

NATIONAL ELECTRICITY LAW
SECTION 74
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.: AER01-2014

1. The Australian Energy Regulator (**AER**):
 - (a) has reason to believe that Red Energy Pty Limited (**Red Energy**), being the responsible person for the metering installation designated with the National Metering Identifier (**NMI**) [REDACTED] (**the relevant metering installation**) within the meaning of the *National Electricity Rules (NER)*, has breached clause 7.2.5(d)(2) of the NER, as described in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - (b) has decided to serve this Infringement Notice on Red Energy under section 74 of the *National Electricity Law (NEL)*.
2. Clause 7.2.5(d)(2) of the NER is a civil penalty provision within the meaning of the NEL.
3. The infringement penalty is \$20,000.

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

4. Red Energy can choose whether or not to comply with this Infringement Notice. If Red Energy chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. Red Energy is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If Red Energy chooses to comply with this Infringement Notice, it must pay the infringement penalty. Payment of the infringement penalty must be received by the AER between the date this infringement notice is served and on or before 25 March 2014 (**the compliance period**).
6. If Red Energy 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period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period.

HOW DOES RED ENERGY PAY THE INFRINGEMENT PENALTY?

7. Red Energy 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: AER01-2014

you should allow at least 2 business days for payment to be received.

- * Please note that the AER is a constituent part of the Australian Competition and Consumer Commission (ACCC). The ACCC handles the receipt of infringement penalty payments for the AER.

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

DATE OF ISSUE: 25th February 2014



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Andrew Reeves
Chair
Australian Energy Regulator

SCHEDULE 1

MATTERS CONSTITUTING AN ALLEGED BREACH OF A RELEVANT CIVIL PENALTY PROVISION

1. Red Energy is an energy retailer and the responsible person under the NER for the electricity metering installation designated with the NMI [REDACTED] (**the relevant metering installation**).
2. Red Energy:
 - (a) in not developing an asset management strategy that defines practices that meet the intent of schedule 7.3 of the NER that was approved by the Australian Energy Market Operator (**AEMO**); and
 - (b) in failing to ensure that the relevant metering installation was tested within the last 10 years as at 31 January 2014,

has breached clause 7.2.5(d)(2) of the NER by not ensuring that the components, accuracy and testing of the installation complies with the requirements of the NER.

Relevant rules

3. Clause 7.2.5(d)(2) of the NER requires a responsible person, for each of its metering installations, to ensure that the components, accuracy and testing of the installation complies with the requirements of the NER, the metrology procedure and procedures authorised under the NER.
4. In this context, the requirements of the NER include the requirements specified in clause S7.3.1(c). Clause S7.3.1(c) provides, among other things, that the responsible person (or any other person arranging for testing) must ensure that testing of a metering installation is carried out in accordance with schedule 7.3 of the NER or in accordance with an asset management strategy that defines an alternative testing practice (other than time-based) determined by the responsible person and approved by AEMO.
5. Schedule 7.3 of the NER specifies the inspection and testing requirements that are applicable to a metering installation. Table S7.3.2 of the NER provides that unless the responsible person has developed an asset management strategy that defines practices that meet the intent of schedule 7.3 of the NER and is approved by AEMO, the maximum period between tests for a current transformer (**CT**) is 10 years (**the 10 year testing requirement**).

Relevant conduct

6. On 13 July 2011, staff assisting the AER (**AER staff**) requested information from Red Energy about how many instrument transformers, including CTs, were overdue for testing and on the approach Red Energy was taking to ensure that its instrument transformers were tested in accordance with the 10 year testing requirement (**13 July 2011 Information Request**) by 12 August 2011. On 2 September 2011, AER staff agreed to extend this deadline to 21 September 2011. Red Energy did not provide a response to the

13 July 2011 Information Request by 21 September 2011. As at 25 February 2014, Red Energy has not responded to the 13 July 2011 Information Request.

7. In December 2011, the AER published a Compliance Bulletin that set out its expectations in relation to the testing of CTs. The Compliance Bulletin specified that if a responsible person submitted a test strategy and plan to AEMO for approval by April 2012 (later extended to June 2012) or tested a representative 10 per cent sample of low-voltage CTs from all family types by 30 June 2013, the AER would consider that demonstrated a responsible person's willingness to comply with clause 7.2.5(d) of the NER. The Compliance Bulletin also stated that "the AER may take enforcement action after July 2012 if there is ongoing non-compliance (for example, the RP fails to fulfil the testing practice approved by AEMO)".
8. Red Energy did not submit a test strategy and plan to AEMO for approval by June 2012.
9. On 7 September 2012, AER staff requested information from Red Energy about why it did not submit a test strategy and plan to AEMO for approval by June 2012 (**the 7 September 2012 Information Request**). On 12 October 2012, Red Energy responded to the 7 September 2012 Information Request. In that response, Red Energy referred to delays due to communication breakdowns within its business and committed to submitting the test strategy and plan within weeks and to testing a representative 10 per cent sample of low-voltage CTs from all family types by 30 June 2013.
10. In September 2013, AEMO informed AER staff that Red Energy had not submitted a test strategy and plan for 2012–13 and had not tested any of the CTs of which it was the responsible person over that period.
11. On 26 September 2013, AER staff requested information from Red Energy about why it had not submitted a test strategy and plan for 2012–13 and tested any of the CTs of which it was the responsible person over that period (**the 26 September 2013 Information Request**). On 4 October 2013, Red Energy responded to the 26 September 2013 Information Request. In that response Red Energy confirmed that it had not submitted a test strategy and plan for 2012–13 and had not tested any of its 681 CTs.
12. On 6 December 2013, AER staff requested information from Red Energy about, among other things, when each CT that Red Energy is the responsible person for was last tested (**6 December 2013 Request**).
13. On 31 January 2014, Red Energy responded in part to the 6 December 2013 Request. Red Energy's response identified that as at 31 January 2014, the relevant metering installation had not been tested within the last 10 years.

PARTICULARS

- a. On 1 August 2012, Red Energy became the responsible person under the NER for the relevant metering installation.
- b. As at 31 January 2014, the relevant metering installation had not been tested within the last 10 years.

- c. At all times when Red Energy was the responsible person for the relevant metering installation, Red Energy did not develop an asset management strategy that defines practices that meet the intent of schedule 7.3 of the NER that was approved by AEMO.