

NATIONAL GAS LAW

SECTION 277

INFRINGEMENT NOTICE ISSUED TO

ENERGYAUSTRALIA PTY LTD (ACN: 086 014 968)

**TO: EnergyAustralia Pty Ltd (ACN: 086 014 968)
Level 33, 385 Bourke Street
MELBOURNE VIC 3000**

Infringement Notice No.: AER21-2020

1. The Australian Energy Regulator (**AER**):
 - a. has reason to believe that EnergyAustralia Pty Ltd (ACN: 086 014 968) (**EnergyAustralia**), being a transportation facility user within the meaning of the *National Gas Law* (**NGL**), has breached rule 666(1) of the *National Gas Rules* (**NGR**), as described in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - b. has decided to serve this Infringement Notice on EnergyAustralia under section 277 of the NGL.
2. Rule 666(1) of the NGR is a civil penalty provision within the meaning of the NGL.
3. The infringement penalty is \$20,000.

**WHAT CAN ENERGYAUSTRALIA DO IN RESPONSE TO
THIS INFRINGEMENT NOTICE?**

4. EnergyAustralia can choose whether or not to comply with this Infringement Notice. If EnergyAustralia chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. EnergyAustralia is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If EnergyAustralia chooses to comply with this Infringement Notice, it must pay the infringement penalty to the AER, on behalf of the Commonwealth, by **30 September 2020**, being not less than 28 days from the date of service of this Infringement Notice, beginning on the day after the day on which this Infringement Notice is served (**the compliance period**).
6. To ensure payment is made in accordance with this Infringement Notice, payment must be received on or before **30 September 2020**.
7. If EnergyAustralia pays the infringement penalty within the compliance period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the NGL.

HOW TO PAY AN INFRINGEMENT NOTICE

8. EnergyAustralia may pay the \$20,000 infringement penalty in three ways:
- by cheque made out to the “ACCC Official Administered Account”,* enclosing a copy of this Infringement Notice and delivered to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

You should allow at least five business days for payment to be received.

or

- by electronic funds transfer to the following account:*

Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: AER21-2020

You should allow at least two business days for payment to be received.

or

- by credit card via the ACCC online payment system at www.accc.gov.au/payments.*

Please ensure that you include “AER21-2020” in the Payment Description field of your online payment to identify payment.

You should allow at least two business days for payment to be received.

- * The Australian Competition and Consumer Commission handles the receipt of infringement penalty payments for the AER on behalf of the Commonwealth of Australia. All payments received are paid into the Consolidated Revenue Fund.

9. Please allow sufficient time for your payment to be received within the compliance period.
10. EnergyAustralia will be issued with a Tax Invoice following payment of the infringement penalty.

DATE OF ISSUE: 1 September 2020



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Clare Savage
Chair
Australian Energy Regulator

SCHEDULE 1

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION: RULE 666(1) OF THE NATIONAL GAS RULES

1. EnergyAustralia is a transportation facility user within the meaning of section 2 of the NGL in respect of the [REDACTED].
2. The [REDACTED] is an 'auction facility' within the meaning of rule 648 of the NGR.

Relevant Rule

3. Rule 666(1) of the NGR provides as follows:

(1) A transportation facility user for an auction facility who makes a material renomination as defined in subrule (2) for use on a gas day of a transportation service must make a contemporaneous record in relation to the renomination, which must include a record of:

- a) the material conditions and circumstances giving rise to the renomination;*
- b) the transportation facility user's reasons for making the renomination, which must be verifiable and specific;*
- c) the time at which the event or other occurrence giving rise to the renomination occurred; and*
- d) the time at which the shipper first became aware of the event or other occurrence.*

4. Rule 666(2) of the NGR provides for when a renomination is a material renomination for the purposes of rule 666(1) as follows:

(2) For the purpose of subrule (1), a renomination of a transportation facility user is a material renomination in relation to a gas day and transportation service if:

- a) the renomination is for:*
 - (i) a transportation service taken into account in the calculation of an auction quantity limit; or*
 - (ii) an auction service; and*
- b) the renomination, either alone or taken together with other renominations of the transportation facility user for that transportation service for the gas day (whether before or after the renomination) results in a variation of more than 10% to:*
 - (i) except in the case of an auction service, the last day-ahead nomination of the transportation facility user for that transportation service before the nomination cut-off time applicable to the transportation service; and*
 - (ii) in the case of an auction service, the initial nomination for the use of the auction service.*

5. Rule 666(1) of the NGR, which is the subject of this Infringement Notice, is a civil penalty provision under Schedule 3 of the *National Gas Regulations*.

Relevant Conduct

6. For the gas day of 1 May 2019, EnergyAustralia made a renomination:
 - (a) which was for a firm forward transportation service on the [REDACTED], being a transportation service taken into account in the calculation of an auction quantity limit;
 - (b) which resulted in a variation of more than 10% to the last day-ahead nomination which EnergyAustralia had made before the nomination cut-off time for the gas day of 1 May 2019; and
 - (c) for which a contemporaneous renomination record was not made.
7. EnergyAustralia failed to make a contemporaneous record which included the matters referred to in rule 666(1) of the NGR in respect of the renomination referred to in paragraph 6.

Particulars

Time of event giving rise to the renomination	Transportation service	Nominated amount (TJ)	Renominated amount (TJ)	Record
5:00 pm	[REDACTED]	11.501	14.428	Did not make a contemporaneous renomination record

8. By making a material renomination for the purposes of rule 666(2) as described in paragraph 6 without making a contemporaneous record in relation to the material renomination as described in paragraph 7, EnergyAustralia has contravened rule 666(1) of the NGR which is a civil penalty provision.