

## ***National Energy Retail Law***

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

By

Endeavour Energy Network Operator Partnership (ABN 11 247 365 823)

### **Persons giving this Undertaking**

- 1 This Undertaking is given to the Australian Energy Regulator (**AER**) by Endeavour Energy Network Operator Partnership (ABN 11 247 365 823) of 51 Huntingwood Drive, Huntingwood NSW 2148 (**Endeavour Energy**) in its own right as well as on behalf of each of the partners of Endeavour Energy:
  - (a) Edwards O Pty Limited (ACN 618 643 486) as trustee for Edwards O Trust;
  - (b) ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for ERIC Epsilon Operator Trust 1;
  - (c) ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for ERIC Epsilon Operator Trust 2;
  - (d) ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for ERIC Epsilon Operator Trust 3; and
  - (e) ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for ERIC Epsilon Operator Trust 4,pursuant to section 288 of the *National Energy Retail Law* (**NERL**).
- 2 Endeavour Energy is a *distributor* in New South Wales and holds a licence to operate the *distribution system* in New South Wales.

### **Background**

- 3 As a distributor, Endeavour 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 distributor, when advised by a customer or notified by a retailer that a person residing at the customer's premises requires *life support equipment*, to:
  - (a) 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(4)(a) and 124(5);
  - (b) provide in writing to the customer, no later than 5 business days after receipt of the advice from the customer, the information prescribed by rule 124(4)(b);
  - (c) notify the retailer 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(4)(c); and
  - (d) provide the customer at least 4 business days' written notice of any *Distributor Planned Interruption* to supply at their premises, as prescribed by rule 124B(2)(a)(iv).

## Conduct of concern

- 5 Between March 2021 and 17 February 2022, Endeavour Energy submitted 16 immediate reports to the AER relating to 138 incidents of non-compliance with the life support requirements of the NERR (the **incidents**). The incidents affected 69 customers.
- 6 Endeavour Energy admits that it has breached its obligations under rules 124(4)(a), 124(4)(b), 124(4)(c), 124(5) and 124B(2)(a)(iv) of the NERR. Specifically, on various dates between 18 March 2019 and 17 February 2022, Endeavour 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 5 business days, provide information prescribed by the NERR to customers who had advised Endeavour Energy that a person residing or intending to reside at the premises required *life support equipment*;
  - (c) failed to notify the retailer 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) failed to provide customers requiring *life support equipment* at least 4 business days' written notice of a *Distributor Planned Interruption* to supply at their premises.
- 7 The AER is concerned about Endeavour Energy's repeated breaches. To minimise the likelihood of future contraventions of the NERR, Endeavour Energy offers this undertaking (the **Undertaking**).

## Commencement of Undertaking

- 8 This Undertaking comes into effect when:
- (a) the Undertaking is executed by Endeavour Energy; and
  - (b) the AER accepts the Undertaking so executed (**Commencement Date**).
- 9 From the Commencement Date, Endeavour Energy undertakes to assume the obligations set out in this Undertaking.

## Expiry of Undertaking

- 10 This Undertaking expires once Endeavour Energy receives written notice from the AER that the AER considers Endeavour Energy has satisfied its obligations.
- 11 Endeavour 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.
- 12 The AER may, if requested by Endeavour 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

- 13 Endeavour Energy undertakes that:
- (a) By no later than 31 August 2022, it will implement the following IT systems:
    - (i) SAP IS-U to improve retailer and B2B processes. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- (ii) Customer Advocacy System [REDACTED] to manage life support workflows for the Registration and Deregistration process.
- (b) Within three months of implementing the IT systems referred to in paragraph 13(a), Endeavour Energy undertakes to commence a Post Implementation Review to review Endeavour Energy's systems, controls, processes and training for complying with the life support obligations under the NERR.
- (c) Within 10 Business Days of commencing the Post Implementation Review, Endeavour Energy will propose an Independent Expert for the AER's approval to complete the Post Implementation Review. If the AER does not approve the Independent Expert Endeavour Energy nominates, then Endeavour Energy must liaise with the AER to identify a candidate acceptable to the AER within 5 Business Days of such non-approval.
- (d) Within 10 Business Days of receiving notice of the AER's approval of the Independent Expert, Endeavour Energy will engage the Independent Expert to complete the Post Implementation Review and prepare a report which addresses the following matters:
  - (i) whether Endeavour Energy has implemented the systems specified in paragraph 13(a);
  - (ii) whether the systems, controls, processes and training that Endeavour Energy has in place in relation to life support customers are sufficient to ensure that Endeavour Energy achieves compliance with the life support obligations under the NERR from the Commencement Date;
  - (iii) where it is identified that Endeavour Energy has not achieved compliance, provide practical recommendations for implementation by Endeavour Energy to enable it to meet the requirements of the life support obligations under the NERR above going forward and indicate whether further investment is required in its systems, controls, processes and training; and
  - (iv) provide any other practical recommendations for implementation by Endeavour Energy to reduce the risk of human error going forward.
- (e) 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 paragraph 13(d) 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, Endeavour 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.

- (f) Unless otherwise directed 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 Endeavour 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 develop the Post Implementation Review Proposal and to conduct the Post Implementation Review.
- (g) Within 2 Business Days of receipt of the Independent Expert's findings and recommendations, Endeavour Energy will provide the final Post Implementation Review report to the AER.
- (h) Within 20 Business Days of receipt of the Independent Expert's findings and recommendations, Endeavour Energy will provide the AER with the final Post Implementation Review report and Endeavour Energy's response to all recommendations of the Independent Expert, including timings for implementation as relevant. This response will be from Endeavour 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 Endeavour 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.

14 Endeavour Energy must:

- (a) provide the AER with regular progress reports on the implementation of:
- (i) the IT systems referred to in paragraph 13(a); and
  - (ii) the Post Implementation Review,
- at intervals of no more than 40 Business Days from the Commencement Date until all steps referred to in paragraph 13 have been completed; and
- (b) notify the AER in writing within 5 Business Days of any failure to comply with the dates identified within this Undertaking.

### Costs

15 Endeavour Energy must pay all of its own costs in relation to the Undertaking.

### Notification

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

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<b>Name:</b>	<b>GM AER C&amp;E</b>
<b>Address:</b>	GPO Box 520 Melbourne VIC 3001

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**Email:** Attn: **General Manager AER Compliance and Enforcement -**  
[AERCompliance@aer.gov.au](mailto:AERCompliance@aer.gov.au)

17 Any notice or communication to Endeavour Energy pursuant to this Undertaking must be sent to:

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**Name:** [REDACTED]

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**Address:** [REDACTED]

**Email:** [REDACTED]

18 Endeavour Energy must notify the AER of a change to its contact details within 5 Business Days.

### **Acknowledgments**

19 Endeavour 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 13, including in news media statements and in AER publications;
- (d) the AER reserves its rights and remedies (including to institute legal proceedings against Endeavour Energy seeking penalties and other relief) in relation to any breaches of the NERR or NERL 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**

20 Terms used in this Undertaking are set out below. Italicised terms used in this Undertaking have the meaning given to those terms in the NERL or NERR, as the case requires.

<b>Term</b>	<b>Meaning</b>
<b>AER</b>	has the meaning of the Australian Energy Regulator.
<b>Endeavour Energy</b>	has the meaning of Endeavour Energy Network Operator Partnership (ABN 11 247 365 823)
<b>Business Day</b>	has the meaning given to that term under the NERL
<b>Commencement Date</b>	is the date the Undertaking comes into effect under paragraph 8 of this Undertaking.
<b>Distributor Planned Interruption</b>	has the meaning given to that term under the NERR.
<b>Independent Expert</b>	<p>means a third party who is not a Related Body Corporate of Endeavour Energy.</p> <p>The third party carrying out the Post Implementation Review must:</p> <ul style="list-style-type: none"> <li>• 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"> <li>○ is not a present or past staff member or director of Endeavour Energy;</li> <li>○ has not acted and does not act for, and does not consult and has not consulted to, Endeavour Energy in any matters relating to compliance with Part 7 of the NERR; and</li> <li>○ has no significant shareholding or other interests in Endeavour Energy or any of its partners;</li> </ul> </li> <li>• have professional competence to apply established audit standards and techniques to carry out the Post Implementation Review to a high standard; and</li> <li>• have a system of quality controls to ensure the Post Implementation Review report is of a professional standard.</li> </ul>
<b>NERL</b>	means the National Energy Retail Law set out in the Schedule to the <i>National Energy Retail Law (South Australia) Act 2011</i> .
<b>NERR</b>	means the <i>National Energy Retail Rules</i> .
<b>Post Implementation Review</b>	has the meaning given in paragraph 13.
<b>Post Implementation Review Proposal</b>	has the meaning given in paragraph 13(e).
<b>Undertaking</b>	means this document (including any schedules or annexures to this document) as varied from time to time under section 288 of the NERL.

## Interpretation

- 21 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 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*;
  - (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 Endeavour Energy Network  
Operator Partnership (ABN 11 247 365  
823)**



by its authorised representative in the  
presence of:

\_\_\_\_\_  
Authorised Representative Signature



\_\_\_\_\_  
Guy Chalkley

\_\_\_\_\_  
Witness Signature  
Lisa James

\_\_\_\_\_  
Print Name  
Chief Executive Officer

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Position

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



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**Clare Savage, Chair**

**Date** 29/06/2022