

National Electricity Law

Undertaking to the Australian Energy Regulator given for the purpose of
section 59A of the National Electricity Law

By

**Icon Distribution Investments Limited (ACN 073 025 224) and Jemena
Networks (ACT) Pty Ltd (ACN 008 552 663), trading as Evoenergy (ABN 76
670 568 688)**

Persons giving Undertaking

- 1 This Undertaking is given to the AER by Icon Distribution Investments Limited (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663), trading as Evoenergy of 40 Bunda Street, Canberra ACT 2601, pursuant to section 59A of the NEL.

Background

- 2 Evoenergy owns and operates the electricity distribution network and is a DNSP in the Australian Capital Territory. As a DNSP, clause 6.17.1 of the NER requires Evoenergy to comply with the Guideline.
- 3 Most relevantly, clause 3.1(b) of the Guideline states that, subject to certain exceptions that are not of present relevance, DNSPs may provide Distribution Services and Transmission Services, but must not provide Other Services. Other Services are any services other than Transmission or Distribution Services.

Conduct of concern

- 4 Evoenergy admits it has breached its obligations under clause 3.1(b) of the Guideline and clause 6.17.1 of the NER since at least 1 January 2018.
- 5 Agreements between the Customer and Evoenergy that predate DNSPs being required to comply with clause 3.1(b) of the Guideline on 1 January 2018 defined an 'operational boundary', within which Evoenergy would provide the following services in relation to the assets located on the Customer's side of the network boundary (collectively referred to in this Undertaking as the 'Services'):
 - a) embedded generation upgrades, including system design, connection and maintenance;
 - b) inspection and maintenance of assets within the operational boundary; and
 - c) operation of assets such as performing isolations to support capital works, maintenance, and emergency response.
- 6 As these Services are Other Services, Evoenergy has provided Other Services to the Customer under those agreements in contravention of clause 3.1(b) of the Guideline.
- 7 On 19 January 2024, the AER decided to grant a Waiver under clause 5 of the Guideline to Evoenergy, subject to Evoenergy giving the AER an undertaking under section 59A of the NEL on terms acceptable to the AER.

This Waiver allows Evoenergy to continue providing the Services to the Customer for a two year period while Evoenergy re-designs systems to separate assets on the Evoenergy and the Customer's side of the network boundary, such that the Services may be provided to the Customer by a provider other than Evoenergy. Evoenergy cannot permissibly provide the Services without the Waiver.

Commencement of Undertaking

- 8 This Undertaking comes into effect on the occurrence of the later of:
- a) The execution of the Undertaking by Evoenergy; and
 - b) the acceptance of the Undertaking so executed by the AER.
- 9 From the Commencement Date, Evoenergy undertakes to assume the obligations set out in this Undertaking.

Expiry

- 10 This Undertaking will expire on the receipt by Evoenergy of confirmation from the AER that it accepts Evoenergy's notification under paragraph 15(d) that Evoenergy has fully discharged its obligations under paragraphs 13 and 14 of this Undertaking.
- 11 Evoenergy may apply to withdraw or vary the Undertaking at any time, but this Undertaking will only be taken to be withdrawn or varied on the date on which the AER consents to such withdrawal or variation.
- 12 If requested by Evoenergy, the AER may, in writing, expressly waive any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Undertaking

- 13 Evoenergy undertakes to:
- a) separate protection and control assets on the Evoenergy and the Customer's side of the network boundary such that the Services may be provided to the Customer by a provider other than Evoenergy; and
 - b) cease providing the Services to the Customer,
- by 22 May 2026.
- 14 Evoenergy further undertakes, in the course of discharging its obligation under paragraph 13, to:
- a) by 30 September 2024, develop a new system architecture and operating philosophy, to allow the handover of protection and control assets currently operated and maintained by Evoenergy to the Customer;
 - b) by 31 December 2024, develop electrical and communication network designs to support the updated architecture and operating philosophy referred to at paragraph 14(a);
 - c) by 31 March 2025, refine operating arrangements to re-configure the network and provide backup supply in the event of an outage as soon as possible following the outage;
 - d) by 30 September 2025, complete all construction and device configuration work in alignment with the new design;

- e) by 30 September 2025, implement additional cybersecurity controls to achieve the required separation between Evoenergy and the Customer's systems;
- f) by 30 September 2025, if required in order to separate the protection and control assets on the Evoenergy and the Customer's side of the network boundary, complete the relocation of power quality monitoring assets to Evoenergy's side of the network boundary; and
- g) by 31 December 2025, consolidate and handover Evoenergy's drawings and asset records (pertaining to the Customer's assets) to the Customer for their ongoing management and maintenance.

15 Evoenergy also undertakes to:

- a) provide the AER with regular reports on its progress in complying with each of its obligations under paragraphs 13 and 14, at intervals of no more than 3 months from the Commencement Date, until Evoenergy receives confirmation from the AER that it accepts Evoenergy's notification that all of these obligations have been fully discharged under paragraph 15(c);
- b) notify the AER in writing as soon as practicable of any alterations or amendment to its obligations under paragraphs 13 and 14 that are required in order to separate the assets on the Evoenergy and the Customer's side of the network boundary, and cease providing the Services to the Customer;
- c) if Evoenergy notifies the AER under paragraph 15(b) that an amendment to the date specified by paragraph 13 for compliance with its obligations under that paragraph is required, provide with that notice:
 - a. reasons for that amendment, including an explanation for Evoenergy's inability to cease providing the Services by the date specified in paragraph 13; and
 - b. any measures that Evoenergy has considered or explored to enable it to cease providing the Services by the date specified in paragraph 13;
- d) notify the AER once it considers it has fully discharged its obligations under paragraphs 13 and 14;
- e) ensure the costs for provision of the Services to the Customer, and discharging its obligations under paragraphs 13 and 14, are appropriately allocated to prevent cross-subsidisation of the Customer's costs by other Evoenergy customers;
- f) liaise with the Customer in good faith, as required, to support the Customer in finding a suitable provider other than Evoenergy to provide the Services to the Customer; and
- g) inform the Customer at intervals of no less than 6 months of its progress in separating the assets on the Evoenergy and the Customer's side of the network boundary, and Evoenergy's proposed timing for completion of each of its obligations under paragraph 14.

Costs

16 Evoenergy must pay all of its own costs in relation to the Undertaking.

Notification

- 17 Any notice or communication to the AER pursuant to this Undertaking must be sent to:

Name	General Manager AER Compliance & Enforcement
Address	GPO Box 520 Melbourne VIC 3001
Email:	Attn: General Manager AER Compliance and Enforcement - AERCompliance@aer.gov.au

- 18 Any notice or communication to Evoenergy pursuant to this Undertaking must be sent to:

Name	General Manager Evoenergy
Address	GPO Box 366 Canberra ACT 2601
Email:	Attn: General Manager Evoenergy - regulatoryenquiries@evoenergy.com.au

- 19 Evoenergy must notify the AER of any change to the above contact details within 5 Business Days.

Acknowledgements

- 20 Evoenergy consents and acknowledges that:
- (a) the AER may authorise a member of the AER or a member of the AER's staff, to exercise a decision-making function under the Undertaking on its behalf and that authorisation may be subject to any conditions the AER may impose;
 - (b) the AER may make the Undertaking publicly available including by publishing it on the AER's website;
 - (c) the AER may, from time to time, make public reference to the Undertaking, including in news media statements and in AER publications; and
 - (d) the AER reserves its rights and remedies (including to institute legal proceedings against Evoenergy seeking penalties and other relief) in relation to any breaches of the Guideline or NER not contemplated by this Undertaking; and
 - (e) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct described in paragraph 5 of this Undertaking.

Definitions

21 Capitalised terms used in this Undertaking are defined as set out below.

Term	Meaning
AER	means the Australian Energy Regulator.
Business Day	has the meaning given in Chapter 10 of the NER.
Customer	means the Customer identified in the Confidential Schedule to this Undertaking.
Commencement Date	is the date the Undertaking comes into effect under paragraph 8 of this Undertaking.
Distribution Network Service Provider	has the meaning given in Chapter 10 of the NER.
Distribution Service	has the meaning given in Chapter 10 of the NER.
DNSP	means Distribution Network Service Provider.
Evoenergy	means Icon Distribution Investments Limited (ACN 073 025 224) and Jemena Networks (ACT) Pty Ltd (ACN 008 552 663), trading as Evoenergy (ABN 76 670 568 688).
Guideline	means the Electricity Distribution Ring-fencing Guideline prepared by the AER under clause 6.17.2 of the NER.
NEL	means the National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> (SA) as it applies in the Australian Capital Territory under the <i>Electricity (National Scheme) Act 1997</i> (ACT).
NER	means the National Electricity Rules that have force of law under the NEL.
Other Services	has the meaning given at clause 1.4 of the <i>Guideline</i> .
Services	means the services set out at paragraph 5 of this Undertaking.

Transmission Service	has the meaning given in Chapter 10 of the NER.
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Undertaking	means this document (including any schedules or annexures to this document) as varied from time to time under section 59A of the NEL.
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Waiver	has the meaning given in paragraph 7 of this Undertaking.
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Interpretation

- 22 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its annexures;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Undertaking to any company includes a company over which the first-mentioned company is in a position to exercise control within the meaning of section 50AA of the *Corporations Act 2001* (Cth);
 - (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
 - (g) a reference to a paragraph, clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
 - (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or government agency;
 - (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes other genders;
 - (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions are to be construed without

- limitation;
- (l) a construction that would promote the purpose or object of this Undertaking (whether expressly stated or not) is to be preferred to a construction that does not promote that purpose or object;
 - (m) a reference to:
 - (1) a thing (including but not limited to, a chose in action or other right) includes part of that thing; and
 - (2) a party includes its successors and permitted assigns.

EXECUTION BY EVOENERGY

EXECUTED by Icon Distribution Investments Limited (ACN 073 025 224), in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Name of director
Hezkial,
Ray

Name of director/secretary

Digitally signed by
Hezkial, Ray
Date: 2024.06.05
10:04:50 +10'00'


Signature of director
Pratt,
Alison

Signature of director/secretary

Digitally signed by
Pratt, Alison
Date: 2024.06.05
09:58:27 +10'00'

Executed onday of.....2024.

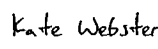
EXECUTED by Jemena Networks (Act) Pty Ltd (ACN 008 552 663), in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:

032AA39EAF1547F.....
12-Jun-2024

Name of director

David Gillespie

Name of director/secretary

DocuSigned by:

522531C063C64BF.....
12-Jun-2024

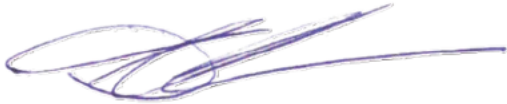
Signature of director

Kate Webster

Signature of director/secretary

Executed onday of.....2024.

ACCEPTANCE BY THE AUSTRALIAN ENERGY REGULATOR PURSUANT TO SECTION 59A(1) OF THE *NATIONAL ELECTRICITY LAW*.



Justin Oliver,
AER Board Member

Accepted on the 14th day of June 2024.

Confidential Schedule



