

NATIONAL ELECTRICITY LAW

**Undertaking to the Australian Energy Regulator for the year ending 30 June 2019
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 Icon Distribution Investments Ltd and Jemena Networks (ACT) Pty Ltd trading as ActewAGL is registered as a distribution network service provider under section 12(1) of the NEL and clause 2.5.1 of the National Electricity Rules (**NER**) and 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's energy networks business changed its name to Evoenergy on 1 January 2018. This Undertaking refers to ActewAGL instead of Evoenergy since ActewAGL is the legal entity giving the Undertaking.
- 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.
- 2.9 On 24 May 2017, the Full Court upheld the AER's application for judicial review in respect of gamma, however, dismissed that application in respect of other matters. As a result, the Final Determination has been set aside and remitted to the AER to make the decision again in accordance with the Tribunal's directions on:
- 2.9.1 cost of debt;
 - 2.9.2 operating expenditure;
 - 2.9.3 service target performance incentive scheme; and
 - 2.9.4 any other appropriate variations necessary in light of the other directions by the Tribunal.
- 2.10 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.
- 2.11 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**).
- 2.12 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 from 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 regulatory years from 1 July 2017 until the AER remakes its distribution determination for the period 1 July 2014 to 30 June 2019 (**Remade Determination**).
- 2.13 To ameliorate this uncertainty:
- 2.13.1 ActewAGL gave, and the AER accepted, an undertaking under section 59A of the NEL 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 (**2017/18 Undertaking**); and
 - 2.13.2 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 regulatory year

commencing on 1 July 2018 (**2018/19 regulatory year**). The Undertaking provides for these tariffs to be calculated in accordance with clause 6.18 of the NER, as applied and modified by the Undertaking.

- 2.14 ActewAGL will submit a pricing proposal for the 2018/19 regulatory year to the AER by the end of March 2018.
- 2.15 The AER accepts this Undertaking, and ActewAGL's compliance with it, as discharging ActewAGL's obligations in relation to tariffs under the NEL and NER in the 2018/19 regulatory year.
- 2.16 The AER agrees to act in accordance with clause 6.18 of the NER as it applies pursuant to this Undertaking in respect of the determination of tariffs for the 2018/19 regulatory year.
- 2.17 As the Tribunal and Full Federal Court decisions concern the regulated revenues that ActewAGL is permitted to recover under the NEL and NER 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 2018/19 regulatory year determined in accordance with this Undertaking may not reflect ActewAGL's allowed revenue for 2018/19 that is determined in the Remade Determination. In these circumstances, Part 15 of Chapter 8A of the NER provides for a reconciliation process the outcome of which will be reflected in ActewAGL's tariffs for direct control services in future regulatory years.
- 2.18 Terms used in this Undertaking which are defined in the NEL and/or the NER 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 the Remade Determination for under or over recovery of revenue amounts arising in respect of any differences between the AER's Remade Determination and its Final Determination, the 2016/17 Undertaking, ActewAGL's 2017/18 pricing proposal pursuant to the 2017/18 Undertaking and/or ActewAGL's 2018/19 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 2018/19 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, the obligation set out in clause 5.1.3 shall cease to apply upon the occurrence of the Remade 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 2019.

5 UNDERTAKING BY ACTEWAGL

- 5.1 ActewAGL undertakes for the purposes of section 59A of the NEL that for the 2018/19 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 2018/19 regulatory year will be calculated in accordance with clause 6.18 of the NEL, including clause 6.18.1A(c), provided that the AER acts in accordance with clause 6.18 of the NEL 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(b)(8) will be modified to provide only that the pricing proposal must describe the nature and extent of change from the 2017/18 regulatory year;
- 5.1.2.3 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;
- 5.1.2.4 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;
- 5.1.2.5 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 NEL as it applies pursuant to this Undertaking;
- 5.1.2.6 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

2018/19 regulatory year submitted by ActewAGL under this Undertaking;

- 5.1.2.7 the Final Determination will not apply to the calculation of ActewAGL's tariffs for standard control services;
- 5.1.2.8 ActewAGL's tariffs for each tariff class for standard control services for the 2018/19 regulatory year will be calculated by:
- (a) applying an average annual revenue cap (**Adjusted AARC**) for the 2018/19 regulatory year derived by applying CPI for 2018/19 to the allowable average revenue (**AAR**) (c/kWh) for the 2017/18 regulatory year set out in ActewAGL's pricing proposal for that year (being \$0.04559 per kWh); and
 - (b) applying expected revenue for standard control services for the 2018/19 regulatory year derived by applying ActewAGL's actual volumes for the 2016/17 regulatory year to the Adjusted AARC for the 2018/19 regulatory year (**Expected Revenue**).

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

$$\text{DUOS Revenue}_{18/19} = \text{Adjusted AARC}_{18/19} \times \text{Q}_{16/17}$$

where:

$$\text{Adjusted AARC}_{18/19} = \text{AAR}_{17/18}(1 + \Delta\text{CPI}_{18/19})$$

$$\Delta\text{CPI}_{18/19} = 1.95\%$$

- 5.1.2.9 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 2018/19 regulatory year derived in the manner described in clause 5.1.2.8(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

- 5.1.2.10 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;
 - (d) clauses 6.18.7A(b) and (c) will not apply in respect of the Feed-in Tariff (large scale) scheme and the amount to be passed on to customers for 2018/19 pursuant to clause 6.18.7A (as modified by this Undertaking) for the Feed-in Tariff (large scale) scheme must not exceed the amount in the Minister's Reasonable Costs of Feed-in Tariff Support Payments Determination 2018 made under clause 20C of the *Electricity Feed-in (Large-scale Renewable Energy Generation) Act 2011* (ACT);
- 5.1.2.11 ActewAGL's tariffs for alternative control services will be calculated in accordance with the Final Determination;
- 5.1.2.12 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)

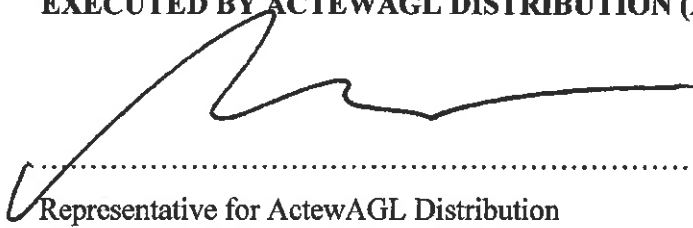
and 6.18.8(c) respectively will be modified to refer to the Final Determination and the TSS; and

- 5.1.3 ActewAGL 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 2018/19 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.

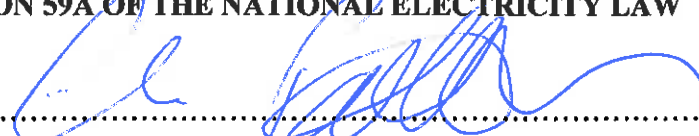
EXECUTED BY ACTEWAGL DISTRIBUTION (ABN 76 670 568 688)



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Representative for ActewAGL Distribution

This 18th day of APRIL.....2018

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



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General Manager, Networks Pricing, Policy and Compliance

This 20th day of April.....2018