

NATIONAL ENERGY RETAIL LAW

SECTION 105

SURRENDER OF RETAILER AUTHORISATION TE12032

**TO: Powerdirect Pty Ltd
c/o AGL Energy Limited
Level 24
200 George Street
Sydney NSW 2000**

The Australian Energy Regulator (**AER**) has, on the application of Powerdirect Pty Ltd (ABN 28 067 609 803) (**Powerdirect**) on 9 September 2022, decided to approve Powerdirect's surrender of retailer authorisation TE12032 (**the surrender**).

Pursuant to section 105 of the *National Energy Retail Law*, the AER has decided:

1. that the surrender shall take effect on 2 March 2023; and
2. to impose on Powerdirect the conditions specified in Schedule 1.

The reasons for imposing the conditions specified in Schedule 1 on Powerdirect are set out in Schedule 2.

When providing the information specified in clauses 1, 12 and 13 of Schedule 1, the AER requires Powerdirect to provide the information by either:

- a) sending the information to the AER at the following electronic address AERauthorisations@aer.gov.au marked to the attention of AER Compliance and Enforcement – Rowena Park (noting that file attachments larger than 20MB will not be accepted by the ACCC/AER email server), or
- b) uploading the information to the AER's secure file sharing service using the link to be provided by the AER and marked to the attention of AER Compliance and Enforcement – Rowena Park.



Catriona Lowe
15 September 2022

Board member
Australian Energy Regulator

SCHEDULE 1

CONDITIONS IMPOSED ON POWERDIRECT

1. Powerdirect must notify the AER, in writing, within five business days after it has transferred all of its electricity customers from:
 - (a) a market retail contract or standard retail contract that each of Powerdirect's electricity customers entered into with Powerdirect (**Powerdirect Retail Contract**)
to:
 - (b) a market retail contract or standard retail contract entered into with:
 - (i) AGL Sales Pty Limited (ABN 88 090 538 337) or AGL South Australia Pty Ltd (ABN 49 091 105 092) (**AGL**) (**AGL Retail Contract**); or
 - (ii) another authorised retailer.
2. Subject to condition 3, Powerdirect must ensure that, for each Affected Customer¹ who is transferred, the terms and conditions that are included in the Powerdirect Retail Contract and the AGL Retail Contract in relation to:
 - (a) non-price matters, are the same as the contract previously entered into with Powerdirect except in relation to any exit fees or early termination fees which are not to apply within the first nine months of an Affected Customer being transferred to an AGL Retail Contract; and
 - (b) price matters, are the same as the contract previously entered into with Powerdirect unless those terms and conditions in the AGL Retail Contract provide for a price that is effectively lower than the price the Powerdirect Retail Contract provided for.
3. For customers who are on a Powerdirect Retail Contract that included a GreenPower component, Powerdirect must ensure that:
 - (a) the cost of the GreenPower component in the AGL Retail Contract will not exceed what the customer was charged under the Powerdirect Retail Contract for that offering for a period of at least 24 months
 - (b) the requirement in paragraph 3(a) may be achieved by application of a credit to the customer account to the value of the difference between the AGL GreenPower offering and the Powerdirect GreenPower offering.
4. Powerdirect must ensure that the following information is recorded in AGL's systems:
 - (a) whether the Affected Customer, on the day before the day the Affected Customer is to be transferred to an AGL Retail Contract is:
 - (i) on a payment plan in accordance with rule 33(1) of the *National Energy Retail Rules* (**Powerdirect Payment Plan**);
 - (ii) participating in Powerdirect's hardship program as set out in Powerdirect's current hardship policy approved by the AER on 10 February 2012 (**Powerdirect Hardship Policy**); and

¹ For the purposes of the *conditions imposed on Powerdirect*, an affected customer is defined as each customer who will be transferred from Powerdirect to AGL following the approval of surrender of Powerdirect's electricity retailer authorisation.

- (iii) registered at a premises that has life support equipment in accordance with Part 7 of the *National Energy Retail Rules (NERR)*, irrespective of whether any process pursuant to sections 124A and 125(4) and 125(5) of NERR has commenced.
 - (b) for each Affected Customer who is recorded as being on a Powerdirect Payment Plan under paragraph 4(a)(i):
 - (i) the payment amount and frequency;
 - (ii) the commencement and expiry date of the payment plan; and
 - (iii) any outstanding payment amounts owing on the payment plan to Powerdirect on the day before the day the Affected Customer is transferred to an AGL Retail Contract; and
 - (c) for each Affected Customer who is recorded as participating in the Powerdirect Hardship Policy under paragraph 4(a)(ii), the details of the assistance that is provided to them.
5. Powerdirect must ensure, for each Affected Customer who is recorded as:
- (a) being on a Powerdirect Payment Plan under paragraph 4(a)(i); or
 - (b) participating in the Powerdirect Hardship Policy under paragraph 4(a)(ii),
- upon being transferred to the AGL Retail Contract, is not required to reapply to:
- (a) be on a payment plan with AGL; or
 - (b) participate in the current AGL hardship policy approved by the AER on 25 July 2019 (**AGL Hardship Policy**),
- on the same terms as the Powerdirect Payment Plan and substantially the same and no less favourable terms as the Powerdirect Hardship Policy.
6. Powerdirect must ensure, for each Affected Customer who is recorded as:
- (a) being on a Powerdirect Payment Plan under paragraph 4(a)(i); or
 - (b) participating in the Powerdirect Hardship Policy under paragraph 4(a)(ii),
- upon being transferred to the AGL Retail Contract, is informed in writing of the details of their:
- (a) payment plan with AGL; and
 - (b) participation in the AGL Hardship Policy.
7. For each Affected Customer who is using Centrepay as a payment option immediately prior to the transfer to an AGL Retail Contract, Powerdirect must ensure that, within the first six months of an Affected Customer being transferred to an AGL Retail Contract, AGL does not cancel a payment plan in circumstances where:
- (a) there has been non-payment in respect of the Affected Customer; and
 - (b) the non-payment is a result of disruption to the Affected Customer's Centrepay arrangements caused by the transfer process.
8. For each Affected Customer who is transferred from a Powerdirect Retail Contract to an AGL Retail Contract, Powerdirect must ensure that as soon as practicable after the Affected Customer

is transferred to an AGL Retail Contract and in any event before 1 February 2023, each Affected Customer is provided with correspondence, that:

- (a) informs the Affected Customer they are no longer a customer of Powerdirect and are now a customer of AGL;
 - (b) states in a prominent and clearly identifiable manner words to the effect that the Affected Customer can transfer from AGL to a new retailer;
 - (c) states in a prominent and clearly identifiable manner that Energy Made Easy is the Australian Government's independent website where customers can compare electricity and gas offers to find the right energy plan for them and that unlike some commercial switching websites Energy Made Easy shows all generally available offers and does not take commission from retailers; and
 - (d) includes a prominent and clearly named hyperlink directly below the information referred to in paragraph 8(c) to <https://www.energymadeeasy.gov.au>.
9. In the correspondence referred to in 8 above, Powerdirect must ensure that for each Affected Customer that had a Powerdirect Retail Contract that included a GreenPower component, the correspondence:
- (a) states that the Affected Customer has been transferred to an AGL Retail Contract that does include a GreenPower component and an explanation of how any credit referred to in paragraph 3(b) will work, and
 - (b) provide the Affected Customer with information about AGL's GreenPower product offering and any price terms and conditions associated with that GreenPower product offering, subject to the customer not being charged for the GreenPower component for a period in accordance with paragraph 3(a).
10. Within five business days after being transferred from a Powerdirect Retail Contract to an AGL Retail Contract, Powerdirect must ensure that for each Affected Customer who is recorded as registered at a premises that has life support equipment under paragraph 4(a)(iii), the relevant distributor is notified that the Affected Customer has changed retailer to AGL but continues to require life support equipment at the premises.
11. For each Affected Customer who is transferred from a Powerdirect Retail Contract to an AGL Retail Contract, Powerdirect must ensure the AGL Retail Contract is not terminated without the agreement of the Affected Customer for a period of at least nine months from the date the Affected Customer is transferred to the AGL Retail Contract.
12. Powerdirect must ensure that any objections, concerns or complaints received by Powerdirect or AGL from an Affected Customer, in relation to the transfer of an Affected Customer or the intention of an Affected Customer to transfer from AGL to a new retailer, are recorded in AGL's systems and can be produced to the AER on request.
13. Within six months of the last Affected Customer being transferred to the AGL Retail Contract, Powerdirect must provide the AER with a report signed by the AGL Head of Compliance, Risk and Assurance (or equivalent position holder) that states whether Powerdirect has complied with the conditions set out in paragraphs 2 to 12 above and evidence such compliance if requested by the AER.

SCHEDULE 2

REASONS FOR IMPOSING CONDITIONS ON POWERDIRECT

The Australian Energy Regulator (**AER**) has considered an application from Powerdirect Pty Ltd (**Powerdirect**) (ABN 28 067 609 803) to surrender its electricity retailer authorisation in accordance with the National Energy Retail Law (**Retail Law**). The AER may decide to approve the surrender of a retailer authorisation if it is satisfied that arrangements relating to the surrender will appropriately manage the transfer of any retail customers. Powerdirect is seeking to surrender its electricity authorisation, which it has held since 1 July 2012.

AGL acquired Powerdirect in February 2007. The application for surrender of Powerdirect's electricity retailer authorisation sets out processes for the transfer of all existing Powerdirect customers to AGL Group market participant IDs in the national wholesale market. All existing Powerdirect customers will be transferred to AGL Sales Pty Ltd (an authorised retailer), except for electricity customers in South Australia who will be transferred to AGL South Australia Pty Ltd (also an authorised retailer).

The *AER Retailer Authorisation Guidelines Version 2, December 2014* sets out the principles that the AER will consider in deciding whether to approve an application to surrender a retailer authorisation, namely that:

- any customer transfers arising from the surrender are managed appropriately, as required by the Retail Law, and that customers have continuity of supply;
- customers do not suffer unnecessary detriment as a result of being transferred to another retailer (particularly where customers may not have the opportunity to provide their explicit informed consent for the transfer); and
- customers have all the necessary information to make an informed choice about their energy service.

The AER has decided to approve the surrender of the retailer authorisation because it considers that the arrangements for the future transfer of all of Powerdirect's electricity customers are appropriate. Specifically, the AER considers that the arrangements in place, which provide for the transfer of Powerdirect customers to AGL, are appropriate to manage the continuity of energy supply to these customers and to ensure that affected customers are made aware of the surrender of Powerdirect's authorisation, and how the surrender may affect particular customers.

In deciding to approve the surrender of a retailer authorisation, the AER:

- (a) may, after consulting the Australian Energy Market Operator (**AEMO**), impose conditions for the transfer of customers to another retailer; and
- (b) must fix a time, no later than 6 months after deciding the application, for the surrender to take effect.

The AER has consulted with AEMO as required by the Retail Law.

In consultation with AEMO, the AER has decided to place several conditions on the surrender of Powerdirect's retailer authorisation. These conditions are designed to facilitate the smooth transfer of customers to AGL and to ensure that previous Powerdirect customers are not disadvantaged by the transfer to AGL.

Any customer transfers arising from the surrender are managed appropriately, as required by the Retail Law, and that customers have continuity of supply

The AER was satisfied that Powerdirect had sufficient arrangements to ensure that customer transfers are appropriately managed, and customers have continuity of supply.

The AER was satisfied that Powerdirect has put in place processes and systems to ensure continuity of supply including engaging with third parties (distributors and AEMO) and conducting trials and

testing of systems to ensure customer transfers are appropriately managed and customers have continuity of supply. AGL has also assured the AER it has systems in place to manage customer queries or concerns regarding the transfer.

To formalise these arrangements, the AER has decided to place reporting requirements on Powerdirect. For example, Powerdirect must notify the AER of the successful transfer of all Powerdirect customers to AGL (or to other retailers, where the customer has elected to switch). This will ensure that all customers have been transferred before the surrender of Powerdirect's authorisations takes effect. The AER has also required Powerdirect to provide a report stating whether it has complied with the conditions of surrender and to record evidence of compliance. Powerdirect must also record any objections, concerns or complaints received by Powerdirect or AGL from an Affected Customer in relation to the conduct of customer transfers or in relation to a customer's intention to transfer from AGL.

Customers do not suffer unnecessary detriment as a result of being transferred to another retailer

The AER was satisfied that the arrangements proposed by Powerdirect as part of its application, together with conditions imposed by the AER, are sufficient to ensure that customers do not suffer unnecessary detriment.

AGL has advised that all customers, except customers with a GreenPower component, will be migrated across to AGL with no change to their contract terms and conditions, rates or fees. Powerdirect will transfer customers that have a contract with a GreenPower component to an AGL Retail Contract with a GreenPower component. AGL has advised that the cost of the GreenPower component in the AGL Retail Contract for these customers will not exceed what the customer was charged under the Powerdirect Retail Contract for that offering for a period of at least 24 months. AGL may achieve this by applying a credit to the customer account to the value of the difference between the AGL GreenPower offering and the Powerdirect GreenPower offering.

This commitment has been supported by a condition requiring that all customers must be able to access contracts which provide at least the same terms and conditions (including price) as the customer's previous contract with Powerdirect. The AER is satisfied that customers will not suffer unnecessary detriment as a result of this proposal.

Further, the AER has placed a condition on Powerdirect that customers transferred as part of the retailer authorisation surrender must not be charged early termination fees for at least 9 months after the customers are transferred, should the customer elect to transfer to another retailer. In addition, these customers cannot be terminated from the contract they have transferred to for a period of at least 9 months without customer agreement. The AER considers that these conditions will provide time for customers to identify whether their market contract is suitable for their needs and limit the potential for unnecessary detriment to customers.

Additionally, the AER has imposed a number of conditions on Powerdirect which relate to the recording of details around customers' payment plans, hardship assistance and life support requirements. Customers on a payment plan or participating in hardship policies are not required to reapply to AGL to be on a payment plan or hardship policy on the same terms as their payment plan or substantially the same terms and no less favourable as their participation in the hardship program.

The AER has also imposed a condition to ensure there is no unnecessary detriment for Powerdirect customers who are on payment plans and use Centrepay. Powerdirect must ensure that, within the first 6 months of an affected customer being transferred to AGL, a payment plan is not cancelled in circumstances where there has been non-payment due to disruption caused by the transfer process.

Further, the AER has placed a condition that for each affected customer recorded by Powerdirect as registered at a premises that has life support equipment, that within five business days following the transfer, Powerdirect will notify the relevant distributor that the affected customer has changed retailer but continues to require life support equipment at the premises.

Customers have all the necessary information to make an informed choice about their energy service

In a circumstance where affected customers may not make an active choice to transfer to AGL, the AER considers that customers should have sufficient information to make an informed choice about their energy services. This should include suitable information about their contract changes and the options available to them.

The AER is aware that Powerdirect has already been providing information to its customers regarding the transfer and relevant contact details should customers wish to opt out of the transfer to AGL. In addition, the AER has decided that Powerdirect must ensure affected customers receive correspondence, informing them that they are now AGL customers and can compare energy deals offered by other retailers and provide a link to Energy Made Easy, the Australian Government's independent comparator website.

Once transferred to AGL, Powerdirect GreenPower customers will receive correspondence, informing them that they are now AGL GreenPower contract customers, and they can compare energy deals offered by other retailers and provide a link to Energy Made Easy.

The surrender of Powerdirect's electricity authorisation will take effect on **2 March 2023**. Until this time, Powerdirect is still an authorised retailer and will need to continue to satisfy its retailer obligations, including maintaining its ombudsman membership and continuing to comply with its obligations relating to notifying customers of their dispute resolution rights.