

ENFORCEABLE UNDERTAKING

ESSENTIAL SERVICES COMMISSION ACT 2001

Undertaking to the Essential Services Commission under section 54ZD of the *Essential Services Commission Act 2001*

by

1st Energy Pty Ltd (ACN 604 999 706)

1. Person giving this Undertaking

1.1 This Undertaking is given by 1st Energy Pty Ltd (ACN 604 999 706) (**1st Energy**) to the Essential Services Commission (**Commission**), for the purposes of section 54ZD of the Essential Services Commission Act (**ESC Act**).

2. Background

2.1 1st Energy is an energy retailer.

2.2 The Commission granted 1st Energy an Electricity Retail Licence on 19 May 2016 and a Gas Retail Licence on 28 November 2018. Pursuant to these licences, 1st Energy sells gas and electricity to customers in Victoria.

3. The Commission's concerns

3.1 The Commission considers that 1st Energy did not comply with section 40EB(1)(c) of the *Electricity Industry Act 2000* (Vic) (**EIA**) and section 48DB(1)(c) of the *Gas Industry Act 2001*(Vic) (**GIA**), by permitting an agent to call upon up to 37 domestic electricity customers and 1 domestic gas customer at their ordinary place of residence for the purpose of negotiating a supply and sale contract, without first obtaining express consent from these customers to do so, in the period from around 17 January 2022 to 15 March 2022 (**relevant period**).

3.2 Specifically, the Commission considers that, in the relevant period:

3.2.1 1st Energy had an energy sales and services contract in place with Oz Sales and Marketing Pty Ltd (ACN 162 932 087) (**Oz Sales**). Oz Sales had an arrangement with third party in home display units (**IHDU**) installers, under which 1st Energy could receive customer referrals. Under this referral arrangement, the IHDU installer would have permission to attend a customer's ordinary place of residence to install an IHDU and, while there, could offer to procure for the customer an energy quote from 1st Energy via SMS.

3.2.2 In those circumstances and in addition, IHDU installers attended certain domestic customers' ordinary place of residence for the purpose of negotiating an energy contract in the absence of the customer's prior "express consent" to being contacted by 1st Energy at their ordinary place of residence for that purpose (as is contemplated by section 40EB(2) of the EIA and section 48DB(2) of the GIA).

4. Admissions and Resolution

4.1 In order to resolve the Commission's concerns, 1st Energy:

- a) acknowledges that the conduct outlined in paragraph 3.2 is likely to have contravened section 40EB(1)(c) of the EIA and section 48DB(1)(c) of the GIA;
- b) has taken steps to rectify the circumstances giving rise to the conduct outlined in paragraph 3.2, including:
 - i. ceasing all business with Oz Sales in relation to any face-to-face activities in Victoria as of March 2022; and
 - ii. in the period February to March 2023, conducting or attempting to conduct, for current 1st Energy customers that were visited by the IHDU installers in the relevant period, satisfaction calls or emails and offering a \$50 credit to their 1st Energy account;
- c) acknowledges that this Undertaking in no way limits the rights and/or remedies available to any person in relation to the conduct outlined in paragraph 3.2;
- d) undertakes to implement a Compliance Improvement Action Plan (the **Action Plan**) in accordance with the requirements set out in **Annexure A**; and
- e) will, on and from the Commencement Date, and at its own expense:
 - i. implement and maintain the Action Plan for a period of 24 months from the Commencement Date; and
 - ii. provide copies of any documents described in **Annexure A** when requested by the Commission.

5. Commencement and Term of Undertaking

5.1 This Undertaking comes into effect on the Commencement Date, being the date when:

- a) the Undertaking is executed by 1st Energy;
- b) the Undertaking so executed is accepted by the Commission; and

c) 1st Energy is given notice of the Commission's acceptance of the Undertaking.

5.2 The Undertaking remains in effect for 24 months from the Commencement Date.

6. Compliance with Undertaking

6.1 In the event that 1st Energy has reason to believe that it has not complied with a requirement of this Undertaking, it will report that possible non-compliance to the Commission within five business days.

6.2 1st Energy will provide further information or particulars to the Commission concerning any possible non-compliance reported to the Commission within a reasonable time upon request by the Commission.

7. Maintaining Records and Monitoring of Undertaking

7.1 1st Energy commits to maintaining records confirming any actions, steps, or measures it takes pursuant to meeting the terms of this Undertaking, and retaining those records for a period of at least seven years following their creation.

7.2 1st Energy will produce any records in relation to any actions, steps, or measures it is required to take under this Undertaking to the commission if requested during the term of the Undertaking or within seven years following their creation.

7.3 1st Energy will provide a report to its Board and senior management team on a regular basis (at least every three months) addressing implementation of the terms of this Undertaking.

7.4 Six months and 12 months following the Commencement Date, 1st Energy will make a report to the Commission on progress made toward implementing the terms of the Undertaking.

7.5 Within one month of the conclusion of the term of the Undertaking, 1st Energy will provide a final report to the Commission on its implementation of, and/or compliance with, the terms of the undertaking.

8. Acknowledgements and Publication of Undertaking

8.1 1st Energy acknowledges that:

a) the Commission will make this Undertaking publicly available by publishing it on its website and in its online Register of Enforcement Action

b) the Commission may from time to time, make public reference to this Undertaking including in news media statements and in Commission publications; and

- c) this Undertaking in no way limits or affects any rights or remedies available to any other person arising from the conduct.

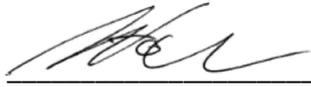
8.2 1st Energy commits to:

- a) publishing a notice disclosing the purpose and key terms of the Undertaking, to be approved by the Commission, prominently on a website maintained by 1st Energy for the period of the Undertaking; and
- b) including a web link to the Undertaking within that notice.

8.3 1st Energy acknowledges it must pay all its own costs in relation to this Undertaking including costs associated with remediation or compensation associated with the Undertaking, and costs related to implementation of the Action Plan.

Executed as an Undertaking

Executed for and on behalf of 1st Energy Pty Ltd (ACN 604 999 706) in accordance with section 127 of the *Corporations Act 2001*:



Signature of director

Liam Foden

Name of director

5 May 2023

Date



Signature of director

Adam Landry

Name of director

5 May 2023

Date

Accepted by the Essential Services Commission pursuant to section 54ZD of the *Essential Services Commission Act 2001* and signed on behalf of the Commission:



Kate Symons, Chairperson

8 August 2023

Date

ANNEXURE A: Compliance Improvement Action Plan

1st Energy Pty Ltd (**1st Energy**) undertakes to implement the Compliance Improvement Action Plan by undertaking the actions set out in this Annexure.

Training

1. 1st Energy must arrange the following:
 - a) the provision of information about the unsolicited sales prohibitions under section 40EB of the EIA and section 48DB of the GIA (the **Unsolicited Sales Prohibitions**) to any sales channel partner that enters into any contractual or other arrangement with 1st Energy for the supply of energy sales and services on 1st Energy's behalf after the Commencement Date and whose duties could result in them being concerned with conduct that may contravene the Unsolicited Sales Prohibitions; and
 - b) regular (at least annual) training about the Unsolicited Sales Prohibitions, the Australian Consumer Law (**ACL**) and explicit informed consent (**EIC**) for:
 - i. employees of 1st Energy whose duties relate to sales or management of sales, or who have responsibility for managing employees with such duties; and
 - ii. sales channel partners with a view to facilitating those sales channel partners conducting the same training with its employees and agents.
2. The training referred to in clause 1.b must be developed with, and annually reviewed and delivered by, an independent compliance professional or legal practitioner.
3. In addition to its obligation to maintain records under section 54(1)(b) of the Energy Retail Code of Practice, 1st Energy will maintain a record of the training provided pursuant to clause 1.b, including of the content of the training, the name of each individual or sales channel partner representative that receives the training and the date(s) on which each individual receives the training.

Quality Assurance and Compliance Monitoring

4. Prior to entering into any contractual or other arrangement with a sales channel partner for the supply of energy sales and services on 1st Energy's behalf, and where 1st Energy has identified potential for the relevant sales channel partner's activities to attract the application of the Unsolicited Sales Prohibitions, 1st Energy must conduct due diligence on the compliance processes of the relevant sales channel partner to satisfy itself that the

policies and procedures of that sales channel partner are compliant with the Unsolicited Sales Prohibitions.

5. 1st Energy must conduct monthly quality assurance checks, having regard to the Unsolicited Sales Prohibitions, on face-to-face interactions between sales channel partners and domestic customers that occurred at their ordinary place of residence in Victoria, and which resulted in the domestic customer entering an energy retail contract with 1st Energy in the month since the previous review (or, in the instance of the first review, the period immediately preceding the date of the review) (**Review Period**).
6. For the purposes of clause 5, the quality assurance checks will be based on a sample comprising at least 25% of all interactions between 1st Energy's current sales channel partners and domestic customers that occurred at the domestic customer's ordinary place of residence in Victoria and resulted in the domestic customer entering an energy retail contract with 1st Energy within the Review Period.

Independent audit of the Compliance Improvement Action Plan and 1st Energy's quality assurance framework

7. Within one month of the Commencement Date, 1st Energy must appoint an independent person with expertise in the ACL and Victoria's energy laws (**Independent Auditor**) to complete a review of 1st Energy's implementation of the Compliance Improvement Action Plan and quality assurance framework.
8. 1st Energy must engage the Independent Auditor to prepare a report that identifies:
 - a) whether 1st Energy has implemented the Compliance Improvement Action Plan;
 - b) whether 1st Energy's quality assurance processes, internal policies and procedures and training practices are adequate to detect and remedy issues around 1st Energy's compliance with the Unsolicited Sales prohibitions, the ACL and EIC in relation to energy plan sales; and
 - c) recommends any further actions required to address any material deficiencies in 1st Energy's implementation of the Compliance Improvement Action Plan and/or quality assurance framework generally.
9. 1st Energy must use best endeavours to ensure the Independent Auditor:
 - a) has full, free and unrestricted access to all staff, records, documentation and information necessary to conduct the review; and

b) provides the report referred to in clause 8 to 1st Energy's management and Board within 90 business days of appointment.

10. 1st Energy will implement promptly and with due diligence any recommendations made by the Independent Auditor in the report referred to in clause 8.