

NATIONAL ENERGY RETAIL LAW
SECTION 308
INFRINGEMENT NOTICE ISSUED TO
ENERGYAUSTRALIA PTY LTD (ACN: 086 014 968)

TO: EnergyAustralia Pty Ltd (ACN: 086 014 968)
'Two Melbourne Quarter' Level 19, 697 Collins Street
DOCKLANDS VIC 3008

Infringement Notice Numbers: INF-20260001 and INF-20260002

1. The Australian Energy Regulator (**AER**):
 - a. believes on reasonable grounds that EnergyAustralia Pty Ltd (ACN: 086 014 968) (**EnergyAustralia**), which is a *retailer* within the meaning of the *National Energy Retail Law* (**Retail Law**), has breached section 38(a) of the *Retail Law* on one occasion and rule 107(2) of the *National Energy Retail Rules* (**Retail Rules**) on one occasion, in the manner set out in Schedule 2 (**the alleged breaches**); and
 - b. has decided to serve these two Infringement Notices on EnergyAustralia under section 277 of the *National Gas Law* being the Schedule to the *National Gas (New South Wales) Act 2008* (**National Gas Law**) as applied by section 308 of the Retail Law.
2. Section 38 of the Retail Law and Rule 107(2) of the Retail Rules are tier 1 civil penalty provisions within the meaning of the Retail Law and Retail Rules.
3. The infringement penalty is \$67,800 for the alleged breach of section 38(a) of the Retail Law, which occurred between 21 January 2021 and 30 June 2023, and \$75,000 for the alleged breach of rule 107(2) of the Retail Rules, which occurred after 30 June 2023.

Note: if EnergyAustralia chooses to pay all of the infringement penalties in these Notices, the combined penalty amount is \$142,800.

WHAT CAN ENERGYAUSTRALIA DO IN RESPONSE TO THESE INFRINGEMENT NOTICE?

4. In respect of each one of these two (2) Infringement Notices:
 - a. EnergyAustralia can choose whether or not to comply with the Infringement Notice. If EnergyAustralia chooses not to comply with the Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach and other related conduct. EnergyAustralia is entitled to disregard the Infringement Notice and to defend any proceedings in respect of the alleged breach.
 - b. If EnergyAustralia chooses to comply with the Infringement Notice, it must pay the infringement penalty to the AER, on behalf of the Commonwealth, by 27 March 2026, being not less than 28 days from the date of service of the Infringement Notice, beginning

on the day after the day on which the Infringement Notice is served (**the compliance period**).

- c. 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 National Gas Law as applied by section 308 of the Retail Law.

HOW TO PAY AN INFRINGEMENT NOTICE

5. EnergyAustralia may pay one or more of the infringement penalties in three ways:

- a. by cheque made out to the “ACCC Official Administered Account”, * enclosing a copy of the relevant Infringement Notice(s) for each infringement penalty being paid to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

You should allow at least five (5) business days for payment to be received; or

- b. by electronic funds transfer to the following account:*

Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550

Should EnergyAustralia choose to pay:

- all two (2) Infringement Notices (the combined infringement penalty amount being \$142,800), one payment is to be made to the account above. Please include the relevant Infringement Notice number for each infringement penalty being paid in the description field of your electronic funds transfer to identify payment.
- less than two (2) Infringement Notices, separate payment is to be made for the infringement penalty to the account above. Please include the relevant Infringement Notice Number for either infringement penalty being paid in the description field of your electronic funds transfer to identify payment.

You should allow at least two (2) business days for payment to be received; or

- c. by credit card via the ACCC online payment system at <http://www.accc.gov.au/payments>.*

Should EnergyAustralia choose to pay:

- all two (2) Infringement Notices (the combined infringement penalty amount being \$142,800), one payment is to be made by credit card via the online payment system above. Please include the relevant Infringement Notice number for each infringement penalty being paid in the description field of your electronic funds transfer to identify payment.

- less than two (2) Infringement Notices, separate payment is to be made for the infringement penalty by credit card via the online payment system above. Please include the relevant Infringement Notice Number for either infringement penalty being paid in the description field of your electronic funds transfer to identify payment.

You should allow at least two (2) 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.
6. Please allow sufficient time for your payment to be received within the compliance period.
 7. EnergyAustralia will be issued with a Tax Invoice following payment of the infringement penalty.
 8. We would be grateful if EnergyAustralia could please advise the AER once it has made any payment of each Infringement Notice via the above means, by email at tim.ridgway@aer.gov.au.

DATE OF ISSUE: 23/02/2026



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Clare Savage
Chair
Australian Energy Regulator

SCHEDULE 1 – RELEVANT LEGISLATION AND OTHER MATTERS

1. Section 38 of the Retail Law, which is in Part 2, provides as follows:

38 Requirement for explicit informed consent for certain transactions

A retailer must obtain the explicit informed consent of a small customer for the following transactions—

(a) except as provided by sections 103(7), 105(8) and under Part 6, the transfer of the customer to the retailer from another retailer

...

Notes—

1 See section 41 for the consequences of not obtaining explicit informed consent as required.

2 This section is a civil penalty provision.

2. Rule 107 of the Retail Rules, which is in Part 6, provides as follows:

107 Application of this Part

(1) This Part (except for rules 119 and 120(1)(a), (2) and (3)) applies to small customers only, and references to a customer are to be construed accordingly.

(2) A retailer must not arrange de-energisation of a customer's premises except in accordance with Division 2.

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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.)

3. Rule 111 of the Retail Rules, which is in Part 6, provides as follows:

111 De-energisation for not paying bill

(1) A retailer may arrange de-energisation of a customer's premises if:

(a) the customer:

(i) has not paid a bill by the *pay-by* date; or

(ii) is on a payment plan with the retailer and has not adhered to the terms of the plan; and

(b) if the customer is a residential customer, the customer:

(i) has not paid a bill by the *pay-by date*; and

(ii) has not agreed to an offer to pay the bill by instalments or, having agreed to the offer, has failed to adhere to an instalment arrangement; and

(c) the retailer has given the customer a *reminder notice*; and

- (d) the retailer has given the customer a *disconnection warning notice* after the expiry of the period referred to in the *reminder notice*; and
 - (e) the retailer has, after giving the *disconnection warning notice*, used its best endeavours to contact the customer, in connection with the failure to pay, or to agree to the offer or to adhere to the payment plan or instalment arrangement as referred to in paragraphs (a)(ii) and (b)(ii), in one of the following ways:
 - (i) in person;
 - (ii) by telephone (in which case contact is, if the telephone is unanswered, taken to have occurred only if the customer acknowledges receipt of a message); (iii) by facsimile or other electronic means (in which case contact is taken to have occurred only if the customer acknowledges receipt of the message); and
 - (f) the customer has refused or failed to take any reasonable action towards settling the debt.
4. Section 38 of the Retail Law and rule 107(2) of the Retail Rules, which are the subject of these infringement notices, are prescribed under the National Energy Retail Regulations (clause 6 and Schedule 1) as being tier 1 civil penalty provisions within the meaning of the Retail Law.
 5. The version of the Retail Law in effect between 20 May 2021 and 7 December 2022 apply in relation to the alleged breaches in Schedule 2. The relevant sections described in this Schedule are the same as is in this version of the Retail Law.
 6. Version 37 of the Retail Rules, which was in effect from 1 May 2023 to 16 August 2023, apply in relation to the alleged breaches in Schedule 2. The relevant rules described in this Schedule are the same as in version 37 of the Retail Rules.
 7. For the purposes of these notices, the customer to which the conduct relates to is identified as *the Affected Customer*. The corresponding confidential customer details are provided in the schedule attached to the cover letter accompanying these notices.

SCHEDULE 2 – THE AFFECTED CUSTOMER

1. EnergyAustralia Pty Ltd (“**EnergyAustralia**”) is, and was at all relevant times, a “retailer” within the meaning of section 2 of the National Energy Retail Law (“**Retail Law**”).
2. The Affected Customer was at all relevant times a “small customer” within the meaning of section 5 of the Retail Law, being a residential electricity customer with premises in New South Wales.
3. On 30 September 2021, a different customer (“**Customer X**”) incorrectly set up an electricity and gas account at the Affected Customer’s premises.
4. On 1 October 2021, EnergyAustralia’s systems created an electricity and gas account in the name of Customer X for supply at the Affected Customer’s premises.
5. Immediately prior to the EnergyAustralia account being set up at the Affected Customer’s premises, the Affected Customer was a customer of Origin Energy.
6. EnergyAustralia issued various correspondence to the Affected Customer’s premises, which were addressed to Customer X, including notification that balances were overdue, offers for a payment plan, payment reminder notices and disconnection warning notices.
7. The Affected Customer returned some of the correspondence to EnergyAustralia and marked “return to sender” and “left address/unknown” as the communications did not name the Affected Customer.
8. On 28 June 2023, the distributor, Endeavor Energy, attended the Affected Customer’s premises and left correspondence regarding the disconnection (“**disconnection correspondence**”).
9. On 29 June 2023, the Affected Customer called EnergyAustralia regarding the disconnection correspondence and advised that Customer X did not live at the premises.
10. On 3 July 2023, the Affected Customer’s electricity at the Affected Customer’s premises was disconnected.
11. The Affected Customer's electricity was reconnected with their preferred retailer on 25 October 2023.

INFRINGEMENT NOTICE NO: INF-20260001

**MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY
PROVISION: SECTION 38 OF THE NATIONAL ENERGY RETAIL LAW**

12. By reason of the matters set out in paragraphs 1 – 5 above, it is alleged that EnergyAustralia breached section 38(a) of the Retail Law by transferring the Affected Customer to itself from another retailer on 1 October 2021 without obtaining the Affected Customer's explicit informed consent as required by section 38 of the Retail Law.

INFRINGEMENT NOTICE NO: INF-20260002

**MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY
PROVISION: RULE 107(2) OF THE NATIONAL ENERGY RETAIL RULES**

13. The matters set out in paragraphs 1 – 11 above apply to this alleged breach.
14. At the time of disconnection on 3 July 2023 to the Affected Customer's premises, the reminder notice and disconnection warning notice which had been issued by EnergyAustralia were both personally addressed to a person other than the Affected Customer, being Customer X. Accordingly, it is alleged that EnergyAustralia failed to validly give the Affected Customer a reminder notice and disconnection warning notice after the expiry of the period referred to in the reminder notice. Therefore, it is alleged that the permission to arrange de-energisation set out in rule 111(1) did not apply.
15. By arranging for the de-energisation of the Affected Customer's premises when none of the circumstances permitting the de-energisation in Division 2 of Part 6 of the Retail Rules applied, it is alleged that EnergyAustralia breached rule 107(2) of the Retail Rules.