

NATIONAL ELECTRICITY LAW

**Undertaking to the Australian Energy Regulator for the year ending 30 June 2018
given for the purposes of section 59A of the *National Electricity (ACT) Law***

by

ActewAGL Distribution (ABN 76 670 568 688)

1 PERSON GIVING THIS UNDERTAKING

- 1.1 This Undertaking is given to the Australian Energy Regulator (AER) by ActewAGL Distribution (ActewAGL) of 40 Bunda Street, Canberra 2600 for the purposes of section 59A of the *National Electricity Law (NEL)*.

2 BACKGROUND

- 2.1 ActewAGL is the owner and operator of an electricity distribution network located in the Australian Capital Territory (ACT). It provides electricity distribution services to retailers through this network.
- 2.2 ActewAGL is registered as a distribution network service provider (DNSP) under section 12(1) of the NEL and clause 2.5.1 of the National Electricity Rules (NER).
- 2.3 Section 5 of the *Electricity (National Scheme) Act 1997 (ACT)* provides that the NEL, as set out in the Schedule to the *National Electricity (South Australia) Act 1996 (SA)*, applies as a law of the ACT. The NEL and the NER regulate the revenue that ActewAGL is permitted to derive from the provision of distribution services, specifically those of its distribution services that are 'direct control network services' as defined in section 2B of the NEL.
- 2.4 On 30 April 2015, the AER published the *Final Decision ActewAGL distribution determination 2015-16 to 2018-19 (Final Determination)* encompassing its reasons together with the distribution determination.
- 2.5 On 21 May 2015, ActewAGL filed an application to the Australian Competition Tribunal (Tribunal) seeking leave to apply, and subject to that leave applying, for review of the Final Determination under Division 3A of Part 6 of the NEL.
- 2.6 On 17 July 2015, the Tribunal gave leave to ActewAGL to apply for review of the Final Determination.
- 2.7 On 26 February 2016, the Tribunal determined that the Final Determination be set aside and remitted to the AER to make the decision again in accordance with its directions on:
- 2.7.1 cost of debt;
 - 2.7.2 estimated cost of corporate income tax (gamma);

- 2.7.3 operating expenditure;
 - 2.7.4 service target performance incentive scheme; and
 - 2.7.5 any other appropriate variations necessary in light of the other directions by the Tribunal.
- 2.8 On 24 March 2016, the AER applied to the Full Federal Court for judicial review of the Tribunal's decision. The Full Federal Court heard the matter (file number NSD419/2016) in October 2016 and reserved its judgment on 24 October 2016.
- 2.9 The setting aside of the Final Determination creates uncertainty for users about applicable tariffs and the legal effect of the non-price provisions of the Final Determination.
- 2.10 To address this uncertainty, in May 2016 ActewAGL gave, and the AER accepted, an undertaking under section 59A of the NEL as to the tariffs it would impose in the regulatory year commencing on 1 July 2016 and ending on 30 June 2017 (**2016/17 Undertaking**).
- 2.11 On 28 February 2017, the AER released its decision on ActewAGL's tariff structure statement (TSS). The NEL provides for ActewAGL's TSS to take effect at the commencement of the regulatory year commencing on 1 July 2017 (**2017/18 regulatory year**) (clauses 11.73.1 and 11.73.2(a)). However, given the Final Determination has been set aside, there is uncertainty as to whether the TSS applies to pricing in the 2017/18 regulatory year.
- 2.12 To ameliorate this uncertainty, ActewAGL has agreed to proffer this Undertaking to the AER to provide for the calculation and determination of ActewAGL's tariffs for direct control services (other than transmission standard control services) for the 2017/18 regulatory year. The Undertaking provides for these tariffs to be calculated in accordance with clause 6.18 of the NEL, as applied and modified by the Undertaking.
- 2.13 The AER accepts this Undertaking, and ActewAGL's compliance with it, as discharging ActewAGL's obligations in relation to tariffs under the NEL and NEL in the 2017/18 regulatory year.
- 2.14 The AER agrees to act in accordance with clause 6.18 of the NEL as it applies pursuant to this Undertaking in respect of the determination of tariffs for the 2017/18 regulatory year.
- 2.15 As the Tribunal decision and the pending Full Federal Court decision in the AER's appeal of that Tribunal decision concern the regulated revenues that ActewAGL is permitted to recover under the NEL and NEL for the 2015/16 to 2018/19 regulatory control period, ActewAGL's tariffs for direct control services (other than transmission standard control services) for the 2017/18 regulatory year determined in accordance with this Undertaking may not reflect ActewAGL's allowed revenue for 2017/18 that is determined upon following the ultimate resolution of the Tribunal and Federal Court proceedings. In these circumstances, the NEL and NEL are expected to provide for a reconciliation process the outcome of which will be reflected in ActewAGL's tariffs for direct control services in future regulatory years.
- 2.16 Terms used in this Undertaking which are defined in the NEL and/or the NEL take their meaning as so defined except insofar as this Undertaking expressly states otherwise (and then only to that extent).

3 COMMENCEMENT OF UNDERTAKING

3.1 This Undertaking comes into effect when:

- 3.1.1 the Undertaking is executed by ActewAGL; and
- 3.1.2 the AER accepts the Undertaking so executed.

4 OPERATION AND TERMINATION OF THE UNDERTAKING

- 4.1 Nothing in this Undertaking is intended to waive any legal rights that ActewAGL otherwise has, including without limitation under the NEL or NER and including in respect of any adjustments made or provided for in any remaking of the AER's distribution determination for ActewAGL for the 2015/16 to 2018/19 regulatory control period or any future pricing proposal for that period approved by the AER under clause 6.18.8 of the NER for under or over recovery of revenue amounts arising in respect of any differences between the AER's remade distribution determination and its Final Determination, the 2016/17 Undertaking and/or ActewAGL's 2017/18 pricing proposal pursuant to this Undertaking.
- 4.2 Upon commencement of this Undertaking, ActewAGL undertakes to assume the obligations set out in clause 5.1, but only to the extent that compliance with those obligations would not prevent ActewAGL from complying with any applicable obligations under the NEL or the NER in relation to tariffs to be applied in the 2017/18 regulatory year.
- 4.3 ActewAGL may withdraw or vary this Undertaking at any time with the consent of the AER. This Undertaking is taken to be withdrawn or varied on the date the AER consents in writing to its withdrawal or variation.
- 4.4 Subject to the prior termination of this Undertaking in accordance with clause 4.5:
 - 4.4.1 the obligations set out in clauses 5.1.1 and 5.1.2 shall cease to apply upon the commencement of a new distribution pricing proposal which has been submitted by ActewAGL and approved by the AER pursuant to clause 6.18 of the NER following upon the occurrence of either:
 - 4.4.1.1 the affirming of the Final Determination; or
 - 4.4.1.2 the making of a distribution determination for the period from 1 July 2015 to 30 June 2019 in place of the Final Determination; and
 - 4.4.2 the obligation set out in clause 5.1.3 shall cease to apply upon the occurrence of either:
 - 4.4.2.1 the affirming of the Final Determination; or
 - 4.4.2.2 the making of a distribution determination for the period from 1 July 2015 to 30 June 2019 in place of the Final Determination.
- 4.5 The Undertaking will terminate on the earlier of:
 - 4.5.1 the withdrawal of the Undertaking by ActewAGL with the consent of the AER;
 - 4.5.2 30 June 2018.

5 UNDERTAKING BY ACTEWAGL

- 5.1 ActewAGL undertakes for the purposes of section 59A of the NEL that for the 2017/18 regulatory year:
- 5.1.1 subject to clause 5.1.2, ActewAGL's tariffs for each tariff class for direct control services (excluding transmission standard control services) for the 2017/18 regulatory year will be calculated in accordance with clause 6.18 of the NER, including clause 6.18.1A(c), provided that the AER acts in accordance with clause 6.18 of the NER as it applies pursuant to this Undertaking;
- 5.1.2 for the purposes of clause 5.1.1:
- 5.1.2.1 the reference to 'any other applicable requirements in the *Rules*' in clause 6.18.1A(c) will be interpreted to refer to any requirements of clause 6.18 as applicable pursuant to this Undertaking;
- 5.1.2.2 clause 6.18.2(a) will not apply and ActewAGL will submit a pricing proposal for the 2017/18 regulatory year to the AER by 3 April 2017;
- 5.1.2.3 clauses 6.18.1B, 6.18.1C and 6.18.4 will not apply;
- 5.1.2.4 clause 6.18.2(b)(8) will be modified to provide only that the pricing proposal must describe the nature and extent of change from the 2016/17 regulatory year;
- 5.1.2.5 the references to 'regulatory control period' in clause 6.18 will be interpreted to refer to the period commencing on 1 July 2017 and ending on 30 June 2019;
- 5.1.2.6 where the term 'regulatory year' is referred to in clause 6.18, the reference to 'regulatory control period' in the definition of that term will be interpreted to refer to the period commencing on 1 July 2017 and ending on 30 June 2019;
- 5.1.2.7 the references to 'this Part' in clause 6.18.8(a)(1) and 6.18.8(c) will be interpreted to refer to Part I of the NER as it applies pursuant to this Undertaking;
- 5.1.2.8 the references in clause 6.18.8(c3) to 'an annual *pricing proposal* by a *Distribution Network Service Provider* under sub-paragraph 6.18.2(a)(2)', and in clauses 6.18.8(c3) and (d) to 'annual *pricing proposal*', will be interpreted to refer to the pricing proposal for the 2017/18 regulatory year submitted by ActewAGL under clause 5.1.2.2 of this Undertaking;
- 5.1.2.9 the Final Determination will not apply to the calculation of ActewAGL's tariffs for standard control services;
- 5.1.2.10 ActewAGL's tariffs for each tariff class for standard control services for the 2017/18 regulatory year will be calculated by:
- (a) applying an average annual revenue cap (**Adjusted AARC**) for the 2017/18 regulatory year derived by applying CPI for

two years to the allowable average revenue (AAR) (c/kWh) for the 2015/16 regulatory year set out in ActewAGL's pricing proposal for that year (being \$0.04435 per kWh); and

- (b) applying expected revenue for standard control services for the 2017/18 regulatory year derived by applying ActewAGL's actual volumes for the 2015/16 regulatory year to the Adjusted AARC for the 2017/18 regulatory year (**Expected Revenue**).

That is, the Adjusted AARC will be derived by applying the following formula:

$$\text{DUOS Revenue}_{17/18} = \text{Adjusted AARC}_{17/18} \times Q_{15/16}$$

where:

$$\text{Adjusted AARC}_{17/18} = \text{AAR}_{15/16}(1 + \Delta\text{CPI}_{16/17})(1 + \Delta\text{CPI}_{17/18})$$

$$\Delta\text{CPI}_{16/17} = 1.51\%$$

$$\Delta\text{CPI}_{17/18} = 1.28\%$$

5.1.2.11 in calculating ActewAGL's tariffs for standard control services, clause 6.18 is modified as follows:

- (a) clause 6.18.2(b)(7) will be modified to provide that the pricing proposal must demonstrate compliance with the Adjusted AARC and ActewAGL's TSS;
- (b) the reference to 'expected revenue for the relevant services in accordance with the applicable distribution determination for the *Distribution Network Service Provider*' in clause 6.18.5(g)(2) will be interpreted to refer to the Expected Revenue for the 2017/18 regulatory year derived in the manner described in clause 5.1.2.10(b);
- (c) clause 6.18.6(c) will be modified to provide that the permissible percentage is CPI plus 2%;
- (d) clause 6.18.6(d) will be modified to omit sub-paragraphs (1) and (4); and
- (e) the references to 'any applicable distribution determination including any applicable *tariff structure statement*' and 'any applicable distribution determination and the *Distribution Network Service Provider's tariff structure statement* for the relevant *regulatory control period*' in clauses 6.18.8(a)(1) and 6.18.8(c) respectively will be modified to refer to the Adjusted AARC and the TSS; and

5.1.2.12 tariffs to recover designated pricing proposal charges and jurisdictional scheme amounts will be calculated in accordance with clauses 6.18.7 and 6.18.7A, subject to the following modifications:

- (a) the references to 'the relevant distribution determination' in clauses 6.18.7 and 6.18.7A will be interpreted to refer to the Final Determination;
 - (b) the reference to 'annual revenue requirement' in clause 6.18.7(d)(1) will be interpreted to refer to the Adjusted AARC; and
 - (c) the references to 'approved jurisdictional schemes' in clause 6.18.7A will be interpreted to refer to any scheme that was a jurisdictional scheme at the time the AER made its decision under clause 6.12.1(20) in the Final Determination;
- 5.1.2.13 ActewAGL's tariffs for alternative control services will be calculated in accordance with the Final Determination;
- 5.1.2.14 in calculating ActewAGL's tariffs for alternative control services, clause 6.18 is modified as follows:
- (a) clause 6.18.2(b)(7) will be modified to provide that the pricing proposal must demonstrate compliance with the Final Determination and ActewAGL's TSS;
 - (b) the reference to 'the applicable distribution determination for the *Distribution Network Service Provider*' in clause 6.18.5(g)(2) will be interpreted to refer to the Final Determination; and
 - (c) the references to 'any applicable distribution determination including any applicable *tariff structure statement*' and 'any applicable distribution determination and the *Distribution Network Service Provider's tariff structure statement* for the relevant *regulatory control period*' in clauses 6.18.8(a)(1) and 6.18.8(c) respectively will be modified to refer to the Final Determination and the TSS; and
- 5.1.3 ActwAGL will otherwise act in accordance with the NEL and the NER on the basis that the Final Determination continues in force.

6 ACKNOWLEDGEMENTS

- 6.1 ActewAGL and the AER acknowledge and agree that the tariffs for the 2017/18 regulatory year determined in accordance with this Undertaking replace any tariffs payable to ActewAGL under any previously approved pricing proposal or undertaking given under section 59A of the NEL.
- 6.2 ActewAGL acknowledges that:
- 6.2.1 the AER will make the Undertaking publicly available including by publishing it on the AER's website;
 - 6.2.2 the AER will, from time to time, make public reference to the Undertaking including in news media statements and in AER publications.


EXECUTED BY ACTEWAGL DISTRIBUTION (ABN 76 670 568 688)



.....
Representative for ActewAGL Distribution

This 16th day of May2017

ACCEPTED BY THE AUSTRALIAN ENERGY REGULATOR PURSUANT TO SECTION 59A OF THE NATIONAL ELECTRICITY LAW



.....
Chair

This 17th day of MAY2017