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19 April 2017

Ms. Paula Conboy  
Chair  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3000

Dear Ms. Conboy

Office of the  
Chief Executive Officer

Level 22, 570 George Street  
Sydney NSW 2000  
All mail to GPO Box 4009  
Sydney NSW 2001  
T +61 2 9269 2115  
[www.ausgrid.com.au](http://www.ausgrid.com.au)

***Submission of an enforceable undertaking under section 288 of the National Energy Retail Law***

I am writing to you to submit an enforceable undertaking that Ausgrid wishes to give, and for the AER to accept, in relation to Ausgrid's obligations under the National Energy Retail Rules to provide Life Support Customers with written notice of any planned interruption to electricity supply at the premises.

For this purpose, please find attached Ausgrid's proposed undertaking, which has been signed by me, and which will be given under section 288 of the National Energy Retail Law.

I understand from previous correspondence that the proposed undertaking is in a form that would be acceptable to the AER Board. I look forward to your confirmation that the undertaking has been accepted by the AER. I note that the undertaking will come into effect once it is accepted by the AER.

If you require further information on our proposed undertaking please contact Mr Russell Houlahan on (02) 9394 6811.

Yours sincerely

**RICHARD GROSS**  
Chief Executive Officer  
Ausgrid

## **NATIONAL ENERGY RETAIL LAW**

Undertaking to the Australian Energy Regulator  
given for the purposes of section 288

by

**AUSGRID (ABN 78 508 211 731)**

### **Persons giving this Undertaking**

1. This Undertaking is given to the Australian Energy Regulator (**AER**) by the Ausgrid Operator Partnership trading as Ausgrid (ABN 78 508 211 731) of 570 George Street, Sydney in the State of New South Wales (**Ausgrid**) pursuant to section 288 of the *National Energy Retail Law* (**Retail Law**).
2. Ausgrid is a partnership comprising the following entities (**Partners**):
  - (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
  - (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
  - (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
  - (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
  - (e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.
3. Ausgrid is the licence holder and operator of the distribution system in its Distribution District in the state of New South Wales.

### **Background**

4. As a *distributor*, Ausgrid has certain obligations under the *National Energy Retail Rules* as those rules are applied in NSW in accordance with the National Energy Retail (Adoption) Act NSW 2012 (NSW) (**Retail Rules**) in respect of a customer's premises at which a person resides who requires *life support equipment* (**Life Support Customer**).
5. Ausgrid's obligations include a requirement, in the case of an interruption under Division 6 of Part 4 of the Retail Rules, to give a Life Support Customer at least four business days' written notice of any Planned Interruptions to supply at the premises. This obligation arises by the operation of rules 90A and 125(2)(d) of the Retail Rules, which states the four business days are to be counted from, but not including, the date of receipt of the notice. Pursuant to rule 90A(3)(c) of the Retail Rules in force in New South Wales, Ausgrid's obligation under rule 125(2)(d) does not apply if the customer consents in writing, in accordance with 90A, for the notice period to be shortened or for the planned interruption to occur with notice on the day of the interruption.
6. In the period between 26 May 2016 and December 2016, Ausgrid, in breach of its obligations under rule 125(2)(d) of the Retail Rules, on 8 instances, failed to provide notification to Life Support Customers as a result of one of the following:
  - (a) Incorrect Network Connectivity data in Ausgrid's geographic information system (**GIS**) which was not identified during planning for the interruption;

- (b) Failure to notify all customers who had been identified as impacted by a Planned Interruption;
  - (c) Abnormal switching arrangements not identified during planning for the interruption;
  - (d) Unusual supply arrangements on a customer's private mains switchboard.
7. For each breach of rule 125(2)(d), Ausgrid notified the AER as required by the AER Compliance Procedures and Guidelines.
  8. The AER is concerned about Ausgrid's repeated breaches of its obligations under Rule 125(2)(d). Ausgrid acknowledges that these breaches are the result of deficiencies in its geographic information system data and planned interruption processes, and has identified improvements to its processes to detect and rectify informational errors.
  9. To address the AER's concerns and to minimise the likelihood of future contraventions of the Retail Rules, Ausgrid offers the Undertakings in clause 17.

### **Commencement of Undertaking**

10. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by Ausgrid; and
  - (b) the AER accepts the Undertaking so executed (**Commencement Date**).
11. Upon the Commencement Date, Ausgrid undertakes to assume the obligations set out in clause 17 below.

### **Expiry**

12. This Undertaking, with the exception of clauses 11 to 14 (inclusive) of Annexure A, expires three years after the Commencement Date (**Expiry Date**).
13. Clauses 11 to 14 (inclusive) of Annexure A survive the expiry of this Undertaking.
14. Ausgrid 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.
15. The AER may revoke its acceptance of the Undertaking if the AER becomes aware that any information provided to it was materially incorrect, inaccurate or misleading.
16. The AER may, if requested by Ausgrid expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

### **Undertaking**

17. Ausgrid undertakes that:
  - (a) by no later than 31 December 2018, it will implement and complete a project to verify Network Connectivity of each of its existing Life Support Customers.
  - (b) processes will be in place to enable the update of data in its GIS as soon as practicable after it becomes aware of any changes to its network that may affect the Network Connectivity of a Life Support Customer.
  - (c) prior to a Planned Interruption where a connection has not been previously verified, it will conduct Reasonable Checks, to verify the Network Connectivity of Life Support Customers in the area impacted by the Planned Interruption and in the Adjoining Neighbourhood.

- (d) by no later than 30 June 2017, it will upgrade its web-based GIS (**WebGIS**) so employees in the field will be able to view all customers who have been notified of the Planned Interruption (including Life Support Customers) in the Planned Interruption area and in the Adjoining Neighbourhood.
- (e) it will continue to conduct employee communications and training to embed the obligation to give a Life Support Customer the required written notice of any Planned Interruptions to supply. To facilitate this, Ausgrid will:
  - (i) establish within 3 months of the Commencement Date, a **Compliance Program** in accordance with the requirements set out in Annexure A, being a program designed to:
    - (A) minimise Ausgrid's risk of future breaches of rule 125(2)(d) of the Retail Rules; and
    - (B) ensure Ausgrid's awareness of its responsibilities and obligations under rule 125(2)(d).
  - (ii) maintain and continue to implement the Compliance Program for the Duration of this Undertaking.
- (f) it will notify the AER in writing within seven business days of any failure to comply with the dates identified within this Undertaking.

#### **Costs**

- 18. Ausgrid must pay all of its own costs in relation to the Undertaking.

#### **Notification**

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

Name: CEO  
 Address: GPO Box 520  
 Melbourne VIC 3001

- 20. Any notice or communication to Ausgrid pursuant to this Undertaking must be sent to:

Name: Company Secretary  
 Address: GPO Box 4009  
 Sydney NSW 2001

- 21. Ausgrid must notify the AER of a change to its contact details within five Business Days.

#### **Acknowledgments**

- 22. Ausgrid acknowledges that:

- (a) the AER will make this Undertaking publicly available including by publishing it on the AER's website;
- (b) the AER will, from time to time, make public reference to the Undertaking including in news media statements and in AER publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

## Definitions

23. Terms used in this Undertaking are set out below. Italicised terms not defined in this Undertaking have the meaning given to those terms in the Retail Law or Retail Rules, as the case requires.

Term	Meaning
<b>Adjoining Neighbourhood</b>	in relation to a Planned Interruption is the locality comprising all properties supplied or able to be supplied from within the area of isolation and the adjoining LV distributor(s) beyond each isolation point.
<b>AER</b>	Australian Energy Regulator.
<b>AER Compliance Procedures and Guidelines</b>	means document entitled <i>AER Compliance Procedures and Guidelines – National Energy Retail Law, Retail Rules and Regulations – Version 3</i> , dated September 2014 (as amended from time to time), available on the AER's website.
<b>Ausgrid</b>	has the meaning given to that term in clauses 1 to 2 of this Undertaking.
<b>Business Day</b>	has the meaning given to that term in the Retail Law.
<b>Commencement Date</b>	Is the date the Undertaking comes into effect under clause 10 of this Undertaking.
<b>Distribution District</b>	has the meaning in Schedule 3 to the <i>Electricity Supply Act 1995 (NSW)</i> .
<b>Duration</b>	means the period commencing on the Commencement Date and ending on the Expiry Date.
<b>Executive Sponsor</b>	Is Ausgrid's General Manager Network Services; or other member of Ausgrid's Executive Leadership Team as nominated from time to time.
<b>Life Support Customer</b>	has the meaning given to that term in clause 4 of this Undertaking.

Term	Meaning
<b>Network Connectivity</b>	means the location at which a customer's premises are electrically connected to the network.
<b>Nominated Auditor</b>	Is Ausgrid's Head of Audit; or as advised from time to time.
<b>Planned Interruption</b>	has the meaning given to that term in the Retail Rules.
<b>Reasonable Checks</b>	Means the checks documented in Ausgrid's Planned Interruption Notification Procedures.
<b>Retail Law</b>	<p>means the <i>National Energy Retail Law</i> set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> as in force for the time being which, pursuant to section 4 of the <i>National Energy Retail Law (Adoption) Act 2012</i> (NSW):</p> <ul style="list-style-type: none"> <li>(a) applies as a law of New South Wales, with the modifications set out in Schedule 1 to that Act; and</li> <li>(b) as so applying, may be referred to as the <i>National Energy Retail Law (NSW)</i>.</li> </ul>
<b>Retail Rules</b>	As the meaning given in clause 4.
<b>Undertaking</b>	this document (including any schedules or annexures to this document) as varied from time to time under section 288 of the Retail Law.

## Interpretation

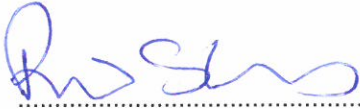
24. In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
  - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
  - (c) if the day on which any act, matter or thing is to be done 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 that company is in a position to exercise control within the meaning of section 50AA of the *Corporations Act 2001*;
  - (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 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 governmental 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 can be construed without limitation;
  - (l) a construction that would promote the purpose or object underlying this Undertaking (whether expressly stated or not) will be preferred to a construction that does not promote that purpose or object;
  - (m) a reference to:
    - (i) a thing (including but not limited to, a chose in action or other right) includes part of that thing; and
    - (ii) a party includes its successors and permitted assigns.

**Executed by**

For and on behalf of each of the partners in the Ausgrid Operator Partnership (ABN 78 508 211 731)

By their Attorney under Registered Power of Attorney

Book 4723 No. 720



**Attorney**



**Witness**



**Name of Attorney**



**Name of Witness**

This 19 day of April 2017.

**ACCEPTED BY THE AUSTRALIAN ENERGY REGULATOR PURSUANT TO SECTION 288 OF THE NATIONAL ENERGY RETAIL LAW.**



Paula Conboy – Chair

This 28 day of April 2017.

## Annexure A

### COMPLIANCE PROGRAM

Ausgrid will establish a **Compliance Program** that complies with each of the following requirements:

#### Appointments

1. From as soon as practicable after the Commencement Date and for at least the Duration of the Undertaking, Ausgrid will appoint (or, if already appointed, continue to employ) either on an ongoing or temporary contractual basis:
  - (a) a person with suitable qualifications and/or experience in electricity regulatory compliance and audit (**Nominated Auditor**) with responsibility for Ausgrid's reporting to the AER in accordance with clause 17(f) of this Undertaking, and the responsibilities outlined below in Annexure A clauses 9 and 10; and
  - (b) a member of its Executive Leadership Team (ELT) to be responsible for the activities outlined in clause 17(a) to (d) of this Undertaking, and Annexure A clauses 2 to 8 (**Executive Sponsor**).

#### Risk Assessment

2. The Executive Sponsor will ensure that a life support risk assessment is completed within 3 months of the Compliance Program being established (**Risk Assessment**).
3. The Risk Assessment must cover the following matters, and be recorded in a written report (**Risk Assessment Report**):
  - (a) identify the areas where Ausgrid is at risk of breaching rule 125(2)(d) of the Retail Rules;
  - (b) assess the likelihood of these risks occurring;
  - (c) identify where there may be gaps in Ausgrid's existing procedures for managing these risks; and
  - (d) provide recommendations for any action to be taken by Ausgrid having regard to the above assessment.

#### Staff Training

4. Ausgrid will ensure that the Compliance Program provides for induction and regular (at least once a year) training for all employees, representatives and agents (excluding Accredited Service Providers) whose duties are directly relevant to Ausgrid's obligations under rule 125(2)(d) of the Retail Rules.
5. Ausgrid will ensure that the training is reviewed by a suitably qualified compliance professional or legal practitioner with relevant retail energy markets expertise.

#### Operational Reports to Executive Leadership

6. The Executive Sponsor will present the Risk Assessment Report to Ausgrid's Executive Leadership Team (**ELT**) as soon as practicable after that report is completed.
7. The Executive Sponsor will present a report to Ausgrid's Executive Leadership Team, on a quarterly basis (**Quarterly Reports**), as to:

- (a) the progress in implementing the undertakings specified in clause 17;
  - (b) any amendments to Ausgrid's processes that are required.
8. The first Quarterly Report for presentation to Ausgrid's ELT will be prepared within 4 months of the Commencement Date and then quarterly thereafter.

### Compliance review

9. Ausgrid will, at its own expense, cause a regular review of the Compliance Program (**Compliance Review**) to be carried out in accordance with each of the following requirements:
- (a) **Independent Reviewer** – The Nominated Auditor will ensure that each Compliance Review is carried out by a suitably qualified, independent compliance professional who is acceptable to Ausgrid and the AER (**Reviewer**). The Reviewer will qualify as independent on the basis that he or she:
    - (i) did not design or implement the Compliance Program;
    - (ii) is not a present or past employee or director of Ausgrid or the AER;
    - (iii) has no significant shareholding or other interests in Ausgrid.
  - (b) **Scope of Review** – the scope of the Compliance Review will be agreed in writing between Ausgrid and the AER 60 days prior to its commencement. As a minimum, it must include the following:
    - (i) whether the Compliance Program includes all the elements outlined in Annexure A clauses 1 to 9, and if not, what elements need to be included or further developed;
    - (ii) whether the Compliance Program adequately covers the parties and areas identified in the Risk Assessment, and if not, what needs to be further addressed;
    - (iii) whether the Staff Training and induction is effective and if not, what aspects need to be further developed; and
    - (iv) whether there are any deficiencies in Ausgrid's Compliance Program, or whether there are or have been any instances of non-compliance with the Compliance Program and, if so, recommendations for rectifying that non-compliance.
  - (c) **Compliance Report** – the Reviewer must provide a written report to the Nominated Auditor within 30 days of completion of the review (**Compliance Report**)
  - (d) **Evidence** – Ausgrid will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Ausgrid's possession and control including, without limitation:
    - (i) the ability to make enquiries of any officer, employees, representatives and agents of Ausgrid;

- (ii) documents relating to the Risk Assessment, including the Risk Assessment Report;
  - (iii) documents relating to Ausgrid's Compliance Program, including documents relevant to Ausgrid's Staff Training and induction program; and
  - (iv) any reports made by the Nominated Auditor to the Board or senior management regarding Ausgrid's Compliance Program.
- (e) **Frequency** – The Nominated Auditor will ensure that a Compliance Review is completed within ten months of the Commencement Date and that a subsequent review is completed on an annual basis from the date of the first Compliance Review for the duration of the Undertaking.

#### **Ausgrid response to Compliance Reports**

10. Ausgrid will ensure that the Nominated Auditor, within 30 days of receiving the Compliance Report:
  - (a) provides a summary of the Compliance Report to Ausgrid's Board Audit Committee; and
  - (b) where an instance of non-compliance has been identified by the Reviewer, provides a report to Ausgrid's Board Audit Committee identifying how Ausgrid can implement any recommendations made by the Reviewer to rectify the non-compliance.
11. Ausgrid will address promptly and with due diligence any recommendations that the Reviewer may make that are reasonably necessary to ensure that Ausgrid maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

#### **Provision of Compliance Program documents to the AER**

12. Ausgrid will maintain a record of and store all documents relating to and constituting the Compliance Program for a period not less than 5 years from the Commencement Date.
13. If requested by the AER during the period of 5 years following the Commencement Date, Ausgrid will, at its own expense, cause to be produced and provided to the AER copies of all documents constituting the Compliance Program, including:
  - (a) the Risk Assessment Report;
  - (b) Staff Training materials and induction materials;
  - (c) all Quarterly Reports that have been completed at the time of the request.
14. Ausgrid will provide a copy of each Compliance Report to the AER within 30 days of it being provided to Ausgrid's Board Audit Committee.