

17 May 2017

**Undertaking to the
Australian Energy Regulator
for the year commencing 1
July 2017 and ending 30
June 2018**

Given for the purposes of section 59A of the
National Electricity (NSW) Law by Ausgrid Operator
Partnership (ABN 78 508 211 731)

1 Person giving this Undertaking

- 1.1 The Undertaking is given to the Australian Energy Regulator (AER) by the Ausgrid Operator Partnership (ABN 78 508 211 731), of 570 George Street, Sydney NSW 2000 (Ausgrid) for the purposes of section 59A of the NEL.
- 1.2 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.
- 1.3 Ausgrid is the licence holder and operator of the distribution system in its Distribution District in the state of New South Wales.

2 Background

- 2.1 Ausgrid is:
- (a) a 'Registered Participant' within the National Electricity Market; and
 - (b) a 'Distribution Network Service Provider' that engages in the activity of operating a distribution system in New South Wales.
- 2.2 As a Distribution Network Service Provider, the revenue and pricing of Ausgrid is regulated by Chapters 6 and 6B of the NER.
- 2.3 The AER is responsible for the economic regulation of Ausgrid under section 15(1)(f) of the NEL and is given obligations in relation to the making of distribution determinations and the approval of pricing proposals under Chapter 6 of NER. Ausgrid must comply with the distribution determination that applies to the electricity network services it supplies under section 14B of the NEL.
- 2.4 The AER made a distribution determination in April 2015 that applies to Ausgrid until 30 June 2019 (**2015 Determination**). The 2015 Determination is a 'reviewable regulatory decision' under section 71A of the NEL. Ausgrid and other third parties applied to the Tribunal for a review of the 2015 Determination under section 71B of the NEL. On 26 February 2016, the Tribunal delivered a judgment in this application (**Decision**). The Decision set aside the 2015 Determination and remitted it to the AER under section 71P of the NEL. The AER made an application under the *Administrative Decisions (Judicial Review) Act 1997* (Cth)

seeking review of the Tribunal's decision. The Federal Court has heard the judicial review application and has reserved its judgement.

- 2.5 The effect of setting aside the 2015 Determination (and the subsequent judicial review application to the Federal Court) on pricing by Ausgrid is uncertain. Ausgrid is required by clause 6.18.2 of the NER to submit a pricing proposal to the AER for approval each year. The pricing proposal must demonstrate compliance with any applicable distribution determination, including Ausgrid's tariff structure statement as approved by the AER, under clause 6.18.2(b)(7) of the NER. Ausgrid is required to provide direct control services in accordance with the price of those services under the approved pricing proposal under clause 6.1.3 of the NER and to provide a statement of network charges calculated in accordance with the NER and Ausgrid's distribution determination to each retailer under clauses 6B.A2.3 and 6B.A2.4.
- 2.6 The setting aside of the 2015 Determination also creates uncertainty as to whether the 2015 Determination applies to other non-price matters.
- 2.7 Rule 6.11.3(b) provides for the previous distribution determination and pricing to continue where there is an 'intervening period' between the end of one regulatory control period and the commencement of a new distribution determination providing for the next regulatory control period. However, it is unclear whether this provision properly applies in circumstances where the 2015 Determination has been set aside.
- 2.8 This uncertainty may result in Ausgrid breaching its obligations under the NEL and NER to comply with its distribution determination and to set prices in accordance with the NER and its distribution determination. The AER may commence proceedings for this potential breach under section 61 of the NEL. This uncertainty is expected to continue into the year commencing 1 July 2017 and ending 30 June 2018 following the AER's judicial review of the Decision.
- 2.9 Further, Ausgrid submitted a revised tariff structure statement for the period 1 July 2017 to 30 June 2019. A final determination on this tariff structure statement was published by the AER on 28 February 2017 and it is considered by the AER that the implementation of the tariff structure statement should be implemented in 2017-18 pricing, as contemplated under the NER. As a result, the undertaking given by Ausgrid, and accepted by the AER, to address the uncertainty as to whether Ausgrid will breach its obligations under the NEL and NER for the year commencing on 1 July 2016 and ending 30 June 2017 under section 59A of the NEL cannot be continued because it would not permit the application of Ausgrid's tariff structure statement from 1 July 2017.
- 2.10 Accordingly, Ausgrid gives this Undertaking to set prices for Direct Control Services and provide services in accordance with its terms (which includes the implementation of the tariff structure statement). The AER acknowledges that this Undertaking is given in response to concerns about the uncertainty associated with, and the risk of breach of, Ausgrid's obligations in relation to pricing and compliance under the NEL and NER and that its acceptance by the AER will facilitate transparency and stability in network charges in the year commencing 1 July 2017 and ending 30 June 2018.
- 2.11 The AER is satisfied that this undertaking, and Ausgrid's compliance with it, discharges Ausgrid's obligations in relation to:
 - (a) pricing and network charges (including the giving effect to the tariff structure statement approved by the AER); and
 - (b) compliance with the matters set out in Schedule 2,under the NEL and NER in the year commencing 1 July 2017 and ending 30 June 2018.

3 Commencement

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Ausgrid; and
 - (b) the AER accepts the Undertaking so executed, **(Commencement Date)**.
- 3.2 On and from the Commencement Date, Ausgrid undertakes to assume the obligations in clause 5.

4 Expiry

- 4.1 Subject to clauses 4.2 and 4.3, this Undertaking expires on 30 June 2018 (**Expiry Date**).
- 4.2 Ausgrid may withdraw or vary this Undertaking at any time, but this Undertaking will be taken to be withdrawn or varied on the date on which the AER consents to such withdrawal or variation in accordance with section 59A of the NEL.
- 4.3 The AER may revoke its acceptance of this Undertaking if the AER becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 4.4 The AER may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied.

5 Undertaking

Ausgrid undertakes for the purposes of section 59A of the NEL that for the year commencing on 1 July 2017 and ending 30 June 2018:

- (a) subject to clause 5(b), Ausgrid's tariffs for each tariff class for Standard Control Services for the year commencing on 1 July 2017 and ending on 30 June 2018 will be calculated in accordance with clause 6.18 of the NEL (**Network Charges**), which for the avoidance of doubt includes compliance with the tariff structure statement;
- (b) for the purposes of clause 5(a), the 2015 Determination will not apply (other than as set out in clauses 5(c) and 5(e)) and:
 - 1. Clause 6.18.2(a) will not apply and Ausgrid must submit its pricing proposal for the year commencing 1 July 2017 and ending on 30 June 2018 by 1 April 2017.
 - 2. the tariffs for each tariff class will be calculated such that they will reflect the recovery of the revenues for:
 - a. Distribution Use of System Charges (DUOS);
 - b. Designated Pricing Proposal Charges and
 - c. Jurisdictional Scheme Amounts (i.e. Climate Change Funds),**(Target Revenues)** as referred to and calculated in accordance with Schedule 1;
 - 3. the reference to 'any applicable distribution determination' in clauses 6.18.2(b)(7), 6.18.2(b)(8), 6.18.8(a)(1) and 6.18.8(c) will be interpreted to refer to the Target Revenues;

4. the reference to 'revenue' in clause 6.18.5(g)(2) will be interpreted to refer to the Target Revenues and the words after "relevant services" are deleted;
 5. the reference to 'annual revenue requirement' in clauses 6.18.1C(a)(1), 6.18.1C(a)(2), 6.18.6(d)(4) and 6.18.7(d)(1) will be interpreted to refer to the Target Revenues;
 6. For the purposes of clauses 6.18.2(b)(8) and 6.18.8(a)(2) any variation in proposed tariffs caused by this clause 5(b) will be deemed to be explained by this Undertaking;
 7. the reference to 'regulatory control period' in clause 6.18 will be interpreted to refer to the period commencing 1 July 2017 and ending on 30 June 2018; and
 8. 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.
- (c) The prices for alternative control services to be applied in the year commencing 1 July 2017 and ending 30 June 2018 are to be calculated in accordance with Attachment 16 of the 2015 Determination;
 - (d) Ausgrid will charge the Network Charges for Direct Control Services to retailers and customers (where direct billing has been agreed under clause 6B.A2.2 of the NER) in accordance with the NER;
 - (e) Ausgrid will comply with the 2015 Determination in relation to the matters specified in Schedule 2;
 - (f) Ausgrid will publish this Undertaking on its website within five business days of the Commencement Date; and
 - (g) Ausgrid will notify the AER in writing within seven days of any failure to charge the Network Charges in accordance with this Undertaking.

6 Acknowledgement

Ausgrid and the AER acknowledge and agree that:

- (a) the Network Charges replace any charges payable to Ausgrid under any previously approved pricing proposal; and
- (b) the process for submitting and approving a pricing proposal for the year commencing 1 July 2017 and ending on 30 June 2018 will be as set out in rule 6.18 of the NER as modified by this undertaking.

7 No derogation

This Undertaking does not prevent the AER from taking enforcement action at any time whether during or after the Term in respect of any breach by Ausgrid of any term of this Undertaking.

8 Costs

Ausgrid must pay all of its own costs in relation to this Undertaking.

9 Notices

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

Name: CEO
Address: GPO Box 520
Melbourne VIC 3001

9.2 Any notice or communication to Ausgrid pursuant to this Undertaking must be sent to:

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

9.3 Notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).

9.4 Ausgrid must notify the AER of a change to its contact details within three Business Days.

9.5 The AER must notify Ausgrid of a change to its contact details within three Business Days.

9.6 Any notice or communication will be sent to the most recently advised contact details and subject to clause 9.3, will be taken to be received.

10 Definitions and interpretation

10.1 Definitions

The meanings of the terms used in this Undertaking are set out below.

Term	Meaning
2015 Determination	has the meaning given to that term in clause 2.4.
2015/16 pricing proposal	means the pricing proposal for the regulatory year 2015/16 approved by the AER for Ausgrid.
AER	has the meaning given to that term in clause 1.
Ausgrid	has the meaning given to that term in clause 1.
Business Day	has the meaning given to that term in the NER.
Commencement Date	has the meaning given to that term in clause 3.1.
Decision	has the meaning given to that term in clause 2.4.

Term	Meaning
Direct Control Services	has the meaning given to that term in the NER.
Distribution District	has the meaning given to that term in the <i>Electricity Supply Act 1995</i> (NSW).
Expiry Date	has the meaning given to that term in clause 4.1.
NEL	means the National Electricity Law set out in the Schedule to the <i>National Electricity (South Australia) Act 1996</i> of South Australia, as in force for the time being which, pursuant to section 6 of the <i>National Electricity Act (New South Wales) 1997</i> : (a) applies as a law of New South Wales, and (b) as so applying, may be referred to as the National Electricity (NSW) Law.
NER	means the National Electricity Rules.
Network Charges	has the meaning given to that term in clause 5(a).
Target Revenues	has the meaning given to that term in clause 5(b)(2)
Tariff structure statement	means the tariff structure statement referred to in clause 6.18.1A of the NER (as amended) that has been approved by the AER for Ausgrid for the period 1 July 2017 to 30 June 2019.
Term	means the period commencing on the Commencement Date and ending on the Expiry Date.
Tribunal	means the Australian Competition Tribunal.
Undertaking	this document (including any schedules or annexures to this document) as varied from time to time under section 59A of the NEL.

10.2 Interpretation

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;
- (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 the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to 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 would 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 a part of that thing;
 - (2) a party includes its successors and permitted assigns; and
 - (3) a monetary amount is in Australian dollars.

Method to set target standard control services revenues for 2017-18

This schedule sets out the principles, methods, and values (as available) underpinning the calculation of **Target Revenues**. These **Target Revenues** will be applied in the pricing proposal for the year commencing 1 July 2017 and ending on 30 June 2018 to be submitted by Ausgrid in accordance with Clause 6.18.2 of the NER as modified by this Undertaking.

Subclauses (a) and (b) set out the principles underpinning the calculation of the Target Revenues while subclauses (c), (d) and (e) set out the calculation methods for those revenues.

Principles

Ausgrid's 2017/18 Target Revenues to be recovered in the pricing proposal for the year commencing on 1 July 2017 and ending on 30 June 2018 will be calculated by:

- (a) applying CPI to the result of:
 - (i) the separate revenues allowed for each of distribution use of system charges (DUOS), designated pricing proposal charges (TUOS) and climate change funds (CCF) as approved by the AER, or as contained, in Ausgrid's 2015/16 pricing proposal, and
 - (ii) The actual closing balances of over/under recovery of revenues for DUOS, TUOS and CCF, as at 30 June 2015, and
- (b) Summing the resulting revenues referred to in (a) above

Calculation Method

- (c) **Distribution Use Of System Target Revenue** is the 2015/16 annual revenue for Distribution Standard Control Services as contained in the AER's 2015/16 Pricing Proposal for Ausgrid offset by the relevant actual over/under account balance as at 30 June 2015 and escalated by two years of CPI. For avoidance of doubt, this Undertaking sets out below the relevant inputs:
 - (i) The 2015/16 annual revenue is to be calculated in accordance with Figure 14.1 of the 2015 AER Determination (Attachment 14). This amount is \$1,508.55 million (nominal) and is consistent with the annual revenue used in the calculation of prices for 2015/16 as approved by the AER for Ausgrid's 2015/16 pricing proposal. Against this amount, a reduction of \$56.018 million is made to include the closing balance of the over/under account as at 30 June 2015. The resulting revenue amount is **\$1,452.532 million (nominal)**; to which two years of CPI are applied.
 - (ii) The applicable CPI for 2016/17 is 1.5084% as calculated in accordance with Figure 14.1 of the 2015 AER Determination (Attachment 14).
 - (iii) The applicable CPI for 2017/18 is 1.2770% as calculated in accordance with Figure 14.1 of the 2015 AER Determination (Attachment 14).

- (d) **Designated Pricing Proposal Charges Target Revenue** is the revenue from designated pricing proposal charges for 2015/16 as calculated consistent with Table 14.3 in the AER's 2015 final decision (Appendix B of Attachment 14) and approved by the AER for Ausgrid's 2015/16 pricing proposal, offset by the relevant actual over/under account balance as at 30 June 2015 and escalated by two years of CPI. The applicable CPI is to be calculated in accordance with Figure 14.3 of the AER's 2015 Final Decision. For avoidance of doubt, this Undertaking sets out below the relevant inputs:
- (i) The 2015/16 revenue for designated pricing proposal charges is \$497.4 million (nominal) as approved by the AER for Ausgrid's 2015/16 pricing proposal. Against this amount, a reduction of \$1.798 million is made to include the closing balance of the over/under account as at 30 June 2015. The resulting revenue amount is **\$495.602** million; to which two years of CPI are applied.
 - (ii) The applicable CPI for 2016/17 is 1.6886% as calculated in accordance with Figure 14.3 of the AER's 2015 Final Decision (Attachment 14).
 - (iii) The applicable CPI for 2017/18 is 1.4760% as calculated in accordance with Figure 14.3 of the AER's 2015 Final Decision (Attachment 14).
- (e) **Climate Change Fund revenue Target Revenue** is the 2015/16 revenue from jurisdictional schemes as calculated consistent with Table 14.4 in the AER's 2015 final decision (Appendix C of Attachment 14) and approved by the AER for Ausgrid's 2015/16 pricing proposal offset by the relevant actual over/under account balance as at 30 June 2015 and escalated by two years of CPI. The applicable CPI is to be calculated in accordance with Figure 14.1 of the AER's 2015 Final Decision. For avoidance of doubt, this Undertaking also set out below the method for calculating this amount:
- (i) The 2015/16 revenue from jurisdictional schemes is \$148.467 million (nominal) as approved by the AER for Ausgrid's 2015/16 pricing proposal. Against this amount, a reduction of \$0.343 million is made to include the closing balance of the over/under account as at 30 June 2015. The resulting revenue amount is **\$148.125** million (nominal) to which two years of CPI are applied.
 - (ii) The applicable CPI for 2016/17 1.5084% as calculated in accordance with Figure 14.1 of the 2015 AER Determination (Attachment 14)
 - (iii) The applicable CPI for 2017/18 is 1.2770% as calculated in accordance with Figure 14.1 of the 2015 AER Determination (Attachment 14).
- (f) The total target revenue to be recovered in Ausgrid's 2017/18 pricing proposal will be the sum of the target revenues for DUOS, designated pricing proposal charges and climate change funds.
- (g) Ausgrid is required, as part of the annual pricing proposal process for 2017/18, to inform TransGrid (as the co-ordinating TNSP in NSW) of Ausgrid's Maximum Allowed (MAR) Revenue for Transmission Standard Control Services. For avoidance of doubt, this Undertaking also sets out below the method for calculating this MAR.
- (i) Ausgrid's MAR for 2017/18 will be the smoothed revenue (adjusted by actual CPI) for 2015/16 as contained in the AER's 2015 Final Decision escalated by the two years of CPI. The applicable CPI is to be calculated in

accordance with Figure 14.3 of the AER's 2015 Final Decision. For clarity the relevant amount/values are:

- (A) \$185.055 million (nominal) for Ausgrid's 2015/16 smoothed revenue adjusted for actual CPI for that year.
- (B) The applicable CPI for 2016/17 is 1.6886% as calculated in accordance with Figure 14.3 of the AER's 2015 Final Decision (Attachment 14).
- (C) The applicable CPI for 2017/18 is 1.4760% as calculated in accordance with Figure 14.3 of the AER's 2015 Final Decision (Attachment 14).

Matters in the 2015 Determination that Ausgrid will comply with

Ausgrid will comply with the 2015 Determination in relation to the following constituent decisions:



1. The Capital Expenditure Sharing Scheme as set out in Attachment 10;
2. The Service Target Performance Incentive Scheme as set out in Attachment 11;
3. The Demand Management Incentive Scheme as set out in Attachment 12;
4. Classification of services as set out in Attachment 13;
5. Ausgrid's procedure for Assigning Retail Customers to Tariff Classes as set out in Attachment 14;
6. Additional Pass Through Events as set out in Attachment 15;
7. Form of Control for Alternative Control Services as set out in Attachment 16;
8. Ausgrid's Negotiating Framework and Negotiated Distribution Services Criteria as set out in Attachment 17; and
9. Ausgrid's Connection Policy as set out in Attachment 18.

Executed as an undertaking

Ausgrid


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 who declares that the Attorney has not received any notice of the revocation of such Power of Attorney

sign here ▶		
	Attorney	Witness
print name	RICHARD CROSS	Joseph Pizzinga
print title	CEO	CEO
date	16/5/17	16/5/17

Australian Energy Regulator

Executed by
the Australian Energy Regulator
pursuant to section 59A of the
National Electricity Law
by

sign here ▶	
	on behalf of the Australian Energy Regulator
print name	PAULA CONBOY
date	17.5.2017
