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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

NATIONAL ENERGY RETAIL LAW (ACT) REGULATION 2012

SL2012-29

EXPLANATORY STATEMENT

**Presented by
Simon Corbell MLA
Environment and Sustainable Development**

Overview

The *National Energy Retail Law (ACT) Regulation* (the **Regulation**) prescribes regulations under the *National Energy Retail Law (ACT) 2012* (the **Act**).

The purpose of the Regulation is to provide for the following, as a consequence of the commencement of *National Energy Retail Law (ACT) 2012*:

- a) to prescribe the operation of the National Energy Retail Law (NERL) in the border area of the ACT that is serviced by a New South Wales (NSW) electricity distribution network (Essential Energy) that extends into the ACT;
- b) to prescribe requirements that a retailer or distributor must comply with in relation to connection and re-energisation of premises;
- c) to apply certain voluntary ('opt-in') parts of the NERL including allowing the sale of energy to small customers using prepayment meter systems and adopting the price comparator website administered by the Australian Energy Regulator (**AER**);
- d) to prescribe other minor matters relevant to transitional arrangements.

This Regulation is made under the *National Energy Retail Law (ACT) 2012*, section 23 (regulation making power), section 63 (transitional regulations) and under the *National Gas (ACT) Act 2008*, section 18 (regulation – making power), section 21 (Access arrangements to Pipelines in the Act) and section 22 (Transitional Regulations).

Human Rights Implications

The Regulation does not contain provisions which engage rights under the *Human Rights Act 2004*.

Regulatory Impact Statement

Under section 9(4) of the *National Energy Retail Law (ACT) 2012* a regulatory impact assessment is not required for this regulation. A comprehensive regulatory impact assessment, incorporating extensive consultation with industry and government stakeholders, was undertaken nationally during the development of NERL.¹ The subject matter of this regulation was addressed in this regulatory impact assessment.

¹ This can be found at http://www.ret.gov.au/Documents/mce/documents/Energy%20Market%20Reform/decision_ris_necf.pdf

Clause Notes

Part 1 Preliminary

Clause 1 states that this regulation is the *National Energy Retail Law (ACT) Regulation 2012*.

Clause 2 provides for the commencement of the regulation. The regulation commences on the day *National Energy Retail Law (ACT) Act 2012* commences. The commencement notice for the *National Energy Retail Law (ACT) Act 2012* prescribes 1 July 2012 as the date of commencement for the *National Energy Retail Law (ACT) Act 2012*.

Clause 3 provides for the dictionary appearing at the end of the regulation to be part of the regulation.

Clause 4 explains that notes included in the regulations are explanatory and are not in themselves part of the regulation.

Part 2 Provisions for the Act

Division 2.1 Border area arrangements

Clause 5 prescribes the local energy retail law for the purposes of section 15 of the Act. Local energy retail law is defined in the Act and includes the *National Energy Retail Law (ACT)*. This prescription is necessary for the terms of the exemptions located in clause 7 below.

Clause 6 prescribes the NSW energy retail law for the purposes of section 15 of the Act. NSW energy retail law is defined in the Act and includes *National Energy Retail Law (NSW)*.² This prescription is necessary for the terms of the prescriptions located in clause 7 below.

Clause 7 prescribes the operation of the National Energy Retail Law in the small border area of the ACT serviced by Essential Energy, a NSW electricity distributor (currently less than 20 connections). These provisions require Essential Energy (as distributor) and Origin Energy Electricity Limited (Origin) (as retailer on that network) to comply with the *National Energy Retail Law (NSW)*, instead of the *National Energy Retail Law (ACT)*. This has the effect of applying the *National Energy Retail Law (NSW)* to ACT customers and premises on that network as if it were a Territory Law.

² see section 4, *National Energy Retail Law (Adoption) Act 2012* (NSW)

Clause 7(1) provides that the local energy retail law does not apply, but the NSW energy retail law applies, to Origin in relation to the sale and supply of electricity to premises in the ACT connected to the distribution system of Essential Energy on the basis that Origin:

- a) holds a retailer authorisation under the *National Energy Retail Law (NSW)*;
- b) carries out the functions of a local area retailer under *National Energy Retail Law (NSW)* in relation to the sale and supply of electricity to those premises as if it were a local area retailer under that Law for those premises.

This clause does not apply to Origin until such time as the *National Energy Retail Law (NSW)* is commenced by NSW (**clause 7(3)**). Until that time, Origin will comply with the *National Energy Retail Law (ACT)* and is nominated as the Local Area Retailer for that part of the Essential Energy network located in the ACT (see clause 16) for that interim period. This transitional requirement was necessary to accommodate NSW's delayed start of the NECF.

Clause 7(2) provides that the local energy retail law does not apply, but the NSW energy retail law does apply, to Essential Energy in relation to the supply of electricity to premises in the ACT connected to its distribution system. On a transitional basis only, until the *National Energy Retail Law (NSW)* is commenced by NSW, the reference to NSW energy retail law in this clause is taken to be a reference to the jurisdictional energy legislation of NSW (see clause 17). This transitional requirement was necessary to accommodate NSW's delayed start of the NECF.

Clause 7(3) provides that clause 7(1) does not apply to Origin until such time as the *National Energy Retail Law (NSW)* is commenced by NSW.

Clause 7(4) provides clause 7(3) and clause 7(4) will expire on the day the *National Energy Retail Law (NSW)* commences. This is because they will have been spent by that time and clause 7(1) provides the relevant cross border prescriptions for Origin once the *National Energy Retail Law (NSW)* is commenced by NSW.

Clause 8 requires a distributor to restore the supply of energy, after a planned interruption, no later than 12 hours after the start of the interruption. Part 4, Division 6 of the National Energy Retail Rules (**NERR**) provide for distributor requirements in relation to interruptions to supply. Under Rule 90(3) an energy distributor must use its best endeavours to restore the customer's supply as soon as possible in relation to planned interruptions. The ACT has an existing additional condition that requires distributors to comply with a 12 hour timeframe for the restoration of supply in relation to planned interruptions. This consumer protection has been preserved and the obligation is in addition to the distributor's obligations under the NERR.

Clause 9 requires NERL retailers and distributors to discharge certain obligations they have under the NERR in relation to re-energisation within particular timeframes.

Where a NERL retailer is required to arrange for re-energisation of a small customer's premise under the *National Energy Retail Law (ACT)*, **clause 9(1)** requires the NERL retailer to make the request for re-energisation to a distributor as soon as practicable but not later than within 24 hours after the obligation to initiate the request under the *National Energy Retail Law (ACT)* arose. Rule 121 of the NERR obliges a retailer to arrange the re-energisation of premises where certain conditions are met. The Rule makes provision for the obligation to arrange re-energisation to be discharged in accordance with energy laws, which include regulations made under an application act. Similar to clause 8, clause 9(1) preserves a pre-existing ACT consumer protection in addition to the distributor's obligations under the NERR.

Clause 9(2) provides for specific timeframes that a distributor is required to re-energise a small customer under the *National Energy Retail Law (ACT)*:

- a) if the request to re-energise is initiated or made before 2.00 pm on a business day, on that day (or as agreed with the customer);
- b) if the request to re-energise is initiated or made after 2.00 pm on a business day, the next business day (or as agreed with the customer); or
- c) if there is a timeframe (however described) for re-energisation in the distributor service standards, that timeframe.

Similar to clause 8 and clause 9(1), clause 9(2) preserves a pre-existing ACT consumer protection in addition to the distributor's obligations under the NERR.

Part 3 Provisions for the National Energy Retail Law (ACT)

Clause 10 nominates ActewAGL Retail as the Local Area Retailer for premises in the ACT connected to the distribution system of ActewAGL Distribution. Section 11 of the Act requires these nominations to be made by regulation under a jurisdiction's application act.

Clause 10(2) provides relevant definitions for the purposes of this clause.

Clause 11 permits the use of a prepayment meter system of the sale of energy to small customer in the ACT for the purposes of section 56(2) of the *National Energy Retail Law (ACT)*. This clause continues the existing policy for prepayment meters in the ACT.

Clause 12 applies the price comparator provisions in section 62 of *National Energy Retail Law (ACT)* to the ACT.

Clause 13 applies section 63(b) *National Energy Retail Law (ACT)* (which provide for the Australian Energy Regulators' information gathering powers for pricing guidelines and the price comparator) to NERL retailer operating in the ACT.

Part 4 Modifications of National Energy Retail Rules

Clause 14 provides that those provisions of the National Energy Retail Rules listed in Schedule 1 apply in the Act with the modifications detailed in that Schedule. Only one rule is being modified. The customer category of small market offer customer that exists under the National Energy Retail Law is not being adopted in the ACT. A consequential amendment to a rule was therefore necessary.

Part 5 Transitional

Clause 15 provides that this regulation and any other applicable consumer law have effect despite the provisions of an access arrangement in relation to a pipeline located in the ACT that was in force under the *National Gas (ACT) Law* immediately before the commencement of section 21 of the *National Gas (ACT) Act 2008*.

Section 21 of the *National Gas (ACT) Act 2008* provides for a regulation to provide that an applicable consumer law has effect despite the provisions of an access arrangement in relation to a pipeline located in the ACT that was in force under the *National Gas (ACT) Law* immediately before the commencement of this section. An applicable consumer law is defined as being a regulation mentioned in subsection (1), *National Gas (ACT) Law* (and its instruments), or the *National Energy Retail Law (ACT)* (and its instruments).

As part of the implementation of the National Energy Retail Law, *National Gas Rules* (which are made under the *National Gas Law*, as applied by the *National Gas (ACT) Act 2008*) will implement a new connections framework. This regulation ensures the seamless operation of transitional arrangements that will be in place for the ACT gas distributor in relation to the new connections framework, and will ensure that its current access arrangements are left undisturbed.

Clause 16 nominates Origin as the local area retailer for electricity for premises in the ACT connected to the distribution system of Essential Energy, on a transitional basis only, from the date the regulation commences until the day the *National Energy Retail Law (NSW)* commences. At that time, clause 7(1) provides the relevant cross border prescriptions for Origin.

Clause 17 provides, on a transitional basis only, that a reference to NSW energy retail law in clause 7 (and effectively clause 7(2)) is taken to be a reference to the existing jurisdictional energy legislation of NSW until such time as the *National Energy Retail Law (NSW)* commences.

Schedule 1 outlines that the modification of rule 16(2)(b) of the National Energy Retail Rules is modified for its application in the ACT by omitting the words ‘unless the customer is a small market offer customer’. See further clause 14 above.