

1 March 2017

Undertaking to the Australian Energy Regulator for the year ending 30 June 2018

Given for the purposes of section 59A of the
National Electricity (NSW) Law by Endeavour
Energy (ABN 59 253 130 878), a New South Wales
State Owned Corporation incorporated under the
Energy Services Corporations Act 1995 (NSW)

1 Person giving this Undertaking

- 1.1 The Undertaking is given to the Australian Energy Regulator (**AER**) by Endeavour Energy (ABN 59 253 130 878) of 51 Huntingwood Drive, Huntingwood NSW 2148 (**Endeavour Energy**) for the purposes of section 59A of the NEL.
- 1.2 Endeavour Energy is the energy services corporation constituted under section 7 of the *Energy Services Corporations Act 1995* (NSW) and specified in Part 2 of Schedule 1 to that Act, or any successor to its business (including any 'authorised distributor' of Endeavour Energy's 'network infrastructure assets' (as those terms are defined in the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW)) following the transfer of the whole or part of those network infrastructure assets to the private sector).

2 Background

- 2.1 Endeavour Energy 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 Endeavour Energy is regulated by Chapters 6 and 6B of the NER.
- 2.3 The AER is responsible for the economic regulation of Endeavour Energy 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. Endeavour Energy 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 Endeavour Energy until 30 June 2019 (**2015 Determination**). The 2015 Determination is a 'reviewable regulatory decision' under section 71A of the NEL. Endeavour Energy 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. Subsequently, the AER sought judicial review of the Decision in the Full Federal Court of Australia (**Full Federal Court**). The Full Federal Court has heard the matter and has reserved its judgment.
- 2.5 The effect of setting aside the 2015 Determination on pricing by Endeavour Energy is uncertain. Endeavour Energy 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 under clause 6.18.2(b)(7) of the NER. Endeavour Energy 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 Endeavour Energy'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 Endeavour Energy 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 ending 30 June 2018 following the AER's judicial review of the Decision.
- 2.9 Endeavour Energy gave, and the AER accepted, an undertaking to address this uncertainty for the year ending 30 June 2017 under section 59A of the NEL. The terms of that undertaking cannot be continued after the year ending 30 June 2017 because doing so would not permit the application of Endeavour Energy's tariff structure statement from 1 July 2017.
- 2.10 Accordingly, Endeavour Energy gives this Undertaking to set the revenue allowance from which tariffs for Direct Control Services will be determined in accordance with clause 6.18 of the NER, and to clarify its obligations to provide services, for the year ending 30 June 2018. The AER acknowledges that this Undertaking is given in response to concerns about the uncertainty associated with, and the risk of breach of, Endeavour Energy'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 ending 30 June 2018.
- 2.11 The AER accepts this Undertaking, and Endeavour Energy's compliance with it, as discharging Endeavour Energy's obligations in relation to:
- (a) pricing and network charges; and
 - (b) compliance with the matters set out in Schedule 1,
- under the NEL and NER in the year commencing on 1 July 2017 and ending 30 June 2018.

3 Commencement

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Endeavour Energy; and
 - (b) the AER accepts the Undertaking so executed,
- (Commencement Date).
- 3.2 On and from the Commencement Date, Endeavour Energy 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 Endeavour Energy 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

Endeavour Energy 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), Endeavour Energy's tariffs for each tariff class for Direct 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 NER, including clause 6.18.1A(c) (**Network Charges**);
- (b) for the purposes of clause 5(a):
 - (1) the 2015 Determination will not apply (other than as set out in clause 5(d));
 - (2) clause 6.18.2(a) will not apply and Endeavour Energy must submit its pricing proposal for the year commencing on 1 July 2017 and ending on 30 June 2018 by 1 April 2017;
 - (3) the reference to 'applicable distribution determination' in clauses 6.18.2(b)(7), 6.18.2(b)(8), 6.18.5(g)(2), 6.18.8(a)(1) and 6.18.8(c) will be interpreted to refer to smoothed allowed DUOS revenue for the year commencing on 1 July 2017 and ending on 30 June 2018 of \$827.49 million (**Adjusted Smoothed Revenue**), which is the annual smoothed DUOS revenue requirement as set out in Endeavour Energy's pricing proposal for the year ending 30 June 2016 (being \$804.88 million) adjusted to include the amount for changes in the consumer price index for the 2015/16 and 2016/17 years calculated consistent with the formula set out in Attachment 14 of the 2015 Determination - Figure 14.1 (being 1.51% and 1.28% respectively);
 - (4) the reference to 'revenue' in clause 6.18.5(g)(2) will be interpreted to refer to the Adjusted Smoothed Revenue;
 - (5) the references to 'annual revenue requirement' in clause 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 Adjusted Smoothed Revenue;
 - (6) 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; and
 - (7) 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) Endeavour Energy 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;
- (d) Endeavour Energy will comply with the 2015 Determination in relation to the matters specified in Schedule 1;

- (e) Endeavour Energy will publish this Undertaking on its website within five business days of the Commencement Date; and
- (f) Endeavour Energy will notify the AER in writing within seven days of any failure to charge the Network Charges in accordance with this Undertaking.

6 Acknowledgement

Endeavour Energy and the AER acknowledge and agree that the Network Charges replace any charges payable to Endeavour Energy under any previously approved pricing proposal or undertaking given under section 59A of the NEL.

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 Endeavour Energy of any term of this Undertaking.

8 Costs

Endeavour Energy 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 Endeavour Energy pursuant to this Undertaking must be sent to:
- | | |
|----------|------------------------------------|
| Name: | Company Secretary |
| Address: | PO Box 811
Seven Hills NSW 1730 |
- 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 Endeavour Energy must notify the AER of a change to its contact details within three Business Days.
- 9.5 The AER must notify Endeavour Energy 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.
Adjusted Smoothed Revenue	has the meaning given to that term in clause 5(b)(3).
AER	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.
Direct Control Services	has the meaning given to that term in the NER.
Endeavour Energy	has the meaning given to that term in clause 1.
Expiry Date	has the meaning given to that term in clause 4.1.
Indicative Pricing Schedule	has the meaning given to that term in the NER.

Term	Meaning
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).
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 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 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.

Schedule 1

Matters in the 2015 Determination that Endeavour Energy will comply with

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

1. Efficiency Benefit Sharing Scheme as set out in Attachment 9;
2. Capital Expenditure Sharing Scheme as set out in Attachment 10;
3. Service target Performance Incentive Scheme as set out in Attachment 11;
4. Demand Management Incentive Scheme as set out in Attachment 12;
5. Classification of services as set out in Attachment 13;
6. Endeavour Energy's obligation to report to the AER on its recovery of designated pricing proposal charges and jurisdictional scheme amounts as set out in Attachment 14;
7. Additional Pass Through Events as set out in Attachment 15;
8. Form of Control for Alternative Control Services as set out in Attachment 16;
9. Endeavour Energy's Negotiating Framework and Negotiated Distribution Services Criteria as set out in Attachment 17; and
10. Endeavour Energy's Connection Policy as set out in Attachment 18.

Signing page

Executed as an undertaking

Endeavour Energy

Executed by
Endeavour Energy (ABN 59 253 130 878),
a New South Wales State Owned Corporation
incorporated under the *Energy Services
Corporations Act 1995* (NSW), by its
authorised officer

sign here ►

Authorised officer

Witness

print name

ROD HOWARD

print title

Acting Chief Executive Officer

date

2 March 2017

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

20 March 2017