
  - (c) information provided by a retailer under subsection (8).
- (8) The Market Monitor may, by notice in writing served on a retailer, require the retailer to provide particulars to the Market Monitor of the number of market offer customers of the retailer, the market offer prices

of those customers, the number of customers on each standing offer price offered by the retailer that has been publicly advertised and those standing offer prices.

#### **234B—Special reviews by Market Monitor**

- (1) The Market Monitor must, if requested in writing by the Minister to do so, carry out a detailed review of retail prices and profit margins in the retail electricity market in New South Wales for small customers, or any other matter related to that market, (a *special review*) and report on the review to the Minister.
- (2) The request for a special review may specify a period within which the Market Monitor is to submit the report on the review to the Minister and may require the Market Monitor to consider specified matters when carrying out the review.
- (3) In preparing a report on a special review, the Market Monitor is not limited to consideration of information of a kind referred to in section 234A (7).

#### **234C—Reports to Parliament**

- (1) If a House of Parliament is not sitting when the Minister seeks to table a report required by this Part to be laid before the House, the Minister may present copies of the report to the Clerk of the House.
- (2) The report—
  - (a) on presentation and for all purposes is taken to have been laid before the House; and
  - (b) may be printed by authority of the Clerk of the House; and
  - (c) if printed by authority of the Clerk, is for all purposes taken to be a report published by or under the authority of the House; and
  - (d) is to be recorded—
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council; and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly;on the first sitting day of the House after receipt of the copy of the report by the Clerk.

#### **234D—Regulations**

The NSW regulations may make provision for or with respect to the following matters—

- (a) reports by the Market Monitor for the purposes of this Part;
- (b) conferring functions on the Market Monitor that are related or ancillary to its review, reporting and monitoring functions under this Part;
- (c) without limiting paragraph (b), providing for the conduct of a special review and conferring related functions on the Market Monitor, including powers to require retailers or other persons to provide information or other evidence for the purposes of a special review;
- (d) prohibiting or regulating the disclosure of information or the provision of evidence to the Market Monitor;

- (e) if the Independent Pricing and Regulatory Tribunal is prescribed as the Market Monitor, applying provisions (with or without modification) of the *Independent Pricing and Regulatory Tribunal Act 1992* or the *Electricity Supply Act 1995* to the exercise of functions by the Market Monitor under this Part.

## **Schedule 2      Amendment of National Energy Retail Law (Adoption) Regulation 2013**

**[1]    Clause 4 Small customers and regulated offer customers**

Omit clause 4 (2). Insert instead:

- (2) For the purposes of the definition of *regulated offer customer* in section 37B of the National Law, the consumption threshold for a customer to be a regulated customer is a rate of 1,000 gigajoules per year.

**[2]    Clause 4 (3)**

Omit “energy” wherever occurring. Insert instead “gas”.

**[3]    Clause 6 Regulated offer retailers**

Omit clause 6 (2).

**[4]    Clauses 8A–8E**

Insert after clause 8:

**8A    Market Monitor**

The Independent Pricing and Regulatory Tribunal is prescribed as the Market Monitor for the purposes of Part 9A of the National Law.

**8B    Powers of Market Monitor and conduct of special reviews**

- (1) In a special review under Part 9A of the National Law, the Market Monitor:
- (a) is to act with as little formality as possible, and
  - (b) may inform itself on any matter in any way it thinks fit and is not bound by the rules of evidence, and
  - (c) may receive information or submissions in the form of oral or written statements, and
  - (d) may consult with such persons as it thinks fit.
- (2) The Market Monitor may, but is not required to, hold hearings or public seminars, conduct workshops and establish working groups and task forces for the purposes of a special review.
- (3) The Market Monitor must consult with retailers in a special review.
- (4) If the Market Monitor holds hearings, it must give reasonable notice, by advertisement published in a newspaper circulating in the State, of the hearings.
- (5) The Market Monitor may call for written submissions and may specify a time and date by which those submissions must be made. The Market Monitor may extend the time for the making of submissions.
- (6) A hearing may be held in public or in private, at the discretion of the Market Monitor, and may be conducted as determined by the Market Monitor.

**8C    Provision of information, documents and evidence**

- (1) For the purposes of a special review, the Chairperson of the Market Monitor may, by notice in writing served on an officer of a retailer or any other person, require the officer or person to do any one or more of the following:

- (a) to give to the Market Monitor, on or before a day specified in the notice, a statement setting out such information as is so specified,
  - (b) to give to the Market Monitor, on or before a day specified in the notice, such documents as are so specified,
  - (c) to attend a meeting or hearing of the Market Monitor to give evidence.
- (2) If documents are given to the Market Monitor under this clause, the Market Monitor:
- (a) may take possession of, and make copies of or take extracts from, the documents, and
  - (b) may keep possession of the documents for such period as is necessary for the purposes of the special review to which they relate, and
  - (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Market Monitor.

#### **8D Confidential information**

- (1) If a person provides information (*protected information*) to the Market Monitor for the purposes of a special review on the understanding that the information is confidential and will not be divulged, the Market Monitor is required to ensure that the information is not divulged by it to any person, except:
- (a) with the consent of the person who provided the information, or
  - (b) to the extent that the Market Monitor is satisfied that the information is not confidential in nature, or
  - (c) to a member or officer of the Market Monitor.
- (2) If the Market Monitor is satisfied that protected information provided to the Market Monitor by a person needs to be divulged for the purposes of its report on the special review, and the exceptions in subclause (1) (a)–(c) are not applicable, the Market Monitor may notify the person that the Market Monitor proposes to divulge the information in its report after a specified period.
- (3) After the specified period, and despite subclause (1), the Market Monitor may divulge the information in its report.
- (4) If the Market Monitor is satisfied that it is desirable to do so because of the confidential nature of any information provided to it in connection with its functions relating to a special review, it may give directions prohibiting or restricting the divulging of the information.
- (5) A person must not contravene a direction given under subclause (4).  
Maximum penalty: 100 penalty units.
- (6) A reference in this clause to information includes information given at a meeting or hearing of the Market Monitor and information contained in any documents given to the Market Monitor.

#### **8E Offences**

- (1) A person must not, without reasonable excuse:
- (a) refuse or fail to comply with a notice served under clause 8C, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson at any meeting or hearing before the Market Monitor for the purposes of a special review.

- (2) It is a reasonable excuse for the purposes of subclause (1) that to comply with the notice or to answer the question might tend to incriminate a natural person or make the person liable to any forfeiture or penalty.
- (3) A person must not:
  - (a) give to the Market Monitor, whether orally or in writing, information that the person knows to be false or misleading in a material particular (unless the person informs the Market Monitor of that fact), or
  - (b) at a meeting of or hearing before the Market Monitor, give evidence that the person knows to be false or misleading in a material particular.
- (4) A person must not hinder, obstruct or interfere with the Chairperson or any other member of the Market Monitor in the exercise of functions for the purposes of a special review as Chairperson or other member.  
Maximum penalty: 100 penalty units.

**[5] Part 6, Division 7**

Insert after Division 6:

**Division 7 Provisions consequent on National Energy Retail Law (Adoption) Amendment (Retail Price Deregulation) Regulation 2014**

**50 Existing regulated offer customers**

- (1) This clause applies to a customer who was, immediately before 1 July 2014, being the date of commencement of this clause, a regulated offer customer for the supply of electricity to the customer.
- (2) On that commencement, the customer is taken to be a standing offer customer and the regulated offer contract is taken to be replaced by a contract between the customer and the designated retailer for that customer on the terms and conditions (including standing offer prices) applicable to a standard retail contract between a small customer and the designated retailer under the National Law.
- (3) A payment plan, or an arrangement as to a payment method, in force in relation to the customer immediately before that commencement continues to have effect in relation to the customer, subject to any subsequent agreement between the customer and the designated retailer or another retailer.
- (4) A notice that was given, and was in operation, under the contract for the supply of electricity to the customer immediately before that commencement is taken to be a notice given under the standard retail contract.
- (5) A hardship policy applicable to the customer immediately before that commencement continues to apply to the customer.
- (6) Rule 36 of the *National Energy Retail Rules* applies to a change of tariff that occurs when a contract is replaced by another contract under this clause with the following modifications:
  - (a) a meter reading or metering data is not required to be obtained at the time the type of tariff changes,
  - (b) the customer's bill is to be based on an estimation of the customer's consumption of energy in accordance with rule 21 of those Rules and, for that purpose, the customer is taken to consent to the use of estimation by the retailer,

- (c) the date from which the new type of tariff applies for the purposes of calculating the bill is the date of commencement of this clause.

**51 Revival of provision**

Section 145 (4) of the National Law has effect on and from 1 July 2014, being the date of commencement of this clause, as if Schedule 1 [23] to the Act, as in force before that commencement, had not been made.

**52 References to regulated offer customers**

- (1) A reference to a regulated offer customer in any Act or other instrument is taken to be a reference to a person who was, immediately before 1 July 2014, a regulated offer customer within the meaning of the National Law.
- (2) A reference to a regulated offer retailer in any Act or other instrument is taken to be a reference to a person who was, immediately before 1 July 2014, a regulated offer retailer within the meaning of the National Law.