

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.: AER24-2016

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 **16 January 2017**, being not less than 28 days from the date of service of this Infringement Notice, and 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 **16 January 2017**.

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period, the AER will not institute proceedings in respect of the alleged breach unless the Infringement Notice is withdrawn before the end of the compliance period in accordance with section 282 of the National Gas Law as applied by section 308 of the Retail Law.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: AER24-2016

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

* The Australian Competition and Consumer Commission handle the receipt of infringement penalty payments for the AER on behalf of the Commonwealth of Australia. All payments received are paid into the Consolidated Revenue Fund.

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: 8 December 2016


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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. IPower, jointly with IPower 2 Pty Limited, by their agent Smart Utilities Pty Limited (Smart Utilities), engaged in telephone marketing for the purpose of entering customers into market retail contracts. At all material times, Smart Utilities and its telephone sales representatives acted on behalf of IPower.
4. On 30 March 2015, a telephone sales representative of Smart Utilities telephoned [REDACTED] for the purpose of entering him into a market retail contract with IPower.
5. During the telephone conversation, the telephone sales representative entered [REDACTED] into a market retail contract with IPower.
6. The telephone sales representative of Smart Utilities did not obtain [REDACTED] explicit informed consent to enter into a market retail contract. In particular:
 - a. During the telephone conversation it ought reasonably have been apparent to the telephone sales representative that [REDACTED] was confused and did not understand the nature of the telephone call that he had received.
 - b. [REDACTED] did not understand that the telephone sales representative purported to have obtained [REDACTED] consent to enter into a market retail contract between him and IPower.