

NATIONAL ENERGY RETAIL LAW
SECTION 308
INFRINGEMENT NOTICE ISSUED TO
RED ENERGY PTY LIMITED

TO: Red Energy Pty Limited (ACN 107 479 372)
c/o Snowy Hydro Trading Pty Limited
AMP Centre
Level 37, 50 Bridge Street
SYDNEY NSW 2000

Infringement Notice No.: AER02-2016

1. The Australian Energy Regulator (**AER**):
 - (a) has reason to believe that Red Energy Pty Limited (ACN 107 479 372), which is a *retailer* within the meaning of the *National Energy Retail Law* (**Retail Law**), has breached section 38(b) of the Retail Law, in the manner set out in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - (b) has decided to serve this Infringement Notice on Red Energy Pty Limited under section 277 of the National Gas Law, being the Schedule to the *National Gas (South Australia) Act 2008* (**National Gas Law**) as applied by section 308 of the Retail Law.
2. Section 38 of the Retail Law is a civil penalty provision within the meaning of the Retail Law.
3. The infringement penalty is \$20,000.

**WHAT CAN RED ENERGY PTY LIMITED DO IN RESPONSE TO THIS
INFRINGEMENT NOTICE?**

4. Red Energy Pty Limited can choose whether or not to comply with this Infringement Notice. Red Energy Pty Limited chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. Red Energy Pty Limited is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If Red Energy Pty Limited chooses to comply with this Infringement Notice, it must pay the infringement penalty by **7 March 2016**, 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 **7 March 2016**.
7. If Red Energy Pty Limited 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period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the National Gas Law as applied by section 308 of the Retail Law.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 DOES RED ENERGY PTY LIMITED PAY THE INFRINGEMENT PENALTY?

8. Red Energy Pty Limited may pay the \$20,000 infringement penalty in two ways:
- (a) by cheque made out to the "ACCC Official Administered Account",* enclosing a copy of this Infringement Notice to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

you should allow at least 5 business days for payment to be received

or

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

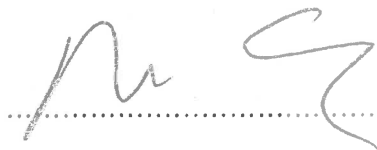
Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: AER02-2016

you should allow at least 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.

9. Please allow sufficient time for your payment to be received within the compliance period.
10. Red Energy Pty Limited will be issued with a Tax Invoice following payment of the \$20,000 infringement penalty.

DATE OF ISSUE: 2 February 2016



Paula Conboy
Chair
Australian Energy Regulator

SCHEDULE 1

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

1. Red Energy Pty Limited (**Red Energy**) is a 'retailer' within the meaning of section 2 of the National Energy Retail Law (**Retail Law**).
2. By reason of s 38(b) of the Retail Law, Red Energy must obtain the explicit informed consent of a small customer for entry by the customer into a market retail contract.
3. From about 1 February 2013 until a time around August 2015 (**Relevant Period**), Red Energy sent small customers in South Australia written notice advising that their fixed term market retail contract was due to end and informing them that they had the option of doing nothing (in which case they would be placed on to a new market retail contract) or choosing another Red Energy plan.
4. Following the sending of the notice, for those customers who took no action, Red Energy entered them into a new market retail contract upon expiry of the customers' fixed term market.
5. Red Energy did not obtain the explicit informed consent of these customers for entry into the new market retail contract.