

VIEW SUMMARY

The legislation that is being viewed is valid for 20 May 2011.

Electricity Supply Industry (Contestable Customer) Regulations 2005 (S.R. 2005, No. 88)

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Electricity Supply Industry (Contestable Customer) Regulations 2005

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Electricity Supply Industry Act 1995*.

25 July 2005

W. J. E. COX

Governor

By His Excellency's Command,

P. A. LENNON

Treasurer

PART 1 - Preliminary

1. Short title

These regulations may be cited as the *Electricity Supply Industry (Contestable Customer) Regulations 2005*.

2. Commencement

These regulations take effect on the day on which section 34 of the *Electricity Supply Industry Amendment Act 2003* commences.

3. Interpretation

In these regulations –

"**Act**" means the *Electricity Supply Industry Act 1995*;

"**amending regulations**" means the *Electricity Supply Industry (Contestable Customer) Amendment Regulations 2011*;

"**Aurora Distribution**" means Aurora Energy in its capacity as the holder of a licence under the Act authorising operations in respect of the distribution of electricity;

"**Aurora Energy**" means Aurora Energy Pty Ltd (ABN 85 082 464 622);

"**Aurora Retail**" means Aurora Energy in its capacity as the holder of a licence under the Act authorising operations in respect of the retailing of electricity;

"**business customer**", in respect of a single site, means the customer in respect of the site, if –

(a) the customer principally purchases electricity for use at the site otherwise than for personal, household or domestic use; and

(b) the consumption level at the site is measured at a connection point;

"**connection point**" means a metering installation, within the meaning of the National Electricity Rules, which has a unique National Metering Identifier in accordance with those Rules;

"**consumption level**" means the electricity consumed at a single site as assessed under regulation 10;

"**fallback contract**" means a contract that is the result of a contractual relationship established under regulation 14;

"**large offer contestable customer**" means a customer who is a large offer contestable customer under regulation 8, regulation 12 or regulation 12D(2);

"**National Electricity Rules**" means the National Electricity Rules made in accordance with the National Electricity Law;

"**previous business customer**", in relation to a business customer in respect of a single site, means the person who was the last business customer in respect of the site before the first-mentioned business customer became a business customer in respect of the site;

"**regional reference node**" has the same meaning as in the National Electricity Rules;

"**single site**" has the meaning given by regulation 6;

"**spot price**" has the same meaning as in the National Electricity Rules;

"**standing offer contestable customer**" means a customer who is a standing offer contestable customer under regulation 9, regulation 12 or regulation 12D(2);

"**standing offer contract**" means a contract that is in accordance with regulation 12H;

"**wholesale pool price**" means the spot price at the regional reference node for the Tasmanian region of the National Electricity Market determined under the National Electricity Rules.

4. Application of regulations

These regulations apply to customers in respect of single sites that are connected –

(a) directly to the transmission system operated by Transend Networks Pty Ltd (ABN 57 082 586 892); or

(b) indirectly to that transmission system by means of a distribution network.

5. Customer retail services

For the purpose of paragraph (b) of the definition of "customer retail services" in section 3 of the Act, the following are prescribed services:

(a) the connection of premises to a distribution network or transmission system for the purposes of the supply of electricity;

(b) the supply of electricity from a distribution network or transmission system to premises.

6. Single site

(1) In this regulation –

"**title**" means –

(a) an area of land recorded on a folio in the Register under the Land Titles Act 1980; or

(b) if the area of land is not registered under the Land Titles Act 1980, that area of land as described as a separate parcel in a

deed registered under the *Registration of Deeds Act 1935*; or

(c) an area of land that is Crown land in respect of which a lease, or a licence which includes a right of occupancy, is granted under any Act.

(2) Regardless of the number of buildings or other structures on or at an area of land, that area is a single site if it –

(a) consists of one or more titles, or part of a title, to which electricity is supplied by a single connection point; or

(b) consists of one or more areas of land determined by the Regulator to be a single site under subregulation (5).

(3) If a customer owns or occupies one or more areas of land to which electricity is supplied by more than one connection point, the customer may apply to the Regulator for a determination that the area or areas is or are a single site if –

(a) the area or areas consist of one title; or

(b) the area or areas consist of more than one title and each title –

(i) shares a boundary with at least one of the other titles; or

(ii) would share a boundary with at least one of the other titles if the titles were not separated by a road or watercourse.

(4) An application under subregulation (3) is to be –

(a) in writing; and

(b) provided to the Regulator.

(5) On receipt of an application under subregulation (3), the Regulator is to determine that the area or areas of land are a single site if he or she is satisfied that –

(a) the area or areas consist of one title; or

(b) the area or areas consist of more than one title and each title –

(i) shares a boundary with at least one of the

other titles; or

(ii) would share a boundary with at least one of the other titles if the titles were not separated by a road or watercourse.

(6) A determination by the Regulator under subregulation (5) –

(a) is to be given to the customer and Aurora Retail, in writing, as soon as practicable after the determination is made; and

(b) is not a reviewable decision.

PART 2 - Contestable customers

7. Classification of contestable customers

For the purposes of the Act and these regulations, a person is a contestable customer in respect of a single site only if the person is –

(a) a large offer contestable customer in respect of the site; or

(b) a standing offer contestable customer in respect of the site.

8. Large offer contestable customers

(1) A business customer in respect of a single site is a large offer contestable customer in respect of the site on and from the day on which the amending regulations come into force if, immediately before that day, the person was a contestable customer in respect of the site.

(2) A business customer in respect of a single site is a large offer contestable customer in respect of the site on and from 1 July in a year if, for the 12-month period ending on 30 June in the calendar year immediately preceding that year, the business customer's consumption level in respect of that site is 0.15 gigawatt hours or more.

(3) If –

(a) a business customer is, immediately before 1 July in a year, a standing offer contestable customer in respect of a single site; and

(b) the business customer would, but for this subregulation, become under subregulation (2) a large offer contestable customer in respect of the single site on that 1 July –

then, despite subregulation (2), the business customer becomes a large offer contestable customer in respect of the site on and from 1 July in the following

year.

(4) A person who becomes, on a day, a business customer in respect of a single site is a large offer contestable customer in respect of the site on and from that day, if the previous business customer in respect of the site was –

(a) before the amending regulations came into force, a contestable customer in respect of the site; or

(b) a large offer contestable customer in respect of the site.

(5) A business customer becomes a large offer contestable customer in respect of a single site on and from the 1 July on which, had the previous business customer in respect of the site remained the customer in respect of the site, the previous business customer would have become a large offer contestable customer in respect of the site under subregulation (2) or (3) by virtue of the consumption level in respect of the site during the 12-month period referred to in subregulation (2).

9. Standing offer contestable customers

(1) A business customer is a standing offer contestable customer in respect of a single site on and from 1 July in a year if, for the 12-month period ending on 30 June in the calendar year immediately preceding that year, the business customer's consumption level in respect of the site is 0.05 gigawatt hours or more.

(2) A person who becomes, on a day, a business customer in respect of a single site is a standing offer contestable customer in respect of the site on and from that day, if the previous business customer in respect of the site was a standing offer contestable customer in respect of the site.

(3) A business customer is a standing offer contestable customer in respect of a single site on and from the 1 July on which, had the previous business customer in respect of the site remained the customer in respect of the site, the previous business customer would have become a standing offer contestable customer in respect of the site under subregulation (1) by virtue of the consumption level in respect of the site during the 12-month period referred to in that subregulation.

(4) A customer is not, and does not become, a standing offer contestable customer in respect of a site under this regulation on a day if the customer is a large offer contestable customer in respect of the site under regulation 8 or regulation 12D(2) on that day.

(5) A customer ceases to be a standing offer contestable customer in respect of a site under this regulation on the day on which the customer becomes a large offer contestable customer in respect of the site under

regulation 8 or regulation 12D(2).

10. Consumption level

(1) For the purposes of these regulations, Aurora Distribution is to assess the consumption level in respect of a single site based on the consumption level in respect of the site for the 12-month period that is relevant for the purposes of determining under regulation 8 or 9 whether a customer in respect of the site is a contestable customer.

(2) Subject to these regulations, a contestable customer remains a contestable customer in respect of a single site despite any fluctuation in the consumption level in respect of that site.

(3) For the avoidance of doubt, a consumption level in respect of a site that occurred during a period, all or part of which began before the amending regulations came into effect, may be taken into account for the purposes of these regulations.

11. Advising customers of contestability

(1) If Aurora Distribution, after assessing under regulation 10 the consumption level in respect of a single site, is reasonably of the opinion that one of its customers in respect of the site will become on 1 July in a year –

(a) a large offer contestable customer in respect of that site under regulation 8(2) or (5), Aurora Distribution is to give a notice to the customer before 31 March in that year; or

(b) a large offer contestable customer in respect of that site under regulation 8(3), Aurora Distribution is to give a notice to the customer before 31 March in the previous year.

(2) If Aurora Distribution is reasonably of the opinion that one of its customers in respect of a single site has become on a day a contestable customer in respect of that site under regulation 8(4) or regulation 9(2), Aurora Distribution is to give a notice to the customer within 3 months after that day.

(3) If Aurora Distribution, after assessing under regulation 10 the consumption level in respect of a single site, is reasonably of the opinion that one of its customers in respect of the site will become on 1 July in a year a standing offer contestable customer in respect of that site under regulation 9(1) or (3), Aurora Distribution is to give a notice to the customer before that day.

(4) A notice given to a customer under this regulation is to –

(a) specify that the customer has or will become, on and from a day specified in the notice, a large offer contestable customer,

or a standing offer contestable customer, in respect of the single site specified in the notice; and

(b) specify that the customer may apply to the Regulator for a determination under regulation 12D as to whether or not the customer will or has become a contestable customer on and from the day specified in the notice; and

(c) otherwise be in a form approved by the Regulator.

(5) A notice under this regulation given to a person who Aurora Distribution is of the opinion has or will become, on and from a day specified in the notice, a standing offer contestable customer in respect of a single site is to specify that –

(a) 12 months after that day, the customer will be taken to have entered into a standing offer contract in respect of the site and will remain on the contract unless –

(i) the customer ceases to be a customer of Aurora Retail in respect of the site; or

(ii) the customer enters into a contract in respect of the site with Aurora Retail under section 40 of the Act –

whichever occurs first; and

(b) the customer may, at any time after a contract entered into by the customer with a retailer (including Aurora Retail) expires or is terminated, enter into a standing offer contract with Aurora Retail in respect of the site, if the customer has not become a large offer contestable customer in respect of the site.

(6) If Aurora Retail, before the day on which the amending regulations come into force, issued to a customer a notice advising the customer that the customer will become a contestable customer in respect of a single site, the customer is to be taken to have been issued a notice under subregulation (2) specifying that the customer has become a large offer contestable customer in respect of the site.

(7) Aurora Distribution may, by notice to a customer, withdraw a notice issued to the customer under subregulation (1), (2) or (3).

(8) Aurora Distribution may only withdraw a notice under subregulation (7) if it is reasonably of the opinion that the notice was issued in error.

12. Effect of notice issued under regulation 11

Despite regulations 8 and 9, if Aurora Distribution issues to a customer a notice under regulation 11 specifying that the customer has or will become, on and from a day specified in the notice, a large offer contestable customer, or a standing offer contestable customer, in respect of a single site, the customer is to be taken to be, by virtue of the notice, such a customer in respect of the site on and from that day –

(a) unless –

(i) the Regulator makes an inconsistent determination under regulation 12D in relation to the site; or

(ii) Aurora Distribution withdraws the notice under regulation 11(7); and

(b) until a further notice, if any, is issued under regulation 11 in respect of the single site; and

(c) until, where the person has become a standing offer contestable customer by virtue of this regulation, the person becomes, if at all, a large offer contestable customer under regulation 8.

12A. Regulator to provide to customers information about contestability

(1) It is a function of the Regulator to provide to a customer, on the Regulator's own initiative or at the request of the customer, the information that the Regulator thinks fit on matters relating to contestable customers.

(2) The information that the Regulator may provide under subregulation (1) includes, but is not limited to including, information as to –

(a) whether a customer or customers will become contestable customers; and

(b) the circumstances in which, and the manner in which, customers may apply to the Regulator for a determination as to whether they are, or will become, or are not, or will not become, contestable customers.

12B. Application for determination as to contestability

(1) A customer in respect of a single site may apply to the Regulator for a determination as to whether, on a day specified in the application –

(a) the customer is, or will become, a standing offer contestable

customer, or a large offer contestable customer, in respect of the site; or

(b) the customer is not, or will not become, a large offer contestable customer in respect of the site.

(2) A customer in respect of a single site may only make an application under subregulation (1) in relation to a day referred to in that subregulation if –

(a) the electricity accounts for the customer, or the previous business customer, in respect of the site, or both accounts taken together, do not cover all of the 12-month period that is relevant for the purposes of determining under regulation 8 or 9 whether the customer is a contestable customer; or

(b) there are no electricity accounts for the customer, or the previous business customer, at that site for that 12-month period; or

(c) the customer reasonably believes that there is likely to be a significant increase or decrease in the consumption level at that site in the 12-month period after the end of the 12-month period referred to in paragraph (a); or

(d) the customer is of the opinion that –

(i) the previous business customer in respect of the site was not a contestable customer in respect of the site; and

(ii) accordingly the customer is not, or is not to become, a contestable customer by virtue of regulation 8(4) or (5) or regulation 9(2) or (3).

(3) Aurora Retail may apply to the Regulator for a determination that a customer is or will become a large offer contestable customer on a day specified in the application in respect of a single site.

(4) Aurora Retail may only make an application under subregulation (3) in relation to a customer at a single site if Aurora Retail reasonably believes that the customer is, or is likely to become, under regulation 9 a large offer contestable customer in respect of the site on the day specified in the application.

(5) Aurora Distribution must apply to the Regulator for a determination as to whether a person will become, on the day on which the person becomes a customer in respect of a single site, a large offer contestable customer in

respect of a single site, if –

(a) Aurora Distribution becomes aware that the person is likely to become a customer in respect of the site; and

(b) it is reasonably likely that the consumption level in respect of the site in the first 12-month period after the person becomes a customer in respect of the site will be 0.15 gigawatt hours or more.

12C. Regulator may obtain relevant information

(1) An application under regulation 12B is to include any information that the Regulator considers necessary for the determination of an application.

(2) The Regulator may request information from any person if the Regulator believes that the information is necessary for the determination of an application under regulation 12B.

(3) The Regulator may defer consideration of an application made under regulation 12B in respect of a customer at a single site for the period the Regulator thinks is necessary in order for sufficient information to be provided to the Regulator as to the likely consumption level in respect of that site for the 12-month period after the customer becomes the customer in respect of the site.

(4) However, the Regulator may not, under subregulation (3), defer consideration of an application under regulation 12B for more than 12 months after receiving the application.

12D. Determination of applications about status

(1) The Regulator is to determine an application under regulation 12B in respect of a single site by determining that –

(a) the customer is, or will become, a large offer contestable customer, or a standing offer contestable customer, in respect of the site on a day specified in the determination; or

(b) the customer is not, or will not become, a large offer contestable customer or a standing offer contestable customer in respect of the site on a day specified in the determination.

(2) Despite regulations 8 and 9, if a customer is determined under subregulation (1)(a) to be, or to become, a large offer contestable customer, or a standing offer contestable customer, in respect of a single site on a day specified in a determination under subregulation (1), the customer becomes a large offer contestable customer, or a standing offer contestable customer, as

the case may be, in respect of the site on that day.

(3) Despite regulations 8 and 9, if a customer is determined under subregulation (1)(b) to not be, or to not become, a large offer contestable customer, or a standing offer contestable customer, in respect of a single site on a day specified in a determination under subregulation (1), the customer ceases to be, or to become, a large offer contestable customer, or a standing offer contestable customer, respectively, in respect of the site on that day.

(4) A determination under subregulation (1) in relation to a customer in respect of a single site –

(a) is to be in writing; and

(b) is to be given, as soon as practicable after it is made, to –

(i) the customer; and

(ii) the person who is, when the determination is made, the retailer, for the site, in respect of the customer; and

(iii) Aurora Distribution; and

(c) is not a reviewable decision.

(5) The Regulator, in determining under subregulation (1) an application under regulation 12B in relation to a customer in respect of a single site –

(a) is to estimate the likely consumption level in respect of the site; and

(b) is to have regard to all matters the Regulator considers relevant, including –

(i) the past and anticipated future consumption level in respect of the site while the customer was or is a customer in respect of the site; and

(ii) if regulation 8(5) or regulation 9(3) may apply in relation to the site, the past consumption level in respect of the site while the previous business customer was the previous business customer in respect of the site; and

(c) may take into account –

(i) any previous electricity accounts for the

single site; and

(ii) any other information or matter the Regulator considers appropriate.

12E. Factors to be taken into account in determining applications not made by Aurora Distribution

(1) This regulation does not apply in relation to applications made under regulation 12B(5) by Aurora Distribution.

(2) The Regulator may only determine under regulation 12D(1)(a) that a customer is, or will become, a large offer contestable customer in respect of a single site on a day specified in the determination if the Regulator is satisfied that –

(a) the customer is, or is likely to be, a large offer contestable customer in respect of the site under regulation 8 on that day; or

(b) the consumption level in respect of the site is likely to be, in the 12-month period after that day, 0.15 gigawatt hours or more.

(3) The Regulator may only determine under regulation 12D(1)(b) that a customer is not, or will not become, a large offer contestable customer in respect of a single site on a day specified in the determination if the Regulator is satisfied that –

(a) the customer is not, or is not likely to be, a large offer contestable customer in respect of the site under regulation 8 on that day; and

(b) the consumption level in respect of the site is not likely to be, in the 12-month period after that day, 0.15 gigawatt hours or more.

(4) The Regulator may only determine under regulation 12D(1)(a) that a customer is, or will become, a standing offer contestable customer in respect of a single site on a day specified in the determination if the Regulator is satisfied that –

(a) the customer is, or is likely to become, a standing offer contestable customer in respect of the site under regulation 9 on that day; or

(b) the consumption level in respect of the site is likely to be, in the 12-month period after that day, 0.05 gigawatt hours or more but less than 0.15 gigawatt hours.

(5) The Regulator may only determine under regulation 12D(1)(b) that a customer is not, or will not become, a standing offer contestable customer in respect of a single site on a day specified in the determination if the Regulator is satisfied that –

(a) the customer is not, or is not likely to become, a standing offer contestable customer in respect of the site under regulation 9 on that day; and

(b) the consumption level in respect of the site is not likely to be, in the 12-month period after that day, 0.05 gigawatt hours or more but less than 0.15 gigawatt hours.

12F. Determination of applications made by Aurora Distribution

(1) The Regulator may only determine an application under regulation 12B(5) by determining under regulation 12D(1)(a) that a person is, or will become, a large offer contestable customer in respect of a single site on a day specified in the determination, if the Regulator is satisfied that the consumption level in respect of the site, during the first 12 months after the person becomes a customer, is likely to be 0.15 gigawatt hours or more.

(2) The Regulator may only determine an application under regulation 12B(5) by determining under regulation 12D(1)(b) that a person is not, or will not become, a large offer contestable customer in respect of a single site on a day specified in the determination if the Regulator is satisfied that the consumption level in respect of the site, during the first 12 months after the person becomes a customer, is not likely to be 0.15 gigawatt hours or more.

(3) The day specified by the Regulator in a determination, under regulation 12D(1)(a) or regulation 12D(1)(b), of an application under regulation 12B(5) in respect of a single site is to be specified to be the day (which may be an unknown future date) on which the person becomes a customer in respect of the site.

(4) If an application is made under regulation 12B(5) in respect of a single site, a person cannot become a customer in respect of the site until after the application is determined under regulation 12D(1)(a) or regulation 12D(1)(b).

12G. Effect of determination on certain existing contracts

A customer becoming a contestable customer under regulation 8 or 9 or under regulation 12D –

(a) does not affect the terms and conditions, or the operation, of any contract, to which section 40 of the Act applies, for the provision of customer retail services between the customer and a retailer that was in force immediately before the customer

became a contestable customer; and

(b) is not in itself a ground for –

(i) the termination of any such existing contract;
or

(ii) the payment of, or the refusal to pay, a
penalty or amount required under any such
existing contract; and

(c) does not in itself constitute a breach of any such existing
contract.

12H. Standing offer contracts

(1) For the purposes of section 22(1)(b) of the Act, it is a requirement of a licence issued to Aurora Retail that Aurora Retail –

(a) must prepare a standing offer contract; and

(b) must, at the request of a standing offer contestable customer to whom no contract for retail supply of electricity, entered into under section 40 of the Act, will apply from a particular day, offer to enter into with the customer a standing offer contract that is to apply on and from that day; and

(c) must enter into such a contract with the customer.

(2) For the purposes of these regulations, a standing offer contract is a contract that contains –

(a) the same terms and conditions as those of the contract that applies, by virtue of section 39A of the Act, in relation to a business customer to whom a tariff applies; and

(b) no terms or conditions that are inconsistent with those terms and conditions and this regulation.

(3) Despite subregulation (2), a standing offer contract may contain a term that a customer in respect of a single site who, immediately before entering into the contract with Aurora Retail in respect of the site, was, in respect of the site, a customer of another retailer is required to pay to Aurora Retail an amount that is sufficient to recoup the administrative costs incurred by Aurora Retail as a result of entering into the standing offer contract.

(4) Despite subregulation (2), a standing offer contract may contain a term that a customer who, immediately before entering into the contract with Aurora Retail in respect of a single site, was, by virtue of a contract other than

a standing offer contract, a customer of Aurora Retail in respect of the site is required to pay to Aurora Retail an amount that is sufficient to recoup the administrative costs incurred by Aurora Retail as a result of entering into the standing offer contract.

(5) Despite subregulation (2), a standing offer contract may contain a term that a customer in respect of a single site who, immediately before entering into the contract with Aurora Retail, was, in respect of the site, a customer of another retailer is required to pay to Aurora Retail an amount that is sufficient to recoup any costs incurred by Aurora Retail in meeting any obligations relating to meter services or meter data services as required under the National Electricity Rules.

(6) Despite anything to the contrary in the *Electricity Supply Industry (Tariff Customers) Regulations 2008*, those regulations apply to and in relation to –

(a) a contestable customer in relation to whom a standing offer contract is in force; and

(b) Aurora Retail; and

(c) any moneys received from the customer, whether by way of security, undercharges or overcharges or otherwise –

as if the customer were a customer to whom a tariff applies and as if any such money were money received from a customer to whom a tariff applies.

(7) If a standing offer contract is in force between Aurora Retail and a customer –

(a) chapter 9 of the Tasmanian Electricity Code applies in relation to the customer; and

(b) Aurora Retail's customer charter applies in relation to the customer –

as if the customer were a customer to whom a tariff applies.

12I. Duties of retailers

(1) A retailer must, not more than 40, and not less than 20, days before the day on which a contract between the retailer and a customer of the retailer who is a standing offer contestable customer expires, give the relevant notice to the customer.

(2) The relevant notice to the customer is a notice that specifies that –

(a) the contract between the retailer and the customer is due to

expire on a day specified in the notice; and

(b) after that day, the retailer's fallback contract will apply to the customer unless the customer –

(i) enters into a contract (other than the fallback contract) with the retailer; or

(ii) enters into a contract (other than the standing offer contract) with Aurora Retail; or

(iii) enters into a standing offer contract with Aurora Retail; and

(c) the customer may enter into a contract, other than a fallback contract, with the retailer, or may enter into a contract, including a standing offer contract, with Aurora Retail; and

(d) the standing offer contract with Aurora Retail is a contract on the same terms and conditions as those that would be offered to the customer if the customer were not a contestable customer.

PART 3 - Fallback arrangements

13. Interpretation of Part

In this Part –

"**pro-forma fallback contract**" means a contract approved by the Regulator, and published in the *Gazette*, under regulation 15, as amended or substituted from time to time under this Part.

14. Establishment of fallback contract

(1) A contractual relationship is established between a contestable customer and a retailer in respect of a single site if –

(a) electricity is being supplied at that single site by means of a distribution network; and

(b) the retailer is financially responsible, within the meaning of the National Electricity Rules, for the connection point in respect of the site; and

(c) no other contract, including a contractual relationship under these or any other regulations, or tariff covers the retailing of

electricity to that site.

(2) A fallback contract may only relate to a single site.

(2A) If the retailer is Aurora Retail and the contestable customer in respect of the site is a standing offer contestable customer, the fallback contract between the contestable customer and Aurora Retail in respect of the site is to be the standing offer contract.

(2B) If –

(a) the retailer is Aurora Retail and the contestable customer in respect of the site is a large offer contestable customer; or

(b) the retailer is not Aurora Retail –

the fallback contract between the contestable customer and the retailer in respect of the site is to be on the same terms and conditions as the relevant pro-forma fallback contract.

(3) As soon as practicable after a fallback contract takes effect, the retailer is to –

(a) give written notice to the customer that the fallback contract has taken effect; and

(b) give a copy of that fallback contract to the customer.

15. Pro-forma fallback contract

(1) Subject to this regulation, the terms and conditions of a draft pro-forma fallback contract, including the price of the customer retail services specified in the draft pro-forma fallback contract, are to be determined by the retailer.

(2) A draft pro-forma fallback contract in respect of a customer who consumed more than 0.75 gigawatt hours of electricity at one single site in the 12 months immediately preceding the establishment of the fallback contract must not specify a price, or a method of determining a price, that would result in the amount paid by a customer under the contract exceeding the cost to the retailer of supplying the customer retail services specified in the contract to the customer, taking into consideration the following amounts:

(a) the wholesale pool price;

(b) applicable distribution and transmission charges;

(c) the reasonable retail margin proposed by the retailer and approved by the Regulator;

(d) any other costs which, in the opinion of the Regulator, are incurred in connection with the provision of the customer retail service to the customer.

(3) A draft pro-forma fallback contract in respect of a customer who consumed not more than 0.75 gigawatt hours of electricity at one single site in the 12 months immediately preceding the establishment of the fallback contract must specify a price, or a method of determining a price, that the Regulator considers reasonable.

(4) The retailer must submit to the Regulator, within a period determined by the Regulator by notice provided to the retailer –

(a) a draft pro-forma fallback contract that specifies a price, or a method of determining a price, in accordance with subregulation (2); and

(b) another draft pro-forma fallback contract that specifies a price, or a method of determining a price, in accordance with subregulation (3).

(5) The Regulator may –

(a) approve a draft pro-forma fallback contract if the draft contract –

(i) complies with the terms of the retailer's licence; and

(ii) complies with the Act and these regulations;
or

(b) refuse to approve a draft pro-forma fallback contract and require a substitute draft pro-forma fallback contract to be submitted to him or her.

(6) The Regulator is to notify the retailer as soon as practicable of an approval, or refusal to approve, a draft pro-forma fallback contract under subregulation (5).

(7) If the Regulator approves a draft pro-forma fallback contract under subregulation (5), the Regulator is to publish a copy of the draft pro-forma fallback contract in the *Gazette*.

(8) A pro-forma fallback contract may be amended or substituted by the retailer –

(a) obtaining the approval of the Regulator for the amendment

or substitution of the pro-forma fallback contract; and

(b) after so obtaining that approval, publishing, by notice in the *Gazette*, the amendment or the substituted pro-forma fallback contract.

15A. Amendment of fallback contract

(1) In this regulation –

"**prescribed services**" means the services prescribed under regulation 5.

(2) If –

(a) a fallback contract in respect of a single site contains terms and conditions relating to prescribed services; and

(b) the contestable customer is supplied with the prescribed services under a new or existing contract in respect of the single site covered by the fallback contract; and

(c) the fallback contract is still required to provide for the retailing of electricity to the single site covered by the fallback contract –

the fallback contract remains in force in respect of the retailing of electricity but is taken not to include the terms and conditions relating to the prescribed services.

16. Cessation of fallback contract

(1) A fallback contract is terminated when the first of the following events occurs:

(a) a retailer, under a contract in respect of the single site covered by the fallback contract, retails electricity to the customer;

(b) the electricity supply to the single site covered by the fallback contract is disconnected;

(c) the period of 3 months, commencing on the day on which the fallback contract is established, expires.

(1A) Subregulation (1)(c) does not apply in relation to a fallback contract that is a standing offer contract.

(2) The termination of a fallback contract does not affect any obligations,

rights or liabilities arising out of or accrued under that contract.

17. Fallback contract not to prevent prosecution

The existence of a fallback contract does not prevent legal proceedings being taken against the customer with the fallback contract, if the customer's actions constitute an offence –

(a) under section 111(1) of the Act; or

(b) of stealing under Chapter XXIV of the *Criminal Code*.

PART 3A - Default Distribution Contracts

17A. Interpretation of Part

In this Part –

"connection and supply contract", in relation to a site, means a contract that relates, or the provisions of a contract that relate, to –

(a) the connection of the site to a distribution network for the purposes of the supply of electricity; and

(b) the supply of electricity to the site from a distribution network;

"default customer-distributor contract" means a contract that is in force between a customer and a distributor because of the application of regulation 17B(1)(a);

"default retailer-distributor contract" means a contract that is in force between a retailer and a distributor because of the application of regulation 17B(1)(b);

"pro-forma contract", in relation to a distributor, means –

(a) a pro-forma default customer-distributor contract in relation to the distributor; or

(b) a pro-forma default retailer-distributor contract in relation to the distributor;

"pro-forma default customer-distributor contract", in relation to a distributor, has the meaning it has in regulation 17D;

"pro-forma default retailer-distributor contract", in relation to a distributor, has the meaning it has in regulation 17D.

17B. Establishment of default distribution contract

(1) For the purposes of section 22(1)(b) of the Act, it is a requirement of a licence issued to a distributor who supplies electricity to a single site that, if there is a relevant contractual relationship between a contestable customer and the retailer in relation to the site –

(a) the distributor will enter into a contract, with the customer, that is on the same terms and conditions as the pro-forma default customer-distributor contract in relation to the distributor; and

(b) the distributor will enter into a contract, with the retailer, that is on the same terms and conditions as the pro-forma default retailer-distributor contract in relation to the distributor.

(2) For the purposes of section 22(1)(b) of the Act, it is a requirement of a licence issued to a retailer that if there is a relevant contractual relationship between a contestable customer in relation to a single site and the retailer, the retailer will enter into a contract, with the distributor who supplies electricity to the site, that is on the same terms and conditions as the pro-forma default retailer-distributor contract in relation to the distributor.

(3) For the purposes of subregulations (1) and (2), there is a relevant contractual relationship between a contestable customer and a retailer in relation to a single site if –

(a) there is a fallback contract between the customer and the retailer in relation to the site; or

(b) there is a contract, other than a fallback contract, in force between the customer and the retailer and there are inadequate distribution arrangements between the contestable customer, the retailer and the distributor in relation to the site.

(4) For the purposes of subregulation (3)(b), there are inadequate distribution arrangements between a contestable customer, a retailer and the distributor in relation to a single site if –

(a) there is no connection and supply contract in relation to the site, between –

(i) the customer and the distributor; or

(ii) the retailer and the distributor; and

(b) the retailer has issued to the distributor a notice under

subregulation (5).

(5) A retailer may issue to a distributor a notice specifying that the retailer is of the opinion that there are, in relation to a single site specified in the notice, inadequate distribution arrangements between a contestable customer, a retailer and the distributor.

(6) Subregulation (1)(b) and subregulation (4)(a)(ii) do not apply in relation to a retailer and a distributor if they are the same person.

17C. Approval of pro-forma default contracts

(1) The Regulator may, by written notice to a distributor, require the distributor to submit to the Regulator, within a period specified in the notice –

(a) a draft pro-forma contract in relation to the distributor; or

(b) an amendment to a pro-forma contract in relation to the distributor.

(2) A distributor may, pursuant to a notice to the distributor under subregulation (1) or on the distributor's own initiative, submit to the Regulator –

(a) a draft pro-forma contract in relation to the distributor, including such a draft in substitution for a pro-forma contract in relation to the distributor; or

(b) an amendment to a pro-forma contract in relation to the distributor.

(3) The Regulator –

(a) may approve a draft pro-forma contract, or an amendment to a pro-forma contract, submitted to the Regulator by the distributor under subregulation (2); or

(b) may –

(i) refuse to approve a draft pro-forma contract, or an amendment to a pro-forma contract, submitted to the Regulator by the distributor under subregulation (2); and

(ii) issue a further notice to the distributor under subregulation (1).

(4) A further notice issued to the distributor under subregulation (1) in accordance with subregulation (3)(b)(ii) is, in addition to including the

requirement set out in subregulation (1), to include a statement as to why the Regulator refused to approve the draft pro-forma contract or amendment to a pro-forma contract submitted to the Regulator in accordance with the previous notice.

(5) The Regulator may only approve under subregulation (3) a contract, or an amendment to a contract, submitted by a distributor under subregulation (2) if –

(a) the contract, or the contract as so amended, complies with the terms of the distributor's licence, the Act and these regulations; and

(b) where a scheme applies, or is intended to apply, in more than one State or Territory, the Regulator is satisfied that the contract, or the contract as so amended, is consistent with the requirements in relation to such contracts under the scheme.

(6) The Regulator is to notify a distributor as soon as practicable after approving, or refusing to approve, under subregulation (3) –

(a) a contract submitted by the distributor under subregulation (2); or

(b) an amendment, to a contract, submitted by the distributor under subregulation (2).

(7) The Regulator, as soon as practicable after approving under subregulation (3) a contract, or an amendment to a contract, is to publish in the *Gazette* a copy of the contract as so approved, or the amendment to the contract as so approved, as the case may be.

(8) A distributor must –

(a) ensure that a copy of each pro-forma contract in relation to the distributor may be viewed at a website of the distributor; and

(b) whenever a pro-forma contract in relation to the distributor, or an amendment to such a contract, as the case may be, has been approved by the Regulator, give notice, in writing, to retailers –

(i) stating that the pro-forma contract, or an amendment to the contract, has been so approved; and

(ii) specifying the electronic address of the website of the distributor at which the contract,

or the contract as so amended, as the case may be, may be viewed.

17D. Pro-forma contracts in relation to distributors

(1) A draft pro-forma default customer-distributor contract approved under regulation 17C(3) in relation to the distributor is the pro-forma default customer-distributor contract in relation to the distributor from the date on which a notice of the approval is published under regulation 17C(7).

(2) A draft pro-forma default customer-distributor contract approved under regulation 17C(3) in substitution for another contract in relation to the distributor is the pro-forma default customer-distributor contract in relation to the distributor from the date on which a notice of the approval is published under regulation 17C(7).

(3) If the Regulator approves under regulation 17C(3) an amendment to a pro-forma default customer-distributor contract in relation to the distributor, the contract, as so amended, is the pro-forma default customer-distributor contract in relation to the distributor from the date on which a notice of the approval is published under regulation 17C(7).

(4) A draft pro-forma default retailer-distributor contract approved under regulation 17C(3) in relation to the distributor is the pro-forma default retailer-distributor contract in relation to the distributor from the date on which a notice of the approval is published under regulation 17C(7).

(5) A draft pro-forma default retailer-distributor contract approved under regulation 17C(3) in substitution for another contract in relation to the distributor is the pro-forma default retailer-distributor contract in relation to the distributor from the date on which a notice of the approval is published under regulation 17C(7).

(6) If the Regulator approves under regulation 17C(3) an amendment to a pro-forma default retailer-distributor contract in relation to the distributor, the contract, as so amended, is the pro-forma default retailer-distributor contract in relation to the distributor from the date on which a notice of the approval is published under regulation 17C(7).

(7) Unless the contract specifies otherwise, the rights and responsibilities of a person under a default customer-distributor contract or a default retailer-distributor contract, in relation to –

- (a) an action; or
- (b) a failure to take an action; or
- (c) an event –

that occurs at a particular time are to be determined in accordance with the terms and conditions of the contract as at the time of the action, failure or event.

17E. Termination of default contracts

(1) A default customer-distributor contract, in relation to a single site, between a customer and a distributor terminates when whichever of the following events occurs first:

(a) the customer and the distributor enter into a connection and supply contract (other than the default customer-distributor contract) in relation to the site;

(b) the electricity supply to the site is disconnected in the relevant circumstances.

(2) A default retailer-distributor contract, in relation to a single site, between a retailer and a distributor terminates when whichever of the following events occurs first:

(a) the retailer and the distributor enter into a contract (other than the default retailer-distributor contract) in relation to the obligations of the distributor to ensure supply of electricity to the site;

(b) the electricity supply to the site is disconnected in the relevant circumstances.

(3) For the purposes of subregulation (1)(b) and subregulation (2)(b), the relevant circumstances are that the electricity supply to the site is disconnected –

(a) at the request of the customer; or

(b) because the customer has failed to comply with the contract for supply of electricity by the retailer, the default customer-retailer contract, or the default customer-distributor contract, in relation to the site; or

(c) because the customer has committed an offence in relation to the supply of electricity to the site.

(4) The termination of a contract under this regulation does not affect any obligation, rights or liabilities arising out of or accrued under the contract.

PART 4 - Retailer of Last Resort

18. Interpretation of Part

In this Part –

"pro-forma retailer of last resort contract" means a contract approved by the Regulator, and published in the *Gazette* under regulation 21, as amended or substituted from time to time under this Part;

"retailer of last resort contract" means a contract that is the result of a contractual relationship established under regulation 20(1).

19. Retailer of last resort

Aurora Energy in its capacity as the holder of a licence under the Act authorising the distribution of electricity is appointed as the retailer of last resort.

20. Establishment of retailer of last resort contract

(1) If any circumstances specified in section 49AA(2)(a) of the Act occur in respect of a retailer, a contractual relationship is established between a customer of that retailer affected by the circumstances and the retailer of last resort in respect of each single site for which the customer was supplied with any customer retail services by that retailer.

(2) A contract under subregulation (1) is to be in the form of a contract in the same terms as the pro-forma retailer of last resort contract.

(3) A retailer of last resort contract is for the supply of customer retail services by the retailer of last resort to the single site of the customer.

(4) As soon as practicable after a retailer of last resort contract is established, the retailer of last resort is to –

(a) give written notice to the customer that the retailer of last resort contract has taken effect; and

(b) give a copy of that retailer of last resort contract to the customer.

(5) On the establishment of a retailer of last resort contract –

(a) the customer becomes a customer of the retailer of last resort in accordance with the relevant NEMMCO market management systems; and

(b) NEMMCO must take any steps necessary under the

National Electricity Rules, or under the relevant NEMMCO market management systems, for the purposes of paragraph (a); and

(c) any contract for the provision of any customer retail services, by the retailer in respect of which the circumstances specified in section 49AA(2)(a) of the Act occurred, to the customer in respect of the single site is terminated without affecting any obligations, rights or liabilities arising out of or accrued under that contract.

(6) The transfer of a customer, from a retailer in respect of which a circumstance under section 49AA(2)(a) of the Act occurs to a retailer of last resort under a retailer of last resort contract, is taken to have complied with all requirements in the National Electricity Rules, and any documents made under or for the purposes of those Rules, relating to the transfer of customers.

21. Pro-forma retailer of last resort contract

(1) Subject to this regulation, the terms and conditions of a draft pro-forma retailer of last resort contract, including the price of the customer retail services, are to be determined by the retailer of last resort.

(2) A draft pro-forma retailer of last resort contract must not specify a price, or a method of determining a price, that would result in the amount paid by a customer under the contract exceeding the cost to the retailer of last resort of supplying customer retail services to the customer, taking into consideration the following amounts:

(a) the wholesale pool price;

(b) applicable distribution and transmission charges;

(c) the reasonable retail margin proposed by the retailer of last resort and approved by the Regulator;

(d) any other costs which, in the opinion of the Regulator, are incurred in connection with the provision of the customer retail services to the customer.

(3) The retailer of last resort must submit the draft pro-forma retailer of last resort contract to the Regulator.

(4) The Regulator may –

(a) approve the draft pro-forma retailer of last resort contract if the draft contract complies with the terms of the retailer of last resort's licence, the Act and these regulations; or

(b) refuse to approve the draft pro-forma retailer of last resort contract and require a substitute draft pro-forma retailer of last resort contract to be submitted to him or her.

(5) The Regulator is to notify the retailer of last resort as soon as practicable of an approval, or refusal to approve, a draft pro-forma retailer of last resort contract under subregulation (4).

(6) If the Regulator approves a draft pro-forma retailer of last resort contract under subregulation (4), the Regulator is to publish a copy of the draft pro-forma retailer of last resort contract in the *Gazette*.

(7) A pro-forma retailer of last resort contract may be amended or substituted by the retailer of last resort –

(a) obtaining the approval of the Regulator for the amendment or substitution of the pro-forma retailer of last resort contract; and

(b) after so obtaining that approval, publishing, by notice in the *Gazette*, the amendment or the substituted pro-forma retailer of last resort contract

22. Guidelines for information

(1) The Regulator is to issue guidelines in respect of information relating to a retailer of last resort contract, or the provision of customer retail services to a single site that is the subject of a retailer of last resort contract, including guidelines on the distribution of that information.

(2) Guidelines are not statutory rules within the meaning of the *Rules Publication Act 1953*.

23. Cessation of retailer of last resort contract

(1) A retailer of last resort contract terminates when the first of the following events occurs:

(a) the affected customer is supplied with electricity under a contract with a retailer in respect of the single site covered by the retailer of last resort contract;

(b) the electricity supply to the single site covered by the retailer of last resort contract is disconnected;

(c) the period of 3 months, commencing on the day on which the retailer of last resort contract is established, expires.

(2) The termination of a retailer of last resort contract does not affect any

obligations, rights or liabilities arising out of or accrued under that contract.

Displayed and numbered in accordance with the [Rules Publication Act 1953](#).

Notified in the *Gazette* on 3 August 2005.

These regulations are administered in the Department of Treasury and Finance.