

National Energy Retail Law

Undertaking to the Australian Energy Regulator given for the purpose of section 288 of the National Energy Retail Law

By

Alinta Energy Retail Sales Pty Ltd (ABN 22 149 658 300)

Persons giving this Undertaking

- 1 This Undertaking is given to the Australian Energy Regulator (**AER**) by Alinta Energy Retail Sales Pty Ltd (ABN 22 149 658 300) of Level 13, 225 George Street Sydney, NSW 2000 Australia (**Alinta Energy**) pursuant to section 288 of the *National Energy Retail Law* (**NERL**).
- 2 Alinta Energy is an authorised:
 - (a) electricity retailer in Queensland, New South Wales, the Australian Capital Territory, South Australia and Tasmania; and
 - (b) gas retailer in Queensland, New South Wales, the Australian Capital Territory and South Australia,under the *National Energy Retail Regulations*.

Background

- 3 As a retailer, Alinta Energy has certain obligations under the National Energy Retail Rules (**NERR**) in relation to a customer's premises where a person resides, or intends to reside that requires *life support equipment*.
- 4 Most relevantly, these obligations impose the following requirements on a retailer:
 - (a) when advised by a customer or notified by a distributor that a person residing at the customer's premises requires *life support equipment*, to:
 - (i) register that a person residing at the customer's premises requires *life support equipment* and the date from which the *life support equipment* is required, as prescribed by rules 124(1)(a) and 124(3)(a);
 - (ii) provide in writing to the customer no later than 5 business days after receipt of the advice from the customer or distributor the information prescribed by rules 124(1)(b)(i)-(vii) and 124(3)(b)(ii); and
 - (iii) notify the distributor that a person residing or intending to reside at the customer's premises requires *life support equipment* and the date from which the *life support equipment* is required as prescribed by rule 124(1)(c); and
 - (b) where a customer whose premises have been registered as requiring *life support equipment* does not provide the retailer with a *medical confirmation form*, only to *deregister* the premises in prescribed circumstances including where a *deregistration* notice has been provided no less than 15 business days following the date of the second confirmation notice under rule 125(4)(c).

Conduct of concern

- 5 Between September 2019 and March 2020, Alinta Energy has reported to the AER 1,501 incidents of non-compliance with the requirements identified in paragraphs 4(a) to 4(b) above (the **incidents**).
- 6 Alinta Energy admits that it has breached its obligations under rules 124(1)(a), (b)(i)-(vii), (c), 124(3)(b)(ii) and 125(4)(c) of the NERR. Specifically, on various dates between 1 February 2019 and 27 February 2020, Alinta Energy:
- (a) failed to register customers' premises as requiring life support equipment and the date from which that life support equipment is required upon being advised that a person residing or intending to reside at the premises required life support equipment;
 - (b) failed to, within five business days, provide information prescribed by the NERR to customers who had advised Alinta Energy or their relevant distributor that a person residing or intending to reside at the premises required life support equipment;
 - (c) failed to notify the distributor that a person residing or intending to reside at a customer's premises required life support equipment upon being advised that a person residing or intending to reside at the premises required life support equipment; and
 - (d) de-registered premises that were registered as requiring life support equipment without providing a deregistration notice at least 15 business days prior.
- 7 The AER is concerned about Alinta Energy's reported breaches. Alinta Energy acknowledges that the above incidents were caused by IT system issues, insufficient testing measures and human errors, including inaccurate record keeping by some agents.
- 8 Upon identifying the incidents, Alinta Energy took immediate steps to address the breaches and prevent further non-compliance, including:
- (a) remediating breaches to the extent possible and communicating issues with affected customers;
 - (b) addressing IT system deficiencies, including by updating its IT systems and implementing additional testing measures;
 - (c) appointing a dedicated life support manager and life support team to implement Alinta Energy's obligations and monitor Alinta Energy's compliance under the life support regime; and
 - (d) engaging independent auditor Deloitte to test the remediation undertaken to date and to undertake an end-to-end review of Alinta Energy's life support processes including through customer sampling (**Deloitte Review**).
- 9 To help address the AER's concerns, on 27 October 2020, Alinta Energy provided the AER with a Compliance Improvement Action Plan, being a plan informed by the Deloitte Review and designed to address the root causes of the incidents and reduce the risk of future breaches.
- 10 To further address the AER's concerns and to minimise the likelihood of future contraventions of the NERR, Alinta Energy offers the undertakings in paragraphs 16 - 18, below.

Commencement of Undertaking

- 11 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Alinta Energy; and
 - (b) the AER accepts the Undertaking so executed (**Commencement Date**).

- 12 From the Commencement Date, Alinta Energy undertakes to assume the obligations set out in paragraphs 16 - 18 below.

Expiry of Undertaking

- 13 This Undertaking expires once Alinta Energy has implemented all of the steps set out in paragraph 16 of this Undertaking.
- 14 Alinta Energy 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, if requested by Alinta Energy, 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

- 16 Subject to paragraph 18 below, Alinta Energy undertakes that:
- (a) within 6 months of the Commencement Date, it will propose an Independent Expert for the AER's approval to complete a Post Implementation Review of the Compliance Improvement Action Plan. If the AER does not approve the Independent Expert Alinta Energy nominates, then Alinta Energy must liaise with the AER to identify a candidate acceptable to the AER within five Business Days of such non-approval.
 - (b) within 10 Business Days of receiving notice of the AER's approval of the Independent Expert, Alinta Energy will engage the Independent Expert to complete the Post Implementation Review and prepare a report, including recommendations, which addresses the following matters:
 - (i) whether Alinta Energy has implemented all the controls and processes described in the Compliance Improvement Action Plan;
 - (ii) whether the controls and processes implemented by Alinta Energy have resulted in Alinta Energy achieving compliance with the life support obligations listed in paragraphs 4(a) to 4(b) above from the Commencement Date; and
 - (iii) where it is identified that Alinta Energy has not achieved compliance, provide practical recommendations for implementation by Alinta Energy to enable it to meet the requirements of the life support obligations listed in paragraphs 4(a) to 4(b) above going forward.
 - (c) within 10 Business Days of engaging the Independent Expert, it will submit to the AER for approval a detailed Post Implementation Review Proposal developed jointly with the Independent Expert which addresses the matters in 16(b) above. The proposal must include details of how the Independent Expert will conduct a risk based review and the matters to be addressed by the Independent Expert in its final report. If the AER has concerns about the proposal, Alinta Energy will make revisions to the proposal in conjunction with the Independent Expert within 5 Business Days of the AER notifying its concerns and submit the revised Post Implementation Review Proposal to the AER for approval.
 - (d) unless agreed by the AER, the Independent Expert will:
 - (i) commence the Post Implementation Review within 15 Business Days of receiving notice of the AER's approval of the Post Implementation Review Proposal;
 - (ii) complete the Post Implementation Review within 40 Business Days of the Post Implementation Review commencing;

- (iii) provide Alinta Energy with a final Post Implementation Review report within 20 Business Days of completion of the Post Implementation Review; and
 - (iv) have full, free and unrestricted access to all functions, staff, records, documentation and information necessary to conduct the Post Implementation Review.
- (e) Within 2 Business Days receipt of the Independent Expert's findings and recommendations, Alinta Energy will provide the final Post Implementation Review report to the AER.
- (f) Within 20 Business Days of receipt of the Independent Expert's findings and recommendations, Alinta Energy will provide the AER with the final Post Implementation Review report and Alinta Energy's response to all recommendations of the Independent Expert, including timings for implementation as relevant. This response will be from Alinta Energy's Chief Executive Officer unless that person is on leave at the required time, in which case it will be from his/her delegate. If Alinta Energy is unable to implement any of the Independent Expert's recommendations, it will provide the AER with the reasons for its inability and the Independent Expert's response to those reasons.
- 17 Alinta Energy must:
- (a) Provide the AER with regular progress reports on the implementation of the Post Implementation Review at intervals of no more than 40 Business Days from the Commencement Date until all steps referred to in paragraph 16 have been completed.
 - (b) Notify the AER in writing within 5 Business Days of any failure to comply with the dates identified within this Undertaking.
- 18 To the extent that any action under paragraphs 16 to 17 is ongoing as at close of business 18 December 2020, the timeframe for completion of that action is automatically suspended and restarts from 4 January 2021.

Costs

- 19 Alinta Energy must pay all of its own costs in relation to the Undertaking.

Notification

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

Name: CEO
Address: GPO Box 520
Melbourne VIC 3001
Email: Attn: **General Manager AER Compliance and Enforcement -**
AERCompliance@aer.gov.au

- 21 Any notice or communication to Alinta Energy pursuant to this Undertaking must be sent to:

Name: Jeff Dimery
Address: Level 13, 225 George Street Sydney, NSW 2000
Email: [REDACTED]

- 22 Alinta Energy must notify the AER of a change to its contact details within 5 Business Days.

Acknowledgments

- 23 Alinta Energy consents and acknowledges that:
- (a) the AER may authorise a member of the AER or a member of the AER staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions the AER may impose;
 - (b) the AER may make this Undertaking publicly available including by publishing it on the AER's website;
 - (c) the AER may, from time to time, make public reference to the Undertaking, including the findings of the Post Implementation Review referred to in paragraph 16, including in news media statements and in AER publications;
 - (d) the AER reserves its rights and remedies (including to institute legal proceedings against Alinta Energy seeking penalties and other relief) in relation to any breaches of the NER or NEL which have occurred after the Commencement Date; and
 - (e) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Definitions

- 24 Terms used in this Undertaking are set out below. Italicised terms used in this Undertaking have the meaning given to those terms in the National Energy Retail Law or Retail Rules, as the case requires.

Term	Meaning
AER	has the meaning of the Australian Energy Regulator.
Alinta Energy	has the meaning of Alinta Energy Retail Sales Pty Ltd (ABN 22 149 658 300)
Business Day	has the meaning given to that term under the NERL
Commencement Date	Is the date the Undertaking comes into effect under clause 11 of this Undertaking.
Compliance Improvement Action Plan	has the meaning given in paragraph 9.
Deloitte Review	has the meaning given in paragraph 8(d).
Independent Expert	<p>means a third party who is not a Related Body Corporate of Alinta Energy.</p> <p>The third party carrying out the Post Implementation Review must:</p> <ul style="list-style-type: none"> • be able to act without bias and without any actual or potential conflicts of interest with reference to the following criteria: <ul style="list-style-type: none"> ○ is not a present or past staff member or director of Alinta Energy; ○ has not acted and does not act for, and does not consult and has not consulted to, Alinta Energy in any matters relating to compliance with Part 7 of the Retail Rules; and ○ has no significant shareholding or other interests in Alinta Energy; • have professional competence to apply established audit standards and techniques to carry out the Post Implementation Review to a high standard; • have a system of quality controls to ensure the Post Implementation Review report is of a professional standard;
NERL	means the National Energy Retail Law set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> .
NERR	means the <i>National Energy Retail Rules</i> .
Post Implementation Review	has the meaning given in paragraph 16.
Post Implementation Review Proposal	has the meaning given in paragraph 16(c).
Undertaking	means this document (including any schedules or annexures to this document) as varied from time to time under section 288 of the NERL.

Interpretation

- 25 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 annexures;
 - (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 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 paragraph, 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 government 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 of 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.

Signed for Alinta Energy Retail Sales Pty Ltd (ABN 22 149 658 300) by its authorised representative in the presence of:



Witness Signature

Daniel McClelland

Print Name



Authorised Representative Signature

Jeff Dimery

Print Name

Managing Director & CEO

Position

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



Clare Savage, Chair

Date 24 November 2020