



# **Evoenergy Distribution Determination 2019 to 2024**

April 2019

Attachment A  
Negotiating Framework

# Negotiating framework



# Table of contents

List of tables	iv
1. Background	1
2. Application of negotiating framework	1
3. Obligation to negotiate in good faith	2
4. Timeframe for commencing, progressing and finalising negotiations	2
5. Provision of initial Commercial Information by Service Applicant	3
Obligation to provide Initial Commercial Information	3
Confidentiality Requirements – Commercial Information	3
6. Provision of additional Commercial Information by the Service Applicant	4
Obligation to provide additional Commercial Information	4
Confidentiality requirements	5
7. Provision of Commercial Information by Evoenergy	5
Obligation to provide Commercial Information	5
Confidentiality requirements	6
8. Arrangement for assessment and review of charges	6
9. Determination of impact on other Distribution Network Users and consultation with affected Distribution Network Users	6
10. Suspension of timeframe for provision of the Negotiated Distribution Service	7
11. Dispute Resolution	7
12. Payment of Evoenergy's reasonable Expenses	8
13. Termination of Negotiations	8
14. Giving notices	8
Time notice is given	9
15. Publication of Results of Negotiations on Website	9
16. Definitions and interpretation	9
Definitions	9
Interpretation	12

# List of tables

Table 4.1: Timeframes

2

## 1. Background

- 1.1 The National Electricity Rules ("NER") provide that:
  - 1.1.1 a Distribution Network Service Provider must prepare a document (the "negotiating framework") setting out the procedure to be followed during negotiations between it and any person (the "Service Applicant") who wishes to be provided with a Negotiated Distribution Service as to the terms and conditions of access for the provision of the service (Clause 6.7.5(a) of the NER);
  - 1.1.2 the negotiating framework must comply with and be consistent with the applicable requirements of a distribution determination applying to the Distribution Network Service Provider (Clause 6.7.5(b)(1) of the NER); and
  - 1.1.3 the negotiating framework must comply with and be consistent with clause 6.7.5(c) of the NER, which sets out the minimum requirements for a negotiating framework (Clause 6.7.5(b)(2) of the NER).
- 1.2 This document has been prepared to satisfy Evoenergy's obligation under clause 6.7.5(a) of the NER to establish a negotiating framework.
- 1.3 This document applies to Evoenergy and any Service Applicant who wishes to receive a Negotiated Distribution Service from Evoenergy.
- 1.4 As at 1 July 2019, a Negotiated Distribution Service is a service provided by Evoenergy that has been classified as such by the AER in accordance with clauses 6.2.1 and 6.12.1(1) of the NER.

## 2. Application of negotiating framework

- 2.1 This negotiating framework applies to Evoenergy and each Service Applicant who has made an application in writing to Evoenergy for the provision of a Negotiated Distribution Service.
- 2.2 Evoenergy and any Service Applicant who wishes to receive a Negotiated Distribution Service from Evoenergy must comply with the requirements of this negotiating framework in accordance with its terms.
- 2.3 The requirements set out in this negotiating framework are additional to, and must not be inconsistent with, any of the requirements or obligations of clauses 5.3, 5.3A, 5.4A and 5.5 of the NER and any other relevant provisions in Chapters 6 and 6A. In the event of any inconsistency between this negotiating framework and those requirements of the NER, those requirements of the NER will prevail.
- 2.4 Nothing in this negotiating framework or in the NER will be taken as imposing an obligation on Evoenergy to provide any service to a Service Applicant or an applicant. Evoenergy has the sole discretion to determine if it will provide the *negotiated distribution service* to the *Service Applicant* at the conclusion of the negotiation process.

- 2.5 The *Service Applicant* acknowledges that Evoenergy is not liable for any loss or costs incurred or suffered by the *Service Applicant* as a result of Evoenergy not providing the *negotiated distribution service* at the conclusion of any negotiation process for such service.

### 3. Obligation to negotiate in good faith

- 3.1 Evoenergy and the Service Applicant must negotiate in good faith the terms and conditions of access to a Negotiated Distribution Service.

### 4. Timeframe for commencing, progressing and finalising negotiations

- 4.1 Clause 4.4 sets out the timeframe for commencing, progressing and finalising negotiations with the Service Applicant for the provision of the Negotiated Distribution Service.
- 4.2 The timeframe set out in clause 4.4 may be suspended in accordance with clause 10.
- 4.3 Evoenergy and the Service Applicant shall use reasonable endeavours to adhere to the time periods specified in clause 4.4 during the negotiation for the provision of the Negotiated Distribution Service.
- 4.4 Timeframes:
- 4.4.1 The specified times for commencing, progressing and finalising negotiations with a Service Applicant are as set out in Table 4.1.
- 4.4.2 The preliminary program finalised under C in Table 4.1 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 4.3 applies to the last amended preliminary program.

**Table 4.1: Timeframes**

	Event	Timeframe
A.	Receipt of written application for a Negotiated Distribution Service	X
B.	Parties meet to discuss a preliminary program with milestones for the supply of the Negotiated Distribution Service that represents a reasonable period of time for commencing, progressing and finalizing negotiations	X + 20 business days
C.	Parties finalise preliminary program, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> <li>the request and provision of commercial information; and</li> <li>notification and consultation with any affected Distribution Network Users.</li> </ul>	X + 50 business days
D.	Evoenergy provides Service Applicant with an offer for the Negotiated Distribution Service	X + 65 business days
E.	Parties finalise negotiations	X + 85 business days

- 4.5 Subject to clause 4.3, Evoenergy and the Service Applicant must, following a request by the Service Applicant, use their reasonable endeavours to:
  - 4.5.1 hold a meeting within 20 Business Days of receipt of the application by the Service Applicant, or such other period as agreed by the parties, in order to agree a timetable for the conduct of negotiations and to commence discussion regarding other relevant issues;
  - 4.5.2 progress the negotiations for the provision of the Negotiated Distribution Service by Evoenergy such that the negotiations may be finalised in accordance with the timetable agreed under 4.5.1;
  - 4.5.3 adhere to any timetable established for the negotiation and to progress the negotiation in an expeditious manner; and
  - 4.5.4 finalise the negotiations for the provision of the Negotiated Distribution Service by Evoenergy within the time period agreed by the parties.
- 4.6 Notwithstanding clause 4.1 or any other provision of this negotiating framework, the timeframes set out in clause 4.4:
  - 4.6.1 do not commence until payment of the amount to Evoenergy pursuant to clause 12; and
  - 4.6.2 recommence if there is a material change in the nature of the Negotiated Distribution Service sought by the Service Applicant, unless Evoenergy agrees otherwise.

## **5. Provision of initial Commercial Information by Service Applicant**

### **Obligation to provide Initial Commercial Information**

- 5.1 Within a time agreed by the parties Evoenergy must use its reasonable endeavours to give notice to the Service Applicant requesting Commercial Information held by the Service Applicant that is reasonably required by Evoenergy to enable it to engage in effective negotiations with the Service Applicant for the provision of the Negotiated Distribution Service and to enable Evoenergy to submit Commercial Information to the Service Applicant.
- 5.2 Subject to clauses 5.3 and 5.4, the Service Applicant must use its reasonable endeavours to provide Evoenergy with the Commercial Information requested by Evoenergy in accordance with clause 5.1 within 10 Business Days of that request, or within a time period as agreed by the parties.
- 5.3 Notwithstanding clause 5.1, the obligation under clause 5.1 is suspended as at the date of notification of a dispute if a dispute under this negotiating framework arises until conclusion of the dispute in accordance with clause 10.

### **Confidentiality Requirements – Commercial Information**

- 5.4 For the purposes of this clause 5, Commercial Information does not include:
  - 5.4.1 Confidential Information provided to the Service Applicant by another person; or



- 5.4.2 information that the Service Applicant is prohibited, by law, from disclosing to Evoenergy.
- 5.5 Commercial Information may be provided by the Service Applicant subject to a condition that Evoenergy must not provide any part of that Commercial Information to any other person without the prior written consent of the Service Applicant.
- 5.6 The Service Applicant may require Evoenergy 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 Evoenergy.
- 5.7 A consent provided by the Service Applicant in accordance with clause 5.5 may be subject to the condition that the person to whom Evoenergy provides the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

## **6. Provision of additional Commercial Information by the Service Applicant**

### **Obligation to provide additional Commercial Information**

- 6.1 Evoenergy may give a notice to the Service Applicant requesting the Service Applicant to provide Evoenergy with any additional Commercial Information that is reasonably required by Evoenergy to enable it to engage in effective negotiations with the Service Applicant in relation to the provision of the Negotiated Distribution Service or to clarify any Commercial Information provided pursuant to clause 5.
- 6.2 The Service Applicant must use its reasonable endeavours to provide Evoenergy with the Commercial Information requested by Evoenergy in accordance with clause 6.1 within 10 Business Days of the date of the request under clause 6.1, or such other period as agreed by the parties.
- 6.3 The provision of additional Commercial Information by the *Service Applicant* pursuant to paragraph 7.2 is subject to the provisions in paragraphs 6.4 and 6.5 below.
- 6.4 The *Service Applicant* must use its reasonable endeavours to provide the following information to Evoenergy within 10 Business Days of the written request (Step C of Table 1 in paragraph 4.4) being submitted to Evoenergy, regardless of whether it is requested by Evoenergy under paragraphs 5.1 and 6.1:
  - 6.4.1 technical information such as life cycle analysis, maintenance requirements, performance criteria, electrical specifications, or any other information relevant to the application for a *negotiated distribution service*;
  - 6.4.2 financial information such as technology costs, maintenance costs, or any other information relevant to the application for a *negotiated distribution service*;
  - 6.4.3 details of the compliance of the *Service Applicant's* application with any law, the Rules, or applicable guidelines; and

- 6.4.4 details of the compliance of the *Service Applicant's* application with AS/NZ 3000:2007, or AS1158, AS61000 series or any other applicable standard.

### **Confidentiality requirements**

- 6.5 For the purposes of this clause 6, Commercial Information does not include:
- 6.5.1 Confidential Information provided to the Service Applicant by another person; or
- 6.5.2 information that the Service Applicant is prohibited, by law, from disclosing to Evoenergy; and
- 6.6 Commercial Information may be provided by the Service Applicant subject to a condition that Evoenergy must not provide any part of that the Commercial Information to any other person without the prior written consent of the Service Applicant consents in writing to the disclosure.
- 6.7 The Service Applicant may require Evoenergy 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 Evoenergy.
- 6.8 A consent provided by the Service Applicant in accordance with clause 6.4 may be subject to the condition that the person to whom Evoenergy provides the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

## **7. Provision of Commercial Information by Evoenergy**

### **Obligation to provide Commercial Information**

- 7.1 Evoenergy shall provide the Service Applicant with all Commercial Information held by Evoenergy that is reasonably required by a Service Applicant to enable it to engage in effective negotiations with Evoenergy for the provision of the Negotiated Distribution Service within a timeframe agreed by the parties, including the following information:
- 7.1.1 a description of the nature of the Negotiated Distribution Service including what Evoenergy would provide to the Service Applicant as part of that service;
- 7.1.2 the terms and conditions on which Evoenergy would provide the Negotiated Distribution Service to the Service Applicant;
- 7.1.3 the reasonable Costs and/or the increase or decrease in Costs (as appropriate) of providing the Negotiated Distribution Service to the Service Applicant which demonstrate to the Service Applicant that the charges for providing the Negotiated Distribution Service reflect those Costs and/or the Cost increment or decrement (as appropriate).
- 7.2 Evoenergy reserves the right to withhold information requested by the *Service Applicant* pursuant to paragraph 7.1 if such information is legally privileged.

- 7.3 For the purpose of paragraph 7.1.3, Evoenergy must have appropriate arrangements in place for the assessment and review of the charges and the basis on which they are made.

### **Confidentiality requirements**

- 7.4 For the purposes of clause 7.1, Commercial Information does not include:
- 7.4.1 Confidential Information provided to Evoenergy by another person; or
- 7.4.2 information that Evoenergy is prohibited, by law, from disclosing to the Service Applicant.
- 7.5 For the purposes of clause 7.1, Commercial Information does not include:
- 7.5.1 Confidential Information provided to Evoenergy by another person; or
- 7.5.2 information that Evoenergy is prohibited, by law, from disclosing to the Service Applicant.
- 7.6 Commercial Information may be provided by Evoenergy subject to a condition that the Service Applicant must not provide any part of that Commercial Information to any other person without the prior written consent of Evoenergy.
- 7.7 Evoenergy may require the Service Applicant to enter into a confidentiality agreement with Evoenergy, on terms reasonably acceptable to both parties, in respect of Commercial Information provided to the Service Applicant.
- 7.8 A consent provided by a Service Applicant in accordance with clause 7.3 may be subject to the condition that the person to whom the Service Applicant provides the Commercial Information must enter into a separate confidentiality agreement with Evoenergy.

## **8. Arrangement for assessment and review of charges**

- 8.1 Evoenergy will assess and review the basis for its charges to the Service Applicant for the Negotiated Distribution Service, following an application by the Service Applicant for such a review.
- 8.2 Where the Service Applicant submits an application for review, the Service Applicant must provide the reason why it considers such a review to be appropriate, plus the supporting information required in order for Evoenergy to be able to assess the application.

## **9. Determination of impact on other Distribution Network Users and consultation with affected Distribution Network Users**

- 9.1 Evoenergy must determine the potential impact on Distribution Network Users, other than the Service Applicant, of the provision of the Negotiated Distribution Service.
- 9.2 Evoenergy 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 in relation to other Distribution Network Users under the NER.

- 9.3 If Evoenergy is required to consult the affected Distribution Network Users pursuant to paragraph 9.2, the timeframes provided for in paragraph 4 shall be suspended until the information required to assess the impact is received from the affected Distribution Network User.

## **10. Suspension of timeframe for provision of the Negotiated Distribution Service**

- 10.1 The timeframes for negotiation of provision of the Negotiated Distribution Service as contained within this negotiating framework, or as otherwise agreed between the parties, are suspended if:
- 10.1.1 within 15 Business Days of Evoenergy providing the Commercial Information to the Service Applicant pursuant to clause 7.1, the Service Applicant does not formally accept that Commercial Information and the parties have agreed a date for the undertaking and conclusion of commercial negotiations;
  - 10.1.2 a dispute in relation to the Negotiated Distribution Service has been notified to the AER under Part L of Chapter 6, from the date of notification of that dispute to the AER until:
    - 10.1.2.1 the withdrawal of the dispute;
    - 10.1.2.2 the termination of the dispute by the AER in accordance with clause 6.22.3 of the NER; or
    - 10.1.2.3 determination of the dispute by the AER under clause 6.22.2;
  - 10.1.3 within 10 Business Days of Evoenergy requesting additional Commercial Information from the Service Applicant pursuant to clause 6, the Service Applicant has not supplied that Commercial Information;
  - 10.1.4 without limiting clauses 10.1.1 to 10.1.3, 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;
  - 10.1.5 Evoenergy has been required to notify and consult with any affected Distribution Network Users under clause 9.2, from the date of notification to the affected Distribution Network Users until the end of the time limit specified by Evoenergy 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.

## **11. Dispute Resolution**

- 11.1 All disputes between the parties as to the terms and conditions of access for the provision of the Negotiated Distribution Service are to be dealt with in accordance with Part 10 of the *NEL* and Part L of Chapter 6 of the NER.

## 12. Payment of Evoenergy's reasonable Expenses

- 12.1 Prior to commencing negotiations, the Service Applicant shall pay an application fee to Evoenergy.
- 12.2 The application fee lodged pursuant to clause 12.1 will be deducted from the reasonable Expenses incurred in processing the Service Applicant's application to Evoenergy for the provision of the Negotiated Distribution Service.
- 12.3 From time to time, Evoenergy may give the Relevant Service Applicant a notice setting out the reasonable Expenses incurred by Evoenergy under clause 12.2 and the off-set of any amount applicable under clause 12.1.
- 12.4 If the aggregate of the Expenses referred to in clause 12.2 exceeds the amount paid by the Service Applicant pursuant to clause 12.1, the Service Applicant must, within 20 Business Days of the receipt of a notice in accordance with clause 12.3, pay Evoenergy the amount stated in the notice.
- 12.5 Evoenergy may require the Service Applicant to enter into a binding agreement addressing conditions, guarantees and other matters in relation to the payment of any Expenses incurred in excess of the application fee.

## 13. Termination of Negotiations

- 13.1 The Service Applicant may elect not to continue with its application for the Negotiated Distribution Service and may terminate the negotiations by giving Evoenergy written notice of its decision to do so.
- 13.2 Evoenergy may terminate a negotiation under this framework by giving the Service Applicant written notice of its decision to do so where:
  - 13.2.1 Evoenergy believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;
  - 13.2.2 the Service Applicant consistently fails to comply with the requirements of the negotiating framework;
  - 13.2.3 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 Evoenergy;
  - 13.2.4 Evoenergy has reasonable grounds to believe that the *Service Applicant* will not acquire any *negotiated distribution service*;
  - 13.2.5 An act of Solvency Default occurs in relation to the Service Applicant.

## 14. Giving notices

- 14.1 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. 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.

<b>Evoenergy</b>	
Name	Evoenergy
Address	40 Bunda St, Canberra ACT, 2600
<b>Service Applicant</b>	
Name:	Service Applicant
Address:	The nominated address of the Service Applicant provided in writing to Evoenergy as part of the application

### Time notice is given

- 14.2 A notice, consent, information, application or request is to be treated as given or made at the following time:
- 14.2.1 if it is delivered, when it is left at the relevant address; or
  - 14.2.2 if it is sent by post, 2 Business Days after it is posted.
  - 14.2.3 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).
  - 14.2.4 if sent by email once acknowledged as received by the addressee.
- 14.3 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.

## 15. Publication of Results of Negotiations on Website

- 15.1 Evoenergy will publish the outcomes of negotiations for Negotiated Distribution Services on its website.

## 16. Definitions and interpretation

### Definitions

- 16.1 In this document the following definitions apply:

**Evoenergy** means ActewAGL Distribution Pty Limited, ABN 76 670 568 688.

**AEMO** means Australian Energy Market Operator

**AER** means the Australian Energy Regulator, as defined by the Rules.

**Business Day** means a day that is not:

- a) A Saturday or Sunday; or
- b) Observed as a public holiday on the same day in the Australian Capital Territory.

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

details of corporate structure;

financial details relevant to creditworthiness and commercial risk;

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.

**Confidential Information** means information held by either party that is, by its nature confidential, is marked confidential or the receiving party knows or ought to know is confidential, and specifically includes:

- information relating to or about the business affairs and operations of Evoenergy;
- Commercial Information provided by Evoenergy to Service Applicant pursuant to paragraph 8;
- information provided to Evoenergy by the Service Applicant pursuant to paragraph 6 and 7; and
- trade secrets, information, ideas, concepts, know-how, technology, processes and knowledge and the like provided, to or obtained by, a party by the other party (including but not limited to in relation to a party, all information reports, accounts or data in relation to that party's business affairs, finances, properties and methods of operations, regardless of the form in which it is recorded or communicated).

**Costs** means any costs or expenses incurred by Evoenergy in complying with this negotiating framework or otherwise advancing the *Service Applicant's* request for the provision of a *negotiated distribution service*.

**Distribution Network User** means a *Distribution Customer* or an *Embedded Generator* as defined by the *Rules*.

**Expenses** means any direct expenses incurred by Evoenergy in processing a Service Applicant's application to provide the Negotiated Distribution Service.



**Negotiated Distribution Service** means a distribution service that is not a standard control service and that is specified as that service by the *Rules* or the *AER*

**NEL** means the *National Electricity (NSW) Law*.

**Rules** mean the *National Electricity Rules* made under Part 7 of the NEL as amended from time to time in accordance with that Part 7.

**Service Applicant** means a person who asks Evoenergy for access to a distribution service, as defined by the *Rules*.

**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 60 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.

**terms and conditions of access** means the terms and conditions described in clause 6.1.3 of the Rules, as defined by the Rules.

## Interpretation

- 16.2 In this document, unless the context otherwise requires:
- 16.2.1 terms defined in the NER have the same meaning in this negotiating framework;
  - 16.2.2 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;
  - 16.2.3 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
  - 16.2.4 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;
  - 16.2.5 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency; and
  - 16.2.6 a covenant or agreement on the part of two or more persons binds them jointly and severally.