

Undertaking to the New Zealand Commerce Commission

Given under section 74A of the Commerce Act 1986 (**Act**) by Eastland Network Limited (**Eastland**).

1. Person(s) giving the Undertaking

- 1.1. This Undertaking is given to the New Zealand Commerce Commission (**Commission**) by Eastland for the purposes of section 74A of the Act.

2. Background

- 2.1. Eastland supplies electricity lines services to consumers in the Gisborne, Wairoa and East Coast areas.
- 2.2. Consumers connected to Eastland's network are divided into groups called tariff codes (**Tariff Codes**). The amount that consumers connected to Eastland's network pay for electricity lines services depends on which Tariff Code they are in.
- 2.3. Section 54G of the Act provides that all electricity lines services supplied by electricity distributors are subject to default/customised price-quality regulation, unless they are exempt.
- 2.4. Eastland is not exempt from price-quality regulation and is currently subject to a default price-quality path (**Price Path**) that limits the amount of notional revenue that it can earn in each annual assessment period to its allowable notional revenue.
- 2.5. For the annual assessment period ending 31 March 2020 (**2020 Assessment Period**), Eastland's Price Path was set by the Electricity Distribution Services Default Price-Quality Path Determination 2015 [2014] NZCC 33 (**DPP Determination 2015**).
- 2.6. For the 2020 Assessment Period, Eastland's allowable notional revenue was \$27,366,386 and its notional revenue was \$27,693,433. Eastland's notional revenue exceeded its allowable notional revenue by \$327,047 and it therefore charged \$327,047 more than it was entitled to charge under the DPP Determination 2015 (this amount being referred to in this Undertaking as the **Overcharge**).
- 2.7. Because Eastland's notional revenue exceeded its allowable notional revenue, the Commission considers, and Eastland agrees, that Eastland has contravened the Price Path in the DPP Determination 2015 and has contravened a price-quality requirement for the purposes of section 87 of the Act because it failed to comply with the requirements for prices by receiving more revenue than is permitted under the DPP Determination 2015 (**Contravention**).
- 2.8. Eastland stated that it mistakenly included pass-through prices in the prices for certain Tariff Codes, resulting in an incorrect understatement of its notional

revenue for the 2020 Assessment Period. Because of this incorrect understatement, Eastland believed that its notional revenue was less than its allowable notional revenue, when in fact it was not.

- 2.9. In response to the Contravention, Eastland has acknowledged that it has contravened the Price Path set out in the DPP Determination 2015 for the 2020 Assessment period and offered this Undertaking to the Commission.
- 2.10. The Commission and Eastland agree that the most expedient mechanism for disgorging the Overcharge and providing compensation to consumers is for Eastland to provide a rebate, via electricity retailers, for the benefit of the current consumer of each active installation control point (**ICP**) in its service area as at the date of this Undertaking, provided that the particular consumer had been subject to the Contravention by being the consumer of that ICP on the last day of the 2020 Assessment Period (**Affected ICP**) (as required by clause 5.1.1 of this Undertaking) and for Eastland to exercise contractual rights to require electricity retailers to pass on the rebate to consumers (as required by clause 5.1.2).
- 2.11. The process for providing rebates and requiring electricity retailers to pass them on is set out in the Use of Systems Agreements (**UoSAs**) or Default Distribution Agreements (**DDAs**) (in the DDAs a rebate is referred to as a “one-off payment”) between Eastland and electricity retailers. Under those processes, Eastland provides notice to electricity retailers that it requires a rebate paid by it to be passed by electricity retailers on to consumers, along with the information required by electricity retailers to calculate the rebate. Each electricity retailer then calculates and pays the rebates to consumers, and invoices Eastland for the rebates. Eastland then pays each electricity retailer for the rebates.
- 2.12. The Commission and Eastland agree that the total minimum amount disgorged to consumers should be the Overcharge, plus a minimum amount of \$28,253 agreed by Eastland and the Commission as accounting for the time value of money, given the elapsed period between the time at which the Overcharge was paid by consumers and the time at which the disgorgement occurs. The total minimum amount for Eastland to disgorge is therefore \$355,300 (**Total Disgorgement Amount**).

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect on the date when:
- 3.1.1. this Undertaking is executed by Eastland; and
- 3.1.2. this Undertaking so executed is accepted by the Commission
- (the **Commencement Date**).

4. Acknowledgement of contravention of Price Path

- 4.1. Eastland acknowledges that it contravened the Price Path set out in the DPP Determination 2015 for the 2020 Assessment Period because its notional revenue exceeded its allowable notional revenue by the Overcharge.

5. Undertaking

- 5.1. Eastland undertakes for the purposes of section 74A of the Act as follows:

Rebate

- 5.1.1. It will disgorge at least the Total Disgorgement Amount by paying a rebate to the electricity retailer of each Affected ICP from the Tariff Code in Column A of the table below of at least the amounts set out in the corresponding rows in Columns B and C of the table below (collectively, the **Rebates**).

Column A: Tariff Code	Column B: Minimum Rebate for each Affected ICP in the Tariff Code	Column C: Total minimum Rebates for all Affected ICPs in the Tariff Code
PDH0030	\$1.80	\$25,136.18
PDL0030	\$15.08	\$85,841.91
PNH0003	\$6.42	\$853.38
PNH0030	\$9.49	\$16,236.10
PNH0100	\$59.78	\$16,798.29
PNH0300	\$274.17	\$19,740.12
PNH0500	\$835.02	\$14,195.31
PNH1000	\$2,000.59	\$44,012.95
PNH4500	\$6,850.68	\$13,701.36
PNH6500	\$36,680.62	\$36,680.62
PNL0003	\$6.00	\$726.15
PNL0030	\$8.46	\$29,527.69
PNL0100	\$48.15	\$5,296.94

PNL0300	\$149.85	\$3,446.56
PNL0500	\$498.81	\$2,494.07
PNL1000	\$2,172.33	\$2,172.33
PNL4500	\$32,009.87	\$32,009.87
PTH0300	\$360.05	\$2,520.35
PTL0300	\$96.11	\$96.11
PNG1000	\$635.70	\$3,814.19
	Total Disgorgement Amount	\$355,300.00

- 5.1.2. Within 10 working days of the Commencement Date, it will notify electricity retailers under clauses S2.2 and S2.3 of the UoSAs or clauses 9.11, S2.2 and 2.3 of the DDAs (as applicable) that it requires electricity retailers to pass the Rebates to consumers. It will provide a maximum of 45 working days' notice of the requirement to pass the Rebates to consumers.
- 5.1.3. Within 5 working days of receiving confirmation from an electricity retailer of the total amount credited to consumers' accounts (under clause S2.16 of the UoSAs or S2.11 of the DDA, as applicable), it will pay the Rebate to that electricity retailer up to the amount credited to consumers. For the avoidance of doubt, Eastland will not be required to pay Rebates to electricity retailers that do not confirm that they have passed the Rebates to their consumers.
- 5.1.4. It will meet the electricity retailers' reasonable costs of providing services associated with passing on the Rebates to consumers, in accordance with clause S2.14 of the UoSAs and clause S2.9 of the DDAs.
- 5.1.5. Provided it uses all reasonable endeavours to ensure that electricity retailers comply with their obligations to pass on the Rebates under Schedule 2.1 of the UoSAs or Schedule 2 of the DDA (as applicable), Eastland will not be in breach of this Undertaking if electricity retailers fail or refuse to pass on the Rebates.

Reporting

- 5.1.6. It will provide to the Commission a report, within 65 working days of the Commencement Date, that sets out:
- 5.1.6.1. the amount of the Rebates paid to each consumer of an Affected ICP in each Tariff Code;
 - 5.1.6.2. the total amount of the Rebates paid to all consumers of Affected ICPs in each Tariff Code;
 - 5.1.6.3. the number of ICPs who were paid a Rebate within each Tariff Code; and
 - 5.1.6.4. where an electricity retailer refuses or fails to pass on Rebates, the total amount that the electricity retailer refuses or fails to pass on and the number of ICPs affected by the refusal or failure to pass on within each Tariff Code.

Public statements

- 5.1.7. It will publish a statement on the news section of its website explaining that the Rebates will be paid to recognise the fact of consumers having been overcharged as a result of the Contravention and including the amount of the Rebates to be paid to consumers of each Affected ICP in each Tariff Code. The text of this statement must be approved by the Commission before it is published on Eastland's website. The statement will be published within 20 working days of the Commission's approval of the proposed statement and must remain on Eastland's website for at least 80 working days from the date of publication.
- 5.1.8. It will include, in the notice to retailers in clause S2.3 of the UoSAs, a statement that it wishes to include promotional material with the invoice containing the credit for the Rebates in accordance with clause S2.3(d) of the UoSAs. The promotional material, if agreed to be distributed by a retailer, will explain that the Rebates have been made to recognise the fact of consumers having been overcharged as a result of the Contravention. The text of this explanation must be approved by the Commission before it is included in the promotional material.

Independent review

- 5.1.9. It will engage Adri Smit from PriceWaterhouseCoopers, or another individual as agreed with the Commission, (the **Reviewer**) to review and report on the effectiveness of its price-setting processes at ensuring compliance with the price path in the Electricity Distribution Services Default Price-Quality Path Determination 2020 [2019] NZCC

21 (as amended) (**DPP Determination 2020**) on the terms set out at **Attachment A**. Where the Reviewer considers that these processes could be improved to better ensure compliance with the DPP Determination 2020, the reviewer will be instructed to make corresponding recommendations in the report. Eastland will formally engage the Reviewer within 30 working days of the Commencement Date. Eastland will provide a copy of the report resulting from the review to the Commission as soon as reasonably practicable upon its completion.

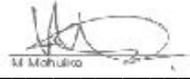
- 5.1.10. It will provide to the Commission a report within 40 working days of the date of the provision of the report required by clause 5.1.9 to the Commission that sets out any steps Eastland has taken in response to any recommendations made in the report required by clause 5.1.9.
- 5.1.11. It will publish on its website the reports required by clauses 5.1.9 and 5.1.10 alongside the Annual Compliance Statement required by clause 11.1 of the DPP Determination 2015 for the 2020 Assessment Period.

6. Further acknowledgements

- 6.1. Eastland further acknowledges that:
 - 6.1.1. the Commission will make this Undertaking publicly available, including by publishing it on the Commission's register of enforceable undertakings on its website;
 - 6.1.2. the Commission may, from time to time, make public reference to this Undertaking, including in media statements and in Commission publications; and
 - 6.1.3. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Eastland Network Limited pursuant to section 180 of the Companies Act 1993:



29 Sep, 2021 2:09:33 PM GMT+13

Signature of director

Matankuk Mahuika

Name of director (print)

Date



23 Sep, 2021 7:12:59 PM GMT+13

Signature of director

Jon Nichols

Name of director (print)

Date

Accepted by the New Zealand Commerce Commission pursuant to section 74A of the Act:



Signature of Commissioner

Susan Janice Begg

Deputy Chair

Name of Commissioner



Date

**Attachment A: Eastland Network - Price Setting Process Review – Terms of Reference
(5 March 2021)**