

NATIONAL ENERGY RETAIL LAW

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

by

COVAU PTY LIMITED (ACN 090 117 730)

Persons giving this Undertaking

1. This Undertaking is given to the Australian Energy Regulator (**AER**) by COVAU PTY LIMITED (ACN 090 117 730) of Level 29, 255 George Street, Sydney, NSW 2000 Australia (**CovaU**) pursuant to section 288 of the *National Energy Retail Law* (**NERL**).
2. CovaU was granted authorisation by the AER on 14 February 2014 and 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 NERL.
3. In granting the authorisation to CovaU, the AER formed the view, based on CovaU's application, that CovaU had demonstrated its capacity and suitability to operate as an energy retailer under the NERL.

Background

4. As an authorised retailer, CovaU has certain obligations under the NERL and *National Energy Retail Rules* (**NERR**).
5. Relevantly, section 23(1) of the NERL requires that a retailer must publish its standing offer prices on its website, and the standing offer prices so published remain in force until varied in accordance with the NERL.
6. A retailer's standing offer prices are all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under a standard retail contract.

Conduct of concern

7. Between July 2021 and January 2023, CovaU failed to publish its standing offer prices on its website as required by section 23(1) of the NERL.
8. CovaU admits that it has breached its obligations under section 23(1) of the NERL.
9. CovaU offers this undertaking to address the AER's concerns and in order to improve its actions, policies, and procedures across its gas and electricity retail operations to ensure future compliance with the NERL and NERR. CovaU offers this undertaking for the purposes of section 288 of the NERL and undertakes to take the actions as set out in paragraphs 15 to 16 below.

Commencement of the Undertaking

10. This Undertaking comes into effect when:
 - a) the undertaking is executed by CovaU; and

- b) the AER accepts the Undertaking so executed (**Commencement Date**).
11. Upon the Commencement Date, CovaU undertakes to assume the obligations and undertake the actions set out in paragraphs 15 to 16 below.

Expiry and variation

12. This Undertaking expires (the **Expiry Date**) once CovaU has implemented all the steps set out in paragraphs 15 and 16 of this Undertaking and has received notification in writing by the AER that the obligations and actions required by the Undertaking are completed.
13. CovaU 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.
14. The AER may, if requested by CovaU, expressly waive in writing any of the obligations contained in the Undertaking or extend the date by which any such obligation is to be satisfied.

Undertaking

15. CovaU undertakes that:

Compliance Improvement Action Plan

- a) within 7 Business Days of the Commencement Date, CovaU will propose to the AER an appropriate Compliance Expert with experience in energy regulation and compliance to conduct the risk-based review described in paragraph 15(b). If the AER does not agree to the person proposed by CovaU within 10 Business Days, then CovaU must liaise with the AER to identify a candidate acceptable to the AER within 5 Business Days of the AER notifying CovaU of its decision in writing.
- b) within 10 Business Days of receiving notice of the AER's agreement to the Compliance Expert, CovaU will engage the Compliance Expert to conduct a risk-based compliance review that covers the following matters:
- i. undertakes a risk assessment (an external assurance process) to identify potential deficiencies in CovaU's compliance systems which may create a material risk of non-compliance with the NERL or the NERR;
 - ii. qualitatively assesses the likelihood of these risks occurring;
 - iii. identifies where there may be gaps in CovaU's existing compliance strategy procedures for managing these risks; and
 - iv. by the later of 40 Business Days of the Compliance Expert's engagement or 29 September 2023, provide written recommendations for any actions (including, but not limited to, controls and processes) to be taken by CovaU having regard to the above assessments, in the form of a written Compliance Improvement Action Plan (**CIAP**).
- c) within 2 Business Days of receiving the CIAP from the Compliance Expert, CovaU will provide the AER with a full copy of the CIAP.
- d) within 20 Business Days of receipt of the CIAP, CovaU will provide the AER with a submission signed by a Director or Chief Executive Officer of CovaU detailing CovaU's intended responses to the CIAP, including timings for implementation of each recommendation and CovaU's reasons for any decision not to implement a recommendation in the CIAP.

Independent review of implementation

- e) within 6 months of CovaU's receipt of the CIAP and the implementation of the recommendations as per paragraph 15(d), CovaU will propose to the AER an Independent Expert with appropriate expertise to complete a Post Implementation Review of the CIAP. If the AER does not agree to the Independent Expert CovaU nominates, then CovaU must liaise with the AER to identify a candidate acceptable to the AER within 5 Business Days of the AER notifying CovaU of its decision in writing.
- f) within 10 Business Days of receiving written notice of the AER's agreement to the Independent Expert, CovaU will engage the Independent Expert to complete the Post Implementation Review and prepare a report, including recommendations, which addresses the following matters:
 - i. whether CovaU has implemented all the controls, processes and other recommendations described in the CIAP, including a description of the implementation. If the controls, processes and other recommendations have not been implemented, or have not been fully implemented, identify those and outline a plan to implement them;
 - ii. whether and how the controls, processes and other recommendations implemented by CovaU have resulted in CovaU achieving compliance with the NERL and the NERR; and
 - iii. where it is identified that CovaU has not achieved compliance, provide practical recommendations for implementation by CovaU to enable it to meet the requirements of its obligations under the NERL and the NERR going forward.
- g) within 10 Business Days of engaging the Independent Expert, CovaU will submit to the AER for approval a detailed written Post Implementation Review Proposal developed jointly with the Independent Expert which addresses the matters in paragraph 15(f) 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 notifies CovaU of any concerns about the proposal, CovaU will make revisions to the proposal in consultation 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.
- h) CovaU will use its best endeavours to procure that, unless otherwise 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 CovaU with a final Post Implementation Review written report within 20 Business Days of completion of the Post Implementation Review;
 - iv. have full, free and unrestricted access to all functions, staff, records, documentation and information necessary to conduct the Post Implementation Review;
 - v. in the event that the Independent Expert forms a belief that it has not been given full, free and unrestricted access as described in (iv), the Independent Expert may report this to the AER without the need to obtain the consent of CovaU.
- i) within 2 Business Days of its receipt of the Independent Expert's findings and recommendations, CovaU will provide the final Post Implementation Review report to the AER.

- j) within 20 Business Days of receipt of the Independent Expert's findings and recommendations, CovaU will provide the AER with a submission signed by a Director or Chief Executive Officer of CovaU detailing CovaU's response to all recommendations of the Independent Expert, including timings for implementation, CovaU's reasons for any decision not to implement any recommendation and the Independent Expert's response to those reasons.

16. CovaU must:

- a) provide the AER with regular progress reports on the implementation of the CIAP at intervals of no more than 40 Business Days until the Independent Expert is engaged by CovaU.
- b) notify the AER in writing within 5 Business Days of any failure to comply with the dates identified within this Undertaking.

Costs

17. CovaU must pay all of its own costs in relation to the Undertaking.

Notification

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

Name: General Manager Compliance & Enforcement

Address: Australian Energy Regulator

GPO Box 520

Melbourne VIC 3001

Email: Attn: GM Compliance & Enforcement AERCompliance@ aer.gov.au

19. Any notice or communication to CovaU pursuant to this Undertaking must be sent to:

Name: [REDACTED]

Address: CovaU Pty Ltd

Level 29, 255 George Street,

Sydney NSW 2000

Email: [REDACTED]

20. CovaU must notify the AER of a change to its contact details within 5 business days.

Acknowledgements

21. CovaU acknowledges that, and to the extent relevant, consents to, the following actions and matters:

- i. the AER may authorise a member of the AER or a member of the AER staff, to exercise a decision-making functions under this Undertaking on its behalf and that authorisation may be subject to any conditions the AER may impose;
- ii. the AER will make this Undertaking publicly available including by publishing it on the AER's website;
- iii. the AER will, from time to time, make public reference to the Undertaking in news media statements and in AER publications;

- iv. the AER reserves its rights and remedies (including to institute legal proceedings against CovaU seeking penalties and other relief) in relation to any breaches of the NERL and NERR which have occurred before or after the Commencement Date, including in respect of matters referred to in this Undertaking; and,
- v. this Undertaking in no way derogates from the rights and remedies available to any other persons arising from the alleged conduct.

Definitions

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

Term	Meaning
AER	means the Australian Energy Regulator
Business Day	has the meaning given to that term under the NERL
CIAP	means the Compliance Improvement Action Plan given in paragraph 15(b)(iv)
Commencement Date	is the date the Undertaking comes into effect under paragraph 10 of this Undertaking.
Compliance Expert	means a third party who is not a Related Body Corporate of CovaU who is engaged to carry out the risk-based review at paragraph 15(b). The Compliance Expert must have the necessary experience and expertise in energy regulation, specifically compliance experience with NERL and NERR.
CovaU	means CovaU Pty Ltd (ACN 090 117 730)
Independent Expert	means a third party who is not a Related Body Corporate of CovaU who is engaged to carry out the Post Implementation Review. The Independent Expert must: <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 CovaU; ○ has not acted and does not act for, and does not consult and has not consulted to, CovaU in any matters relating to compliance with NERL & NERR; and ○ has no significant shareholding or other interests in CovaU; • 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 Error! Reference source not found. (f)
Post Implementation Review Proposal	has the meaning given in paragraph 15.g)
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

23. 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 CovaU Pty Ltd (ACN 090 117 730)
by its authorised representatives in accordance
with section 127 of the *Corporations Act 2001*
(Cth):




Authorised Representative Signature

STEVEN GODARZI

Print Name

DIRECTOR

Position



Authorised Representative Signature

JEFFREY MA

Print Name

DIRECTOR

Position

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



Justin Oliver, AER Board Member

Date 19 June 2023