



FINAL DECISION
Ausgrid distribution
determination
2015–16 to 2018–19

Attachment 17 – Negotiated
services framework and criteria

April 2015

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AER reference: 52294

Note

This attachment forms part of the AER's final decision on Ausgrid's revenue proposal 2015–19. It should be read with all other parts of the final decision.

The final decision includes the following documents:

Overview

Attachment 1 - Annual revenue requirement

Attachment 2 - Regulatory asset base

Attachment 3 - Rate of return

Attachment 4 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency benefit sharing scheme

Attachment 10 - Capital expenditure sharing scheme

Attachment 11 - Service target performance incentive scheme

Attachment 12 - Demand management incentive scheme

Attachment 13 - Classification of services

Attachment 14 - Control mechanism

Attachment 15 - Pass through events

Attachment 16 - Alternative control services

Attachment 17 - Negotiated services framework and criteria

Attachment 18 - Connection policy

Attachment 19 - Pricing methodology

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Shortened forms

| Shortened form | Extended form |
|----------------------------------|--|
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| augex | augmentation expenditure |
| capex | capital expenditure |
| CCP | Consumer Challenge Panel |
| CESS | capital expenditure sharing scheme |
| CPI | consumer price index |
| DRP | debt risk premium |
| DMIA | demand management innovation allowance |
| DMIS | demand management incentive scheme |
| distributor | distribution network service provider |
| DUoS | distribution use of system |
| EBSS | efficiency benefit sharing scheme |
| ERP | equity risk premium |
| Expenditure Assessment Guideline | expenditure forecast assessment Guideline for electricity distribution |
| F&A | framework and approach |
| MRP | market risk premium |
| NEL | national electricity law |
| NEM | national electricity market |
| NEO | national electricity objective |
| NER | national electricity rules |
| NSP | network service provider |
| opex | operating expenditure |
| PPI | partial performance indicators |
| PTRM | post-tax revenue model |
| RAB | regulatory asset base |
| RBA | Reserve Bank of Australia |
| repex | replacement expenditure |
| RFM | roll forward model |

| Shortened form | Extended form |
|----------------|---|
| RIN | regulatory information notice |
| RPP | revenue and pricing principles |
| SAIDI | system average interruption duration index |
| SAIFI | system average interruption frequency index |
| SLCAPM | Sharpe-Lintner capital asset pricing model |
| STPIS | service target performance incentive scheme |
| WACC | weighted average cost of capital |

17 Negotiated services framework and criteria

The NER requires us to make constituent decisions on:

- the negotiating framework that is to apply to Ausgrid (which may be as proposed by the distributor, some variant of it, or a framework substituted by us),¹ and
- a decision on the negotiated distribution service criteria (NDSC) for the distributor.²

While our final decision is not to classify any of Ausgrid's distribution services as negotiated distribution services, the NER require us to set out these matters irrespective of our classification decisions. Ausgrid submitted a negotiating framework as part of its regulatory proposal for our consideration.³

The NDSC set out criteria that a distributor must apply in negotiating terms and conditions including the prices for negotiated distribution services. They also contain the criteria that a commercial arbitrator must apply to resolve disputes about such terms and conditions and/or prices. This section sets out our final decision on Ausgrid's negotiating framework and NDSC.

17.1 Final decision

Negotiating framework

We approve Ausgrid's proposed negotiating framework as it meets the requirements of the NER.⁴ Therefore, our final decision is to accept the negotiating framework submitted by Ausgrid for the 2015–19 regulatory control period.⁵

Negotiated distribution service criteria

Our final decision is to retain the NDSC that we published for Ausgrid in June 2014⁶ for the 2015–19 regulatory control period. The NDSC give effect to the negotiated distribution service principles.⁷

17.2 Ausgrid's revised proposal

As we accepted Ausgrid's negotiating framework without amendment in our draft decision, Ausgrid stated that it has no further submissions on this issue.⁸

¹ NER, cl. 6.12.1(15)

² NER, cl. 6.12.1 (16).

³ Ausgrid, *Regulatory proposal*, May 2014, p. 102 and attachment 9.05.

⁴ NER, cl. 6.7.5.

⁵ NER, cl. 6.12.1(15).

⁶ AER, *Proposed Negotiated Distribution Service Criteria for Ausgrid – period commencing 1 July 2014*, June 2014.

⁷ NER, cl. 6.7.1.

⁸ Ausgrid, *Revised proposal*, January 2015, p. 215.

In its revised proposal, Ausgrid submitted the NDSC we proposed in June 2014, while based on the principles of clause 6.7.1 of the NER, adopted a mandatory language rather than a principles or criteria based approach. Ausgrid indicated we should explain the basis of our approach and why we had departed from the language of the principles and criteria in the NER. Ausgrid further submitted that in the absence of any basis for our approach, we should move away from mandatory language and revert to language which is more consistent with clause 6.7.1.⁹

17.3 AER's assessment approach

Negotiating framework

To be approved, a proposed negotiating framework must specify the obligations in clause 6.7.5(c) of the NER. We examined whether Ausgrid's proposed negotiating framework has done that.

Negotiated distribution services criteria

We consider NDSC that reflect the negotiated distribution service principles would satisfy the NER. Therefore we assessed whether our proposed NDSC reflect the negotiated distribution service principles in clause 6.7.1 of the NER.

17.4 Reasons for final decision

Negotiating framework

We approve Ausgrid's proposed negotiating framework because it specifies the minimum requirements of the NER.¹⁰ Those requirements include, among other things, a statement that a distributor will negotiate in good faith and a description for dealing with disputes.

Table 17.1 summarises our assessment of Ausgrid's proposed negotiating framework. It shows that each of the NER requirements for a negotiated framework is satisfactorily addressed.

⁹ Ausgrid, Revised proposal, January 2015, p. 215.

¹⁰ NER, cl. 6.7.5(c).

Table 17.1 AER's assessment of Ausgrid's proposed negotiating framework

| NER requirements | AER assessment of Ausgrid |
|--|------------------------------------|
| Requirement for a distributor and applicant ¹¹ to negotiate in good faith— cl. 6.7.5(c)(1) | Section 2 of Ausgrid's framework |
| Requirement for a distributor to provide all such commercial information reasonably required to enable the applicant of a negotiated distribution service to engage in effective negotiations— cl. 6.7.5(c)(2) | Section 5 of Ausgrid's framework |
| Requirement for a distributor to identify and inform the applicant of the reasonable costs of providing the negotiated service; demonstrate the charges reflect costs and have appropriate arrangements for assessment and review of the charges and the basis on which they are made— cl. 6.7.5(c)(3) | Section 5.1 of Ausgrid's framework |
| Requirement for the applicant to provide all such commercial information reasonably required for a distributor to engage in effective negotiation— cl. 6.7.5(c)(4) | Section 4 of Ausgrid's framework |
| 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— cl. 6.7.5(c)(5) | Section 3 of Ausgrid's framework |
| Requirement to specify a process for dispute resolution in accordance with the relevant provisions for dispute resolution— cl. 6.7.5(c)(6) | Section 9 of Ausgrid's framework |
| Requirements to specify arrangements for the payment of a distributor's reasonable direct expenses incurred in processing the application to provide the negotiated distribution service— cl. 6.7.5(c)(7) | Section 10 of Ausgrid's framework |
| 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) | Section 7.1 of Ausgrid's framework |
| Requirement for a distributor to notify and consult with any affected distribution network user and ensure that the provision of the negotiation distribution service does not result in noncompliance with obligations in relation to other network users under the NER— cl. 6.7.5(c)(9) | Section 7.2 of Ausgrid's framework |
| Requirement that the distributor publish the results of negotiations on its website – 6.7.5(c)(10) | Section 12 of Ausgrid's framework |

Source: AER analysis

We are also satisfied that Ausgrid's negotiating framework appropriately addresses its dual function assets.¹² We are therefore satisfied that Ausgrid's framework is consistent with the requirements of clause 6.7.5(d) of the NER.

A copy of Ausgrid's framework is at appendix A.

¹¹ An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, ch. 10.

¹² Ausgrid's dual function assets are the 66kV and 220kV part of its network that provide support to the high voltage transmission network.

Negotiated distribution services criteria

In June 2014, we published an invitation for submissions on our proposed NDSC for Ausgrid. We did not receive any submissions in response to our proposed NDSC. However, Ausgrid, in its revised proposal submitted that we did not explain the basis for our use of 'mandatory' language in the proposed NDSC.

We have considered Ausgrid's submission. While we have adopted mandatory language we are satisfied that the language used in our proposed NDSC gives effect to and is consistent with the negotiated distribution services principles in clause 6.7.1 of the NER.¹³ The NER do not require us to use language that entirely replicates the negotiating principles. Clause 6.7.2(a)(2) of the NER provides that a distributor must comply with the NDSC when negotiating terms and conditions of access to negotiated distribution services. Further, clause 6.7.4 provides that the determination specifying the NDSC forms part of the distribution determination for a distributor is to set out the criteria that are to be applied by the provider and the AER. Therefore, we consider that the use of mandatory language gives effect to how the principles are to be applied under the NER.

On that basis, the NDSC we have decided to apply to Ausgrid follows:

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.

¹³ NER, cl. 6.7.4(2)(b).

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 7 and 8, 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:
 - 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).

The above therefore constitutes our constituent decisions on the negotiating framework and NDSC to apply to Ausgrid for the 2015–19 regulatory control period.

A Ausgrid's negotiating framework



Attachment 9.05

Proposed Negotiating Framework - 1 July 2015 to 30 June 2019

May 2014



Proposed Negotiating Framework - 1 July 2015 to 30 June 2019

Introduction

Ausgrid must prepare a document (i.e., the *negotiating framework*) that sets out the procedures to be followed by Ausgrid and applicants who wish to be provided with negotiated distribution services.

Whilst the AER has not classified any distribution services as negotiated for the period 2014-2019, under the National Electricity Rules (NER), there is some scope for services provided by Ausgrid's transmission network to be treated as negotiated distribution services. These are explained further under "Background".

The minimum requirements for the framework are set out in the NER - Part D, clauses 6.7.5(c) and (d). These requirements are comprehensive and include:

- requirements around provision of information, including specific cost information;
- specified timeframes for negotiation (to be specified by Ausgrid in proposing its negotiating framework);
- disputes must be resolved on the basis of the dispute resolution process set out in the Law and the NER; and
- the framework must not be inconsistent with the requirements of NER 5.3, 5.4A and 5.5 and from 1 October 2014, rule 5.3A.

Background

The National Electricity Rules set out in Part D of Chapter 6 that:

- Ausgrid must prepare a document setting out the procedure to be followed during negotiations between it and any person who wishes to receive a Negotiated Distribution Service as to the terms and conditions of access for the provision of the service (Clause 6.7.5(a));
- the negotiating framework required by the Rules must comply with, and be consistent with, the applicable requirements of a distribution determination applying to the provider; and
- the negotiating framework must comply with and be consistent with the applicable requirements of Part D, clause 6.7.5(c) which sets out the minimum requirements for a negotiating framework.

This document has been prepared in fulfilment of Ausgrid's obligation under Clause 6.7.5(a) to establish a negotiating framework which is to be followed during negotiations between Ausgrid and any person (known as a Service Applicant) who wishes to receive a Negotiated Distribution Service from Ausgrid.

A Negotiated Distribution Service is any service that is provided by Ausgrid by means of, or in connection with, Ausgrid's dual function assets that would be a negotiated transmission service under Chapter 6A of the NER. The NER treats these services as Negotiated Distribution Services.

Dual function assets are any part of Ausgrid's network which operate between 66 kV and 220 kV and which operate in parallel, and provide support, to the higher voltage transmission network (i.e. Ausgrid's transmission assets).

Negotiated transmission services are defined in Chapter 10 of the NER:

1. shared transmission services that either:
 - a. exceed the network performance requirements (whether as to quality or quantity) (if any) that the shared transmission service is required to meet under any jurisdictional electricity legislation; or
 - b. except to the extent that the network performance requirements which that shared transmission service is required to meet are prescribed under an jurisdictional electricity legislation, exceeds or does not meet the network performance requirements (whether as to quality or quantity) as are set out in schedule 5.1a or 5.1 of the NER

This effectively refers to a service provided by Ausgrid's transmission assets at a higher or lower standard in terms of quality or reliability than would otherwise apply to that customer's service.;
2. connection services that are provided to serve a Transmission Network User, or a group of Transmission Network Users, at a single transmission network connection point, other than connection

services that are provided by one Network Service Provider to another Network Service Provider to connect their networks where neither provider is a Market Network Service Provider;
This effectively refers to a new connection to Ausgrid's transmission assets other than a connection by another network service provider.

3. use of system services provided to a Transmission Network User and referred to in rule 5.4A(f)(3) of the NER in relation to augmentations or extensions required to be undertaken on a transmission network as described in rule 5.4A of the NER.
This effectively refers to services relating to the charges imposed by Ausgrid in relation to Ausgrid augmenting or extending its network for a new connection to its transmission assets but does not include an above-standard system shared transmission service or a market network service.

Ausgrid's Negotiating Framework

1 Application of negotiating framework

1.1 This negotiating framework applies to Ausgrid and each Service Applicant who has made an application in writing to Ausgrid for the provision of a Negotiated Distribution Service.

1.2 Ausgrid and any Service Applicant who wishes to receive a Negotiated Distribution Service from Ausgrid must comply with the requirements of this negotiating framework.

1.3 The requirements set out in this negotiating framework are additional to any requirements or obligations contained in Clauses 5.3, 5.4A and 5.5, and Chapters 5, 6 and 6A of the National Electricity Rules (NER). In the event of any inconsistency between this negotiating framework and any other requirements in the NER, the requirements of the NER will prevail.

1.4 Nothing in this negotiating framework or in the NER will be taken as imposing an obligation on Ausgrid to provide any service to the Service Applicant.

2 Obligation to negotiate in good faith

2.1 Ausgrid and the Service Applicant must negotiate in good faith the terms and conditions of access for the provision by Ausgrid of the Negotiated Distribution Service sought by the Service Applicant.

3 Timeframe for commencing, progressing and finalising Negotiations

3.1 Clause 3.4 and Table 1 set out the timeframe for commencing, progressing and finalising negotiations in relation to applications for a Negotiated Distribution Service.

3.2 The timeframes set out in Table 1 will not apply where a timeframe is specified in Chapter 5 in relation to any application for negotiated distribution services, and in that case the time period specified in Chapter 5 will apply.

3.3 The timeframe set out in clause 3.4 may be suspended in accordance with clause 9.

3.4 Timeframes:

(a) The specified time for commencing, progressing and finalising negotiations with a Service Applicant is as set out in Table 1.

(b) Ausgrid and the Service Applicant shall use reasonable endeavours to adhere to the time periods specified in Table 1 and may by agreement extend any such time period.

(c) The preliminary program finalised under C in Table 1 may be modified from time to time by agreement of the parties, where such agreement must not be unreasonably withheld. Any such amendment to the preliminary program shall be taken to be a reasonable period of time for commencing, progressing and finalising negotiations with a Service Applicant for the provision of the Negotiated Distribution Service. The requirement in clause 3.4(b) applies to the last amended preliminary program.

Table 1

| | Event | Indicative timeframe |
|----|---|--|
| A. | Receipt of written application for a Negotiated Distribution Service. The application must be made by either: Completing an Application Form in accordance with Ausgrid publication: <i>ES 10 - Ausgrid Policies for Developments</i> (where the service requested relates to services provided under Ausgrid's Standard Form Customer Connection Contract) | X |
| B. | Parties meet to discuss a preliminary negotiation program with milestones that represent a reasonable period of time for commencing, progressing and finalising negotiations. This program must take into account, and be consistent with, any preliminary program agreed as part of the connection inquiry process. | X + 15 business Days |
| C. | Parties finalise negotiation programme, which may include, without limitation, milestones relating to: The provision of information by Ausgrid to meet the obligation in clause 5.1. The request and provision of commercial information by Ausgrid and the Service Applicant, see clauses 4 and 5; and Notification and consultation with any affected Distribution Network Users, see clause 7. The Negotiable Distribution Service being formally specified by the Service Applicant. The notification by Ausgrid of its reasonable direct expenses incurred in processing the application and the payment of those expenses by the service applicant, see clause 10. | X + 30 business days |
| D. | Parties progress negotiations and the Service Applicant specifies to Ausgrid the exact Negotiable Distribution Service which is required to be provided. | X + 40 business days |
| E. | Parties finalise negotiations | X + 60 business days or (where the reasonable direct expenses of Ausgrid have been requested but not paid by the service applicant) within 20 business days of those expenses being paid to Ausgrid. |

4 Provision of Commercial Information by Service Applicant

4.1 Ausgrid may give notice to the Service Applicant requesting Commercial Information held by the Service Applicant that is reasonably required by Ausgrid to enable it to engage in effective negotiations with the Service Applicant in relation to the application and to enable Ausgrid to submit Commercial Information to the Service Applicant.

4.2 Subject to clauses 4.3 and 4.4, the Service Applicant must use its reasonable endeavours to provide Ausgrid with the Commercial Information requested by Ausgrid in accordance with clause 4.1 within 10 Business Days of that request, or within a time period as agreed by the parties.

4.3 Confidentiality Requirements - Commercial Information. For the purposes of this clause 4, Commercial Information does not include:

- (a) confidential information provided to the Service Applicant by another person; or
- (b) information that the Service Applicant is prohibited, by law, from disclosing to Ausgrid.

4.4 Commercial Information may be provided by the Service Applicant subject to conditions including the condition that Ausgrid must not disclose the Commercial Information to any other person unless the Service Applicant consents in writing to the disclosure. The Service Applicant may require Ausgrid to enter into a confidentiality agreement, on terms reasonably acceptable to both parties, with the Service Applicant in respect of any Commercial Information provided to Ausgrid.

4.5 A consent provided by the Service Applicant in accordance with clause 4.5 may be subject to the condition that the person to whom Ausgrid discloses the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

5 Provision of Commercial Information by Ausgrid

5.1 Ausgrid must provide the following information to the Service Applicant in accordance with the negotiation programme prepared in accordance with clause 3.4:

- (a) the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the Negotiated Distribution Service to the Service Applicant;
- (b) a demonstration to the Service Applicant that the proposed charges for providing the Negotiated Distribution Service reflect those costs and/or the cost increment or decrement (as appropriate); and
- (c) Ausgrid's arrangements for the assessment and review of the charges and the basis upon which they are made.

5.2 The Service Applicant may give a notice to Ausgrid requesting that Ausgrid provide it with all Commercial Information held by Ausgrid that is reasonably required by the Service Applicant to enable it to engage in effective negotiations with Ausgrid for the provision of a Negotiated Distribution Service, including the following:

- (a) a description of the nature of the Negotiated Distribution Service including what Ausgrid would provide to the Service Applicant as part of that service;
- (b) the terms and conditions on which Ausgrid would provide the Negotiated Distribution Service to the Service Applicant if not previously provided in accordance with subclause 5.1(a);
- (c) the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the Negotiated Distribution Service to the Service Applicant if not previously provided in accordance with subclause 5.1(b);
- (d) a demonstration to the Service Applicant that the proposed charges for providing the Negotiated Distribution Service reflect those costs and/or the cost increment or decrement (as appropriate); and
- (e) Ausgrid's proposed arrangements for the assessment and review of the proposed charges for the Negotiated Distribution Service and the basis upon which those charges are made if not previously provided in accordance with subclause 5.1(c).

Confidentiality Requirements

5.3 For the purposes of clause 5.1, Commercial Information does not include:

- (a) confidential information provided to Ausgrid by another person; or
- (b) information that Ausgrid is prohibited, by law, from disclosing to the Service Applicant.

5.4 Ausgrid may provide the Commercial Information in accordance with clause 5.2 subject to relevant conditions including the condition that the Service Applicant must not disclose the Commercial Information to any other person unless Ausgrid consents in writing to the disclosure. Ausgrid may require the Service Applicant to enter into a confidentiality agreement with Ausgrid, on terms reasonably acceptable to both parties, in respect of Commercial Information provided to the Service Applicant.

5.5 A consent provided to a Service Applicant in accordance with clause 5.4 may be subject to the condition that the person to whom the Service Applicant discloses the Commercial Information must enter into a separate confidentiality agreement with Ausgrid.

6 Assessment and Review of Charges and Basis of Charges

6.1 Ausgrid's must have arrangements for the assessment and review of the proposed charges for the Negotiated Distribution Service and the basis upon which those charges are made.

6.2 Ausgrid must provide these arrangements to the Service Applicant in accordance with clause 5.1 or 5.2 as applicable.

7 Determination of impact on other Distribution Network Users and consultation with affected Distribution Network Users

7.1 Ausgrid must determine the potential impact on Distribution Network Users, other than the Service Applicant, of the provision of the Negotiated Distribution Service.

7.2 Ausgrid must notify and consult with any affected Distribution Network Users and ensure that the provision of the Negotiated Distribution Service does not result in non-compliance with obligations to other Distribution Network Users under the NEL.

8 Suspension of Timeframe for Provision of a Negotiated Distribution Service

8.1 The timeframes for negotiation of provision of a Negotiated Distribution Service in Table 1, or as otherwise agreed between the parties, are suspended if:

(a) a dispute in relation to the Negotiated Distribution Service has been notified to the AER under Part 10 of the NEL, from the date of notification of that dispute to the AER until

- (i) the withdrawal of the dispute under section 126 of the NEL;
- (i) the termination of the dispute by the AER under section 131 or 132 of the NEL; or
- (i) determination of the dispute by the AER under section 128 of the NEL;

(b) within 15 Business Days of Ausgrid requesting additional Commercial Information from the Service Applicant pursuant to clause 4, the Service Applicant has not supplied that Commercial Information;

(c) without limiting clauses 8.1(a) and (b), either of the parties does not promptly conform with any of its obligations as required by this negotiating framework or as otherwise agreed by the parties;

(d) Ausgrid has been required to notify and consult with any affected Distribution Network Users under clause 6, from the date of notification to the affected Distribution Network Users until the end of the time limit specified by Ausgrid for any affected Distribution Network Users, or the receipt of such information from the affected Distribution Network Users whichever is the later regarding the provision of the Negotiated Distribution Service.

(e) Each party will notify the other party if it considers that the timeframe has been suspended, within 5 business days of that suspension.

9 Dispute Resolution

9.1 All disputes between the parties as to the terms and conditions of access for the provision of a Negotiated Distribution Service are to be dealt with by the AER in accordance with Part 10 of the NEL.

10 Payment of Ausgrid's Reasonable Costs

10.1 Ausgrid may give the Service Applicant a notice setting out Ausgrid's reasonable direct expenses incurred in the processing of the Service Applicant's application.

10.2 The service applicant must, within 20 days of a notice being given in accordance with this clause 9 pay to Ausgrid the amount set out in the Notice.

11 Termination of Negotiations

11.1 The Service Applicant may elect not to continue with its application for a Negotiated Distribution Service and may terminate the negotiations by giving Ausgrid written notice of its decision to do so.

11.2 Ausgrid may terminate a negotiation under this framework by giving the Service Applicant written notice of its decision to do so where:

(a) Ausgrid believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;

(b) the Service Applicant consistently fails to comply with the requirements of the negotiating framework;

(c) the Service Applicant fails to comply with an obligation in this negotiating framework to undertake or complete an action within a specified or agreed timeframe, and does not complete the relevant action within 20 Business Days of a written request from Ausgrid;

(d) An act of Solvency Default occurs in relation to the Service Applicant.

12 Publication of Results of Negotiations on Website

12.1 Ausgrid will publish the outcomes of negotiations for Negotiated Distribution Services on its website.

13 Giving notices

13.1 A notice, consent, information, application or request that must or may be given or made to a party under this document is only given or made if it is in writing and delivered or posted to that party at its address set out below.

13.2 If a party gives the other party 3 Business Days' notice of a change of its address, a notice, consent, information, application or request is only given or made by that other party if it is delivered or posted to the latest address.

Ausgrid

Name: Ausgrid
Address: GPO Box 4009, Sydney, NSW 2001
Attention: Network Connections

Service Applicant Name

Name: Service Applicant
Address: The nominated address of the Service Applicant provided in writing to Ausgrid as part of the application

Time notice is given

13.3 A notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address; or
 - (b) if it is sent by post, 2 Business Days after it is posted.
 - (c) If sent by facsimile transmission, on the day the transmission is sent (but only if the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission) .
- 13.4 If a notice, consent, information, application or request is delivered after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

14 Miscellaneous

Governing law and jurisdiction

14.1 This document is governed by the law of the State of New South Wales.

14.2 The parties submit to the non-exclusive jurisdiction of the courts of the state of New South Wales.

14.3 The parties will not object to the exercise of judgment by the courts of the State of New South Wales on any basis.

Severability

14.4 If a clause or part of a clause of this negotiating framework can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

14.5 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this negotiating framework, but the rest of this negotiating framework is not affected.

Time for Action

14.6 If the day on or by which something is required to be done or may be done is not a Business Day, that thing must be done on or by the next Business Day.

15 Definitions and interpretation

15.1 Definitions

In this document the following definitions apply:

Ausgrid means Ausgrid ABN 67505337385

Business Day means a day on which all banks are open for business generally in Sydney, NSW.

Commercial Information shall include at a minimum, the following classes of information:

In relation to a Service Applicant, details of corporate structure, financial details relevant to creditworthiness and commercial risk and ownership of assets; technical information relevant to the application for a Negotiated Distribution Service; financial information relevant to the application for a Negotiated Distribution Service; details of an application's compliance with any law, standard, NER or guideline.

Costs means any costs or expenses incurred by Ausgrid in complying with this negotiating framework or otherwise advancing the Service Applicant's request for the provision of a Negotiated Distribution Service or such other costs or expenses consistent with the NER, Ausgrid's Cost Allocation Methodology or any relevant part of a distribution determination applying to Ausgrid.

Solvency Default means the occurrence of any of the following events in relation to the Service Applicant:

- (a) An originating process or application for the winding up of the Service Applicant (other than a frivolous or vexatious application) is filed in a court or a special resolution is passed to wind up the Service Applicant, and is not dismissed before the expiration of 80 days from service on the Service Applicant;
- (b) A receiver, receiver and manager or administrator is appointed in respect of all or any part of the assets of the Service Applicant, or a provisional liquidator is appointed to the Service Applicant;
- (c) A mortgagee, chargee or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the Service Applicant;
- (d) A mortgage, charge or other security is enforced by its holder or becomes enforceable or can become enforceable with the giving of notice, lapse of time or fulfilment of a condition;
- (e) The Service Applicant stops payment of, or admits in writing its inability to pay, its debts as they fall due;
- (f) The Service Applicant applies for, consents to, or acquiesces in the appointment of a trustee or receiver of the Service Applicant or any of its property;
- (g) A court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of the Service Applicant's property;
- (h) The Service Applicant takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act 2001), in respect of the Service Applicant;
- (i) A controller (as defined in the Corporations Act 2001) is appointed in respect of any part of the property of the Service Applicant;
- (j) Except to reconstruct or amalgamate while solvent, the Service Applicant enters into or resolves to enter into a scheme of arrangement, compromise or reconstruction proposed with its creditors (or any class of them) or with its members (or any class of them) or proposes re-organisation, re-arrangement moratorium or other administration of the Service Applicant's affairs;
- (k) The Service Applicant is the subject of an event described in section 459C(2)(b) of the Corporations Act 2001; or
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the Service Applicant.

15.2 Interpretation

In this document, unless the context otherwise requires:

- (a) terms defined in the NEL and the NER have the same meaning in this negotiating framework;
- (b) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (c) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (d) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;
- (e) an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- (f) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (g) if a day on or by which an obligation must be performed is not a Business Day, the obligation must be performed on or by the next Business Day.