



National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018 No. 2

under the National Energy Retail Law as applied by:

- (a) the National Energy Retail Law (South Australia) Act 2011 of South Australia;
- (b) the National Energy Retail Law (ACT) Act 2012 of the Australian Capital Territory;
- (c) the National Energy Retail Law (Adoption) Act 2012 of New South Wales;
- (d) the National Energy Retail Law (Queensland) Act 2014 of Queensland;
- (e) the National Energy Retail Law (Tasmania) Act 2012 of Tasmania; and
- (f) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Energy Retail Law.

John Pierce
Chairman
Australian Energy Market Commission

National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018 No. 2

1 Title of Rule

This Rule is the National Energy Retail Amendment (Preventing discounts on inflated energy rates) Rule 2018 No. 2.

2 Commencement

This Rule commences operation on 1 July 2018.

3 Amendment of the National Energy Retail Rules

The National Energy Retail Rules are amended as set out in Schedule 1.

Schedule 1 Amendments of the National Energy Retail Rules

(Clause 3)

[1] Part 1 Introduction and definitions

In rule 3, insert the following definition in alphabetical order:

dual fuel market contract means:

- (a) one market retail contract between a small customer and a retailer for the sale of both electricity and gas by the retailer to the small customer; or
- (b) two market retail contracts with the same small customer, one for the sale of electricity and the other for the sale of gas to the customer, where the prices or conditions of one or both contracts are contingent on the customer entering into both contracts.

[2] Rule 45A Definitions

Insert the following definitions in alphabetical order in rule 45A:

dual fuel standing offer means a standing offer for the supply of both electricity and gas.

energy payment means any payment or credit by a retailer to a small customer for products or services provided by the small customer to the retailer under a market retail contract or a standard retail contract, for example a feed-in arrangement or demand reduction arrangement.

energy rate means any tariff or charge that is a component of the market offer prices under a market retail contract, or of the standing offer prices under a standard retail contract, but in each case excluding charges that are fees (including penalties).

Note 1:

Energy rates relate to the period or amount of energy consumption, such as daily charges and kilowatt hour charges.

Note 2:

Examples of fees for the purposes of this definition are account establishment fees, special meter read fees, new meter fees, credit card payment fees, late fees, and early termination fees.

[3] New Rule 46B Energy rates – discounting practices

After rule 46A, insert:

46B Energy rates – discounting practices

- (1) A retailer must not include any term or condition in a market retail contract (other than a *dual fuel market contract*) with a small customer that applies a price discount to an energy rate under the contract if, on the date the small customer enters into the contract:
 - (a) there is an equivalent standing offer, as defined in subrule (3);
 - (b) without taking into account any price discounts, at least one energy rate under the market retail contract exceeds the equivalent component of the energy rate under the equivalent standing offer;
 - (c) without taking into account any price discounts, no energy rate under the market retail contract is lower than the equivalent component of the energy rate under the equivalent standing offer; and
 - (d) the level or rate of every energy payment under the market retail contract (if any) is equal to or lower than the level or rate of the equivalent energy payment under the equivalent standing offer.

- (2) A retailer must not include any term or condition in a *dual fuel market contract* with a small customer that applies a price discount to an energy rate under the contract if, on the date the small customer enters into the contract:
 - (a) there is an equivalent standing offer in either of the following forms:
 - (i) a dual fuel standing offer, if the conditions for equivalence specified in subrule (3) are met in relation to that standing offer; or
 - (ii) a standing offer for electricity and a standing offer for gas, if the conditions for equivalence specified in subrule (3) are met in relation to both of those standing offers;
 - (b) without taking into account any price discounts, at least one energy rate in respect of the supply of either electricity or gas under the *dual fuel market contract* exceeds the equivalent component of the energy rate under the equivalent standing offer;
 - (c) without taking into account any price discounts, no energy rate in respect of the supply of either electricity or gas under the *dual fuel market contract* is lower than the equivalent component of the energy rate under the equivalent standing offer; and
 - (d) the level or rate of every energy payment under the *dual fuel market contract* (if any) is equal to or lower than the level or rate of the equivalent energy payment under the equivalent standing offer.

- (3) For the purposes of subrules (1) and (2), a standing offer is an equivalent standing offer with respect to a market retail contract, including a *dual fuel market contract*, if the following conditions are satisfied:
- (a) the retailer making the standing offer is the retailer providing the market retail contract, or is a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) of that retailer;
 - (b) the standing offer and the market retail contract would be available to the same small customer, if the retailer was the designated retailer for the small customer's premises;
 - (c) in relation to energy rates and energy payments, without taking into account any price discounts, there are no material differences between the tariff structure of the standing offer and the tariff structure of the market retail contract, subject to subrule (4); and
 - (d) without taking into account any price discounts, the market retail contract provides no material additional benefit or service to the customer compared to the standing offer.
- (4) For the purposes of subrule (3)(c), there is a material difference between the tariff structure of a standing offer and the tariff structure of a market retail contract if:
- (a) the standing offer is a dual fuel standing offer and the market retail contract is not a *dual fuel market contract*; or
 - (b) the market retail contract contains provisions that prevent the retailer varying any of the energy rates or energy payments under the market retail contract for a period of at least 12 months from the date of entry into the market retail contract.

[4] Rule 48B Benefit change notice guidelines

In subrule 48B(3)(c)(iv), omit “dual fuel contracts (as defined in rule 117(1))” and substitute “*dual fuel market contracts*”.

[5] Rule 117 Timing of de-energisation where dual fuel contract

In Part 6, Division 2, omit rule 117 and substitute:

117 Timing of de-energisation where dual fuel market contract

(1) Application of this rule

This rule applies where a retailer and a customer have entered into a *dual fuel market contract* for the customer's premises and the retailer has the right to arrange for de-energisation of the premises under this Division.

(2) **De-energisation of gas supply**

Despite any other provision of this Division, the retailer may exercise the right to arrange for de-energisation of the customer's gas supply in accordance with timing determined under the *dual fuel market contract*.

(3) **De-energisation of electricity supply**

The retailer may exercise the right to arrange for de-energisation of the customer's electricity supply in accordance with timing determined under the *dual fuel market contract* but no earlier than 15 business days after the date of the de-energisation of the customer's gas supply under subrule (2).

(4) **Restrictions on de-energisation not affected**

Nothing in this rule affects the operation of rule 116.

[END OF RULE AS MADE]
