

NATIONAL ENERGY RETAIL LAW

SECTION 308

INFRINGEMENT NOTICE ISSUED TO

IPOWER PTY LIMITED

TO: IPower Pty Limited
ACN 111 267 228
Rialto South Tower
Level 33, 525 Collins St
Melbourne VIC 3000

Infringement Notice No.: AER11-2015

1. The Australian Energy Regulator (**AER**):
 - (a) has reason to believe that IPower Pty Limited (ACN 111 267 228), which is a *retailer* within the meaning of the *National Energy Retail Law* (**Retail Law**), has breached section 38(b) of the Retail Law, in the manner set out in Schedule 1 to this Infringement Notice (**the alleged breach**); and
 - (b) has decided to serve this Infringement Notice on IPower Pty Limited under section 277 of the National Gas (NSW) Law being the Schedule to the *National Gas (South Australia) Act 2008* (**National Gas Law**) as applied by section 308 of the Retail Law.
2. Section 38 of the Retail Law is a civil penalty provision within the meaning of the Retail Law.
3. The infringement penalty is \$20,000.

**WHAT CAN IPOWER PTY LIMITED DO IN RESPONSE TO THIS
INFRINGEMENT NOTICE?**

4. IPower Pty Limited can choose whether or not to comply with this Infringement Notice. If IPower Pty Limited chooses not to comply with this Infringement Notice, the AER may commence proceedings against it in relation to the alleged breach. IPower Pty Limited is entitled to disregard this Infringement Notice and to defend any proceedings in respect of the alleged breach.
5. If IPower Pty Limited chooses to comply with this Infringement Notice, it must pay the infringement penalty by **6 November 2015**, being not less than 28 days from the date of service of this Infringement Notice, beginning on the day after the day on which this Infringement Notice is served (**the compliance period**).
6. To ensure payment is made in accordance with this Infringement Notice, payment must be received on or before **6 November 2015**.

7. If IPower Pty Limited pays the infringement penalty within the compliance period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the National Gas Law as applied by section 308 of the Retail Law.

HOW DOES IPOWERTY LIMITED PAY THE INFRINGEMENT PENALTY?

8. IPower Pty Limited may pay the \$20,000 infringement penalty in two ways:
- (a) by cheque made out to the "ACCC Official Administered Account",* enclosing a copy of this Infringement Notice to:

Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

you should allow at least 5 business days for payment to be received

or

- (b) by electronic funds transfer to the following account:*

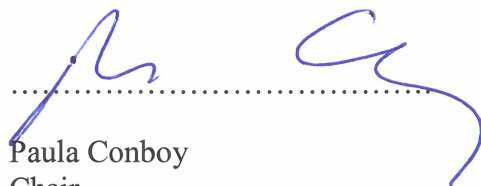
Account name: ACCC Official Administered Account
BSB: 032-730
Account: 146550
Description: AER11-2015

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

- * The Australian Competition and Consumer Commission handles the receipt of infringement penalty payments for the AER.

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

DATE OF ISSUE: 7 October 2015



Paula Conboy
Chair
Australian Energy Regulator

SCHEDULE 1

MATTERS CONSTITUTING AN ALLEGED BREACH OF A CIVIL PENALTY PROVISION: SECTION 38(b) OF THE NATIONAL ENERGY RETAIL LAWS

1. IPower Pty Limited (**IPower**) is a 'retailer' within the meaning of section 2 of the National Energy Retail Law (**Retail Law**).
2. By reason of section 38(b) of the Retail Law, IPower must obtain the explicit informed consent of a small customer for the entry by the customer into a market retail contract with the retailer.
3. At all material times, IPower, jointly with IPower 2 Pty Limited, by their agent Energy Deal Pty Limited (**Energy Deal**), engaged in telephone marketing for the purpose of entering customers into market retail contracts.
4. On 5 November 2014, a door to door sales representative of Energy Deal attended at the premises of [REDACTED] (the **Property**) in the State of New South Wales and spoke with a person at the Property. That person was the 14 year old daughter of [REDACTED], the tenant of the Property.
5. On 5 November 2014, during or immediately after the door to door sales representative's attendance at the Property, a telephone sales representative of Energy Deal telephoned and spoke to the daughter of [REDACTED] for the purpose of entering her into a market retail contract with IPower.
6. During the telephone conversation, the telephone sales representative entered [REDACTED] into a market retail contract with IPower.
7. The telephone sales representative did not obtain [REDACTED] explicit informed consent for the market retail contract.
8. At all material times during the telephone conversation it was reasonably apparent to the telephone sales representative that the person she was speaking to was not [REDACTED] as it was known to the telephone sales representative that:
 - 8.1. [REDACTED] was 42 years old woman;
 - 8.2. the person she was speaking to was a young girl;
 - 8.3. the person she was speaking to did not know whether she was the owner or renter of the Property;
 - 8.4. the person she was speaking to asked no questions about the nature of the transaction; and
 - 8.5. at times the person she was speaking to was confused or uncertain about the nature of the telephone call that she was engaged in.