

Market Operations Rule (Retailer of Last Resort) No. 5 of 2009

1. Name and commencement of Rule

- 1.1 This Rule is the Market Operations Rule (Retailer of Last Resort) No. 5 of 2009.
- 1.2 This Rule is made under clause 65 of *the Regulation*.
- 1.3 This Rule revokes the previous Market Operations Rule (Retailer of Last Resort) No. 5 of 2001 which commenced on 1 January 2002.
- 1.4 This Rule commences on 26 September 2009.

2. Objects of Rule

The objects of this Rule are:

- (a) to provide for implementation of *last resort supply*;
- (b) to facilitate information flows to a *retailer of last resort* following a *last resort supply event*; and
- (c) to facilitate arrangements between *retail suppliers, retailers of last resort, DNSPs, AEMO* and other parties for *last resort supply*.

3. Incomplete *customer* transfer where a *last resort supply event* occurs

Where a *customer* has entered into a contract for supply with a *new retail supplier* and a transfer of the *customer* to the *new retail supplier* has been entered into *MSATS* but has not been completed before a *last resort supply event* occurs, the following provisions apply:

- (a) when the *last resort supply event* affects the *old retail supplier*, both the *retailer of last resort* and the *new retail supplier* must take all reasonable steps to ensure that the *customer* is transferred to the *new retail supplier* as soon practicable to enable supply to commence under the contract with the *new retail supplier* on the date agreed in the contract and entered into *MSATS* prior to the *last resort supply event*; and
- (b) when the *last resort supply event* affects the *new retail supplier*, the transfer must not be completed. However, if the transfer is completed, the *DNSP*, the *old retailer* and the *retailer of last resort* must use reasonable endeavours to transfer the *customer* to the *old retail supplier*.

4. Instructions to AEMO

- 4.1 For the purpose of clause 3.15.21(j) of the *NER*, this clause 4 is the New South Wales jurisdiction's instruction to *AEMO* as to the identity of the *retailers of last resort* for *DNSP connection points* in New South Wales.
- 4.2 *AEMO* must consult with the *Minister* and comply with the *Minister's* instructions to provide information related to preparation for, and management of, *last resort supply events* and *last resort supply* as contemplated under the *NER*.
- 4.3 A *DNSP* must allocate each *DNSP connection point* within the *supply district* of a *retailer of last resort* to that *retailer of last resort*.
- 4.4 Where a *standard retail supplier*, who is also a *retailer of last resort*, undergoes a *last resort supply event*, each *DNSP connection point* that had been allocated to that *standard retail supplier* under clause 4.3 or is otherwise within the *supply district* of that *standard retail supplier* must be allocated by the *DNSP* to a different *retailer of last resort* in accordance with any determination of the *Minister* published from time to time in the Government Gazette.
- 4.5 A determination under clause 4 shall specify a *customer* or a class of *customers* who are to be assigned to a particular *retailer of last resort* by reference to all or any of the following:
- (a) the *retail supplier* authorised to supply electricity;
 - (b) the purpose for which the electricity is used;
 - (c) the quantity of electricity used;
 - (d) the period of use;
 - (e) the place of supply;
 - (f) market share of the *retail supplier*; or
 - (g) any other factor the *Minister* considers relevant to the sale of electricity.
- 4.6 Where clause 4.4 applies, each *DNSP* must inform *AEMO* of the identity of the *retailer of last resort* to which each *DNSP connection point* is allocated, as soon as reasonably possible following any relevant determination by the *Minister*.

5. DNSP obligations and responsibilities

- 5.1 A *DNSP* must nominate the applicable *retailer of last resort* to transfer a *customer* and/or to arrange connection services in accordance with clause 5(2), Schedule 3, of *the Regulation*.
- 5.2 The *DNSP* must agree to collect charges that are the subject of clause 5(3), Schedule 3, of *the Regulation*, on behalf of the *retailer of last resort*, if requested by the *retailer of last resort*.

6. Exempt networks

A *DNISP* may request information from *exempt network operators* to ensure that *sufficient customer information* will be available to enable *last resort supply* on occurrence of a *last resort supply event*.

7. Alternative last resort supply arrangements

- 7.1 Subject to clause 7.2, a person who is not a *small retail customer* may enter into a contract with a *retail supplier* for alternative *last resort supply* arrangements, on terms and conditions agreed between the parties.
- 7.2 The relevant *DNISP* must consent to such alternative *last resort supply* arrangements being made, which consent must not be withheld without reasonable cause.
- 7.3 If the *DNISP* consents to alternative *last resort supply* arrangements under clause 7.2, the *retail supplier* with whom the person contracts must inform *AEMO* and the *DNISP* of the alternative arrangements as soon as practicable.

8. Provision of customer information

- 8.1 The *DNISP* must cooperate and endeavour to assist the *retailer of last resort* to have access to information to ensure that *sufficient customer information* will be available to enable *last resort supply* to be implemented.
- 8.2 On and after 1 January 2002, all *retail suppliers* must keep or have access to a record of all the data of the type referred to in clause 12.1 of the Market Operations (Arranged Connection Services) Rule No.1 of 2001 with respect to the premises of their *customers* and *former customers*.
- 8.3 A *retail supplier* who is the subject of a *last resort supply event* must provide a *DNISP* with all of the information that is referred to in clause 8.2:
- (a) about *customers* and *former customers* whose *DNISP connection points* are connected directly or indirectly to the *DNISP's* network; and
 - (b) that the *retail supplier* possesses or has access to,
- as soon as practicable, but in any case within 5 *business days* of the *last resort supply event*.
- 8.4 A *DNISP* must provide all information received from the *retail supplier* under clause 8.3 to the relevant *retailer of last resort* for those *customers'* premises as soon as practicable but in any case within 2 *business days* of receipt of the information from the *retail supplier*.
- 8.5 The obligations in clauses 8.3 and 8.4 do not apply to the extent that a *DNISP* arranges for the *retailer of last resort* to secure the information that is referred to in clause 8.3 directly from the *retail supplier*.
- 8.6 For the purposes of clause 8.3, a *retail supplier* must provide information categorised by the relevant national metering identifier and billing address for the premises, unless otherwise agreed with the relevant *DNISP* and the *retailer of last resort*.

- 8.7 For the purposes of clause 8.4, the *DNISP* must provide all information received from the *retail supplier* to the relevant *retailer of last resort* with the same presentation and format as it was received from the *retail supplier*, unless otherwise agreed between the relevant *DNISP* and *retailer of last resort*.
- 8.8 Subject to clause 8.7, and to the extent possible, information required to be provided by this Rule may be provided in electronic form or via *MSATS*.
- 8.9 The obligations in this clause 8 on the *retail supplier* continue to apply where the *retail supplier* has been the subject of a *last resort supply* notice under clause 60 of *the Regulation*.

9. **Dispute resolution**

Any disputes arising under this Rule are to be dealt with under a dispute management system of a type required to be established in accordance with clause 8.2.3 of the *NER*.

10. **Definitions and interpretation**

10.1 In this Rule:

"**AEMO**" means the Australian Energy Market Operator.

"**business day**" means a day that is not a Saturday, Sunday or public holiday in New South Wales.

"**customer**" means a customer under *the Act*, as well as a person taking supply under:

- (a) a new occupant arrangement; and
- (b) a *last resort supply* arrangement.

"**DNISP**" means a licensed distribution network service provider and, in relation to a *DNISP connection point*, means the distribution network service provider to whose network the *DNISP connection point* is connected directly or indirectly through one or more *exempt networks*.

"**DNISP connection point**" means:

- (a) a connection point that is supplied from the *DNISPs* network; and
- (b) a connection point within an *exempt network* that is supplied directly or indirectly from the *DNISPs* network.

"**exempt network**" means a distribution system that is owned or controlled by an *exempt network operator*.

"**exempt network operator**" means a person who owns or controls a distribution system and who is exempt by clause 66 of *the Regulation* from the operation of section 13 of *the Act*.

"**former customer**" means a person who was a *customer* of the *retail supplier* immediately prior to being transferred from the *retail supplier*.

“**last resort supply**” means the supply of electricity by a *retailer of last resort* following a *last resort supply event*.

“**last resort supply event**” means, in relation to a licensed *retail supplier*, that:

- (a) a suspension notice is issued by *AEMO* to the *retail supplier* under the *NER*; and/or
- (b) the *retail supplier*’s licence is cancelled and written notice of the cancellation is given to the *retail supplier*.

“**Minister**” means the NSW Minister for Energy.

“**MSATS**” means the Market Settlement and Transfer System operated by *AEMO*.

“**National Electricity Law**” means the National Electricity (NSW) Law which applies in NSW as a result of the operation of section 6 of *National Electricity (New South Wales) Act 1997* (NSW).

“**NER**” means the rules made under Part 7 of the *National Electricity Law* as amended from time to time in accordance with that Part.

“**new retail supplier**” means, in relation to a *customer*, a *retail supplier* that has entered into a contract for supply with the *customer* but where the transfer of the *customer* to the *retail supplier* has not been completed.

“**old retail supplier**” means, in relation to a *customer*, a *retail supplier* that supplies the *customer* where the *customer* has entered into a contract for supply with a *new retail supplier*.

“**retailer of last resort**” means a *retail supplier* to whose *retail supplier*’s licence is attached a *retailer of last resort endorsement*.

“**retail supplier**” means the person who supplies or supplied electricity to a *customer*.

“**retailer of last resort endorsement**” means an endorsement of a kind referred to in clause 57 of *the Regulation*.

“**small retail customer**” has the same meaning as in *the Act*.

“**standard retail supplier**” has the same meaning as in *the Act*.

“**sufficient customer information**” means information of the type referred to in clause 12.1 of the Market Operations (Arranged Connection Services) Rule No.1 of 2001 and clause 9.1(b) of the Market Operations (NSW Transfer Rules for Retail Electricity Supply) Rules No. 4 of 2001.

“**supply district**” has the same meaning as in *the Act*.

“**the Act**” means the *Electricity Supply Act 1995* (NSW).

“**the Regulation**” means the *Electricity Supply (General) Regulation 2001*.

10.2 Notes in this Rule do not form part of the Rule.

10.3 The terms and expressions used in this Rule have the same meaning as the *National Electricity (New South Wales) Act 1997* (NSW), the *National Electricity Law*, the

NER and the *Electricity Supply Act 1995* (NSW) except terms that are expressly defined in this Rule.