

Energy industry penalty notice

Section 54G of the Essential Services Commission Act 2001 (Vic)

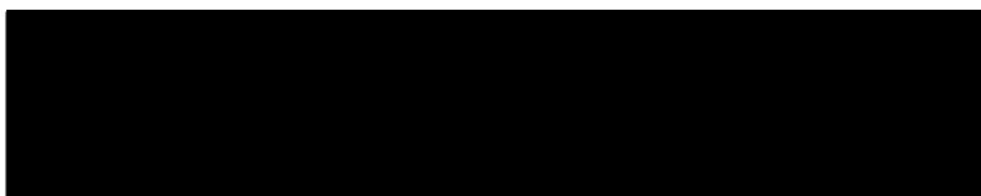
To: 1st Energy Pty Ltd
Level 4, 459 Little Collins Street
Melbourne VIC 3000

Energy industry penalty notice number: EIPN(E) 25-2019

1. This notice is dated 10 April 2019.
2. The Essential Services Commission (Commission) has reason to believe that 1st Energy Pty Ltd (ABN 71 604 999 706) (1st Energy) has engaged in conduct that constitutes an energy industry contravention within the meaning of section 54F of the Essential Services Commission Act 2001 (Vic) (ESC Act) as detailed in schedule 1 to this energy industry penalty notice.
3. The Commission formed the belief on 10 April 2019 that 1st Energy had engaged in the conduct that constitutes the alleged energy industry contravention.
4. The energy industry penalty is \$20,000 as provided by section 54I of the ESC Act and regulation 5 of the Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016 (Vic).

How to pay the energy industry penalty

5. 1st Energy may pay the \$20,000 energy industry penalty by **15 May 2019**.
6. Payment of the energy industry penalty can be made by electronic funds transfer to the following account:



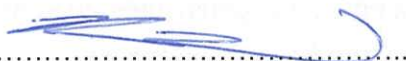
7. Please state the energy industry penalty notice number in the transaction details to assist us in matching the payment received.

8. If 1st Energy pays the amount of the energy industry penalty before the end of the time specified in this energy industry penalty notice, the Commission will not take relevant enforcement action in relation to the alleged energy industry contravention unless the energy industry penalty notice is withdrawn before the end of that time in accordance with section 54N of the ESC Act.

What can 1st Energy do in response to this energy industry penalty notice?

9. 1st Energy can choose whether or not to pay the energy industry penalty. If 1st Energy chooses not to pay the energy industry penalty, the Commission may commence proceedings against it in the Supreme Court of Victoria in relation to the alleged contravention.
10. 1st Energy is entitled to disregard this energy industry penalty notice and to defend any proceedings in respect of the alleged contravention in the Supreme Court of Victoria.

Date of notice: 10 April 2019



Dr Ron Ben-David
Chairperson
Essential Services Commission

Schedule 1 – Details of the conduct and alleged energy industry contravention

1. 1st Energy holds an electricity retail licence issued by the commission.
2. The requirements imposed by clause 8.1 of its electricity retail licence obliged 1st Energy to comply with the requirements of the Energy Retail Code (the Code).
3. Clause 57(1) of the Code provides that a retailer must not submit a request for transfer of a small customer under relevant Retail Market Procedures unless:
 - (a) The retailer has obtained explicit informed consent from the customer to enter into the relevant customer retail contract; and
 - (b) The retailer has a customer retail contract in place to enable the sale of energy to the customer at their premises.
4. 1st Energy Pty Ltd is a 'retailer' within the meaning of clause 57(1) of the Code.
5. On 10 April 2018, 1st Energy submitted a request for the transfer of a small customer:
 - NMI: [REDACTED]
 - Name and address: [REDACTED]

without having obtained the explicit informed consent from the customer and without having entered into any customer retail contract with [REDACTED]

6. The alleged circumstances of the energy industry contravention are as follows:
 - (a) On 21 March 2018, a person identified as [REDACTED] employed by or acting on behalf of [REDACTED], called [REDACTED] [REDACTED] had a non-exclusive arrangement in place at the relevant time to enter into agreements for the supply of electricity with customers on behalf of 1st Energy. The call to [REDACTED] was made on behalf of 1st Energy.
 - (b) [REDACTED] was contacted at her room in the [REDACTED] located at [REDACTED]. The aged care facility is owned and operated by [REDACTED].
 - (c) During the telephone call [REDACTED] initially replied 'yes' to a question whether she was responsible for the electricity account at the premises. However, when [REDACTED] queried whether the address was a business address, [REDACTED] identified that the address was an aged care facility where she was staying.
 - (d) [REDACTED] subsequently identified her date of birth as [REDACTED]. She was accordingly 85 years old at the time of the telephone call.

(e) During the telephone call, [REDACTED] queried whether the address was [REDACTED]. [REDACTED] informed the caller that the address of the aged care facility was [REDACTED].

(f) [REDACTED] advised [REDACTED] that her NMI was [REDACTED].

(g) At the conclusion of the call, [REDACTED] was asked whether she agreed to enter into a contract with 1st Energy 'to supply electricity to unit which you have [REDACTED] [REDACTED]? She replied 'yes'.

(h) On 10 April 2018, 1st Energy submitted a request for transfer to the distributor, [REDACTED] in respect of NMI [REDACTED]. The NMI was not for the [REDACTED] or for [REDACTED] room at the facility. The NMI was for [REDACTED], located at [REDACTED], an unrelated third party.

(i) On 1 May 2018, the NMI for [REDACTED] was transferred from [REDACTED] to 1st Energy.

7. 1st Energy had not obtained the explicit informed consent of [REDACTED] and did not have a customer retail contract in place to enable the sale of energy to the customer at their premises.
8. A failure to comply with the requirements of clause 57(1) of the Code is a contravention of a prescribed condition of an energy licence in a prescribed circumstance under section 54F of the ESC Act, by reason of regulation 5 of the Essential Services Commission (Energy Industry Penalty Regime) Regulations 2016 (Vic), as applied by Schedule 1, Table 4, Column 1, Item 1.
9. Having regard to the above circumstances, the commission has reason to believe that 1st Energy has engaged in conduct which constitutes an energy industry contravention as defined in section 54F of the Essential Services Commission Act 2001 (Vic).