

New Reg: Towards Consumer-Centric Energy Network Regulation

AusNet Trial – AER Staff Guidance Note 8: Negotiations between the Customer Forum and AusNet – 29 August 2018

The Australian Energy Regulator (AER), Energy Consumers Australia (ECA), and Energy Networks Australia (ENA) have established a project aimed at improving consumer engagement and enabling customers to shape aspects of network revenue proposals submitted to the AER for approval (the **New Reg model**). AusNet Services (**AusNet**) has agreed to trial the New Reg model for its Victorian electricity distribution network business (the **AusNet trial**). A Customer Forum (the **Forum**) has already been established to negotiate and agree key aspects of AusNet's regulatory revenue proposal, so that the proposal better reflects the preferences of AusNet's customers.

This note is one of a series of guidance notes prepared by AER staff on a number of topics for AusNet and the Forum, prior to AusNet submitting its revenue proposal to the AER for formal assessment. More information on the New Reg model, the AusNet trial, and the role of the AER in the trial, is provided in the first guidance note in this series.¹

We have set out our view on what topics we consider should be in scope in our [second guidance note](#). This view recognised that the Forum only has a limited time to familiarise itself with the issues, direct relevant customer research, and prepare itself for negotiations.² However, our view on which topics should be in scope doesn't preclude the Forum from considering and discussing other topics with AusNet's customers. We encourage such discussions and would be interested in customer preferences regarding those topics.

The AER must still undertake its usual assessment of the final revenue proposal in accordance with the National Electricity Law (NEL) and National Electricity Rules (NER). Once received by the AER in July 2019, the AER will undertake its formal technical and economic assessment of AusNet's revenue proposal, as normal. In doing so, the AER will not be bound by any agreement made between the Forum and AusNet, but in assessing AusNet's proposal, the AER will consider the matters AusNet and the Forum have discussed, whether or not they have been agreed.

Negotiation purpose and process

As is set out in the Early Engagement Memorandum of Understanding (MOU), the Forum and AusNet are expected to enter into negotiations with a view to reaching, as far as possible, agreement on specific matters that form a part of AusNet's revenue proposal, having regard to the revenue proposal as a whole.³

In doing so, the Forum is supposed to understand, and represent to AusNet, the perspectives and preferences of AusNet's customers. Negotiations should be undertaken with a view to AusNet preparing a revenue proposal that, in the opinion of the Forum, is likely to contribute to the achievement of the National Electricity Objective (NEO).⁴ If the process works as intended, AusNet's revenue proposal should better reflect the preferences of AusNet's customers than would otherwise be the case.

¹ *AusNet Trial – AER Staff Guidance Note 1: How the AER will support AusNet's Customer Forum*, July 2018.

² *AusNet Trial – AER Staff Guidance Note 2: Scope of Negotiation*, July 2018.

³ [Memorandum of Understanding](#) between AusNet Services, the AER, and Tony Robinson on behalf of the Customer Forum, June 2018.

⁴ The NEO is: to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to (a) price, quality, safety, reliability and security of supply of electricity; and (b) the reliability, safety and security of the national electricity system (NEL, section 7).

At the conclusion of negotiations, the Forum is expected to prepare an Engagement Report. The Forum's Engagement Report should:

- identify the matters in AusNet's revenue proposal that were considered by the Forum
- to the extent there is agreement between the Forum and AusNet as to how a matter is addressed in the revenue proposal
 - confirm the nature and scope of the agreement⁵
 - explain how the matter is consistent with, or best reflects, the perspectives and preferences of AusNet's customers, by reference to relevant customer research or engagement
- to the extent there are areas of disagreement between the Forum and AusNet about a matter
 - identify the areas of disagreement
 - summarise the process followed by the Forum and AusNet in seeking to reach agreement on the areas of disagreement
 - summarise the reasons of the Forum and AusNet in support of their respective positions on which there remains disagreement.

AusNet will submit the Forum's final Engagement Report to the AER as part of its revenue proposal. Therefore, in assessing AusNet's revenue proposal, the AER will be able to have regard to the extent of the Forum's agreement with AusNet on certain matters in the proposal, and the extent to which that agreement is based on sound evidence of consumer perspectives and preferences. The AER can take into account the matters that have been agreed and, conversely, those that have not been agreed, in its consideration of AusNet's proposal.

Timing and phasing of the negotiations

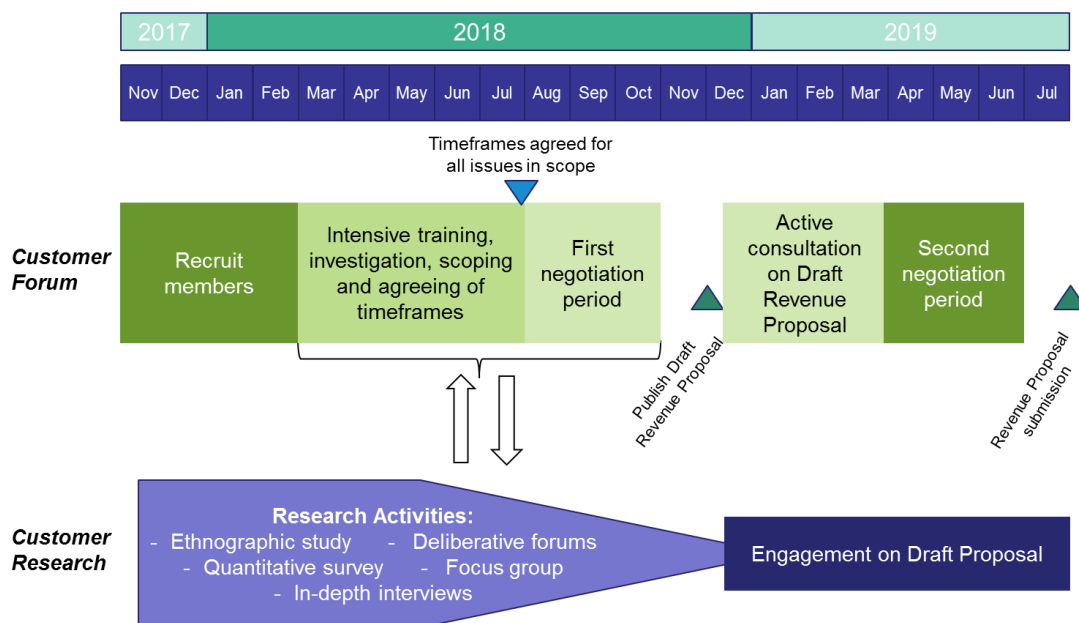
Figure 1 sets out the timeline for negotiations that was originally proposed in AusNet's Early Engagement Plan.⁶ Although the dates have likely shifted to some extent since that original plan, the key milestones remain:

- the publication of AusNet's draft revenue proposal, prior to the end of the 2018 calendar year
- the submission of AusNet's final revenue proposal to the AER, in July 2019.

⁵ If the agreement of the Forum is not unanimous, then the MOU sets out an expectation that the draft/initial or final Engagement Report (as applicable) should explain the basis for any dissenting Forum member's disagreement.

⁶ AusNet, [Early Engagement Plan, EDPR 2021-25 Customer Forum](#), May 2018.

Figure 1: Indicative timeline for Forum and AusNet negotiations



The Early Engagement Plan envisages a negotiation period prior to both of those key milestones. The Forum will prepare a draft (or initial) Engagement Report following the first negotiation period, which will be released for consultation with interested stakeholders along with AusNet’s draft revenue proposal to be released before the end of 2018.

We expect that the main purpose of the second negotiation period will be for the Forum and AusNet to take into account stakeholder feedback on the draft/initial Engagement Report, and the draft revenue proposal, rather than an opportunity for entirely new matters to be raised and negotiated. Nonetheless, it is possible that stakeholder feedback might cause the Forum and AusNet to reconsider the scope of the matters to be negotiated in the second period. We note, however, that there will be limited time to undertake any additional customer research or significant further work before the second negotiation period begins.

Following the end of the second negotiation period, the Forum will prepare its final Engagement Report, and AusNet will finalise the revenue proposal for its Victorian electricity distribution network business for submission to the AER. The AER will then consider AusNet’s final revenue proposal as part of making its draft determination due in March 2020

Undertaking the negotiations

The Forum has been directing AusNet’s own customer engagement and research, as well as directly engaging with some of AusNet’s customers, representative consumer groups and organisations. The Forum should seek to incorporate this research and engagement in negotiating relevant parts of AusNet’s revenue proposal.

We understand that AusNet does not propose taking the same negotiation approach for all topics the Forum has agreed to negotiate. Rather, quite reasonably, AusNet intends tailoring the approach to the topic, depending on how certain AusNet’s negotiating position is. Different negotiation approaches are likely to include the following.

- *Workshops.* In some cases, the Forum and AusNet might work together collaboratively to come up with and agree new initiatives for improving customer outcomes, and for monitoring whether those outcomes are achieved. Much of the customer experience and hardship topics might be amenable to this approach.
- *Options.* In other cases, AusNet might present the Forum with a number of options, involving different customer outcomes, without necessarily having a preferred option.

The Forum can draw on customer research to reach agreement on the preferred option to include in the revenue proposal.

- *Initial negotiating positions.* On some matters, AusNet might have a clear position on what it wants to achieve, and will want to test that position with the Forum, in light of relevant information the Forum has about customer preferences.

AER's role in the negotiation process

By specifying the topics that should be in scope, and providing guidance on the boundaries of negotiation for those topics, AER staff aim to make the negotiation process clearer and more efficient. By focusing on a selected number of 'in scope' topics, we will be in a better position to set out the boundaries of negotiation for those topics. Doing so should reduce the risk that the Forum and AusNet reach an agreed position on a particular matter, which the AER subsequently determines, when assessing AusNet's revenue proposal, to be inconsistent with the NER.

The negotiation is ultimately between the Forum and AusNet. While the MOU provides for AER staff to attend as observers, given the AER is not a party to the negotiations it would be preferable for AusNet and the Forum to negotiate without AER staff in attendance.

As set out in the MOU, AER staff can respond to questions the Forum might have, particularly about the regulatory framework or factual matters, to facilitate a more effective and informed outcome for the negotiations, leading to the draft engagement report. Also, if AER staff have any particular issues or concerns with any information provided to the Forum, staff will raise those concerns with the Forum and AusNet, again to facilitate a more informed outcome for the negotiations and the draft engagement report. AER staff will not, however, be verifying the accuracy of all information presented by AusNet, as the basis for negotiations.

The AER's normal technical and economic assessment of AusNet's revenue proposal, such as reviews of demand forecasts and input costs, and efficiency assessments, will not occur until after AusNet formally submits its proposal to the AER in July 2019. In undertaking its assessment subject to the process under the NER, the AER will not be bound by any agreement made between the Forum and AusNet. However, the AER will take into account the matters AusNet and the Forum have agreed and conversely, those that have not been agreed, in its consideration of AusNet's proposal.