

Undertaking to the Australian Energy Regulator

Given for the purposes of section 59A of the National Electricity Law by Essential Energy (ABN 37 428 185 226), a New South Wales State Owned Corporation incorporated under the *Energy Services Corporations Act 1995* (NSW)

1 Person giving this Undertaking

The Undertaking is given to the Australian Energy Regulator (**AER**) by Essential Energy (ABN 37 428 185 226), a New South Wales State Owned Corporation incorporated under the *Energy Services Corporations Act 1995* (NSW), of 8 Buller Street Port Macquarie NSW 2444 (**Essential Energy**) for the purposes of section 59A of the NEL.

2 Background

- 2.1 Essential 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 Essential Energy is regulated by Chapters 6 and 6B of the NEL.
- 2.3 The AER is responsible for the economic regulation of Essential 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 NEL. Essential 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 Essential Energy until 30 June 2019 (**2015 Determination**). The 2015 Determination is a 'reviewable regulatory decision' under section 71A of the NEL. Essential 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.
- 2.5 The effect of setting aside the 2015 Determination on pricing by Essential Energy is uncertain. Essential Energy is required by clause 6.18.2 of the NEL 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 NEL. Essential 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 NEL and to provide a statement of network charges calculated in accordance with the NEL and Essential 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 Essential Energy breaching its obligations under the NEL and NEL 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.

- 2.9 Accordingly, Essential Energy gives this Undertaking to set prices for Direct Control Services and provide services in accordance with its terms. The AER acknowledges that this Undertaking is given in response to concerns about the uncertainty associated with, and the risk of breach of, Essential 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 regulatory year ending 30 June 2017.
- 2.10 The AER is satisfied that this undertaking, and Essential Energy's compliance with it, discharges Essential Energy's obligations in relation to:
- (a) pricing and network charges; and
 - (b) compliance with the 2015 Determination, under the NEL and NER.

3 Commencement

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

4 Expiry

- 4.1 Subject to clauses 4.2 and 4.3, this Undertaking expires on 30 June 2017 **(Expiry Date)**.
- 4.2 Essential 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 materially 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

Essential Energy undertakes for the purposes of section 59A of the NEL that for the regulatory year ending 30 June 2017:

- (a) Essential Energy will comply with the 2015 Determination on all matters other than those specified in clause 5(b);
- (b) Essential Energy will submit a pricing proposal to the AER on or before 16 May 2016, which:
 - (1) subject to clauses 5(b)(2) to 5(b)(4), must comply with the requirements in clause 6.18.2(b) of the NER;
 - (2) is not required to comply with the requirement in clause 6.18.2(e) of the NER;

- (3) will be based on the street lighting prices sent to the Director, Pricing, at the AER via email on 14 May 2015 and not those in 2015 Determination; and
 - (4) will include multiple CPI uplifts to convert base prices for street lighting which are in 2013/14 dollars to 2016/17 dollars as advised to the Director, Pricing, at the AER via email on 23 July 2015.
- (c) Essential Energy will charge prices for the regulatory year ending 30 June 2017 in accordance with the pricing proposal submitted by Essential Energy pursuant to clause 5(b) as approved by the AER;
 - (d) Essential Energy will publish this Undertaking on its website within five business days of the Commencement Date; and
 - (e) Essential Energy will notify the AER in writing within seven days of any failure to comply with this Undertaking.

6 Acknowledgement

Essential Energy and the AER acknowledge and agree that the prices charged by Essential Energy as set out in the pricing proposal submitted by Essential Energy pursuant to clause 5(b) as approved by the AER replace any prices payable to Essential Energy under any previously approved pricing proposal.

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 Essential Energy of any term of this Undertaking.

8 Costs

Essential 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 Essential Energy pursuant to this Undertaking must be sent to:

Name: Mr Gary Humphreys
Address: PO Box 5730
Port Macquarie NSW 2444

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 Essential Energy must notify the AER of a change to its contact details within three Business Days.
- 9.5 The AER must notify Essential 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.
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.
Essential Energy	has the meaning given to that term in clause 1.
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.
Term	means the period commencing on the Commencement Date and ending on the Expiry Date.

Term	Meaning
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.

Executed as an undertaking


Essential Energy

Executed by
Essential Energy (ABN 37 428 185 226), a New
South Wales State Owned Corporation
incorporated under the *Energy Services
Corporations Act 1995* (NSW), by its
authorised officer

<i>sign here</i> ▶ 	
Authorised officer	Witness
<i>print name</i> Gary Humphreys	Lynne Mowatt
<i>print title</i> Acting Chief Executive Officer	ACEO Assistant
<i>date</i> 12 May 2016	12 May 2016

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 16 May 16
