

NORTHERN TERRITORY OF AUSTRALIA

ELECTRICITY REFORM (ADMINISTRATION) REGULATIONS

As in force at 6 February 2008

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NORTHERN TERRITORY OF AUSTRALIA

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ELECTRICITY REFORM (ADMINISTRATION) REGULATIONS

Regulations under the *Electricity Reform Act*

Part 1 Preliminary

1 Citation

These Regulations may be cited as the *Electricity Reform (Administration) Regulations*.

2 Definitions

In these Regulations, unless the contrary intention appears:

consumption, for a site during a consumption period, means the electricity, decided by the relevant entity, that was:

- (a) consumed for the site during the period; or
- (b) charged by an on-supplier for the site during the period.

consumption period means any continuous period of one year beginning on or after 1 July 1998.

estimated consumption, for the site during a future consumption period, means the electricity the relevant entity selling electricity to a non-contestable customer estimates will be:

- (a) consumed for the site during the period; or
- (b) charged by an on-supplier for the site during the period.

future consumption period means any period of one year, whether beginning before, on or after the relevant date of competition as specified in column 1 of the Schedule, that has not ended, but ending no later than 2 years after the date of the relevant application under regulation 7.

on-supplier means a person who:

- (a) is the owner or occupier of premises or has the right to use premises; and
- (b) supplies and sells electricity for use in the premises.

premises include a caravan park, exhibition centre, hostel, hotel, industrial park, lodging house, marina, market arcade, motel, shopping centre and serviced apartments.

receiver means a person who owns, occupies or has the right to use premises and to whom electricity is supplied and sold by an on-supplier for the premises.

relevant entity means the electricity entity licensed to sell electricity to non-contestable customers in the area of a customer's site.

same business or enterprise means a business or enterprise carried out under the same name, other than a business or enterprise made up of parts carried out under different names.

single site has the meaning in regulation 3.

site means premises or a lot of land.

supply point, in relation to electricity supplied to a customer, means the point at which the electricity last leaves the electrical installation of the electricity entity that supplies electricity to the customer before being supplied to the customer (whether or not the electricity passes through facilities owned or operated by any other person after leaving that point and before it is supplied).

3 Single site

- (1) In these Regulations, **single site** means:
 - (a) a site to which electricity is supplied by a single supply point; or
 - (b) sites that are to be treated as a single site under subregulation (2).
- (2) If a site or adjoining sites owned or occupied by a customer are supplied by more than one supply point, the customer may elect to have the site or sites treated as a single site.
- (3) Regulation 12 applies to a contestable customer in respect of each site that is to be treated as a single site under subregulation (2).

3A Exclusion from Act of certain types of electricity generation

- (1) For the definition of **generation** in section 4(1) of the Act, the operation by a person of electricity generating plant that is not connected to electricity infrastructure owned or operated by an electricity entity is declared not to be generation of electricity if the electricity is generated for the person's own use.
- (2) For the definition of **generation** in section 4(1) of the Act, the operation by a person of electricity generating plant that is not connected to electricity infrastructure owned or operated by an electricity entity is declared not to be generation of electricity if:
 - (a) the electricity is generated for supply to the owner or occupier of an area of land that is in the vicinity of the land on which the generating plant is situated; and
 - (b) electricity is not available from an electricity entity for supply to the area of land to which the electricity is supplied by the person operating the electricity generating plant.

3B Exclusion from Act of certain sales of electricity

For the definition of **selling** in section 4(1) of the Act, the trading of electricity by a person to a customer is prescribed not to be selling of electricity if:

- (a) electricity is not available for supply to the customer by an electricity entity; and
- (b) the amount supplied to all customers by the person does not total more than 160 megawatt hours in each calendar year.

Part 2 Licences**4 Licence fees and returns**

- (1) For the purposes of section 19(2)(a) of the Act, the prescribed date is 1 August in each year of the licence.
- (2) For the purposes of section 19(2)(b) of the Act, the prescribed date is 14 days after the date the annual return is lodged under section 19(2)(a) of the Act.
- (3) For the purposes of section 19(5) of the Act, the prescribed penalty:
 - (a) for failing to lodge an annual return – is \$10,000 and \$500 for each day after the date the annual return was required to be lodged during until the day the annual return is lodged; and

- (b) for failing to pay an annual licence fee or an instalment of an annual licence fee – is 10% of the amount outstanding calculated daily on a cumulated basis from the date the fee was required to be paid under section 19 of the Act until the date the fee is paid.

5 Licence conditions – licence authorising selling of electricity

For the purposes of section 28(1)(h) of the Act, the period is 2 years from the date the customer becomes a contestable customer.

Part 3 Contestable customers

6 Classification of customers as contestable customers

- (1) Subject to these Regulations, a contestable customer is a customer whose annual consumption level for a single site has by the date specified in column 1 of the Schedule reached the minimum consumption level specified opposite in column 2.
- (2) For the purposes of subregulation (1), a customer's annual consumption level is measured by:
 - (a) the customer's actual total consumption at a single site during any consumption period; or
 - (b) the customer's estimated consumption during a future consumption period at a single site if the customer either:
 - (i) did not consume electricity at the site before 1 July 1998; or
 - (ii) the customer's business premises at the site was expanded after 1 July 1998 and the expansion causes the estimated consumption to exceed the minimum consumption level.
- (3) An electricity entity that is a customer is a contestable customer regardless of its annual consumption level.
- (4) From 1 April 2010 all customers are contestable customers.

6A Ceasing to be contestable customer

Subject to these Regulations, a customer ceases to be classified as a contestable customer if the customer's consumption for the site to which the classification relates falls below, or never exceeds, the minimum consumption as specified in column 2 of the Schedule and the customer's consumption for the site is expected to remain

below, or to not exceed, that level for the foreseeable future.

6B Contestable customer may apply for declaration

- (1) A customer who is classified as a contestable customer may apply to the relevant entity for a declaration that regulation 6A applies to the customer.
- (2) On receiving the application, the relevant entity must make the declaration if it is satisfied that regulation 6A applies to the customer.
- (3) The relevant entity must notify the customer in writing of its decision not later than 30 days after the application is made.
- (4) If the relevant entity refuses to make a declaration under subregulation (2), the notice under subregulation (3) must state:
 - (a) the reasons for not making the declaration; and
 - (b) that the customer may apply to the Utilities Commission for it to determine whether the customer should cease to be classified as a contestable customer.
- (5) A customer ceases to be classified as a contestable customer on a declaration being made under subregulation (2).
- (6) This regulation does not prevent:
 - (a) a customer who ceases to be classified as a contestable customer from subsequently being classified as a contestable customer; or
 - (b) a customer from re-applying under subregulation (1).

6C Review of relevant entity's decision by Utilities Commission

- (1) A customer whose application under regulation 6B is refused may apply to the Utilities Commission for it to revoke the classification of the customer as a contestable customer.
- (2) The Utilities Commission may revoke the classification of the customer as a contestable customer:
 - (a) if the Utilities Commission is satisfied that:
 - (i) regulation 6A applies to the customer; and

- (ii) the customer has not sought to contrive any reduction in consumption for the site to which the classification relates in order to seek revocation of the classification; or
- (b) for any reason, consistent with the objects of the Act, that the Utilities Commission thinks fit.
- (3) The Utilities Commission must notify the relevant entity and the customer of its decision not later than 30 days after the date of the application under subregulation (1).

7 Applying for contestable customer certificate

- (1) A customer may apply to the relevant entity for a contestable customer certificate for a single site of the customer with effect from the relevant date for introduction of competition as specified in column 1 of the Schedule.
- (2) The application cannot be made earlier than 90 days before the relevant date for introduction of competition as specified in column 1 of the Schedule.
- (3) The application is to:
 - (a) be in writing;
 - (b) state the applicant's name and the site or sites to which the application relates; and
 - (c) be supported by enough other information, reasonably decided by the relevant entity, to enable the entity to consider the application.

8 Consideration of application

- (1) The relevant entity must either issue or refuse to issue the contestable customer certificate within 14 days after receiving all necessary information relevant to the application.
- (2) The relevant entity must issue the contestable customer certificate if satisfied that the customer is a contestable customer as determined by regulation 6 with respect to the site or sites.
- (3) If the relevant entity does not issue a contestable customer certificate within the relevant period, it is to be taken to have refused to issue the certificate.

(4) In subregulation (3), **relevant period** means the first of the following periods to end:

- (a) one month after the relevant entity receives all necessary information relevant to the application;
- (b) 3 months after the application was made.

9 Contestable customer certificate

A contestable customer certificate is to be in writing and state:

- (a) the customer's name;
- (b) the site or sites of the customer to which the certification relates; and
- (c) that the relevant entity was satisfied that the customer was a contestable customer as determined by regulation 6.

10 Refusal to issue contestable customer certificate

- (1) If the relevant entity refuses to issue a contestable customer certificate, the entity must give the customer written notice as soon as practicable after making the decision.
- (2) The notice must state:
 - (a) the reasons for not issuing the contestable customer certificate; and
 - (b) that the customer may ask the Utilities Commission to decide whether the contestable customer certificate should have been issued.

11 Dispute resolution

- (1) This regulation applies if a dispute arises if a customer's contestable customer certificate is not issued or if the relevant entity is taken to have refused to issue the certificate.
- (2) The customer may ask the Utilities Commission to resolve the dispute.
- (3) The Utilities Commission may:
 - (a) give instructions about procedures the parties to the dispute must follow to attempt to resolve the dispute before the Utilities Commission attempts to resolve it; or

- (b) require a party to give the Utilities Commission information the Utilities Commission considers necessary to enable the dispute to be resolved.
- (4) The Utilities Commission must give each party a reasonable opportunity to make representations before making a decision on the dispute.
- (5) After considering any representations, the Utilities Commission must decide whether the customer should be issued a contestable customer certificate.
- (6) The Utilities Commission must inform the parties of the decision by written notice stating:
 - (a) the decision; and
 - (b) the reasons for the decision.
- (7) If the Utilities Commission decides that a contestable customer certificate should have been issued, the certificate is taken to have been issued to the customer for the site to which the application relates when the decision was made.

12 Classification continues despite consumption or use

If a customer is a contestable customer for a site and has a contestable customer certificate in relation to the site, the certificate continues despite:

- (a) the actual consumption of electricity for the site; or
- (b) the purpose for which the site is used.

12A Cancellation of contestable customer certificate

- (1) If a customer ceases to be classified as a contestable customer, the relevant entity must cancel the customer's contestable customer certificate.
- (2) The relevant entity must notify the customer that the contestable customer certificate has been cancelled:
 - (a) not later than 7 days after it makes a declaration under regulation 6B(2); or
 - (b) if the customer's classification is revoked by the Utilities Commission under regulation 6C – not later than 7 days after it is notified of the Utilities Commission's decision.

- (3) The relevant entity must place the customer on the applicable non-contestable tariff not later than 30 days after cancelling the contestable customer certificate.

13 Partial contracting prohibited

A contestable customer cannot have electricity supplied to a single site by more than one relevant entity.

Penalty: \$5,000.

Part 4A Electricity pricing orders

13A Prescribed class of customers

For section 44(1)(a) of the Act, the following customers are customers of a prescribed class:

- (a) customers who became contestable customers on 1 April 2002 in accordance with regulation 6;
- (b) customers who became contestable customers after 1 April 2002 and before 1 April 2004 and whose annual consumption level measured in accordance with regulation 6 when they became contestable customers was 750 megawatt hours per annum or greater but less than 2 gigawatt hours per annum;
- (c) customers who become contestable customers after 31 March 2004 and whose annual consumption level measured in accordance with regulation 6 when they become contestable customers is 750 megawatt hours per annum or greater but less than 2 gigawatt hours per annum.

Part 4 On-suppliers

14 Exemptions for on-suppliers

- (1) An on-supplier is exempted from sections 14(1) and 28 of the Act.
- (2) The exemption under subregulation (1) is subject to the condition that the on-supplier complies with regulation 15(2) and (3).

15 Charges from on-suppliers to receivers

- (1) An on-supplier may charge a receiver for electricity supplied or sold to the receiver by the on-supplier in a way decided by the on-supplier.

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- (2) However, the on-supplier must comply with subregulations (3) to (6) if the on-supplier charges the receiver on the basis of the receiver's consumption of electricity during a period as measured by a meter.
 - (3) The charge must be equal to, or worked out on the same or a similar basis as:
 - (a) if the on-supplier amount is equal to or less than the regulated amount – the regulated amount; or
 - (b) otherwise – the on-supplier amount.
 - (4) In addition, the amount charged under subregulation (2) for each receiver in the premises must be calculated in the same way.
 - (5) The on-supplier amount is so much of the amount charged for the supply of electricity to the on-supplier for that period as is attributable to the receiver's consumption mentioned in subregulation (2).
 - (6) The regulated amount is the amount the receiver would have been charged for that consumption if:
 - (a) the receiver had been a non-contestable consumer of the electricity entity; and
 - (b) the electricity had been supplied by the electricity entity to the receiver; and
 - (c) the standard rates of fix charge and usage charge had applied to the receiver.
 - (7) For section 6(c) of the Act, the Utilities Commission may, by writing, make guidelines for the administration of this regulation.
 - (8) The guidelines must not have effect before the Utilities Commission publishes a *Gazette* notice for the making of the guidelines.

Part 5 Vegetation clearance

16 Definition

In this Part, **electricity entity** means an electricity entity referred to in section 64(1) of the Act.

17 Procedure for consulting occupier

For the purposes of section 64(2) of the Act, written notice under that subsection must be served on the occupier at least 30 days before the day it is proposed to enter the place and is to state:

- (a) the reason and the date and time of the proposed entry;
- (b) the nature of the work to be carried out in clearing vegetation from the place;
- (c) the arrangements to make good any damage caused or the terms of any compensation to be paid for damage caused; and
- (d) that the person has a right to object to the electricity entity and to the Ombudsman appointed under the *Ombudsman (Northern Territory) Act*, the time limits and other requirements for making an objection.

18 Objection relating to notice of intention to enter for vegetation clearance

- (1) An occupier of a place on whom a notice under section 64(2) of the Act is served may lodge an objection with the electricity entity within 21 days after receiving the notice.
- (2) The objection must be in writing and state fully and in detail the grounds on which the objection relies.

19 Objection to arrangements to make good damage or pay compensation

- (1) If an occupier of a place has allowed access to the place for the purposes of vegetation being cleared under section 64 of the Act and damage is caused to the place in clearing the vegetation, if the occupier considers that the damage has not been made good or that reasonable compensation has not been paid, the occupier may lodge an objection with the electricity entity within 21 days after the damage was caused.
- (2) The objection must be in writing and state fully and in detail the grounds on which the objection relies.

20 Consideration of objection

- (1) The electricity entity must consider an objection lodged under regulation 19 and must either allow the objection in whole or in part or disallow the objection.

- (2) The decision must be made with 30 days of receiving the objection and notice of the decision must be served on the objector.
- (3) If after making the decision, the electricity entity still wishes to enter the place it must give to the occupier of the place a revised notice under section 64(2) of the Act.
- (4) A notice referred to in subregulation (3) must contain the information required under regulation 17.
- (5) An objection cannot be made under regulation 18 to a notice referred to in subregulation (3).
- (6) The decision of an electricity entity to disallow an objection in whole or in part must be in writing, contain reasons for the decision and inform the objector of his or her right to lodge a complaint against the decision under the *Ombudsman (Northern Territory) Act*.

21 No effect on alternate right of complaint

Nothing in this Part prevents a contestable customer lodging a complaint under Division 8 of Part 3 of the Act.

Schedule

regulation 6

Column 1	Column 2
Date for introduction of competition	Minimum consumption level
1 April 2000	4 gigawatt hours per annum
1 October 2000	3 gigawatt hours per annum
1 April 2001	2 gigawatt hours per annum
1 April 2002	750 megawatt hours per annum

ENDNOTES

1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2**LIST OF LEGISLATION*****Electricity Reform (Administration) Regulations (SL No. 15, 2000)***

Notified	31 March 2000
Commenced	1 April 2000

Amendments of Electricity Reform (Administration) Regulations (SL No. 29, 2001)

Notified	4 June 2001
Commenced	4 June 2001

Amendments of Electricity Reform (Administration) Regulations (SL No. 9, 2003)

Notified	28 February 2003
Commenced	28 February 2003

Amendment of Electricity Reform (Administration) Regulations (SL No. 7, 2004)

Notified	29 March 2004
Commenced	29 March 2004

Electricity Reform (Administration) Amendment Regulations 2005 (SL No. 35, 2005)

Notified	19 October 2005
Commenced	19 October 2005

Electricity Reform (Administration) Amendment Regulations 2007 (SL No. 4, 2007)

Notified	21 March 2007
Commenced	21 March 2007

Electricity Reform (Administration) Amendment Regulations 2008 (SL No. 1, 2008)

Notified	6 February 2008
Commenced	6 February 2008

3 LIST OF AMENDMENTS

rr 3A – 3B	ins No. 35, 2005, r 3
r 6	amd No. 29, 2001, r 1; No. 9, 2003, r 2; No. 35, 2005, r 4
rr 6A – 6C	ins No. 35, 2005, r 5
r 12A	ins No. 35, 2005, r 6
pt 4A hdg	ins No. 7, 2004
r 13A	ins No. 7, 2004
r 15	amd No. 4, 2007, r 3
sch	amd No. 29, 2001, r 2; No. 9, 2003, r 3; No. 1, 2008, r 3