



Essential Services Commission Act 2001 (Victoria) Section 54G

Energy Industry Penalty Notice served on Simply Energy (ABN 67 269 241 237)

To: Simply Energy
Rialto South Tower
Level 33, 525 Collins Street
Melbourne VIC 3000

Energy Industry Penalty Notice number: ESC EIPN(E) 16-2018

Issue and service of Energy Industry Penalty Notice

1. The Essential Services Commission (Commission) has reason to believe that IPower Pty Ltd (ACN 111 267 228) and IPower 2 Pty Ltd (ACN 070 374 293) trading as Simply Energy (Simply Energy) have 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.
2. The Commission formed the belief on 24 October 2018 that Simply Energy had engaged in the conduct that constitutes the alleged energy industry contravention.
3. The Commission has decided to issue and serve this Energy Industry Penalty Notice on Simply Energy under sections 54G and 54K of the ESC Act.
4. The energy industry penalty is \$20,000 (as provided by section 54I of the ESC Act).

What can Simply Energy do in response to this Energy Industry Penalty Notice?

1. Simply Energy can choose whether or not to comply with this Energy Industry Penalty Notice. If Simply Energy chooses not to comply with this Energy Industry Penalty Notice, the Commission may commence proceedings against it in relation to the alleged contravention. Simply Energy is entitled to disregard this Energy Industry Penalty Notice and to defend any proceedings in respect of the alleged breach in the Supreme Court of Victoria.
2. If Simply Energy chooses to comply with this Energy Industry Penalty Notice, it must pay the energy industry penalty by 26 November 2018, being not less than 28 days from the date of service of this Energy Industry Penalty Notice, beginning on the day after the day on which this Energy Industry Penalty Notice is served.

3. To ensure payment is made in accordance with this Energy Industry Penalty Notice, payment must be received on or before 26 November 2018.
4. If Simply 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action in relation to the alleged energy industry contravention unless the Energy Industry Penalty Notice is withdrawn before the end of that time in accordance with section 54N of the ESC Act.

How to pay the Energy Industry Penalty

1. Simply Energy may pay the \$20,000 energy industry penalty by 26 November 2018, being not less than 28 days after the date on which this Energy Industry Penalty Notice is served.
2. Simply Energy must pay the \$20,000 energy industry penalty by electronic funds transfer to the following account:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Please state the Energy Industry Penalty Notice Number in the transaction details to assist us in matching the payment received.
4. Simply Energy should allow sufficient time for payment of the \$20,000 energy industry penalty to be received on or before 26 November 2018.

Date of notice: 25 October 2018

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Dr Ron Ben-David
Chairperson
Essential Services Commission

SCHEDULE 1 - DETAILS OF THE CONDUCT AND ALLEGED ENERGY INDUSTRY CONTRAVENTION

Electricity customer transfer without explicit informed consent

1. Simply Energy is a 'retailer' within the meaning of clause 57(1) of the Energy Retail Code (version 11) (the Code).
2. The requirements imposed by clause 14.1 of its Electricity Retail Licence, obliged Simply Energy to comply with the requirements of the Code.
3. Clause 57(1) of the Code required that Simply Energy must not submit a request for the transfer of a residential customer under the relevant Retail Market Procedures unless:
 - a. Simply Energy had obtained the explicit informed consent from the customer to enter into the relevant customer retail contract; and
 - b. Simply Energy had a customer retail contract in place to enable the sale of electricity to the customer at their premises.
4. On 25 October 2017, Simply Energy submitted a request for the transfer of a residential customer:

[REDACTED]

[REDACTED]

[REDACTED]

without having obtained the explicit informed consent from the customer to enter into Simply Energy's relevant customer retail contract known by the plan name "Simply Extra 38/25".

5. 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) (made under section 65 of the ESC Act), as applied by Schedule 1, Table 4, Column 1, Item 1.