

# Change to notice requirements relating to planned interruptions of energy supply

Discussion Paper

February 2020

Proposal to amend Regulation 14 of the National Energy Retail Law (Local Provisions) Regulation 2013

## CONTENTS

1. National Energy Customer Framework
2. National Energy Retail Rules
3. National Energy Retail Law (Local Provisions) Regulations 2013
4. What is being proposed?
5. Why the need for the amendment?
6. What approach is taken in other jurisdictions?
7. Consultation Questions
8. Submissions on the Proposal

## 1. NATIONAL ENERGY CUSTOMER FRAMEWORK

The National Energy Customer Framework is a national regulatory regime which regulates the connection, supply and sale of energy (electricity and gas) to residential and small business customers connected to the grid.

The National Energy Customer Framework has been adopted in South Australia, the Australian Capital Territory, Tasmania, New South Wales and Queensland.

The National Energy Customer Framework comprises the National Energy Retail Law, National Energy Retail Regulations and National Energy Retail Rules.

As lead legislator for national energy reform, in June 2012, South Australia proclaimed the *National Energy Retail Law (South Australia) Act 2011* and the Statutes Amendment (*National Energy Retail Law*) Act 2011 to enable participating jurisdictions to adopt the framework on 1 July 2012.

South Australia applied the National Energy Customer Framework via *the National Energy Retail Law (South Australia) Act 2011* and *National Energy Retail Law (Local Provision) Regulations 2013*, taking effect from 1 February 2013.

## 2. NATIONAL ENERGY RETAIL RULES

The National Energy Retail Rules detail the obligations and consumer protection requirements for energy retailers, distributors and consumers.

Obligations under these Rules are administered by the Australian Energy Regulator and can be amended through a rule change process under the direction of the Australian Energy Market Commission.

Rule 90(1) of the National Energy Retail Rules provides:

### **90 Planned interruptions**

#### **(1) Notice to be given**

*In the case of a planned interruption, a distributor must notify each affected customer by any appropriate means of the interruption at least 4 business days before the date of the interruption.*

## 3. NATIONAL ENERGY RETAIL LAW (LOCAL PROVISIONS) REGULATIONS 2013

Under the National Energy Retail Law, there are certain provisions that do not come into operation unless they are prescribed by local instruments in each jurisdiction. Examples of these include the definition of an extreme weather event or the use of prepayment electricity meter systems.

In South Australia, the *National Energy Retail Law (Local Provisions) Regulations 2013* prescribe these provisions. In addition, these regulations include amendments and derogations to the National Energy Retail Rules as they are applied in South Australia.

One such example pertains to Rule 90 of the National Energy Retail Rules.

Regulation 14 (b) currently reads as follows:

#### **14 — Variation of National Energy Retail Rules**

*The National Energy Retail Rules, insofar as they have effect as part of the law of South Australia, apply as though the following amendments were made to those Rules:*

- (b) *Rule 90—after subrule (3) insert:*
  - (4) *A distributor of electricity is not required to comply with this rule if the duration of the interruption is less than 15 minutes.*
  - (5) *Subrule (4) will expire on **30 June 2020**.*

Regulation 14(b) retains South Australia's previous regulatory requirement under the Electricity Distribution Code. As part of the transition to the National Energy Customer Framework, South Australia made the policy decision to retain the existing obligation, and hence amended the application of Rule 90 on the basis that:

- the National Energy Retail Rules represented a more stringent requirement that would require South Australia's electricity distributor, SA Power Networks (SAPN), to amend existing processes and would potentially result in higher costs; and
- the National Energy Customer Framework commenced part-way through the regulatory period for 2010-2015 for which its revenue allowance had already been set.

Accordingly, the expiry date of the derogation was initially set to coincide with the expiry of SAPN's Pricing Determination for the regulatory period 2010-2015.

In anticipation of the expiry of the initial Regulation on 30 June 2015, the SA Government undertook stakeholder consultation following SAPN's request for an extension.

At the time, SAPN advised that compliance with the requirements of Rule 90 of the National Energy Retail Rules would result in an additional \$2.1 million per annum in operating costs. This was on the basis that activities such as bulk electricity meter replacement work, planned high voltage switching and urgent repairs, which could, in many cases, be undertaken without causing an outage of greater than 15 minutes and hence not require notification, would now all require formal notification.

Based on stakeholder consultation, and in light of community concern regarding rising utility costs and cost of living pressures more generally, the decision was made to extend the Regulation to 30 June 2020.

#### **4. WHAT IS BEING PROPOSED BY SAPN?**

Given the current derogation is due to expire on 30 June 2020, SAPN is seeking an extension of South Australia's existing arrangements. SAPN is proposing the extension be indefinite with no sunset clause.

This will require Regulation 14(b) of the *National Energy Retail Law (Local Provisions) Regulations 2013* to be amended to allow an electricity distributor in South Australia to continue to interrupt a customer's supply without providing at least four business days' notice. This will apply where the interruption is planned and for a duration of less than 15 minutes.

In order to have the derogation apply indefinitely, subrule (5) will need to be removed.

## **5. WHY THE NEED FOR THE AMENDMENT?**

SAPN is seeking an extension of the current derogation for a number of reasons.

The first of these is the additional cost of requiring that all customers affected by a planned outage of any duration be contacted. In the absence of the above Regulation, this is the requirement under the National Energy Retail Rules.

SAPN advises that compliance with the Rule would incur additional costs of around \$1.2 million per annum. As these costs have not currently been factored into SAPN's 2020-25 Regulatory Proposal, this would impact on the final determination and hence be ultimately passed onto consumers.

Secondly, SAPN anticipates that requiring that customers be informed of all planned outages could lead to a delay in the distributor undertaking remedial work which it has identified as urgent and capable of being repaired within the 15-minute outage window. Currently, SAPN advises that where a defect is identified as being at risk of failing within two weeks, it is given priority and generally repaired within a few days.

Compliance with Rule 90, in the absence of the Regulation, would require SAPN to follow its processes for informing all customers, and then provide the required four business days' notice before the work can be undertaken. The risk is that by extending the time taken to undertake the works, the risk of the failure causing a longer outage, thereby causing even greater inconvenience to customers, increases.

Where a customer, or another occupant of the customer's premises, relies on life support equipment, and is registered as such, the derogation does not apply. All life support customers however are encouraged to have a back up electricity supply for unplanned electricity outages.

South Australia has operated under the existing arrangement that allows 15-minute planned interruptions to occur without 4 days notification for many years without concern. Unless there is a sufficient reason to move away from the existing arrangements, maintaining the status quo may be the best option. Consideration will then need to be given as to whether that position is maintained indefinitely by having no sunset clause or whether another date is inserted.

## **6. WHAT APPROACH IS TAKEN IN OTHER JURISDICTIONS?**

Until recently, South Australia was the only National Energy Customer Framework jurisdiction to have derogated away from the obligations of Rule 90 of the National Energy Retail Rules, for the reasons outlined in this paper.

In 2019, the COAG Energy Council agreed to the *National Energy Retail Law (Tasmania) Amendment Regulations 2019* which amends the National Energy Retail Law (Tasmania) Act 2012 to also modify the application of Rule 90. It is anticipated this will take effect later in 2020.

This was modelled on South Australia's approach.

## 7. OPTIONS

Notwithstanding SAPN's proposal, the Department for Energy and Mining considers there to be three options for amending Regulation 14(b):

- **Option 1** – Replace *30 June 2020* with another specific date such as 30 June 2025;
- **Option 2** – Remove subrule (5) entirely, leaving the derogation open ended; or
- **Option 3** – Remove the derogation altogether such that Rule 90 of the National Energy Retail Rules will apply in South Australia with no variations.

**Option 1** would replace the existing date of *30 June 2020* with another specific date, such as 30 June 2025. However, amending the date will only postpone, rather than remove, SAPN's additional compliance costs resulting from the requirement under the National Energy Retail Rules.

In its most recent request, SAPN has estimated additional costs in excess of \$1.2 million per annum should the existing derogation cease to have effect.

**Option 2** would see the removal of sub rule (5) entirely from Regulation 14(b) which would make the derogation open ended.

In recognition of the potential for increased compliance costs in the absence of the derogation, and the fact that SAPN has operated under its existing arrangements for some time, including prior to the application of the National Energy Customer Framework in 2003, an open-ended derogation would appear to be the more practical approach.

**Option 3** would see the removal of the derogation altogether such that SAPN will have to comply with Rule 90 of the NERR in its entirety with no variations. Rule 90 (1) requires that a distributor notify each affected customer by any appropriate means of any planned interruption at least four business days before the date of the interruption, regardless of the planned interruption's expected duration.

## 8. CONSULTATION QUESTIONS

### *Question 1 – Customer Complaints*

Are stakeholders aware of any customer complaints relating specifically to planned interruptions of less than 15 minutes?

If so, can stakeholders provide information about the extent of the complaints?

### *Question 2 – Options*

Which of the Options discussed in this paper do stakeholders support?

**Option 1 – Extend the current derogation to 30 June 2025 or another date (specify).**

**Option 2 – Remove subrule (5) thereby making the derogation open ended, as proposed by SAPN.**

**Option 3 – Remove the derogation altogether, thereby reverting to Rule 90 of the NERR with no variations.**

## 9. SUBMISSIONS ON THE PROPOSAL

Written submissions should be provided by **5pm (ACST) Friday 20 March 2020**.

Submissions via email are preferred with the subject line “Submission on 15 Minute Planned Interruption Consultation” or can be posted to:

Submission on 15 Minute Planned Interruption Consultation  
Department for Energy and Mining  
Energy and Technical Regulation Division  
GPO Box 320  
ADELAIDE SA 5001

All submissions will be published on the Government of South Australia website including your name and organisation (if applicable), however your contact details will not be published.

**Please indicate clearly on the front of your submission if you would like it to be treated as confidential, in full or part, and the reason why it should not be made publicly available.**

Under the *Freedom of Information Act 1991*, the Government of South Australia may also be required by law to release your submission to a third party. If a request is made under the Act, you will be contacted prior to the release of any material.