



DRAFT DECISION

AusNet Services Transmission Determination 2022 to 2027

Attachment 14 Negotiating framework

July 2021

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Note

This attachment forms part of the AER's draft decision on AusNet Services' 2022–27 transmission determination. It should be read with all other parts of the draft decision.

The draft decision includes the following attachments:

Overview

Attachment 1 – Maximum allowed revenue

Attachment 2 – Regulatory asset base

Attachment 3 – Rate of return

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 8 – Efficiency benefit sharing scheme

Attachment 9 – Capital expenditure sharing scheme

Attachment 10 – Service target performance incentive scheme

Attachment 11 – Demand management innovation allowance mechanism

Attachment 12 – Pricing methodology

Attachment 13 – Pass through events

Attachment 14 – Negotiating framework

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14 Negotiating framework

Our transmission determination imposes control over revenues that a transmission network service provider (TNSP) can recover from its provision of prescribed transmission services. But we do not determine the terms and conditions of negotiated transmission services. Under the National Electricity Rules (NER), negotiated services are provided under an agreement or as a result of a determination of a commercial arbitrator. In Victoria, these processes are facilitated by:

- a negotiating framework
- negotiated transmission service criteria (NTSC).

AusNet Services must prepare a negotiating framework that sets out procedures for negotiating the terms and conditions of access to a negotiated transmission service. The NTSC, which is developed in consultation with stakeholders, set out criteria that a transmission business must apply in negotiating those terms and conditions, including the prices and access charges for negotiated transmission services. They also contain the criteria that a commercial arbitrator must apply to resolve disputes about such terms and conditions and/or access charges. This attachment sets out our considerations and conclusions on AusNet Services' proposed negotiating framework and the NTSC.

These requirements apply only to Victoria due to its unique transmission arrangements. This is because Victoria is the only National Electricity Market (NEM) jurisdiction in which the Australian Energy Market Operator (AEMO) is authorised to exercise declared network functions.¹ Where such arrangements apply, there is a separation of ownership of the declared transmission system from certain aspects of the operation and control of that system. The framework for connections to the transmission network in Victoria is therefore different to the rest of the NEM.

The NER previously required all TNSPs in the NEM to submit negotiating frameworks for AER approval as part of their revenue determination. In 2017, the AEMC removed this requirement from the NER for all NEM jurisdictions, except for Victoria (2017 rule change).² Rather, the AEMC elevated to the NER the principles that will underpin negotiations between connecting parties and incumbent TNSPs as part of the 2017 rule change.³

In Victoria, clause 11.98.8 preserves chapter 6A of version 109 of the NER, which contain the provisions regarding negotiating frameworks and the NTSC.⁴

¹ For more information regarding AEMO's declared network functions, see National Electricity Law, s. 50C.

² NER, clause 11.98.8.

³ AEMC, *Rule Determination: National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2017*, 23 May 2017, pp. 198–203.

⁴ See also AEMC, *Rule Determination: National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2017*, 23 May 2017, p. 75.

14.1 Draft decision

Our draft decision is to not approve AusNet Services' proposed negotiating framework as we consider editorial amendments are required so that it only applies to AusNet Services.

We consider the substance of the proposed negotiating framework meets the requirements in the NER.⁵ However, we require AusNet Services to amend the negotiating framework such that it applies to AusNet Services only (and not to AusNet Services and AEMO as proposed). We discuss the reasons for these required amendments in section 14.4.1. We welcome stakeholder feedback regarding these amendments and we will consider such feedback in making our final decision.

Further, our draft decision is to apply the NTSC that applied to AusNet Services for the 2017–22 regulatory control period, as those criteria give effect to the negotiated transmission service principles as set out in the NER.⁶ For our final decision, we may revisit our draft decision following consideration of submissions we receive on the NTSC.

AusNet Services' proposed negotiating framework and the NTSC apply from 1 April 2022 to 31 March 2027.

14.2 AusNet Services' proposal

On 29 October 2020, AusNet Services submitted its proposed negotiating framework. We note AusNet Services' proposed negotiating framework for the 2022–27 regulatory control period is substantively identical to the one we approved for the 2017–22 regulatory control period.⁷

AusNet Services provides transmission services in conjunction with AEMO. AusNet Services provides and offers connection services whereas AEMO provides shared transmission services. Because of this arrangement, AusNet Services' proposal stated that it worked with AEMO to devise a common negotiating framework. The proposed negotiating framework is to apply to AEMO and AusNet Services for the period 1 April 2022 to 31 March 2027.⁸

Given AEMO's transmission responsibilities, AusNet Services outlined how the common negotiating framework would operate. Negotiated transmission services include connection services that are provided to service a specific user, or group of users, at a single transmission connection point.⁹ They also include negotiated transmission services which exceed the network performance requirements under

⁵ NER, clause 6A.9.5(c); 11.98.8.

⁶ NER, clause 6A.9.1; 11.98.8.

⁷ AusNet Services' negotiating framework for the 2017–22 regulatory control period in turn was substantively identical to the one we approved in 2014.

⁸ AusNet Services, *Revenue Proposal 2023–27, Appendix 15A Victorian Negotiating Framework*, 29 October 2020, p. 2.

⁹ NER, Chapter 10.

jurisdictional electricity legislation.¹⁰ Of these types of negotiated services AusNet Services stated that it is responsible for connection services whereas AEMO is responsible for shared transmission services. This is such that AusNet Services proposed that its common negotiating framework applies to:¹¹

- AusNet Services and each service applicant who applies in writing to AusNet Services for the provision of connection services which are negotiated services
- AEMO and each service applicant who applies in writing to AEMO for the provision of shared transmission services which are negotiated services.

In respect of enquiries for connection to its transmission network, AusNet Services or the relevant transmission business (as applicable) has primary responsibility for assessing and advising a service applicant on the connection assets at the physical interface with its transmission network (network exit services and network entry services).¹²

14.3 AER's assessment approach

To be approved, a proposed negotiating framework must specify each requirement set out in clause 6A.9.5(c) of the NER.¹³ We examined whether AusNet Services' proposed negotiating framework met these requirements.

We consider the NTSC that adopt the negotiated transmission service principles would satisfy the NER requirements. We thus assessed whether our proposed NTSC reflect the negotiating transmission service principles in clause 6A.9.1 of the NER.

14.4 Reasons for draft decision

Our draft decision is to not approve AusNet Services' proposed negotiating framework as we consider editorial amendments are required so that it only applies to AusNet Services (see section 14.4.1).

However, we consider the substance of the proposed negotiating framework complies with the minimum requirements in the NER.¹⁴ Those requirements include, among other things, a statement that AusNet Services will negotiate in good faith and a description of procedures for dealing with disputes.

Table 14.1 summarises our findings on AusNet Services' proposed negotiating framework. It shows that each of the requirements under the NER for a negotiating framework is satisfactorily addressed.

¹⁰ NER, Chapter 10.

¹¹ AusNet Services, *Revenue Proposal 2023–27, Appendix 15A Victorian Negotiating Framework*, 29 October 2020, p. 5.

¹² AusNet Services, *Revenue Proposal 2023–27, Appendix 15A Victorian Negotiating Framework*, 29 October 2020, p. 4.

¹³ Version 109 of the NER.

¹⁴ NER, clause 6A.9.5(c).

Table 14.1 AER’s assessment of AusNet Services’ proposed negotiating framework

NER requirements	AER assessment
Requirement for AusNet Services and the applicant of a negotiated transmission service to negotiate in good faith—clause 6A.9.5(c)(1)	Section 4 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement for AusNet Services to provide all such commercial information reasonably required to enable the applicant of a negotiated transmission service to engage in effective negotiations—clause 6A.9.5(c)(2)	Section 8 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement for AusNet Services to identify and inform the negotiated transmission service applicant of the reasonable costs of providing the negotiated service; and demonstrate that charges reflect costs—clause 6A.9.5(c)(3)	Section 8 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement for a negotiated transmission service applicant to provide all such commercial information reasonably required to enable AusNet Services to engage in effective negotiation—clause 6A.9.5(c)(4)	Section 8 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement to specify a reasonable period of time for commencing, progressing and finalising negotiations; and a requirement for each party to use their reasonable endeavours to adhere to those time periods during the negotiation—clause 6A.9.5(c)(5)	Section 5 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement to specify a process for disputes to be dealt with in accordance with the relevant provisions for dispute resolution ¹⁵ —clause 6A.9.5(c)(6)	Section 10 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement to specify arrangements for the payment of AusNet Services’ reasonable direct expenses incurred in processing the application to provide the negotiated transmission service—clause 6A.9.5(c)(7)	Section 6 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement for AusNet Services to determine the potential impact of the provision of a negotiated transmission service on other network users—clause 6A.9.5(c)(8)	Section 11 of AusNet Services’ proposed negotiating framework satisfies this requirement.
Requirement for AusNet Services to notify and consult with any affected network user and ensure the negotiated transmission service does not result in noncompliance with obligations in relation to other network users under the NER—clause 6A.9.5(c)(9)	Section 11 of AusNet Services’ proposed negotiating framework satisfies this requirement.

Source: AER analysis.

¹⁵ The relevant provisions for dispute resolution are set out in part K of chapter 6A of the NER.

14.4.1 Required amendments to proposed negotiating framework

As noted in section 14.1, we require AusNet Services to amend the negotiating framework such that it applies to AusNet Services only.

AusNet Services stated that its proposed negotiating framework applies to both itself and AEMO. However, we do not consider that a transmission determination for one TNSP can apply to another TNSP.

We acknowledge that we approved a common negotiating framework for AusNet Services and AEMO in 2014. However, we assessed the common negotiating framework in separate transmission determinations for AusNet Services and AEMO.¹⁶

Circumstances have since changed due to the 2017 rule change. Specifically, we consider the NER no longer requires AEMO to submit a negotiating framework to us. We also consider the NER no longer requires us to make a decision on a negotiating framework for AEMO.¹⁷

We would therefore not be assessing AusNet Services' proposed negotiating framework as part of AEMO's transmission determination. We would, in turn, not assess whether the proposed negotiating framework is appropriate for AEMO's circumstances. For reference, we have begun AEMO's transmission determination for the 1 July 2022 to 30 June 2027 regulatory control period.¹⁸ AEMO did not include a proposed negotiating framework as part of its regulatory proposal, consistent with the change in requirements from the 2017 rule change.

We welcome stakeholder feedback regarding these arrangements and we will consider such feedback in making our final decision.

14.5 Negotiated transmission service criteria

On 17 May 2021, we published an invitation for submissions on the NTSC. Our draft decision is that the NTSC we applied in the 2017–22 regulatory control period (reproduced in section 14.5.1) should apply to AusNet Services' for the 2022–27 regulatory control period. This is because it adopts the negotiated transmission service principles as its criteria.

We did not receive submissions on the NTSC at the time of writing this draft decision. However, we welcome further submissions on the NTSC from interested parties in response to our draft decision. We will take into consideration all submissions on the NTSC in making our final decision for AusNet Services' transmission determination.

¹⁶ AER, *Final decision, SP AusNet Services Transmission determination 2014–17*, 31 January 2014; AER, *Final decision for AEMO's 2014–19 regulatory control period*, 1 April 2014.

¹⁷ AEMC, Final rule: National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2017 No. 4, 23 May 2017, pp. 72–74.

¹⁸ See <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/aemo-determination-2022-27>.

14.5.1 The NTSC

National Electricity Objective

1. The terms and conditions of access for a negotiated transmission service, including the price that is to be charged for the provision of that service and any access charges, should promote the achievement of the National Electricity Objective.

Criteria for terms and conditions of access

Terms and conditions of access

2. The terms and conditions of access for a negotiated transmission service must be fair, reasonable, and consistent with the safe and reliable operation of the power system in accordance with the NER.
3. The terms and conditions of access for negotiated transmission services, particularly any exclusions and limitations of liability and indemnities, must not be unreasonably onerous. Relevant considerations include the allocation of risk between the TNSP and the other party, the price for the negotiated transmission service and the cost to the TNSP of providing the negotiated service.
4. The terms and conditions of access for a negotiated transmission service must take into account the need for the service to be provided in a manner that does not adversely affect the safe and reliable operation of the power system in accordance with the NER.

Price of services

5. The price of a negotiated transmission service must reflect the cost that the TNSP has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the Cost Allocation Methodology.
6. Subject to criteria 7 and 8, the price for a negotiated transmission service must be at least equal to the avoided cost of providing that service but no more than the cost of providing it on a stand-alone basis.
7. If the negotiated transmission service is a shared transmission service that:
 - (a) exceeds any network performance requirements which it is required to meet under any relevant electricity legislation; or
 - (b) exceeds the network performance requirements set out in schedule 5.1a and 5.1 of the NER

then the difference between the price for that service and the price for the shared transmission service which meets network performance requirements must reflect the TNSP's incremental cost of providing that service (as appropriate).

8. For shared transmission services, the difference in price between a negotiated transmission service that does not meet or exceed network performance requirements and a service that meets those requirements should reflect the

TNSP's avoided costs. Schedule 5.1a and 5.1 of the NER or any relevant electricity legislation must be considered in determining whether any network service performance requirements have not been met or exceeded.

9. The price for a negotiated transmission service must be the same for all Transmission Network Users. The exception is if there is a material difference in the costs of providing the negotiated transmission service to different Transmission Network Users or classes of Transmission Network Users.
10. The price for a negotiated transmission service must be subject to adjustment over time to the extent that the assets used to provide that service are subsequently used to provide services to another person. In such cases the adjustment must reflect the extent to which the costs of that asset are being recovered through charges to that other person.
11. The price for a negotiated transmission service must be such as to enable the TNSP to recover the efficient costs of complying with all regulatory obligations associated with the provision of the negotiated transmission service.

Criteria for access charges

Access charges

12. Any access charges must be based on the costs reasonably incurred by the TNSP in providing Transmission Network User access. This includes the compensation for foregone revenue referred to in clause 5.4A(h) to (j) of the NER and the costs that are likely to be incurred by a person referred to in clause 5.4A(h) to (j) of the NER (as appropriate).

Shortened forms

Shortened form	Extended form
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
NEM	national electricity market
NER	national electricity rules
NTSC	negotiated transmission service criteria
TNSP	transmission network service provider