



DRAFT DECISION

Energex Distribution determination 2020-25

Attachment 16- Negotiated services framework and criteria

October 2019

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: 1300 585 165

Email: EnergyQueensland2020@aer.gov.au

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Note

This attachment forms part of the AER's draft decision on the distribution determination that will apply to Energex for the 2020–25 regulatory control period. It should be read with all other parts of the draft decision.

The draft decision includes the following attachments:

Overview

Attachment 1 – Annual revenue requirement

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 incentive scheme

Attachment 12 – Classification of services

Attachment 13 – Control mechanisms

Attachment 14 – Pass through events

Attachment 15 – Alternative control services

Attachment 16 – Negotiated services framework and criteria

Attachment 17 – Connection policy

Attachment 18 – Tariff structure statement

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Shortened forms

Shortened form	Extended form
AER	Australian Energy Regulator
distributor	distribution network service provider
NER or the rules	national electricity rules

16 Negotiated services framework and criteria

The National Electricity Rules (NER) requires us to make decisions on:

- the negotiating framework to apply to Energex,¹ and
- a decision on the negotiated distribution service criteria for Energex.²

While our draft decision does not classify any services as negotiated distribution services, these constituent decisions are required regardless of our classification decisions.

16.1 Draft decision

For the purposes of rule 6.12.1(15) our draft decision is to accept Energex's proposed negotiated distributed services framework.

For the purposes of rule 6.12.1(16) the negotiated distribution service criteria published for consultation in February 2019,³ will be applicable to Energex.

16.2 Energex's proposal

Energex's negotiated distribution services framework is set out in Attachment 16 of its regulatory proposal.⁴ It is similar in substance to the framework approved as part of Energex's current regulatory determination.

16.3 Assessment approach

16.3.1 Negotiating framework

A negotiating framework for negotiated distribution services must meet the requirements of clause 6.7.5(c) of the NER and must not be inconsistent with any of the requirements set out in rule 6.7.5(d). Our assessment therefore examined whether Energex's proposal has met these requirements.

16.3.2 Negotiated distribution services criteria

The negotiated distribution service criteria apply to negotiations for access to the negotiation of terms and conditions of access including the prices that are to be charged for the provision of negotiated distribution services or any access charges which are negotiated by the provider during a regulatory control period. The criteria also to be applied by the AER in resolving access disputes about terms and conditions

¹ NER, cl. 6.12.1(15).

² NER, cl. 6.12.1 (16).

³ AER, Proposed Negotiated Distribution Service Criteria for Energex, Regulatory Control Period 1 July 2020, February 2019.

⁴ Energex, Regulatory Proposal 2020-25, Attachment 16.005 Negotiating Framework, January 2019.

relating to those matters.⁵ The negotiated distribution services criteria must give effect and be consistent with the principles set out in the NER,⁶ which are as follows.⁷

1. the price for a negotiated distribution service should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the Cost Allocation Method for the relevant Distribution Network Service Provider;
2. subject to subparagraphs (3) and (4), the price for a negotiated distribution service should be at least equal to the cost that would be avoided by not providing the service but no more than the cost of providing it on a stand-alone basis;
3. if the negotiated distribution service is the provision of a shared distribution service that:
 - i. exceeds the network performance requirements (if any) which that shared distribution service is required to meet under any jurisdictional electricity legislation; or
 - ii. exceeds the network performance requirements set out in schedules 5.1a and 5.1, then the differential between the price for that service and the price for the shared distribution service which meets (but does not exceed) the network performance requirements under any jurisdictional electricity legislation or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the Distribution Network Service Provider's incremental cost of providing that service:
4. if the negotiated distribution service is the provision of a shared distribution service that does not meet (and does not exceed) the network performance requirements set out in schedules 5.1a and 5.1, the differential between the price for the service and the price for the shared distribution service which meets (but does not exceed) the network performance requirements set out in the schedules 5.1a and 5.1 should reflect the cost the Distribution Network Services Provider would avoid by not providing that service;
5. the price for a negotiated distribution service must be the same for all Distribution Network Users unless there is a material difference in the costs of providing the negotiated distributed services to different Distribution Network Users or classes of Distribution Network Users;
6. the price for a negotiated distribution service should be subjected 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 which case the adjustment should reflect the extent to which the costs of that asset are being recovered through charges to that other person;

⁵ NER, cl.6. 7.4(a).

⁶ NER, cl.6. 7.4(b)

⁷ NER cl. 6.7.1

7. the price for negotiated distributed service should be such as to enable the Distribution Network Service Provider to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the negotiated distribution service;
8. any access charges:
 - (A) in respect of providing distribution network user access to negotiated distribution services which would have been negotiated distribution services of the operation of clause 6.24.2(c) should be based on the costs reasonably incurred by the Distribution Network Service Provider in providing that access and, in the case of compensation referred to in clauses 5.5(f)(4)(ii) and (iii), on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to those provisions where an event referred to in those provisions occurs; and
 - (B) in respect of providing transmission network user access to negotiated distribution services which would have been treated as negotiated transmission services were it not for the operation of clause 6.24.2(c) should be based on the costs reasonably incurred by the Distribution Network Service Provider in providing that access and, in the case of likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an even referred to in those provisions occurs;
9. the terms and conditions of access for a negotiated distribution service should be fair and reasonable and consistent with the safe and reliable operation of the power system in accordance with the Rules (for these purposes, the price for a negotiated distribution service is to be treated as being fair and reasonable if it complies with principles (1) to (7) of this clause;
10. the terms and conditions of access for a negotiated distribution service (including, in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between the Distribution Network Service Provider and the other party, the price for the negotiated distribution service and the costs to the Distribution Network Service Provider of providing the negotiated distribution service;
11. the terms and conditions of access for a negotiated distribution service should take into account the need for the service to be provided in manner that does not adversely affect the safe and reliable operation of power.

16.4 Reasons for draft decision

16.3.3 Negotiating framework

Energex's proposed negotiating framework incorporated the minimum requirements specified by rules 6.7.5(c) of the NER and is not inconsistent with rule 6.7.5(d). Our assessment of compliance with each NER requirement is set out in table 16.1.

Table 16.1 AER's assessment of Energex's proposed negotiating framework

NER requirements	Energex's proposal
Requirement for a distributor and applicant to negotiate in good faith - cl.6.7.5(c)(1)	Clause 2.2
Requirement for a distributor to provide all such commercial information an applicant may reasonably require to enable the applicant to engage in effective negotiations for the provision of the negotiated distribution service, including cost information - cl.6.7.5(c)(2)	Clause 2.6
Requirement for a distributor to identify and inform the applicant of the reasonable costs and/or increase or decrease in costs of providing the negotiated service; demonstrate to an applicant that the charges for providing the negotiated distribution service reflect those costs and/or the cost increment or decrement; and have appropriate arrangements for assessment and review of the charges and the basis on which they made-cl.6.7.5(c)(3)	Clause 2.10
Requirement for an applicant to provide all commercial information the distributor may reasonably require to enable the distributor to engage in effective negotiation with that applicant for the provision of the negotiated distribution service- cl.6.7.5(c)(4)	Clause 2.5
Requirement that negotiations with an applicant for the provision of negotiated distribution services be commenced and finalised within specified periods; and a requirement that each party must make reasonable endeavours to adhere to the specified time limits-cl.6.7.5(c)(5)	Clause 2.3
A process for dispute resolution which provides that all disputes as to the terms and conditions of access for the provision of negotiated distribution services are to be dealt with in accordance with the relevant provisions of the Law and Rules for dispute resolution- cl.6.7.5(c)(6)	Clause 2.9

NER requirements	Energex's proposal
The arrangements for the payment by an applicant of a distributor's' reasonable direct expenses incurred in processing the application to provide the negotiated distribution service- cl6.7.5(c)(7)	Clause 2.11
Requirement for a distributor to determine the potential impact of the provision of a negotiated distribution service on other distribution network users- cl.6.7.5(c)(8)	Clause 2.8
Requirement for a distributor to notify and consult with any affected distribution network user and ensure that the provision of the negotiated distribution services does not result in non-compliance with obligations in relation to other network users under the NER- cl.6.7.5(c)(9)	Clause 2.8
Requirement that the distributor publish the results of negotiations on its website- cl.6.7.5(c)(10)	Clause 2.13

16.5 Negotiated distribution services criteria

In February 2019, we published for consultation negotiated distribution services criteria for Energex.⁸ The criteria have been developed in accordance with the principles relating to access to negotiated distribution services.⁹ We received no submissions on our proposed criteria, and our draft decision is to adopt them for this determination. Our negotiated distribution service criteria are set in the following paragraphs.

National Electricity Objective

1. The terms and conditions of access for a negotiated distribution 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 distribution service must be fair and 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 a negotiated distribution service (including in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between a distributor and any other party, the price for the negotiated distribution service and the costs to a distributor of providing the negotiated distribution service.
4. The terms and conditions of access for a negotiated distribution 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 for a negotiated distribution service must reflect the costs that a distributor has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the relevant Cost Allocation Method.
6. Subject to criteria 6 and 7, the price for a negotiated distribution service must be at least equal to the cost that would be avoided by not providing that service but no more than the cost of providing it on a stand-alone basis.
7. If a negotiated distribution service is a shared distribution service that:

⁸ AER, Proposed negotiation distribution service criteria for Energex 2020-25 – February 2019

⁹ NER, cl. 6.7.4(b).

- i. exceeds any network performance requirements which it is required to meet under any relevant electricity legislation, or
- ii. 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 distribution service which meets network performance requirements must reflect a distributor's incremental cost of providing that service (as appropriate).

8. If a negotiated distribution service is the provision of a shared distribution service that does not meet or exceed the network performance requirements, the difference between the price for that service and the price for the shared distribution service which meets, but does not exceed, the network performance requirements should reflect the cost a distributor would avoid by not providing that service (as appropriate).
9. The price for a negotiated distribution service must be the same for all Distribution Network Users unless there is a material difference in the costs of providing the negotiated distribution service to different Distribution Network Users or classes of Distribution Network Users.
10. The price for a negotiated distribution 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 which case such 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 distribution service must be such as to enable a distributor to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the negotiated service.

Criteria for access charges

Access Charges

12. Any charges must be based on costs reasonably incurred by a distributor in providing distribution network user access and, in the case of compensation referred to in clauses 5.5(f)(4)(ii) and (iii) of the NER, on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs (as appropriate).
13. Any charges must be based on costs reasonably incurred by a distributor in providing transmission network user access to services deemed to be negotiated distribution services by clause 6.24.2(c) of the NER, and, in the case of compensation referred to in clauses 5.4A(h) to (j) of the NER, on the revenue that is likely to be foregone and the costs that are likely to be incurred by a person referred to in those provisions where an event referred to in those provisions occurs (as appropriate).