

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N98837 Ausgrid
ABN 67 505 337 385

This application on behalf of Ausgrid is accompanied by a submission in support. Separate applications which relate to similar conduct have been lodged by Endeavour Energy and Essential Energy. The three networks together are referred to as the **Network Operators**.

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Ausgrid is a State owned energy corporation, incorporated under the *Energy Services Corporations Act 1995* (NSW). Ausgrid operates an electricity distribution and transmission network which provides power to 1.6 million homes and businesses throughout Sydney, the Hunter and the Central Coast.

- (c) Address in Australia for service of documents on that person:

C/- Katrina Groshinski
MinterEllison
Level 40 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notice relates to the service of authorising electrical contractors to work on Ausgrid's network (**Authorisation Services**).

Under the *Electricity Supply Act 1995*, customers may engage an Accredited Service Provider (**ASP**) to carry out certain contestable works.

Under the regulatory regime, before the personnel of an ASP can carry out work on or near Ausgrid's electricity network they must be accredited by the NSW Department of Industry and authorised by Ausgrid.

Ausgrid supplies Authorisation Services to ASPs by authorising the ASPs and their personnel to access Ausgrid's distribution network in order for ASPs to carry out contestable works on the network.

Ausgrid requires ASP personnel who carry out work on or near the distribution network to have completed training courses and assessment both initially and periodically as a 'refresher'. Some types of training need to be contextualised to Ausgrid's network-specific requirements (**Network-Specific Training**) and Ausgrid proposes to require that ASP personnel obtain that Network-Specific Training either from Ausgrid, or from a Registered Training Organisation (**RTO**) endorsed by Ausgrid.

(b) Description of the conduct or proposed conduct: prescribed
(Refer to direction 4)

1. Ausgrid proposes to supply, or offer to supply Authorisation Services to an ASP and ASP personnel;

on the condition that the ASP personnel to whom Ausgrid supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training services from either Ausgrid, or an RTO that is endorsed by Ausgrid.

2. Ausgrid proposes to refuse to supply Authorisation Services to an ASP and ASP personnel;

for the reason that the ASP personnel has not acquired, or has not agreed to acquire, Network-Specific Training services from Ausgrid, or an RTO that is endorsed by Ausgrid.

Please refer to the attached submission in support of the notification.

3. **Persons, or classes of persons, affected or likely to be affected by the notified conduct**

(a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

ASPs and ASP personnel who wish to remain authorised to undertake contestable works on Ausgrid's distribution network.

RTOs who provide, or seek to provide, Network-Specific Training services to ASP/2 personnel who propose to undertake contestable works on Ausgrid's distribution network.

(b) Number of those persons:

(i) At present time:

There are approximately 600 ASP/2s currently authorised to work on Ausgrid's network.

There are two RTOs which currently provide electrical training services to ASP/2s specific to Ausgrid's network:

- TAFE NSW - Hunter Institute.
- IAC Safety Services.

(ii) Estimated within the next year:
(Refer to direction 6)

Ausgrid expects the number of ASP/2s to remain steady over the coming year.

Some RTOs have expressed preliminary interest in becoming accredited to deliver the Network-Specific Training. Accordingly, Ausgrid expects that the number of RTOs wishing to offer training to ASP/2s to increase to approximately five total. Ausgrid does not anticipate any continuing year-on-year increase in the number of RTOs.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

TAFE NSW - Hunter Institute

266 Maitland Road
Tighes Hill NSW 2297

Contact: Nicholas Blanch - nicholas.blanch6@tafensw.edu.au

IAC Safety Services

PO Box 32
Ettalong Beach NSW 2257

Contact: David Conyngham - david@iacsafetyservices.edu.au

The additional RTOs which have expressed interest in becoming accredited are:

- EnerSafe
- Active Tree Services
- WorkSpace Training
- NECA

4. Public benefit claims

(a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission in support of the notification.

(b) Facts and evidence relied upon in support of these claims:

Please refer to the attached submission in support of the notification.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

Please refer to the attached submission in support of the notification.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Please refer to the attached submission in support of the notification.

- (b) Facts and evidence relevant to these detriments:

Please refer to the attached submission in support of the notification.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Katrina Groshinski
MinterEllison
Level 40 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000
(t) +61 2 9921 4396
katrina.groshinski@minterellison.com

Dated 7 January 2016

Signed on behalf of the applicant


.....
(Signature)

Katrina Groshinski
MinterEllison
Partner

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.



Date: 7 January 2016

Submission to the ACCC

Notification of Exclusive Dealing

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Submitted on behalf of Ausgrid

Submission to the ACCC

Notification of Exclusive Dealing

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1. Introduction

- 1.1 This submission is made in support of a Form G – Notification of Exclusive Dealing – lodged by Ausgrid. Separate notifications are made by Endeavour Energy and Essential Energy (the three networks together are referred to as the **Network Operators**). The submissions made by the Network Operators are consistent save for the information set out in **Appendix A**.
- 1.2 The Network Operators each operate electricity distribution networks in separate geographic areas in New South Wales. Each proposes to enter into its own form of endorsement arrangements with certain Registered Training Organisations (**RTO**) and require Accredited Service Providers (**ASPs**) and/or their personnel to acquire certain training from those RTOs.
- 1.3 While the specific ways in which each Network Operator proposes to implement its arrangements will differ, the common feature is a requirement that ASPs and/or their personnel will be required to acquire specified training from a third party. Accordingly, this submission specifies the common features and key differences between the Network Operators' notified conduct. The specific nature of the conduct that is particular to Ausgrid is set out in **Appendix A**.

2. Executive summary

- 2.1 Each Network Operator proposes to authorise electrical contractors known as ASPs and/or their personnel to work on its distribution network, by requiring ASP personnel to undertake certain training provided by a RTO that has been endorsed by the Network Operator (**Network-Specific Training**). The type of Network-Specific Training will differ between the Network Operators. For example, Ausgrid will not require that ASPs undertake all training via an endorsed RTO – only specified courses such as the Electrical Safety Rules (**ESR**) Refresher Training for ASP/2s.
- 2.2 NSW and national energy regulatory laws regulate the control and operation of electricity distribution networks. The three Network Operators are each licensed and registered under that framework and subject to very stringent quality, safety and customer service obligations. They are responsible for ensuring the safety and reliability of electricity to households and businesses in their distribution areas across NSW.
- 2.3 ASPs are engaged by customers to undertake certain electricity connection works known as 'contestable works'. The NSW regulatory regime allows customers to choose who carries out 'contestable work' related to connections to a particular network. This may include designing network assets, connecting and disconnecting premises from the network, and constructing high and low voltage extensions or alterations to the network. To ensure the reliability and safety of the network, the regime requires that only ASPs, which are suitably qualified and authorised workers registered by the NSW Government under the ASP scheme, can perform this work.
- 2.4 To perform contestable work on a distribution network, an ASP must:
 - (a) be accredited by the Department of Industry under the ASP scheme;
 - (b) have access to the appropriate number of personnel with the required qualifications in order to undertake work as an ASP;
 - (c) register personnel who will be performing work on behalf of the ASP; and
 - (d) only use personnel that are authorised by the Network Operator to work on its distribution network.
- 2.5 To become and remain authorised by a Network Operator, ASP personnel are required to complete training courses and ongoing assessments. The Network Operators each propose to exercise control over this process by only allowing ASPs and/or their personnel to be authorised to work on or near their distribution network if they have received Network-Specific Training from an RTO that has been endorsed by the relevant Network Operator (**Notified Arrangements**).

The Notified Arrangements are limited in scope to Network-Specific Training which each Network Operator requires to be contextualised to the specific context of each network. Learning outcomes, course assessment, and audits may not be the same for each Network Operator. Each Network Operator will determine its own individual approach to the Notified Arrangements.

2.6 The key features of the Notified Arrangements are:

- (a) each Network Operator proposes to endorse RTOs to provide Network-Specific Training. Each intends to specify core learning and competency outcomes that RTOs must meet to be endorsed by the Network Operator, and set out the terms and conditions on which an RTO will be endorsed. These include quality control mechanisms, such as rights for the relevant Network Operator to audit the Network-Specific Training provided by the RTO. Audits may be undertaken by a single Network Operator or jointly by more than one Network Operator. Each Network Operator will determine its own approach to endorsing and managing the relationship with an endorsed RTO.
- (b) The Network Operators will not necessarily approve the same RTOs and do not propose to establish a common list of endorsed RTOs. Each Network Operator retains discretion to refuse to endorse an RTO; similarly, endorsement by one Network Operator will not guarantee endorsement by the other two Network Operators.
- (c) The Network Operators do not intend to enter into any exclusive arrangement with any RTO or group of RTOs for the supply of Network-Specific Training. Any RTO may approach a Network Operator to become an endorsed RTO, provided that it meets the quality control criteria.

2.7 The Notified Arrangements will result in significant public benefits which will outweigh any detriment. In particular, the arrangements:

- (a) avoid a more restrictive arrangement whereby the only source of Network-Specific Training is the Network Operators themselves;
- (b) provide assurance to ASPs that if their personnel complete an Network-Specific Training course provided by an RTO it will properly equip them to work on the relevant distribution network – although undertaking training does not guarantee that the Network Operator will authorise that ASP to operate on its network;
- (c) ensure that customers can rely on well-trained electrical professionals to carry out safe contestable work;
- (d) assist each Network Operator to fulfil its statutory obligations in relation to network safety and reliability; and
- (e) facilitate the objects of the regulatory regime by promoting the safety of those who work on the distribution networks, and ensuring that electrical professionals receive training which is contextualised to current industry practices and the specific requirements of the Network Operator.

3. The notifying parties

3.1 The Network Operators are State-owned energy corporations established under the *Energy Services Corporations Act 1995* (NSW) (**ESC Act**). The Network Operators each operate electricity distribution networks in separate geographic areas in New South Wales.

3.2 Under the ESC Act, each Network Operator's principal functions are to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and to supply electricity and other forms of energy, and services relating to its use and conservation, to other persons and bodies (ESC Act s 9(2)).

- 3.3 Ausgrid distributes electricity to the Sydney, Central Coast and Hunter regions of NSW across a 22,275 square kilometre area.
- 3.4 Endeavour Energy distributes electricity across a 24,500 square kilometre area made up of Sydney's Greater West, Blue Mountains, Southern Highlands and the Illawarra.
- 3.5 Essential Energy's network covers more than three quarters of NSW and parts of southern Queensland, including more than 200,000 kilometres of power lines.
- 3.6 The Network Operators have overarching obligations to maintain the safety and integrity of their distribution networks. The Electricity Supply (Safety and Network Management) Regulation 2014 (**Safety Regulation**) requires each Network Operator to take all reasonable steps to ensure that the operation of its distribution network (or any part of it) is safe (cl 5).

4. The conduct

- 4.1 The notified conduct is broadly in respect of the following:
 - (a) Authorisation services supplied by each Network Operator to ASPs and ASP personnel to carry out work on the Network Operator's distribution network (**Authorisation Services**); and
 - (b) Network-Specific Training provided by RTOs, which includes training and assessment in relation to network-specific safety and operating procedures, electrical safety rules, safety management systems, and other policies.

The type and content of Network-Specific Training is set out in further detail in **Appendix 1**.

- 4.2 Each Network Operator proposes to supply, or offer to supply Authorisation Services to an ASP and/or ASP personnel on the condition that the ASP personnel to whom the Network Operator supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training from an RTO that has been endorsed by the relevant Network Operator.
- 4.3 In addition, the Network Operators propose to refuse to supply Authorisation Services to an ASP and/or ASP personnel for the reason that the ASP has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO endorsed by the Network Operator.

5. Markets

- 5.1 The relevant markets for the application include those for the supply of:
 - (a) ASP authorisation: and
 - (b) electrical safety training and assessment services.
- 5.2 Each Network Operator can only authorise ASP personnel to work on the network located in its distribution network, also known as a 'franchise area', and not on any other network. Each Network Operator's distribution district comprises the local government areas, or parts of local government areas, described in Schedule 3 of the *Electricity Supply Act 1995* (NSW) (**ESA**) (see ESA s 83(1), Schedule 3).

6. Affected parties

- 6.1 This section provides information about the parties which will be affected by the Notified Arrangements, and their rights and obligations under the NSW electricity framework:
 - (a) customers;

- (b) ASPs;
- (c) registered and authorised personnel employed by ASPs; and
- (d) RTOs.

Customers

- 6.2 Under the regulatory framework, a 'customer' of an electricity distributor is a person to whom energy is sold for particular premises by a retailer, and whose premises are connected to a distributor's electricity network. The energy laws provide significant protections for customers.
- 6.3 Part 3 of the *National Energy Retail Law (NERL)* governs the relationship between distributors and their customers. Distributors are obliged to provide customer connection services to customers. 'Customer connection services' is defined broadly in the NERL and National Electricity Rules to mean services relating to new connections or connection alterations at premises, as well as supply services including energisation and de-energisation of premises.
- 6.4 Where a customer requests a new connection or a connection alteration, the distributor is required to provide that connection, but the customer may engage an ASP to carry out the physical work required to achieve the connection (alternatively, the customer may request that the Network Operator provide this service in its capacity as an ASP).
- 6.5 This is because, under the ESA, there is a contestable market for certain customer connection services. Rather than the distributor having the exclusive right to provide all services which may impact its network (as is the case in some other jurisdictions), the ESA provides that a customer may elect to have new connection or connection alteration services provided by a distributor or by 'any other person': s 31(1). Section 31(2) of the ESA requires that a person providing such services be accredited under the regulations.
- 6.6 Accordingly, customers have the right to choose who carries out work at their request, provided that the ASP is appropriately accredited and authorised and the ASP's personnel are appropriately registered and authorised. The regime means that customers may choose to engage an electrical professional from a pre-selected pool of authorised and qualified persons.

ASP accreditation and authorisation

- 6.7 An ASP that wishes to provide contestable works in New South Wales must follow a two-stage process: first, it must obtain accreditation from and register personnel with NSW Department of Industry, and second, it must obtain authorisation from the distributor to work on its network.
- 6.8 There is an important distinction between the requirements imposed by Ausgrid and the other two Network Operators in this regard. Ausgrid authorises the ASP company as well as its personnel, while Essential and Endeavour simply authorise the personnel employed by an ASP company.

Accreditation

- 6.9 The Safety Regulation provides for the accreditation scheme. Before the personnel of an ASP can carry out work on or near an electricity network they must be registered with an ASP by the Department of Industry and authorised by the Network Operator.
- 6.10 The ESA requires that a person who provides customer connection services prescribed by the regulations must be accredited in accordance with the Safety Regulation (ESA, s 31(2)). The Safety Regulation provides for the Minister to make Scheme Rules with respect to certain matters regarding the accreditation of persons to provide contestable services (Safety Regulation, cl 26). Sets of Scheme Rules have been made under clause 26 in relation to Level 1, 2 and 3 ASPs.¹

¹ The three sets of Scheme Rules are publicly available at <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

- 6.11 The services provided by Level 1, 2 and 3 ASPs are as follows:
- (a) Level 1 ASPs undertake work to extend the electricity network or to increase the capacity of the existing network.
 - (b) Level 2 ASPs install, repair or maintain the service lines between the electrical wiring on a customer's premises and the electricity network. This includes installing metering equipment, connecting service lines to the network and making the connection live.
 - (c) Level 3 ASPs design distribution network assets.
- 6.12 The Level 1 Scheme Rules outline the requirement that an ASP have properly trained and authorised personnel:
- 'It is a condition of accreditation that an ASP has access to the appropriate number of personnel with the required qualifications in order to undertake work as an accredited service provider. This includes ensuring that all personnel undertaking contestable work on or near a distribution network:*
- *have the competency to do so;*
 - *are registered with the Scheme; and*
 - *are authorised by the local electricity distributor to work on or near the distribution system for the level of accreditation and the work to be undertaken.'* (at [2.3])
- 6.13 The Level 1 Scheme Rules then explain the authorisation process:
- 'Following registration an ASP must seek to have those personnel authorised by the local electricity distributor. Only personnel who are currently registered with the Scheme can be authorised.*
- The local electricity distributor is responsible for determining who is authorised to work on or near the distribution network. The electricity distributor/s will require registered personnel to undertake training in relevant safety and operating procedures and be familiar with and show they can comply with their respective safety management systems, electrical safety rules and other relevant policies.'* (at [2.5])
- 6.14 In relation to the last paragraph, the Network Operators only require registered personnel to be assessed for understanding and compliance with the ESR particular to the relevant network.
- 6.15 The Level 1 Scheme Rules state that ASPs must use the information provided by the local distributor to ensure their employees remain familiar with applicable standards, work practices and general requirements for the type of work being undertaken: at [6.6]. The distributor may charge a fee for the authorisation of ASP personnel which is set by the Australian Energy Regulator (**AER**).
- 6.16 There are equivalent provisions in respect of authorisation under the Level 2 Scheme Rules.
- Authorisation processes*
- 6.17 Each Network Operator is responsible for determining who is authorised to work on or near its network. In doing so, the Network Operator will require registered personnel to undertake training in relevant procedures, rules and other policies. These requirements are directed at ensuring that ASP personnel have the necessary knowledge about the Network Operator's particular systems, materials and network infrastructure to ensure that network safety and reliability are maintained.
- 6.18 Each distributor has policies and arrangements requiring individuals to obtain authorisation to carry out contestable work on or near its distribution network. However, as noted above, while all three Network Operators have processes for authorising personnel employed by an ASP, Essential and Endeavour differ from Ausgrid in that they do not authorise the ASP itself.
- 6.19 There is no substitute for the supply of Authorisation Services to ASPs and their personnel. The regulatory regime outlined above specifically provides that ASP personnel must be registered with

the ASP scheme, and then authorised by the relevant Network Operator. The ESA only permits customer connection services to be provided by a person that has been accredited.

Registered and authorised personnel employed by ASPs

- 6.20 Electrical professionals who wish to do work which affects any of the Network Operators' networks in NSW must meet stringent quality and safety obligations to become registered and authorised to work on that network.
- 6.21 ASP personnel must be authorised by a Network Operator to avoid breaching offences in Part 6 of Division 1 of the ESA. For example, it is an offence to 'interfere' with a network operator's electricity works unless authorised to do so by the network operator (ESA s 65). It is also an offence to connect an electrical installation to a distributor's distribution system unless authorised (ESA s 68). These offences reflect the critical importance of preventing unqualified and unauthorised persons from interfering with live wires and network infrastructure.

Registered Training Organisations (RTOs)

- 6.22 While each Network Operator has the right to determine the form and content of training that they will require ASP personnel to undertake, in most cases they do not require that ASP personnel acquire that training directly from the Network Operator. Instead, personnel may undertake the training with an RTO, provided the training meets NSW Trading & Investment's and the Network Operator's requirements. These arrangements are designed to ensure that ASP personnel have access to convenient and high-quality sources of training while avoiding the cost that would be involved if the Network Operators provided all training themselves.
- 6.23 For example, NSW Trade & Investment's Level 1 Scheme Rules provide:
Appendix B outlines the competencies required of a Level 1 ASP. Further information about required competencies can be obtained from the local electricity distributor. Details of recognised electricity supply industry training and registered training organisations may be obtained from www.training.gov.au.
- 6.24 RTOs are providers of training registered with the Commonwealth Government's Australian Skills Quality Authority (**ASQA**) to deliver vocational education and training (**VET**) services. A complete list of RTOs is maintained at www.training.gov.au, which states that it is '*the authoritative national register of the VET sector in Australia.*'
- 6.25 As part of the Notified Arrangements, the Network Operators propose that an RTO wishing to provide Network-Specific Training to ASPs and/or ASP personnel intending to work on a Network Operator's network must be both registered with ASQA **and** accredited or 'endorsed' by the Network Operator. The endorsement criteria are necessarily above and beyond the RTO's requirements to retain registration with ASQA – they are network-specific and enable the Network Operator to separately assess the RTO's suitability to provide training with respect to its network.

7. Public benefit and detriment

- 7.1 The likely benefit to the public arising from the notified conduct would outweigh any detriment to the public which is likely to result from the arrangement.

Public benefits

- 7.2 The Notified Arrangements will result in the following significant public benefits:
- (a) avoid a more restrictive arrangement whereby the only source of network-specific training is the Network Operators themselves;

- (b) provide assurance to ASPs that if their personnel complete the Network-Specific Training course provided by an endorsed RTO it will properly equip them to work on the relevant distribution network – although undertaking training does not automatically guarantee that the Network operator will authorise that ASP to operate on its network;
- (c) ensure that customers can rely on well-trained ASP personnel to carry out safe contestable work;
- (d) assist each Network Operator to fulfil its statutory obligations in relation to network safety and reliability;
- (e) facilitate the objectives of the regulatory regime by promoting the safety of those who work on the distribution networks, and ensure that ASP personnel receive training which is contextualised to the specific requirements of the Network Operator.

Safety and integrity of the electricity networks

- 7.3 High quality, current and network-specific training is a critical aspect of maintaining the safety and integrity of each of the Network Operators' respective distribution networks. This is why ASP personnel must have completed essential training with an RTO endorsed by the Network Operator/s. To control the quality of training, the Network Operators each propose to specify learning and competency outcomes that endorsed RTOs are required to meet.
- 7.4 The regulatory regime emphasises the importance of electrical safety and training. In particular:
- (a) The objects of the ESA include the delivery of a safe and reliable supply of electricity, and promoting and encouraging the safety of persons and property in relation to the generation, transmission, distribution and use of electricity (ESA s 3).
 - (b) The ESA stipulates that a person who provides customer connection services must be accredited in accordance with the Regulations (ESA s 31(2)). It is an offence to interfere with a network operator's electricity works unless authorised to do so (ESA s 65).
 - (c) Each Network Operator is required to take all reasonable steps to ensure that the operation of its distribution network (or any part of it) is safe (Safety Regulation cl 5).
 - (d) The Scheme Rules made by the Minister under cl 26 of the Regulations expressly provide that the Network Operators will require ASP personnel to undertake training in matters pertaining to safety in order to be authorised (see, eg, Level 1 ASP Rules at 2.4-2.5 and Level 2 ASP Rules at 2.4-2.5).

Promoting the safety of those who work on the distribution networks

- 7.5 Requiring ASPs and ASP personnel to undertake Network-Specific Training with an RTO endorsed by the relevant Network Operator promotes the objectives of the regulatory regime.
- 7.6 Authorisation is an essential component of ensuring the safety and integrity of the distribution network. The Level 1 and 2 ASP Scheme Rules provide that the Network Operators will require registered ASP personnel to undertake training in safety and operating procedures and be familiar with and show they can comply with the management plan, electrical safety rules and other policies (cl 2.5).
- 7.7 The purpose of these requirements under the Scheme Rules is to maintain an appropriately high level of training for those carrying out work on or near the network. Not only is a high standard of training in relation to safety matters necessary to ensure the quality of customer connection work. It also minimises the risk of injury and health hazards which may arise from improper electrical work on a network.

Quality and consistency of training

- 7.8 The Network Operators submit that the endorsement of RTOs is vital to maintaining the quality and consistency of essential safety training. It is particularly important considering the extent to which the training is specific to each distribution network.
- 7.9 The Units of Competency for which each of the Network Operators are seeking to accredit RTOs generally state the need for the training material to be contextualised to current industry practices and technologies, but do not cover network-specific requirements. For instance, RTOs endorsed by Ausgrid would be required to cover Ausgrid's ESR as part of their ASP2 refresher training program. The following are examples of differences between safety practices which differ from network to network:
- (a) obligation for ASPs to notify the Network Operator when on the network;
 - (b) ASP access to substations/switchgear;
 - (c) installation of tiger tails for construction works;
 - (d) commissioning practices.
- 7.10 It is important for the Network Operators to have oversight of the content delivered by RTOs to ensure that the Network-Specific Training remains up to date, in a field that is subject to change. Each Network Operator regularly reviews its safety procedures and ESR. Procedures can change from one year to the next. For example, over the past year, Ausgrid updated its approved safe approach distances and released its new ESR2015/0 earlier this year, along with a requirement for ARC rated clothing. These requirements must be reflected in RTO course content.
- 7.11 The Network Operators intend that if an RTO wishes to update its course material, the RTO must inform the Network Operator so it can ensure the material stays current and appropriate. Material will be reviewed annually and at times when either party may identify an update requirement.
- 7.12 Endorsement will also provide a means by which RTOs can seek to promote their training programs to students and ASPs, and the Network Operators may control the way in which their name and brand is associated with the RTO.

Reliance by customers

- 7.13 The Notified Arrangements would allow customers to access a reliable pool of well-trained ASPs who have the specific knowledge of the network to ensure safe and reliable contestable connection work.

Public detriment

- 7.14 The Network Operators submit that the notified conduct will result in minimal, if any, public detriment.
- 7.15 The effect of the arrangement is that ASPs only have a limited choice of endorsed providers from whom they can obtain Network-Specific Training. However, as noted above, the Network Operators do not intend to enter an exclusive arrangement with either an RTO or a limited group of RTOs for the supply of Network-Specific Training services. Any RTO may approach a Network Operator for endorsement to provide Electrical Training Services. As a result, there is no limit on the number of RTOs that may be endorsed by each Network Operator to provide such services.
- 7.16 In this respect, while there is a list of endorsed RTOs, there is nothing to prevent that list from expanding to include additional RTOs who wish to offer such services to ASP personnel.

Appendix A – Network-Specific Training and RTOs to be endorsed by Ausgrid

Ausgrid's proposed conduct

Ausgrid supplies Authorisation Services to ASPs by authorising the ASP and their personnel to access Ausgrid's distribution network in order for ASPs to carry out contestable works on the network.

Ausgrid requires ASP personnel who carry out work on or near the distribution network to have completed training courses and assessment both initially and periodically as a 'refresher'. Some types of training need to be contextualised to Ausgrid's network-specific requirements – namely, the ESR refresher training (**Network-Specific Training**).

Ausgrid proposes to require that ASP personnel obtain that Network-Specific Training either from Ausgrid, or from a RTO endorsed by Ausgrid.

1. Ausgrid proposes to supply, or offer to supply Authorisation Services to an ASP and ASP personnel:
on the condition that the ASP personnel to whom Ausgrid supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training services from either Ausgrid, or an RTO that is endorsed by Ausgrid.
2. Ausgrid proposes to refuse to supply Authorisation Services to an ASP and ASP personnel:
for the reason that the ASP personnel has not acquired, or has not agreed to acquire, Network-Specific Training services from Ausgrid, or an RTO that is endorsed by Ausgrid.

RTOs to be endorsed by Ausgrid

Registered Training Organisation	Type of training	ASP personnel
1. TAFE NSW – Hunter Institute	ESR Refresher	ASP/2 personnel
2. IAC Safety Services	ESR Refresher	ASP/2 personnel

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N98838 Endeavour Energy (**Endeavour**)

ABN 59 253 130 878

This application on behalf of Endeavour is accompanied by a submission in support. Separate applications which relate to similar conduct have been lodged by Ausgrid and Essential Energy. The three networks together are referred to as the **Network Operators**.

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Endeavour is a State owned energy corporation, incorporated under the *Energy Services Corporations Act 1995* (NSW). Endeavour operates an electricity distribution and transmission network which provides power to 2.2 million homes and businesses throughout Sydney's Greater West, the Blue Mountains, Southern Highlands, the Illawarra and the South Coast.

- (c) Address in Australia for service of documents on that person:

C/- Katrina Groshinski
MinterEllison
Level 40 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notice relates to the service of authorising electrical contractors to work on Endeavour's network (**Authorisation Services**).

Under the *Electricity Supply Act 1995*, customers may engage an Accredited Service Provider (**ASP**) to carry out certain contestable works.

Under the regulatory regime, before the personnel of an ASP can carry out work on or near Endeavour's electricity network they must be accredited by the NSW Department of Industry and authorised by Endeavour.

Endeavour supplies Authorisation Services to ASPs by authorising their personnel to access Endeavour's distribution network in order for ASPs to carry out contestable works on the network.

Endeavour requires ASP personnel who carry out work on or near the distribution network to have completed training courses and assessment both initially and periodically as a 'refresher'.

Endeavour provides all initial training to ASPs free of charge.

Endeavour does not provide refresher training. Some types of training need to be contextualised to Endeavour's network-specific requirements (**Network-Specific Training**) and Endeavour proposes to require that ASP personnel obtain that Network-Specific Training from a Registered Training Organisation (**RTO**) endorsed by Endeavour.

(b) Description of the conduct or proposed conduct: prescribed
(Refer to direction 4)

1. Endeavour proposes to supply, or offer to supply Authorisation Services to an ASP's personnel;

on the condition that the ASP personnel to whom Endeavour supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training services from an RTO that is endorsed by Endeavour.

2. Endeavour proposes to refuse to supply Authorisation Services to an ASP's personnel;

for the reason that the ASP personnel has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO that is endorsed by Endeavour.

Please refer to the attached submission in support of the notification.

3. **Persons, or classes of persons, affected or likely to be affected by the notified conduct**

(a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

ASPs who wish to remain authorised to undertake contestable works on Endeavour's distribution network.

RTOs who provide, or seek to provide, electrical training services to ASP/2 personnel who propose to undertake contestable works on Endeavour's distribution network.

(b) Number of those persons:

(i) At present time:

There are approximately 1,500 ASPs (including Levels 1, 2 and 3) currently authorised to work on Endeavour's network.

There are nine RTOs which currently provide electrical training services to ASPs specific to Endeavour's network:

RTO name	ESR refresher	Carry out and/or observe excavation in a public place (Theory)	Carry out and/or observe excavation in a public place (Practical)
1. BBT Training Australia		Y	Y
2. Coates / Admire Workplace Safety	Y	Y	
3. IAC	Y		
4. Pipeline Training Australia	Y	Y	Y
5. TAFE – Hunter Institute	Y	Y	
6. TAFE – (SWSi)	Y	Y	
7. Enersafe Training	Y		
8. Ausgrid Training Services	Y		
9. NECA Training	Y		

(ii) Estimated within the next year:
(Refer to direction 6)

Endeavour expects the number of ASP/2s to remain steady over the coming year.

Endeavour expects that the number of RTOs wishing to offer training to ASPs may increase slightly, depending on expressions of interests and the commercial viability of entering this particular occupational area of training.

(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

RTO name	Address
BBT Training Australia	20 Waverley Drive Unanderra (02) 42209200 http://www.bbtraining.com.au/index.php/Home/

<u>Coates RTO / Admire Workplace Safety</u>	47 Lancaster St, Ingleburn NSW 2565 1300 657 867 http://www.coateshire.com.au/training/	1 /300 Argyle Street Moss Vale NSW 02 4869 5663 http://www.admireworkplacesafety.com.au/
<u>IAC Safety Services</u>	1/39-41 Fourth Ave, Blacktown NSW 2148 1300 887 317 http://www.iacsafetyservices.com.au/	
<u>Pipeline Training Australia</u>	Unit 4/322 Annangrove Road Rouse Hill NSW 2155 02 9679 0066 http://www.pipelinetraining.com.au/	
<u>TAFE – Hunter Institute</u>	Maitland Road, Tighes Hill 02 4923 7531 http://www.hunter.tafensw.edu.au/pages/default.aspx	
<u>TAFE – (SWSi)</u>	Cnr Muir Road and Worth Street Chullora, NSW 2190 02 9742 0451 / 137974 https://swsi.tafensw.edu.au/	
<u>Enersafe Training</u>	Unit B1, 183 Prospect Highway, Seven Hills NSW 2147 Australia 02 8602 2019 https://www.enersafe.com.au/	
<u>Ausgrid Training Services</u>	50 Holker Rd Silverwater 2128 NSW 131365 http://www.ausgrid.com.au/Common/Industry/Accredited-service-providers/Authorisation.aspx	
<u>NECA Training</u>	Level 3, 28 Burwood Rd Burwood NSW 2134 02 9744 1099 www.neca.asn.au	

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission in support of the notification.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the attached submission in support of the notification.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

Please refer to the attached submission in support of the notification.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Please refer to the attached submission in support of the notification.

- (b) Facts and evidence relevant to these detriments:

Please refer to the attached submission in support of the notification.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Katrina Groshinski
MinterEllison
Level 40 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000
(t) +61 2 9921 4396
katrina.groshinski@minterellison.com

Dated 7 January 2016

Signed on behalf of the applicant


.....
(Signature)

Katrina Groshinski
MinterEllison
Partner

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.



Date: 7 January 2016

Submission to the ACCC

Notification of Exclusive Dealing

—

Submitted on behalf of Endeavour Energy

Submission to the ACCC

Notification of Exclusive Dealing

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1. Introduction

- 1.1 This submission is made in support of a Form G – Notification of Exclusive Dealing – lodged by Endeavour Energy. Separate notifications are made by Ausgrid and Essential Energy (the three networks together are referred to as the **Network Operators**). The submissions made by the Network Operators are consistent save for the information set out in **Appendix A**.
- 1.2 The Network Operators each operate electricity distribution networks in separate geographic areas in New South Wales. Each proposes to enter into its own form of endorsement arrangements with certain Registered Training Organisations (**RTO**) and require Accredited Service Providers (**ASPs**) and/or their personnel to acquire certain training from those RTOs.
- 1.3 While the specific ways in which each Network Operator proposes to implement its arrangements will differ, the common feature is a requirement that ASPs and/or their personnel will be required to acquire specified training from a third party. Accordingly, this submission specifies the common features and key differences between the Network Operators' notified conduct. The specific nature of the conduct that is particular to Endeavour Energy is set out in **Appendix A**.

2. Executive summary

- 2.1 Each Network Operator proposes to authorise electrical contractors known as ASPs and/or their personnel to work on its distribution network, by requiring ASP personnel to undertake certain training provided by a RTO that has been endorsed by the Network Operator (**Network-Specific Training**). The type of Network-Specific Training will differ between the Network Operators. For example, Ausgrid will not require that ASPs undertake all training via an endorsed RTO – only specified courses such as the Electrical Safety Rules (**ESR**) Refresher Training for ASP/2s.
- 2.2 NSW and national energy regulatory laws regulate the control and operation of electricity distribution networks. The three Network Operators are each licensed and registered under that framework and subject to very stringent quality, safety and customer service obligations. They are responsible for ensuring the safety and reliability of electricity to households and businesses in their distribution areas across NSW.
- 2.3 ASPs are engaged by customers to undertake certain electricity connection works known as 'contestable works'. The NSW regulatory regime allows customers to choose who carries out 'contestable work' related to connections to a particular network. This may include designing network assets, connecting and disconnecting premises from the network, and constructing high and low voltage extensions or alterations to the network. To ensure the reliability and safety of the network, the regime requires that only ASPs, which are suitably qualified and authorised workers registered by the NSW Government under the ASP scheme, can perform this work.
- 2.4 To perform contestable work on a distribution network, an ASP must:
 - (a) be accredited by the NSW Department of Industry under the ASP scheme;
 - (b) have access to the appropriate number of personnel with the required qualifications in order to undertake work as an ASP;
 - (c) register personnel who will be performing work on behalf of the ASP; and
 - (d) only use personnel that are authorised by the Network Operator to work on its distribution network.
- 2.5 To become and remain authorised by a Network Operator, ASP personnel are required to complete training courses and ongoing assessments. The Network Operators each propose to exercise control over this process by only allowing ASPs and/or their personnel to be authorised to work on or near their distribution network if they have received Network-Specific Training from an RTO that has been endorsed by the relevant Network Operator (**Notified Arrangements**).

The Notified Arrangements are limited in scope to Network-Specific Training which each Network Operator requires to be contextualised to the specific context of each network. Learning outcomes, course assessment, and audits may not be the same for each Network Operator. Each Network Operator will determine its own individual approach to the Notified Arrangements.

2.6 The key features of the Notified Arrangements are:

- (a) each Network Operator proposes to endorse RTOs to provide Network-Specific Training. Each intends to specify core learning and competency outcomes that RTOs must meet to be endorsed by the Network Operator, and set out the terms and conditions on which an RTO will be endorsed. These include quality control mechanisms, such as rights for the relevant Network Operator to audit the Network-Specific Training provided by the RTO. Audits may be undertaken by a single Network Operator or jointly by more than one Network Operator. Each Network Operator will determine its own approach to endorsing and managing the relationship with an endorsed RTO.
- (b) The Network Operators will not necessarily approve the same RTOs and do not propose to establish a common list of endorsed RTOs. Each Network Operator retains discretion to refuse to endorse an RTO; similarly, endorsement by one Network Operator will not guarantee endorsement by the other two Network Operators.
- (c) The Network Operators do not intend to enter into any exclusive arrangement with any RTO or group of RTOs for the supply of Network-Specific Training. Any RTO may approach a Network Operator to become an endorsed RTO, provided that it meets the quality control criteria.

2.7 The Notified Arrangements will result in significant public benefits which will outweigh any detriment. In particular, the arrangements:

- (a) avoid a more restrictive arrangement whereby the only source of Network-Specific Training is the Network Operators themselves;
- (b) provide assurance to ASPs that if their personnel complete an Network-Specific Training course provided by an RTO it will properly equip them to work on the relevant distribution network – although undertaking training does not guarantee that the Network Operator will authorise that ASP to operate on its network;
- (c) ensure that customers can rely on well-trained electrical professionals to carry out safe contestable work;
- (d) assist each Network Operator to fulfil its statutory obligations in relation to network safety and reliability; and
- (e) facilitate the objects of the regulatory regime by promoting the safety of those who work on the distribution networks, and ensuring that electrical professionals receive training which is contextualised to current industry practices and the specific requirements of the Network Operator.

3. The notifying parties

3.1 The Network Operators are State-owned energy corporations established under the *Energy Services Corporations Act 1995 (NSW) (ESC Act)*. The Network Operators each operate electricity distribution networks in separate geographic areas in New South Wales.

3.2 Under the ESC Act, each Network Operator's principal functions are to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and to supply electricity and other forms of energy, and services relating to its use and conservation, to other persons and bodies (ESC Act s 9(2)).

- 3.3 Ausgrid distributes electricity to the Sydney, Central Coast and Hunter regions of NSW across a 22,275 square kilometre area.
- 3.4 Endeavour Energy distributes electricity across a 24,500 square kilometre area made up of Sydney's Greater West, Blue Mountains, Southern Highlands and the Illawarra.
- 3.5 Essential Energy's network covers more than three quarters of NSW and parts of southern Queensland, including more than 200,000 kilometres of power lines.
- 3.6 The Network Operators have overarching obligations to maintain the safety and integrity of their distribution networks. The *Electricity Supply (Safety and Network Management) Regulation 2014* (**Safety Regulation**) requires each Network Operator to take all reasonable steps to ensure that the operation of its distribution network (or any part of it) is safe (cl 5).

4. The conduct

- 4.1 The notified conduct is broadly in respect of the following:
 - (a) Authorisation services supplied by each Network Operator to ASPs and ASP personnel to carry out work on the Network Operator's distribution network (**Authorisation Services**); and
 - (b) Network-Specific Training provided by RTOs, which includes training and assessment in relation to network-specific safety and operating procedures, electrical safety rules, safety management systems, and other policies.

The type and content of Network-Specific Training is set out in further detail in **Appendix 1**.

- 4.2 Each Network Operator proposes to supply, or offer to supply Authorisation Services to an ASP and/or ASP personnel on the condition that the ASP personnel to whom the Network Operator supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training from an RTO that has been endorsed by the relevant Network Operator.
- 4.3 In addition, the Network Operators propose to refuse to supply Authorisation Services to an ASP and/or ASP personnel for the reason that the ASP has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO endorsed by the Network Operator.

5. Markets

- 5.1 The relevant markets for the application include those for the supply of:
 - (a) ASP authorisation; and
 - (b) electrical safety training and assessment services.
- 5.2 Each Network Operator can only authorise ASP personnel to work on the network located in its distribution network, also known as a 'franchise area', and not on any other network. Each Network Operator's distribution district comprises the local government areas, or parts of local government areas, described in Schedule 3 of the *Electricity Supply Act 1995* (NSW) (**ESA**) (see ESA s 83(1), Schedule 3).

6. Affected parties

- 6.1 This section provides information about the parties which will be affected by the Notified Arrangements, and their rights and obligations under the NSW electricity framework:
 - (a) customers;

- (b) ASPs;
- (c) registered and authorised personnel employed by ASPs; and
- (d) RTOs.

Customers

- 6.2 Under the regulatory framework, a 'customer' of an electricity distributor is a person to whom energy is sold for particular premises by a retailer, and whose premises is connected to a distributor's electricity network. The energy laws provide significant protections for customers.
- 6.3 Part 3 of the *National Energy Retail Law (NERL)* governs the relationship between distributors and their customers. Distributors are obliged to provide customer connection services to customers. 'Customer connection services' is defined broadly in the NERL and National Electricity Rules to mean services relating to new connections or connection alterations at premises, as well as supply services including energisation and de-energisation of premises.
- 6.4 Where a customer requests a new connection or a connection alteration, the distributor is required to provide that connection, but the customer may engage an ASP to carry out the physical work required to achieve the connection (alternatively, the customer may request that the Network Operator provide this service in its capacity as an ASP).
- 6.5 This is because, under the ESA, there is a contestable market for certain customer connection services. Rather than the distributor having the exclusive right to provide all services which may impact its network (as is the case in some other jurisdictions), the ESA provides that a customer may elect to have new connection or connection alteration services provided by a distributor or by 'any other person': s 31(1). Section 31(2) of the ESA requires that a person providing such services be accredited under the regulations.
- 6.6 Accordingly, customers have the right to choose who carries out work at their request, provided that the ASP is appropriately accredited and authorised and the ASP's personnel are appropriately registered and authorised. The regime means that customers may choose to engage an electrical professional from a pre-selected pool of authorised and qualified persons.

ASP accreditation and authorisation

- 6.7 An ASP that wishes to provide contestable works in New South Wales must follow a two-stage process: first, it must obtain accreditation from and register personnel with NSW Department of Industry, and second, it must obtain authorisation from the distributor to work on its network.
- 6.8 There is an important distinction between the requirements imposed by Ausgrid and the other two Network Operators in this regard. Ausgrid authorises the ASP company as well as its personnel, while Essential and Endeavour simply authorise the personnel employed by an ASP company.

Accreditation

- 6.9 The Safety Regulation provides for the accreditation scheme. Before the personnel of an ASP can carry out work on or near an electricity network they must be registered with an ASP by the NSW Department of Industry and authorised by the Network Operator.
- 6.10 The ESA requires that a person who provides customer connection services prescribed by the regulations must be accredited in accordance with the Safety Regulation (ESA, s 31(2)). The Safety Regulation provides for the Minister to make Scheme Rules with respect to certain matters regarding the accreditation of persons to provide contestable services (Safety Regulation, cl 26). Sets of Scheme Rules have been made under clause 26 in relation to Level 1, 2 and 3 ASPs.¹

¹ The three sets of Scheme Rules are publicly available at <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

- 6.11 The services provided by Level 1, 2 and 3 ASPs are as follows:
- (a) Level 1 ASPs undertake work to extend the electricity network or to increase the capacity of the existing network.
 - (b) Level 2 ASPs install, repair or maintain the service lines between the electrical wiring on a customer's premises and the electricity network. This includes installing metering equipment, connecting service lines to the network and making the connection live.
 - (c) Level 3 ASPs design distribution network assets.
- 6.12 The Level 1 Scheme Rules outline the requirement that an ASP have properly trained and authorised personnel:
- 'It is a condition of accreditation that an ASP has access to the appropriate number of personnel with the required qualifications in order to undertake work as an accredited service provider. This includes ensuring that all personnel undertaking contestable work on or near a distribution network:*
- *have the competency to do so;*
 - *are registered with the Scheme; and*
 - *are authorised by the local electricity distributor to work on or near the distribution system for the level of accreditation and the work to be undertaken.'* (at [2.3])
- 6.13 The Level 1 Scheme Rules then explain the authorisation process:
- 'Following registration an ASP must seek to have those personnel authorised by the local electricity distributor. Only personnel who are currently registered with the Scheme can be authorised.*
- The local electricity distributor is responsible for determining who is authorised to work on or near the distribution network. The electricity distributor/s will require registered personnel to undertake training in relevant safety and operating procedures and be familiar with and show they can comply with their respective safety management systems, electrical safety rules and other relevant policies.'* (at [2.5])
- 6.14 In relation to the last paragraph, the Network Operators only require registered personnel to be assessed for understanding and compliance with the ESR particular to the relevant network.
- 6.15 The Level 1 Scheme Rules state that ASPs must use the information provided by the local distributor to ensure their employees remain familiar with applicable standards, work practices and general requirements for the type of work being undertaken: at [6.6]. The distributor may charge a fee for the authorisation of ASP personnel which is set by the Australian Energy Regulator (**AER**).
- 6.16 There are equivalent provisions in respect of authorisation under the Level 2 Scheme Rules.
- Authorisation processes*
- 6.17 Each Network Operator is responsible for determining who is authorised to work on or near its network. In doing so, the Network Operator will require registered personnel to undertake training in relevant procedures, rules and other policies. These requirements are directed at ensuring that ASP personnel have the necessary knowledge about the Network Operator's particular systems, materials and network infrastructure to ensure that network safety and reliability are maintained.
- 6.18 Each distributor has policies and arrangements requiring individuals to obtain authorisation to carry out contestable work on or near its distribution network. However, as noted above, while all three Network Operators have processes for authorising personnel employed by an ASP, Essential and Endeavour differ from Ausgrid in that they do not authorise the ASP itself.
- 6.19 There is no substitute for the supply of Authorisation Services to ASPs and their personnel. The regulatory regime outlined above specifically provides that ASP personnel must be registered with

the ASP scheme, and then authorised by the relevant Network Operator. The ESA only permits customer connection services to be provided by a person that has been accredited.

Registered and authorised personnel employed by ASPs

- 6.20 Electrical professionals who wish to do work which affects any of the Network Operators' networks in NSW must meet stringent quality and safety obligations to become registered and authorised to work on that network.
- 6.21 ASP personnel must be authorised by a Network Operator to avoid breaching offences in Part 6 of Division 1 of the ESA. For example, it is an offence to 'interfere' with a network operator's electricity works unless authorised to do so by the network operator (ESA s 65). It is also an offence to connect an electrical installation to a distributor's distribution system unless authorised (ESA s 68). These offences reflect the critical importance of preventing unqualified and unauthorised persons from interfering with live wires and network infrastructure.

Registered Training Organisations (RTOs)

- 6.22 While each Network Operator has the right to determine the form and content of training that they will require ASP personnel to undertake, in most cases they do not require that ASP personnel acquire that training directly from the Network Operator. Instead, personnel may undertake the training with an RTO, provided the training meets NSW Trading & Investment's and the Network Operator's requirements. These arrangements are designed to ensure that ASP personnel have access to convenient and high-quality sources of training while avoiding the cost that would be involved if the Network Operators provided all training themselves.
- 6.23 For example, NSW Trade & Investment's Level 1 Scheme Rules provide:
Appendix B outlines the competencies required of a Level 1 ASP. Further information about required competencies can be obtained from the local electricity distributor. Details of recognised electricity supply industry training and registered training organisations may be obtained from www.training.gov.au.
- 6.24 RTOs are providers of training registered with the Commonwealth Government's Australian Skills Quality Authority (**ASQA**) to deliver vocational education and training (**VET**) services. A complete list of RTOs is maintained at www.training.gov.au, which states that it is 'the authoritative national register of the VET sector in Australia.'
- 6.25 As part of the Notified Arrangements, the Network Operators propose that an RTO wishing to provide Network-Specific Training to ASPs and/or ASP personnel intending to work on a Network Operator's network must be both registered with ASQA **and** accredited or 'endorsed' by the Network Operator. The endorsement criteria are necessarily above and beyond the RTO's requirements to retain registration with ASQA – they are network-specific and enable the Network Operator to separately assess the RTO's suitability to provide training with respect to its network.

7. Public benefit and detriment

- 7.1 The likely benefit to the public arising from the notified conduct would outweigh any detriment to the public which is likely to result from the arrangement.

Public benefits

- 7.2 The Notified Arrangements will result in the following significant public benefits:
- (a) avoid a more restrictive arrangement whereby the only source of network-specific training is the Network Operators themselves;

- (b) provide assurance to ASPs that if their personnel complete the Network-Specific Training course provided by an endorsed RTO it will properly equip them to work on the relevant distribution network – although undertaking training does not automatically guarantee that the Network Operator will authorise that ASP to operate on its network;
- (c) ensure that customers can rely on well-trained ASP personnel to carry out safe contestable work;
- (d) assist each Network Operator to fulfil its statutory obligations in relation to network safety and reliability;
- (e) facilitate the objectives of the regulatory regime by promoting the safety of those who work on the distribution networks, and ensuring that ASP personnel receive training which is contextualised to the specific requirements of the Network Operator.

Safety and integrity of the electricity networks

7.3 High quality, current and network-specific training is a critical aspect of maintaining the safety and integrity of each of the Network Operators' respective distribution networks. This is why ASP personnel must have completed essential training with an RTO endorsed by the Network Operator/s. To control the quality of training, the Network Operators each propose to specify learning and competency outcomes that endorsed RTOs are required to meet.

7.4 The regulatory regime emphasises the importance of electrical safety and training. In particular:

- (a) The objects of the ESA include the delivery of a safe and reliable supply of electricity, and promoting and encouraging the safety of persons and property in relation to the generation, transmission, distribution and use of electricity (ESA s 3).
- (b) The ESA stipulates that a person who provides customer connection services must be accredited in accordance with the Regulations (ESA s 31(2)). It is an offence to interfere with a network operator's electricity works unless authorised to do so (ESA s 65).
- (c) Each Network Operator is required to take all reasonable steps to ensure that the operation of its distribution network (or any part of it) is safe (Safety Regulation cl 5).
- (d) The Scheme Rules made by the Minister under cl 26 of the Regulations expressly provide that the Network Operators will require ASP personnel to undertake training in matters pertaining to safety in order to be authorised (see, eg, Level 1 ASP Rules at 2.4-2.5 and Level 2 ASP Rules at 2.4-2.5).

Promoting the safety of those who work on the distribution networks

7.5 Requiring ASPs and ASP personnel to undertake Network-Specific Training with an RTO endorsed by the relevant Network Operator promotes the objectives of the regulatory regime.

7.6 Authorisation is an essential component of ensuring the safety and integrity of the distribution network. The Level 1 and 2 ASP Scheme Rules provide that the Network Operators will require registered ASP personnel to undertake training in safety and operating procedures and be familiar with and show they can comply with the management plan, electrical safety rules and other policies (cl 2.5).

7.7 The purpose of these requirements under the Scheme Rules is to maintain an appropriately high level of training for those carrying out work on or near the network. Not only is a high standard of training in relation to safety matters necessary to ensure the quality of customer connection work, it also minimises the risk of injury and health hazards which may arise from improper electrical work on a network.

Quality and consistency of training

- 7.8 The Network Operators submit that the endorsement of RTOs is vital to maintaining the quality and consistency of essential safety training. It is particularly important considering the extent to which the training is specific to each distribution network.
- 7.9 The Units of Competency for which each of the Network Operators are seeking to accredit RTOs generally state the need for the training material to be contextualised to current industry practices and technologies, but do not cover network-specific requirements. For instance, RTOs endorsed by Ausgrid would be required to cover Ausgrid's ESR as part of their ASP2 refresher training program. The following are examples of differences between safety practices which differ from network to network:
- (a) obligation for ASPs to notify the Network Operator when on the network;
 - (b) ASP access to substations/switchgear;
 - (c) installation of tiger tails for construction works;
 - (d) commissioning practices.
- 7.10 It is important for the Network Operators to have oversight of the content delivered by RTOs to ensure that the Network-Specific Training remains up to date, in a field that is subject to change. Each Network Operator regularly reviews its safety procedures and ESR. Procedures can change from one year to the next. For example, over the past year, Ausgrid updated its approved safe approach distances and released its new ESR2015/0 earlier this year, along with a requirement for ARC rated clothing. These requirements must be reflected in RTO course content.
- 7.11 The Network Operators intend that if an RTO wishes to update its course material, the RTO must inform the Network Operator so it can ensure the material stays current and appropriate. Material will be reviewed annually and at times when either party may identify a update requirement.
- 7.12 Endorsement will also provide a means by which RTOs can seek to promote their training programs to students and ASPs, and the Network Operators may control the way in which their name and brand is associated with the RTO.

Reliance by customers

- 7.13 The Notified Arrangements would allow customers to access a reliable pool of well-trained ASPs who have the specific knowledge of the network to ensure safe and reliable contestable connection work.

Public detriment

- 7.14 The Network Operators submit that the notified conduct will result in minimal, if any, public detriment.
- 7.15 The effect of the arrangement is that ASPs only have a limited choice of endorsed providers from whom they can obtain Network-Specific Training. However, as noted above, the Network Operators do not intend to enter an exclusive arrangement with either an RTO or a limited group of RTOs for the supply of Network-Specific Training services. Any RTO may approach a Network Operator for endorsement to provide Electrical Training Services. As a result, there is no limit on the number of RTOs that may be endorsed by each Network Operator to provide such services.
- 7.16 In this respect, while there is a list of endorsed RTOs, there is nothing to prevent that list from expanding to include additional RTOs who wish to offer such services to ASP personnel.

Appendix A – Network-Specific Training and RTOs to be endorsed by Endeavour Energy

Endeavour Energy's proposed conduct

Endeavour provides all initial training to ASPs free of charge.

Endeavour does not provide refresher training. The following types of training need to be contextualised to Endeavour's network-specific requirements:

1. Refresher ESR training
2. Carry out and/or observe excavation in a public place – Theory
3. Carry out and/or observe excavation in a public place – Practical
4. Work near overhead powerlines (close approach) (**Network-Specific Training**).

Endeavour proposes to require that ASP personnel obtain that Network-Specific Training from a RTO endorsed by Endeavour.

1. Endeavour proposes to supply, or offer to supply Authorisation Services to an ASP's personnel:
 - on the condition that the ASP personnel to whom Endeavour supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training services from an RTO that is endorsed by Endeavour.
2. Endeavour proposes to refuse to supply Authorisation Services to an ASP's personnel:
 - for the reason that the ASP personnel has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO that is endorsed by Endeavour.

RTOs to be endorsed by Endeavour Energy

Registered Training Organisation	Type of training	ASP personnel (level)
1. TAFE NSW – South Western Sydney Institute	Excavation <u>theory only</u> Close Approach ESR – Refresher	All ASPs
2. TAFE NSW – Hunter Institute	Excavation <u>theory only</u> Close Approach ESR – Refresher	All ASPs
3. EnerSafe Training	Close Approach ESR Refresher	All ASPs
4. IAC Safety Services	Close Approach ESR – Refresher	All ASPs
5. Pipeline Training Australia	Excavation theory and practical Close Approach ESR – Refresher	All ASPs
6. Admire Workplace Safety / Coates Hire (joint RTO arrangement)	Excavation <u>theory only</u> Close Approach ESR – Refresher	All ASPs
7. BBT Training Australia	Excavation theory and practical	All ASPs
8. Ausgrid Training Services	ESR – Refresher	All ASPs
9. NECA Training	ESR – Refresher	All ASPs

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

N98839 Essential Energy

ABN 37 428 185 226

This application on behalf of Essential Energy is accompanied by a submission in support. Separate applications which relate to similar conduct have been lodged by Ausgrid and Endeavour Energy. The three networks together are referred to as the **Network Operators**.

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Essential Energy is a State owned energy corporation, incorporated under the *Energy Services Corporations Act 1995* (NSW). Essential Energy operates an electricity distribution and transmission network which provides power to more than 800,000 homes and businesses across 95% of New South Wales and parts of southern Queensland.

- (c) Address in Australia for service of documents on that person:

C/- Katrina Groshinski
Minter Ellison
Level 40 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

This notice relates to the service of authorising electrical contractors to work on Essential Energy's network (**Authorisation Services**).

Under the *Electricity Supply Act 1995*, customers may engage an Accredited Service Provider (**ASP**) to carry out certain contestable works.

Under the regulatory regime, before the personnel of an ASP can carry out work on or near Essential Energy's electricity network they must be accredited by the NSW Department of Industry and authorised by Essential Energy.

Essential Energy supplies Authorisation Services to ASPs by authorising their personnel to access Essential Energy's distribution network to carry out contestable works on the network.

Essential Energy requires ASP personnel who carry out work on or near the distribution network to have completed training courses and assessment both initially and periodically as a 'refresher'.

Essential Energy proposes to allow registered training organisations (**RTOs**) to deliver both the initial training and ongoing annual refresher requirements training to ASPs.

Essential Energy updates its Electrical Safety Rules (**ESR**) every three years. The changes are then incorporated into training materials. Some types of training need to be contextualised to Essential Energy's network-specific requirements (**Network-Specific Training**) and Essential Energy proposes to require that ASP personnel obtain that Network-Specific Training from a list of RTOs endorsed by Essential Energy.

(b) Description of the conduct or proposed conduct: prescribed
(Refer to direction 4)

1. Essential Energy proposes to supply, or offer to supply Authorisation Services to an ASP's personnel;

on the condition that the ASP personnel to whom Essential Energy supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training services from an RTO that is endorsed by Essential Energy.

2. Essential Energy proposes to refuse to supply Authorisation Services to an ASP's personnel;

for the reason that the ASP personnel has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO that is endorsed by Essential Energy.

Please refer to the attached submission in support of the notification.

3. **Persons, or classes of persons, affected or likely to be affected by the notified conduct**

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

ASP personnel who wish to become and remain authorised to undertake contestable works on Essential Energy's distribution network.

RTOs who provide, or seek to provide, electrical training services to ASP/2 personnel who propose to undertake contestable works on Essential Energy's distribution network.

- (b) Number of those persons:

- (i) At present time:

There are approximately 1,773 ASPs (including 755 Level 1 ASPs and 1,018 Level 2 ASPs) currently authorised to work on Essential Energy's network.

There are two RTOs which currently provide electrical training services to ASPs specific to Essential Energy's network:

	RTO name	ESR initial	ESR refresher
1.	IAC Safety Services	Y	Y
2.	TAFE – Hunter Institute	Y	Y

- (ii) Estimated within the next year:
(Refer to direction 6)

Essential Energy anticipates the number of ASP/2s to fluctuate on a weekly basis over the coming year, although no significant increase or decrease is expected.

Essential Energy will consider endorsing any RTOs which have the capacity to deliver the Network-Specific Training to Essential Energy's requirements and the requirements of the relevant national unit of competence. Essential Energy is currently fielding some enquiries, but at this point, has not entered into any arrangements with any RTOs beyond the two listed above.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

	RTO name	Address
1.	IAC Safety Services	1/39-41 Fourth Ave, Blacktown NSW 2148 1300 887 317 http://www.iacsafetyservices.com.au/
2.	TAFE – Hunter Institute	Maitland Road, Tighes Hill 02 4923 7531

RTO name	Address
	http://www.hunter.tafensw.edu.au/pages/default.aspx

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

Please refer to the attached submission in support of the notification.

- (b) Facts and evidence relied upon in support of these claims:

Please refer to the attached submission in support of the notification.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

Please refer to the attached submission in support of the notification.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

Please refer to the attached submission in support of the notification.

- (b) Facts and evidence relevant to these detriments:

Please refer to the attached submission in support of the notification.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Katrina Groshinski
Minter Ellison
Level 40 Governor Macquarie Tower
1 Farrer Place, Sydney NSW 2000
(t) +61 2 9921 4396
katrina.groshinski@minterellison.com

Dated 7 January 2016

Signed on behalf of the applicant

A handwritten signature in blue ink is written over a horizontal dotted line. The signature consists of several loops and a long horizontal stroke extending to the right.

(Signature)

Katrina Groshinski
MinterEllison
Partner

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.



Date: 7 January 2016

Submission to the ACCC

Notification of Exclusive Dealing

—

Submitted on behalf of Essential Energy

Submission to the ACCC

Notification of Exclusive Dealing

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1. Introduction

- 1.1 This submission is made in support of a Form G – Notification of Exclusive Dealing –lodged by Essential Energy. Separate notifications are made by Ausgrid and Endeavour Energy (the three networks together are referred to as the **Network Operators**). The submissions made by the Network Operators are consistent save for the information set out in **Appendix A**.
- 1.2 The Network Operators each operate electricity distribution networks in separate geographic areas in New South Wales. Each proposes to enter into its own form of endorsement arrangements with certain Registered Training Organisations (**RTO**) and require Accredited Service Providers (**ASPs**) and/or their personnel to acquire certain training from those RTOs.
- 1.3 While the specific ways in which each Network Operator proposes to implement its arrangements will differ, the common feature is a requirement that ASPs and/or their personnel will be required to acquire specified training from a third party. Accordingly, this submission specifies the common features and key differences between the Network Operators' notified conduct. The specific nature of the conduct that is particular to Essential Energy is set out in **Appendix A**.

2. Executive summary

- 2.1 Each Network Operator proposes to authorise electrical contractors known as ASPs and/or their personnel to work on its distribution network, by requiring ASP personnel to undertake certain training provided by a RTO that has been endorsed by the Network Operator (**Network-Specific Training**). The type of Network-Specific Training will differ between the Network Operators. For example, Ausgrid will not require that ASPs undertake all training via an endorsed RTO – only specified courses such as the Electrical Safety Rules (**ESR**) Refresher Training for ASP/2s.
- 2.2 NSW and national energy regulatory laws regulate the control and operation of electricity distribution networks. The three Network Operators are each licensed and registered under that framework and subject to very stringent quality, safety and customer service obligations. They are responsible for ensuring the safety and reliability of electricity to households and businesses in their distribution areas across NSW.
- 2.3 ASPs are engaged by customers to undertake certain electricity connection works known as 'contestable works'. The NSW regulatory regime allows customers to choose who carries out 'contestable work' related to connections to a particular network. This may include designing network assets, connecting and disconnecting premises from the network, and constructing high and low voltage extensions or alterations to the network. To ensure the reliability and safety of the network, the regime requires that only ASPs, which are suitably qualified and authorised workers registered by the NSW Government under the ASP scheme, can perform this work.
- 2.4 To perform contestable work on a distribution network, an ASP must:
 - (a) be accredited by the Department of Industry under the ASP scheme;
 - (b) have access to the appropriate number of personnel with the required qualifications in order to undertake work as an ASP;
 - (c) register personnel who will be performing work on behalf of the ASP; and
 - (d) only use personnel that are authorised by the Network Operator to work on its distribution network.
- 2.5 To become and remain authorised by a Network Operator, ASP personnel are required to complete training courses and ongoing assessments. The Network Operators each propose to exercise control over this process by only allowing ASPs and/or their personnel to be authorised to work on or near their distribution network if they have received Network-Specific Training from an RTO that has been endorsed by the relevant Network Operator (**Notified Arrangements**).

The Notified Arrangements are limited in scope to Network-Specific Training which each Network Operator requires to be contextualised to the specific context of each network. Learning outcomes, course assessment, and audits may not be the same for each Network Operator. Each Network Operator will determine its own individual approach to the Notified Arrangements.

2.6 The key features of the Notified Arrangements are:

- (a) each Network Operator proposes to endorse RTOs to provide Network-Specific Training. Each intends to specify core learning and competency outcomes that RTOs must meet to be endorsed by the Network Operator, and set out the terms and conditions on which an RTO will be endorsed. These include quality control mechanisms, such as rights for the relevant Network Operator to audit the Network-Specific Training provided by the RTO. Audits may be undertaken by a single Network Operator or jointly by more than one Network Operator. Each Network Operator will determine its own approach to endorsing and managing the relationship with an endorsed RTO.
- (b) The Network Operators will not necessarily approve the same RTOs and do not propose to establish a common list of endorsed RTOs. Each Network Operator retains discretion to refuse to endorse an RTO; similarly, endorsement by one Network Operator will not guarantee endorsement by the other two Network Operators.
- (c) The Network Operators do not intend to enter into any exclusive arrangement with any RTO or group of RTOs for the supply of Network-Specific Training. Any RTO may approach a Network Operator to become an endorsed RTO, provided that it meets the quality control criteria.

2.7 The Notified Arrangements will result in significant public benefits which will outweigh any detriment. In particular, the arrangements:

- (a) avoid a more restrictive arrangement whereby the only source of Network-Specific training is the Network Operators themselves;
- (b) provide assurance to ASPs that if their personnel complete an Network-Specific Training course provided by an RTO it will properly equip them to work on the relevant distribution network – although undertaking training does not guarantee that the Network Operator will authorise that ASP to operate on its network;
- (c) ensure that customers can rely on well-trained electrical professionals to carry out safe contestable work;
- (d) assist each Network Operator to fulfil its statutory obligations in relation to network safety and reliability; and
- (e) facilitate the objects of the regulatory regime by promoting the safety of those who work on the distribution networks, and ensuring that electrical professionals receive training which is contextualised to current industry practices and the specific requirements of the Network Operator.

3. The notifying parties

3.1 The Network Operators are State-owned energy corporations established under the *Energy Services Corporations Act 1995 (NSW) (ESC Act)*. The Network Operators each operate electricity distribution networks in separate geographic areas in New South Wales.

3.2 Under the ESC Act, each Network Operator's principal functions are to establish, maintain and operate facilities for the distribution of electricity and other forms of energy, and to supply electricity and other forms of energy, and services relating to its use and conservation, to other persons and bodies (ESC Act s 9(2)).

- 3.3 Ausgrid distributes electricity to the Sydney, Central Coast and Hunter regions of NSW across a 22,275 square kilometre area.
- 3.4 Endeavour Energy distributes electricity across a 24,500 square kilometre area made up of Sydney's Greater West, Blue Mountains, Southern Highlands and the Illawarra.
- 3.5 Essential Energy's network covers more than three quarters of NSW and parts of southern Queensland, including more than 200,000 kilometres of power lines.
- 3.6 The Network Operators have overarching obligations to maintain the safety and integrity of their distribution networks. The Electricity Supply (Safety and Network Management) Regulation 2014 (**Safety Regulation**) requires each Network Operator to take all reasonable steps to ensure that the operation of its distribution network (or any part of it) is safe (cl 5).

4. The conduct

- 4.1 The notified conduct is broadly in respect of the following:
 - (a) Authorisation services supplied by each Network Operator to ASPs and ASP personnel to carry out work on the Network Operator's distribution network (**Authorisation Services**); and
 - (b) Network-Specific Training provided by RTOs, which includes training and assessment in relation to network-specific safety and operating procedures, electrical safety rules, safety management systems, and other policies.

The type and content of Network-Specific Training is set out in further detail in **Appendix 1**.

- 4.2 Each Network Operator proposes to supply, or offer to supply Authorisation Services to an ASP and/or ASP personnel on the condition that the ASP personnel to whom the Network Operator supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training from an RTO that has been endorsed by the relevant Network Operator.
- 4.3 In addition, the Network Operators propose to refuse to supply Authorisation Services to an ASP and/or ASP personnel for the reason that the ASP has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO endorsed by the Network Operator.

5. Markets

- 5.1 The relevant markets for the application include those for the supply of:
 - (a) ASP authorisation; and
 - (b) electrical safety training and assessment services.
- 5.2 Each Network Operator can only authorise ASP personnel to work on the network located in its distribution network, also known as a 'franchise area', and not on any other network. Each Network Operator's distribution district comprises the local government areas, or parts of local government areas, described in Schedule 3 of the *Electricity Supply Act 1995* (NSW) (**ESA**) (see ESA s 83(1), Schedule 3).

6. Affected parties

- 6.1 This section provides information about the parties which will be affected by the Notified Arrangements, and their rights and obligations under the NSW electricity framework:
 - (a) customers;

- (b) ASPs;
- (c) registered and authorised personnel employed by ASPs; and
- (d) RTOs.

Customers

- 6.2 Under the regulatory framework, a 'customer' of an electricity distributor is a person to whom energy is sold for particular premises by a retailer, and whose premises is connected to a distributor's electricity network. The energy laws provide significant protections for customers.
- 6.3 Part 3 of the *National Energy Retail Law (NERL)* governs the relationship between distributors and their customers. Distributors are obliged to provide customer connection services to customers. 'Customer connection services' is defined broadly in the NERL and National Electricity Rules to mean services relating to new connections or connection alterations at premises, as well as supply services including energisation and de-energisation of premises.
- 6.4 Where a customer requests a new connection or a connection alteration, the distributor is required to provide that connection, but the customer may engage an ASP to carry out the physical work required to achieve the connection (alternatively, the customer may request that the Network Operator provide this service in its capacity as an ASP).
- 6.5 This is because, under the ESA, there is a contestable market for certain customer connection services. Rather than the distributor having the exclusive right to provide all services which may impact its network (as is the case in some other jurisdictions), the ESA provides that a customer may elect to have new connection or connection alteration services provided by a distributor or by 'any other person': s 31(1). Section 31(2) of the ESA requires that a person providing such services be accredited under the regulations.
- 6.6 Accordingly, customers have the right to choose who carries out work at their request, provided that the ASP is appropriately accredited and authorised and the ASP's personnel are appropriately registered and authorised. The regime means that customers may choose to engage an electrical professional from a pre-selected pool of authorised and qualified persons.

ASP accreditation and authorisation

- 6.7 An ASP that wishes to provide contestable works in New South Wales must follow a two-stage process: first, it must obtain accreditation from and register personnel with NSW Department of Industry, and second, it must obtain authorisation from the distributor to work on its network.
- 6.8 There is an important distinction between the requirements imposed by Ausgrid and the other two Network Operators in this regard. Ausgrid authorises the ASP company as well as its personnel, while Essential Energy and Endeavour Energy simply authorise the personnel employed by an ASP company.

Accreditation

- 6.9 The Safety Regulation provides for the accreditation scheme. Before the personnel of an ASP can carry out work on or near an electricity network they must be registered with an ASP by the Department of Industry and authorised by the Network Operator.
- 6.10 The ESA requires that a person who provides customer connection services prescribed by the regulations must be accredited in accordance with the Safety Regulation (ESA, s 31(2)). The Safety Regulation provides for the Minister to make Scheme Rules with respect to certain matters

regarding the accreditation of persons to provide contestable services (Safety Regulation, cl 26). Sets of Scheme Rules have been made under clause 26 in relation to Level 1, 2 and 3 ASPs.¹

6.11 The services provided by Level 1, 2 and 3 ASPs are as follows:

- (a) Level 1 ASPs undertake work to extend the electricity network or to increase the capacity of the existing network.
- (b) Level 2 ASPs install, repair or maintain the service lines between the electrical wiring on a customer's premises and the electricity network. This includes installing metering equipment, connecting service lines to the network and making the connection live.
- (c) Level 3 ASPs design distribution network assets.

6.12 The Level 1 Scheme Rules outline the requirement that an ASP have properly trained and authorised personnel:

'It is a condition of accreditation that an ASP has access to the appropriate number of personnel with the required qualifications in order to undertake work as an accredited service provider. This includes ensuring that all personnel undertaking contestable work on or near a distribution network:

- *have the competency to do so;*
- *are registered with the Scheme; and*
- *are authorised by the local electricity distributor to work on or near the distribution system for the level of accreditation and the work to be undertaken.'* (at [2.3])

6.13 The Level 1 Scheme Rules then explain the authorisation process:

'Following registration an ASP must seek to have those personnel authorised by the local electricity distributor. Only personnel who are currently registered with the Scheme can be authorised.

The local electricity distributor is responsible for determining who is authorised to work on or near the distribution network. The electricity distributor/s will require registered personnel to undertake training in relevant safety and operating procedures and be familiar with and show they can comply with their respective safety management systems, electrical safety rules and other relevant policies.' (at [2.5])

6.14 In relation to the last paragraph, the Network Operators only require registered personnel to be assessed for understanding and compliance with the ESR particular to the relevant network.

6.15 The Level 1 Scheme Rules state that ASPs must use the information provided by the local distributor to ensure their employees remain familiar with applicable standards, work practices and general requirements for the type of work being undertaken: at [6.6]. The distributor may charge a fee for the authorisation of ASP personnel which is set by the Australian Energy Regulator (**AER**).

6.16 There are equivalent provisions in respect of authorisation under the Level 2 Scheme Rules.

Authorisation processes

6.17 Each Network Operator is responsible for determining who is authorised to work on or near its network. In doing so, the Network Operator will require registered personnel to undertake training in relevant procedures, rules and other policies. These requirements are directed at ensuring that ASP personnel have the necessary knowledge about the Network Operator's particular systems, materials and network infrastructure to ensure that network safety and reliability are maintained.

6.18 Each distributor has policies and equivalent arrangements requiring individuals to obtain authorisation to carry out contestable work on or its distribution network. However, as noted

¹ The three sets of Scheme Rules are publicly available at <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

above, while all three Network Operators have processes for authorising personnel employed by an ASP, Essential Energy and Endeavour Energy differ from Ausgrid in that they do not authorise the ASP itself.

- 6.19 There is no substitute for the supply of Authorisation Services to ASPs and their personnel. The regulatory regime outlined above specifically provides that ASP personnel must be registered with the ASP scheme, and then authorised by the relevant Network Operator. The ESA only permits customer connection services to be provided by a person that has been accredited.

Registered and authorised personnel employed by ASPs

- 6.20 Electrical professionals who wish to do work which affects any of the Network Operators' networks in NSW must meet stringent quality and safety obligations to become registered and authorised to work on that network.
- 6.21 ASP personnel must be authorised by a Network Operator to avoid breaching offences in Part 6 of Division 1 of the ESA. For example, it is an offence to 'interfere' with a network operator's electricity works unless authorised to do so by the network operator (ESA s 65). It is also an offence to connect an electrical installation to a distributor's distribution system unless authorised (ESA s 68). These offences reflect the critical importance of preventing unqualified and unauthorised persons from interfering with live wires and network infrastructure.

Registered Training Organisations (RTOs)

- 6.22 While each Network Operator has the right to determine the form and content of training that they will require ASP personnel to undertake, in most cases they do not require that ASP personnel acquire that training directly from the Network Operator. Instead, personnel may undertake the training with an RTO, provided the training meets NSW Trading & Investment's and the Network Operator's requirements. These arrangements are designed to ensure that ASP personnel have access to convenient and high-quality sources of training while avoiding the cost that would be involved if the Network Operators provided all training themselves.
- 6.23 For example, NSW Trade & Investment's Level 1 Scheme Rules provide:
Appendix B outlines the competencies required of a Level 1 ASP. Further information about required competencies can be obtained from the local electricity distributor. Details of recognised electricity supply industry training and registered training organisations may be obtained from www.training.gov.au.
- 6.24 RTOs are providers of training registered with the Commonwealth Government's Australian Skills Quality Authority (**ASQA**) to deliver vocational education and training (**VET**) services. A complete list of RTOs is maintained at www.training.gov.au, which states that it is '*the authoritative national register of the VET sector in Australia.*'
- 6.25 As part of the Notified Arrangements, the Network Operators propose that an RTO wishing to provide Network-Specific Training to ASPs and/or ASP personnel intending to work on a Network Operator's network must be both registered with ASQA **and** accredited or 'endorsed' by the Network Operator. The endorsement criteria are necessarily above and beyond the RTO's requirements to retain registration with ASQA – they are network-specific and enable the Network Operator to separately assess the RTO's suitability to provide training with respect to its network.

7. Public benefit and detriment

- 7.1 The likely benefit to the public arising from the notified conduct would outweigh any detriment to the public which is likely to result from the arrangement.

Public benefits

- 7.2 The Notified Arrangements will result in the following significant public benefits:
- (a) avoid a more restrictive arrangement whereby the only source of network-specific training is the Network Operators themselves;
 - (b) provide assurance to ASPs that if their personnel complete the Network-Specific Training course provided by an endorsed RTO it will properly equip them to work on the relevant distribution network – although undertaking training does not automatically guarantee that the Network operator will authorise that ASP to operate on its network;
 - (c) ensure that customers can rely on well-trained ASP personnel to carry out safe contestable work;
 - (d) assist each Network Operator to fulfil its statutory obligations in relation to network safety and reliability;
 - (e) facilitate the objectives of the regulatory regime by promoting the safety of those who work on the distribution networks, and ensuring that ASP personnel receive training which is contextualised to the specific requirements of the Network Operator.

Safety and integrity of the electricity networks

- 7.3 High quality, current and network-specific training is a critical aspect of maintaining the safety and integrity of each of the Network Operators' respective distribution networks. This is why ASP personnel must have completed essential training with an RTO endorsed by the Network Operator/s. To control the quality of training, the Network Operators each propose to specify learning and competency outcomes that endorsed RTOs are required to meet.
- 7.4 The regulatory regime emphasises the importance of electrical safety and training. In particular:
- (a) The objects of the ESA include the delivery of a safe and reliable supply of electricity, and promoting and encouraging the safety of persons and property in relation to the generation, transmission, distribution and use of electricity (ESA s 3).
 - (b) The ESA stipulates that a person who provides customer connection services must be accredited in accordance with the Regulations (ESA s 31(2)). It is an offence to interfere with a network operator's electricity works unless authorised to do so (ESA s 65).
 - (c) Each Network Operator is required to take all reasonable steps to ensure that the operation of its distribution network (or any part of it) is safe (Safety Regulation cl 5).
 - (d) The Scheme Rules made by the Minister under cl 26 of the Regulations expressly provide that the Network Operators will require ASP personnel to undertake training in matters pertaining to safety in order to be authorised (see, eg, Level 1 ASP Rules at 2.4-2.5 and Level 2 ASP Rules at 2.4-2.5).

Promoting the safety of those who work on the distribution networks

- 7.5 Requiring ASPs and ASP personnel to undertake Network-Specific Training with an RTO endorsed by the relevant Network Operator promotes the objectives of the regulatory regime.
- 7.6 Authorisation is an essential component of ensuring the safety and integrity of the distribution network. The Level 1 and 2 ASP Scheme Rules provide that the Network Operators will require registered ASP personnel to undertake training in safety and operating procedures and be familiar with and show they can comply with the management plan, electrical safety rules and other policies (cl 2.5).
- 7.7 The purpose of these requirements under the Scheme Rules is to maintain an appropriately high level of training for those carrying out work on or near the network. Not only is a high standard of training in relation to safety matters necessary to ensure the quality of customer connection work.

It also minimises the risk of injury and health hazards which may arise from improper electrical work on a network.

Quality and consistency of training

- 7.8 The Network Operators submit that the endorsement of RTOs is vital to maintaining the quality and consistency of essential safety training. It is particularly important considering the extent to which the training is specific to each distribution network.
- 7.9 The Units of Competency for which each of the Network Operators are seeking to accredit RTOs generally state the need for the training material to be contextualised to current industry practices and technologies, but do not cover network-specific requirements. For instance, RTOs endorsed by Ausgrid would be required to cover Ausgrid's ESR as part of their ASP2 refresher training program. The following are examples of differences between safety practices which differ from network to network:
- (a) obligation for ASPs to notify the Network Operator when on the network;
 - (b) ASP access to substations/switchgear;
 - (c) installation of tiger tails for construction works;
 - (d) commissioning practices.
- 7.10 It is important for the Network Operators to have oversight of the content delivered by RTOs to ensure that the Network-Specific Training remains up to date, in a field that is subject to change. Each Network Operator regularly reviews its safety procedures and ESR. Procedures can change from one year to the next. For example, over the past year, Ausgrid updated its approved safe approach distances and released its new ESR2015/0 earlier this year, along with a requirement for ARC rated clothing. These requirements must be reflected in RTO course content.
- 7.11 The Network Operators intend that if an RTO wishes to update its course material, the RTO must inform the Network Operator so it can ensure the material stays current and appropriate. Material will be reviewed annually and at times when either party may identify a update requirement.
- 7.12 Endorsement will also provide a means by which RTOs can seek to promote their training programs to students and ASPs, and the Network Operators may control the way in which their name and brand is associated with the RTO.

Reliance by customers

- 7.13 The Notified Arrangements would allow customers to access a reliable pool of well-trained ASPs who have the specific knowledge of the network to ensure safe and reliable contestable connection work.

Public detriment

- 7.14 The Network Operators submit that the notified conduct will result in minimal, if any, public detriment.
- 7.15 The effect of the arrangement is that ASPs only have a limited choice of endorsed providers from whom they can obtain Network-Specific Training. However, as noted above, the Network Operators do not intend to enter an exclusive arrangement with either an RTO or a limited group of RTOs for the supply of Network-Specific Training services. Any RTO may approach a Network Operator for endorsement to provide Electrical Training Services. As a result, there is no limit on the number of RTOs that may be endorsed by each Network Operator to provide such services.
- 7.16 In this respect, while there is a list of endorsed RTOs, there is nothing to prevent that list from expanding to include additional RTOs who wish to offer such services to ASP personnel.

Appendix A – Network-Specific Training and RTOs to be endorsed by Essential Energy

Essential Energy's proposed conduct

Essential Energy proposes to allow RTOs to deliver both the initial training and ongoing annual refresher requirements training to ASPs. Essential Energy updates its ESR every three years. The changes then need to be incorporated into training materials for two types of training which need to be contextualised to Essential Energy's network-specific requirements, namely:

1. Essential Energy ESR Initial Training; and
2. Essential Energy ESR Refresher Training (**Network-Specific Training**).

Essential Energy proposes to require that ASP personnel obtain that Network-Specific Training from either Essential Energy, or an RTO endorsed by Essential Energy.

1. Essential Energy proposes to supply, or offer to supply Authorisation Services to an ASP's personnel:

on the condition that the ASP personnel to whom Essential Energy supplies or offers to supply or proposes to supply the Authorisation Services acquires Network-Specific Training services from an RTO that is endorsed by Essential Energy.

2. Essential Energy proposes to refuse to supply Authorisation Services to an ASP's personnel:

for the reason that the ASP personnel has not acquired, or has not agreed to acquire, Network-Specific Training services from an RTO that is endorsed by Essential Energy.

RTOs to be endorsed by Essential Energy

Registered Training Organisation	Type of training	ASP personnel (level)
1. TAFE NSW – Hunter Institute	ESR Initial ESR Refresher	All ASPs
2. IAC Safety Services	ESR Initial ESR Refresher	All ASPs