

FINAL DECISION

Energex determination 2015−16 to 2019−20

Attachment 17 − Negotiated services framework and criteria

October 2015

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Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Tel: (03) 9290 1444  
Fax: (03) 9290 1457

Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

1. Note
2. This attachment forms part of the AER's final decision on Energex's 2015–20 distribution determination. It should be read with all other parts of the final decision.
3. The final decision includes the following documents:
4. Overview
5. Attachment 1 – Annual revenue requirement
6. Attachment 2 – Regulatory asset base
7. Attachment 3 – Rate of return
8. Attachment 4 – Value of imputation credits
9. Attachment 5 – Regulatory depreciation
10. Attachment 6 – Capital expenditure
11. Attachment 7 – Operating expenditure
12. Attachment 8 – Corporate income tax
13. Attachment 9 – Efficiency benefit sharing scheme
14. Attachment 10 – Capital expenditure sharing scheme
15. Attachment 11 – Service target performance incentive scheme
16. Attachment 12 – Demand management incentive scheme
17. Attachment 13 – Classification of services
18. Attachment 14 – Control mechanism
19. Attachment 15 – Pass through events
20. Attachment 16 – Alternative control services
21. Attachment 17 – Negotiated services framework and criteria
22. Attachment 18 – Connection policy
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1. Shortened forms

| Shortened form | Extended form |
| --- | --- |
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| AMI | Advanced metering infrastructure |
| 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 |
| 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 |

# Negotiated services framework and criteria

1. The NER requires us to make constituent decisions on:

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

1. While our final decision is not to classify any distribution services as negotiated distribution services, the NER require us to set out these matters irrespective of our classification decisions. Energex submitted a negotiating framework as part of its regulatory proposal for our consideration.[[3]](#footnote-3)
2. 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 Energex's negotiating framework and NDSC.

## Final decision

1. Negotiating framework

We approve Energex's proposed negotiating framework as it meets the requirements of the NER.[[4]](#footnote-4) Therefore, our final decision is to accept the negotiating framework submitted by Energex for the 2015–20 regulatory control period.[[5]](#footnote-5)

1. Negotiated distribution service criteria

Our final decision is to retain the NDSC that we published for Energex in November 2014[[6]](#footnote-6) for the 2015–20 regulatory control period. The NDSC give effect to the negotiated distribution service principles.[[7]](#footnote-7)

## Energex's revised proposal

Energex's revised regulatory proposal did not discuss the negotiating framework or NDSC. On that basis, we can only assume that Energex accepted our preliminary decisions on these matters.

## AER’s assessment approach

1. 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 Energex's proposed negotiating framework has done that.

1. 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.

## Reasons for final decision

1. Negotiating framework
2. We approve Energex's proposed negotiating framework because it specifies the minimum requirements of the NER.[[8]](#footnote-8) Those requirements include, among other things, a statement that a distributor will negotiate in good faith and a process for dealing with disputes.
3. Table 17.1 summarises our assessment of Energex's proposed negotiating framework. It shows that each of the NER requirements for a negotiated framework is satisfactorily addressed.

Table 17. AER's assessment of Energex's proposed negotiating framework

|  |  |
| --- | --- |
| 1. NER requirements | 1. AER assessment of Energex |
| Requirement for a distributor and applicant[[9]](#footnote-9) to negotiate in good faith— cl. 6.7.5(c)(1) | Section 2.2 of Energex’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 2.6 of Energex’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) | Sections 2.6, 2.11 and 2.12 of Energex’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 2.5 of Energex’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 2.3 of Energex’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 2.10 of Energex’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) | Sections 2.6 and 2.11 of Energex’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 2.8 of Energex’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 2.8 of Energex’s framework |
| Requirement that the distributor publish the results of negotiations on its website − cl. 6.7.5(c)(10) | Section 2.14 of Energex’s framework |

Source: AER analysis.

1. A copy of Energex's framework is at appendix A.
2. Negotiated distribution services criteria
3. In November 2014, we published an invitation for submissions on our proposed NDSC for Energex. We did not receive any submissions in response to our proposed NDSC. The NDSC we have decided to apply to Energex follow:
4. 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

* 1. 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.
  2. 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.
  3. 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

* 1. 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.
  2. 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.
  3. If a negotiated distribution service is a shared distribution service that:
     + 1. exceeds any network performance requirements which it is required to meet under any relevant electricity legislation: or
       2. 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).

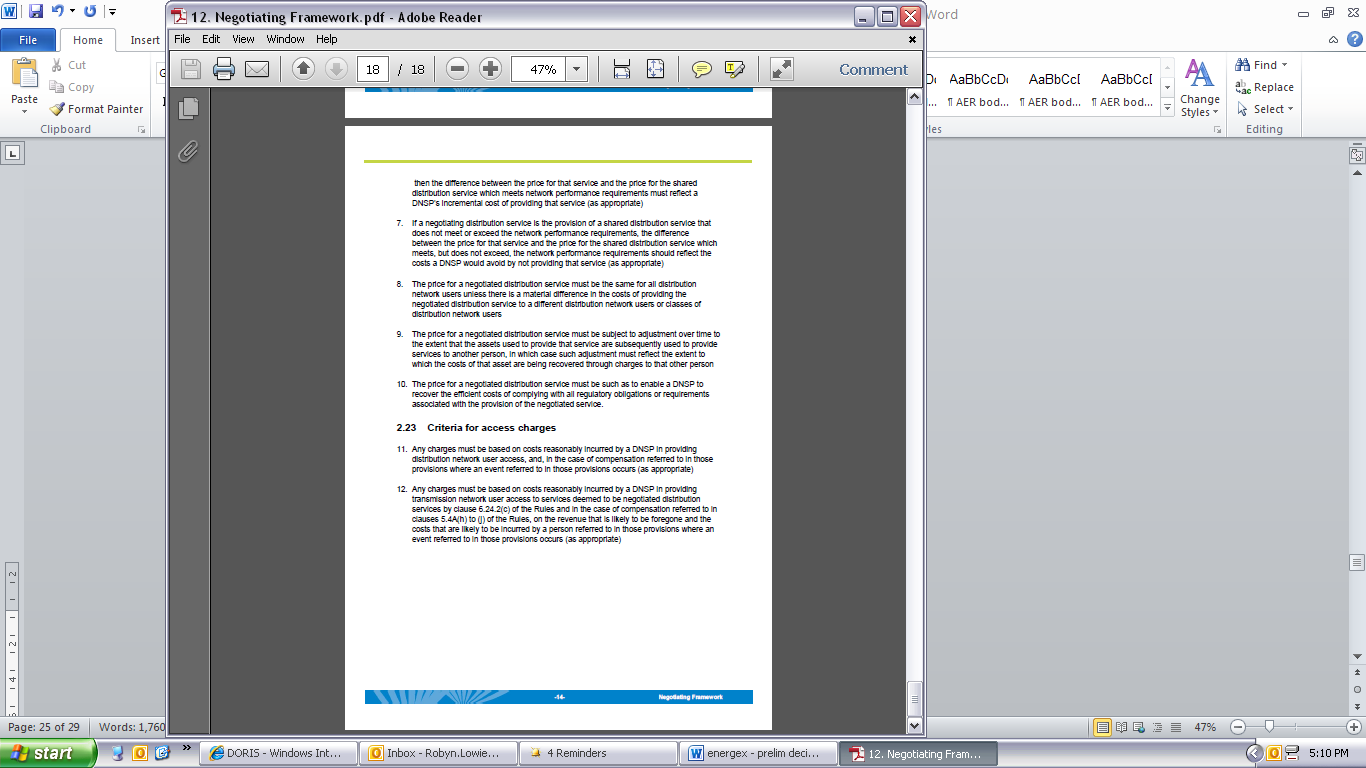
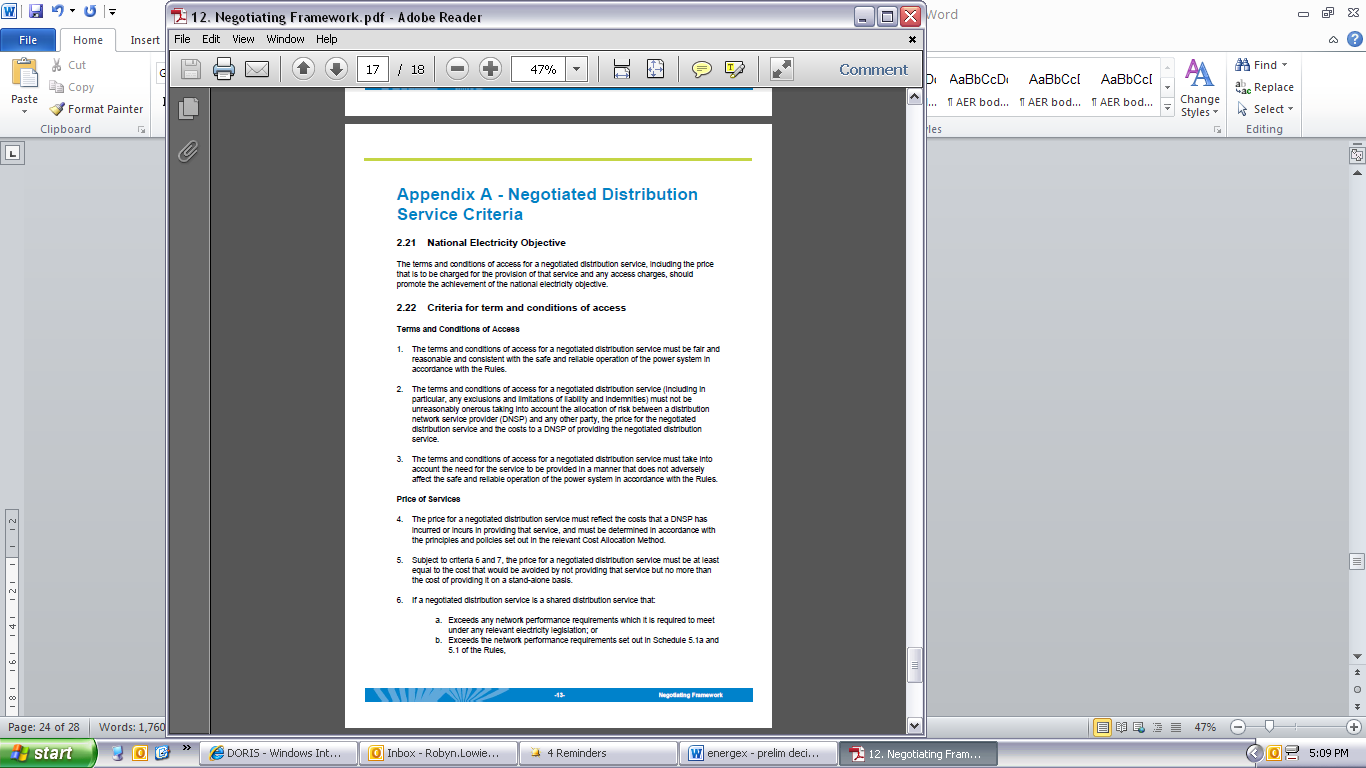
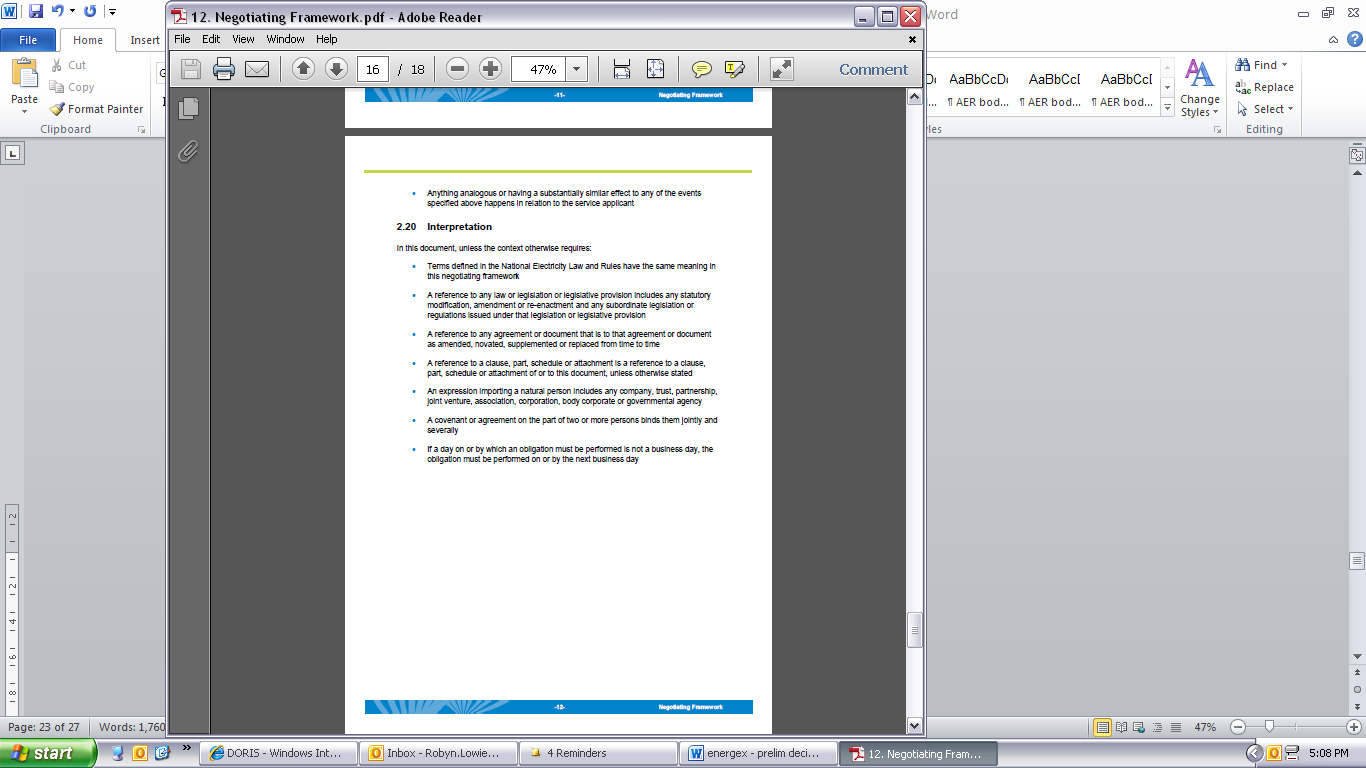
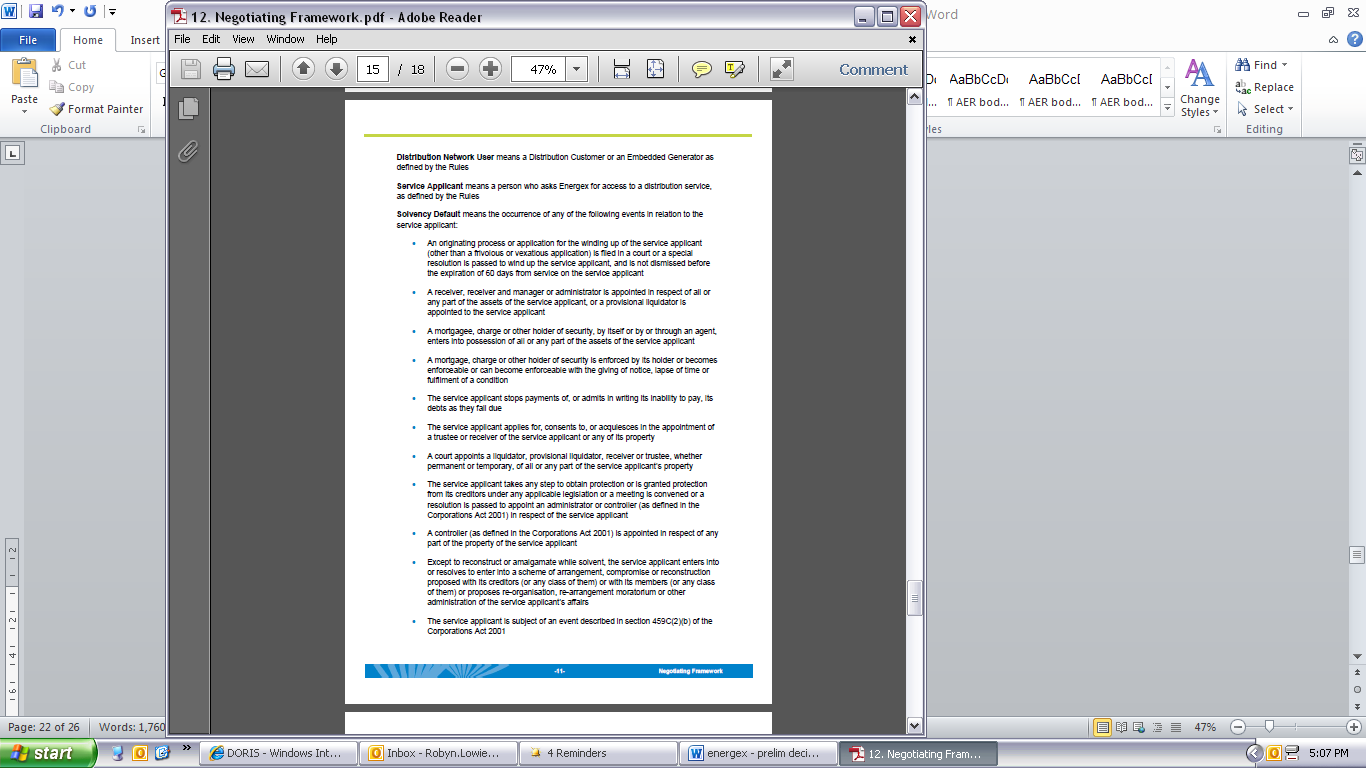
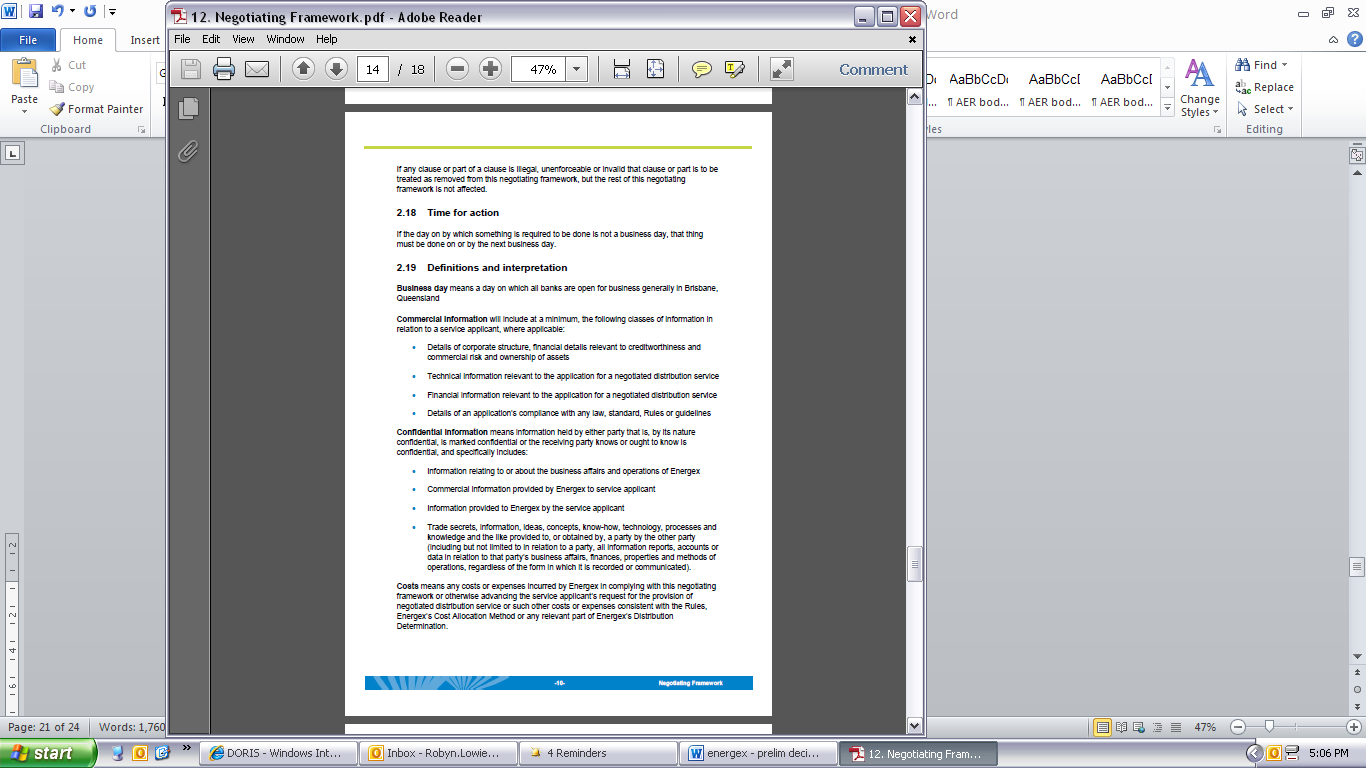
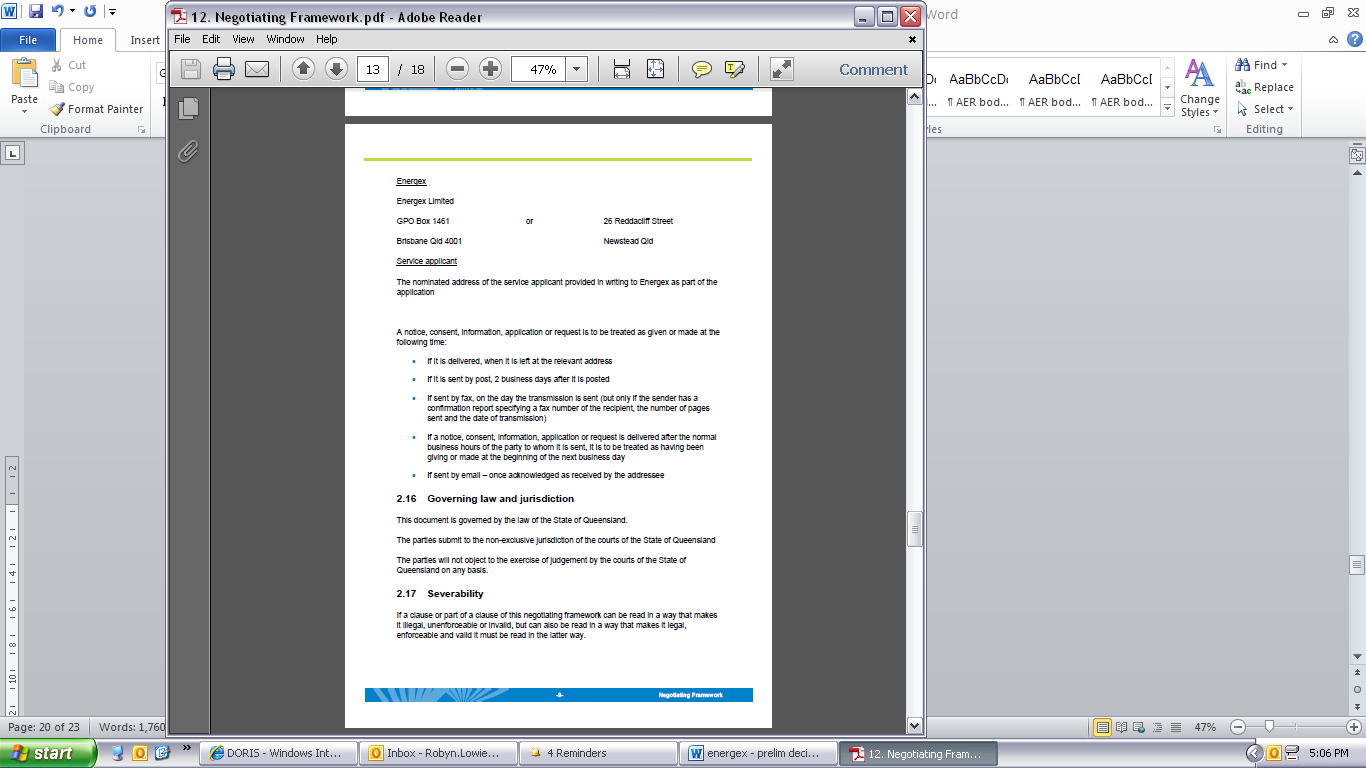
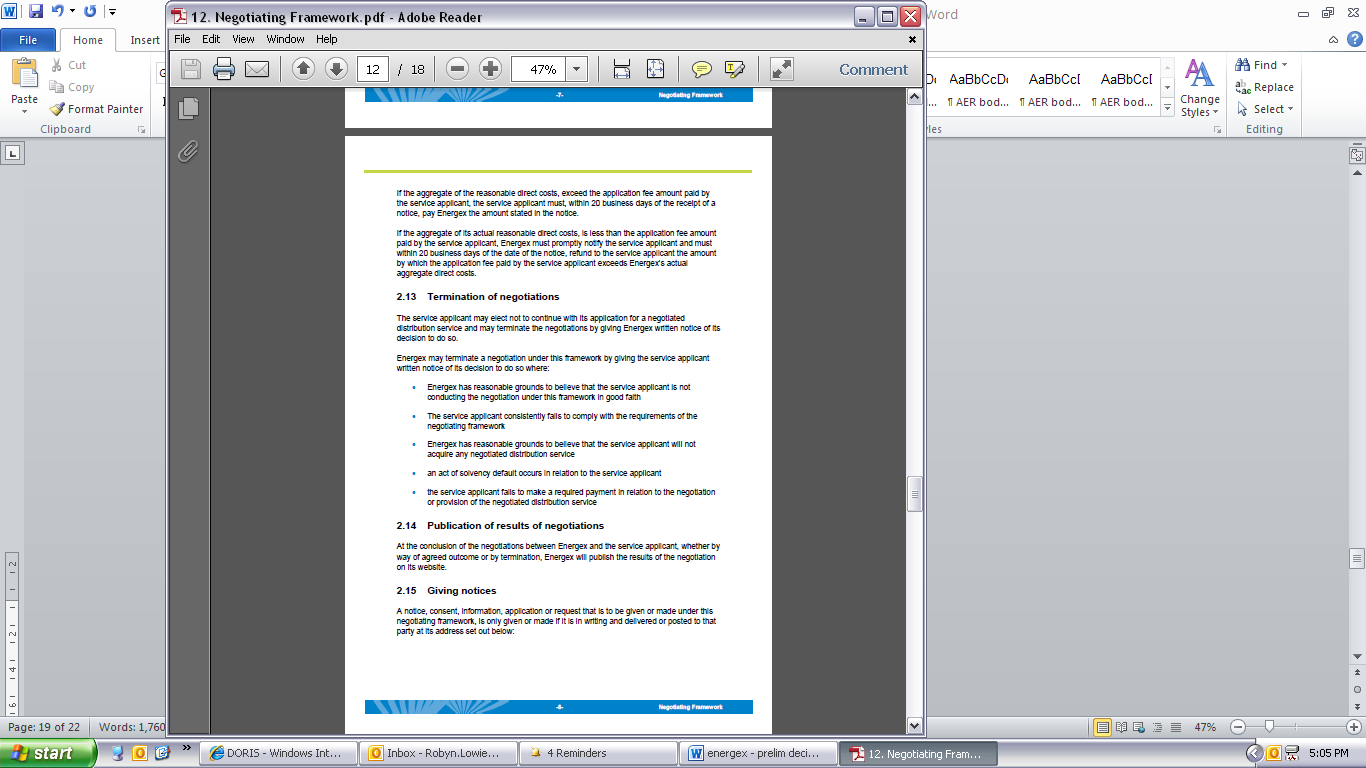
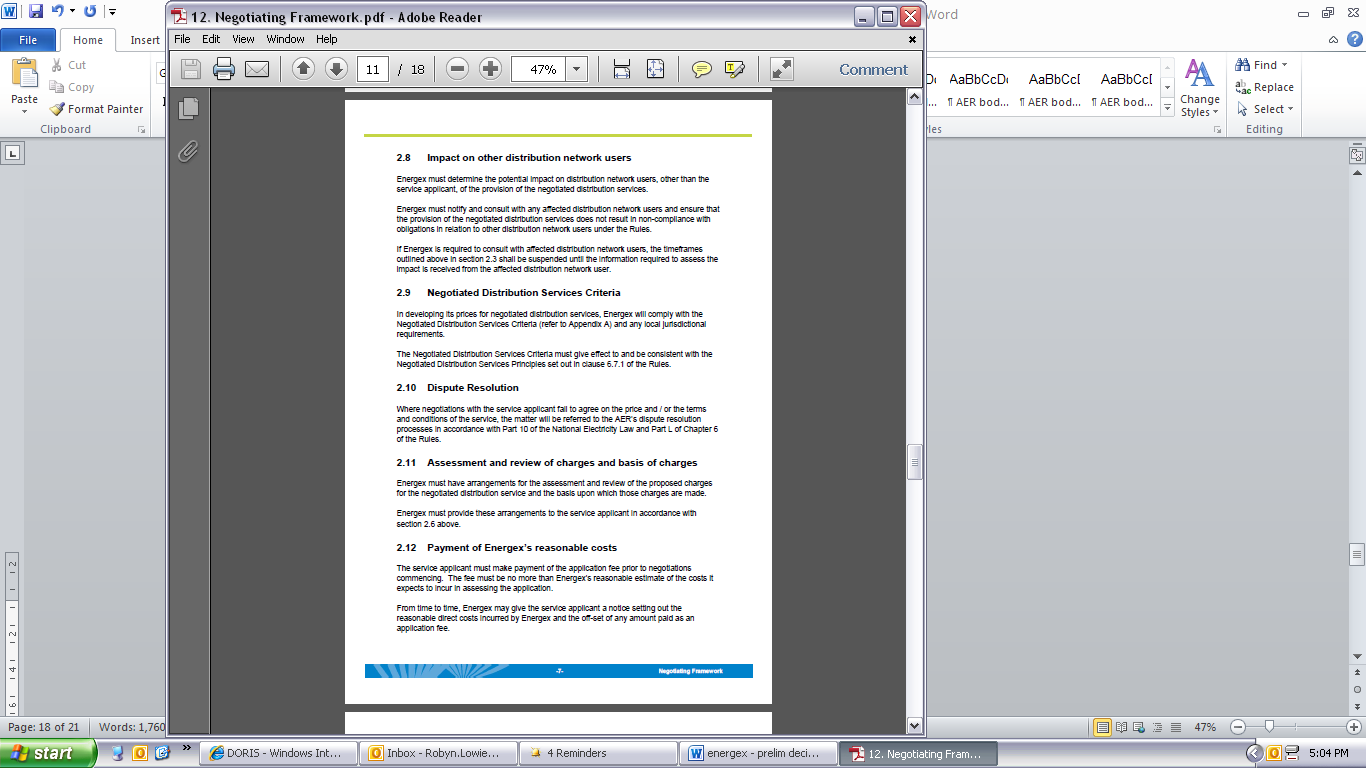
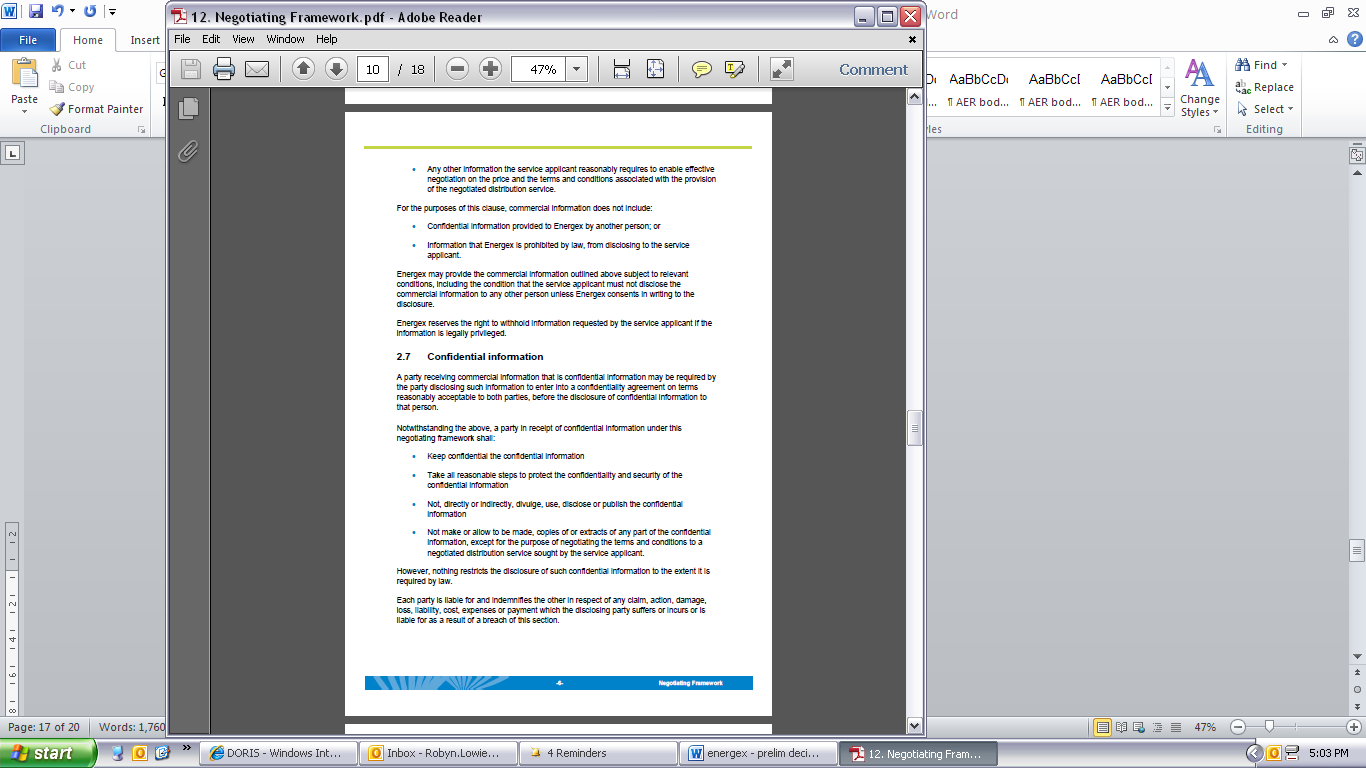
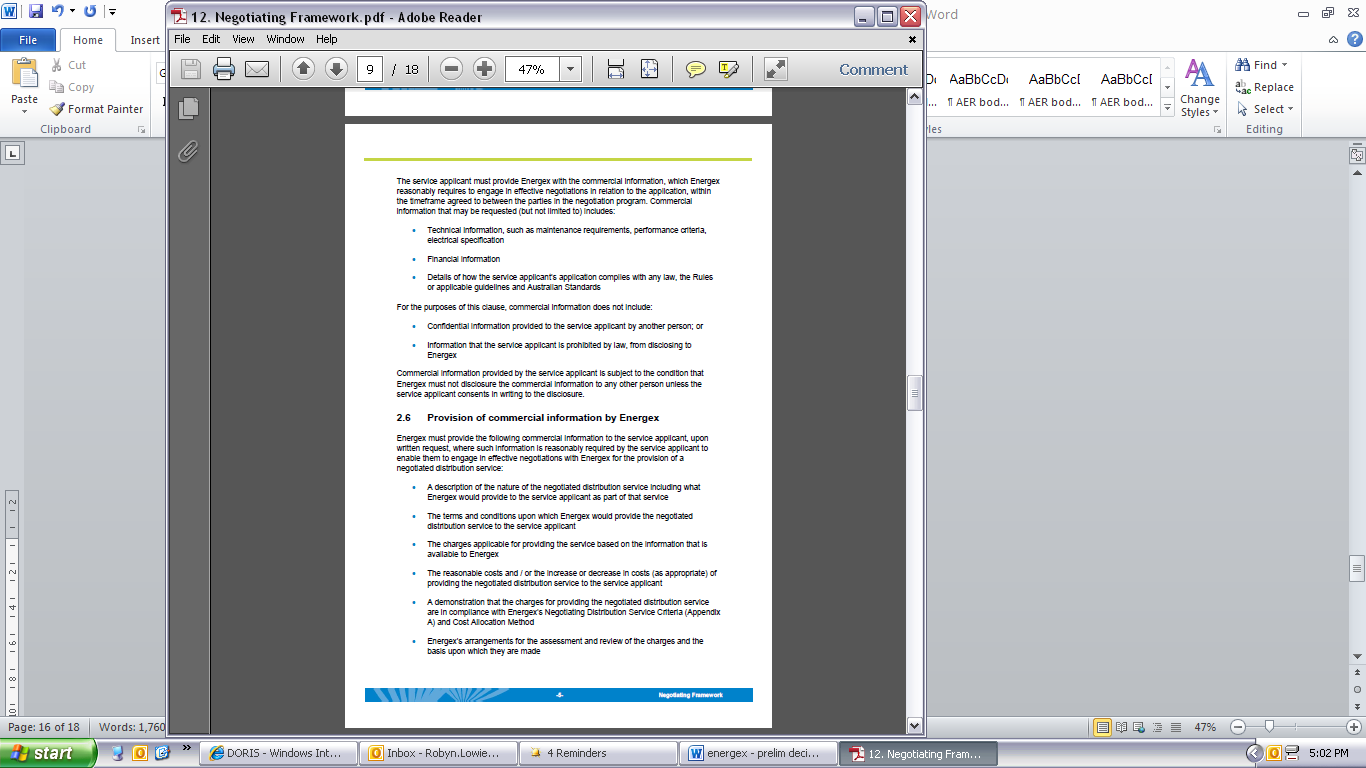
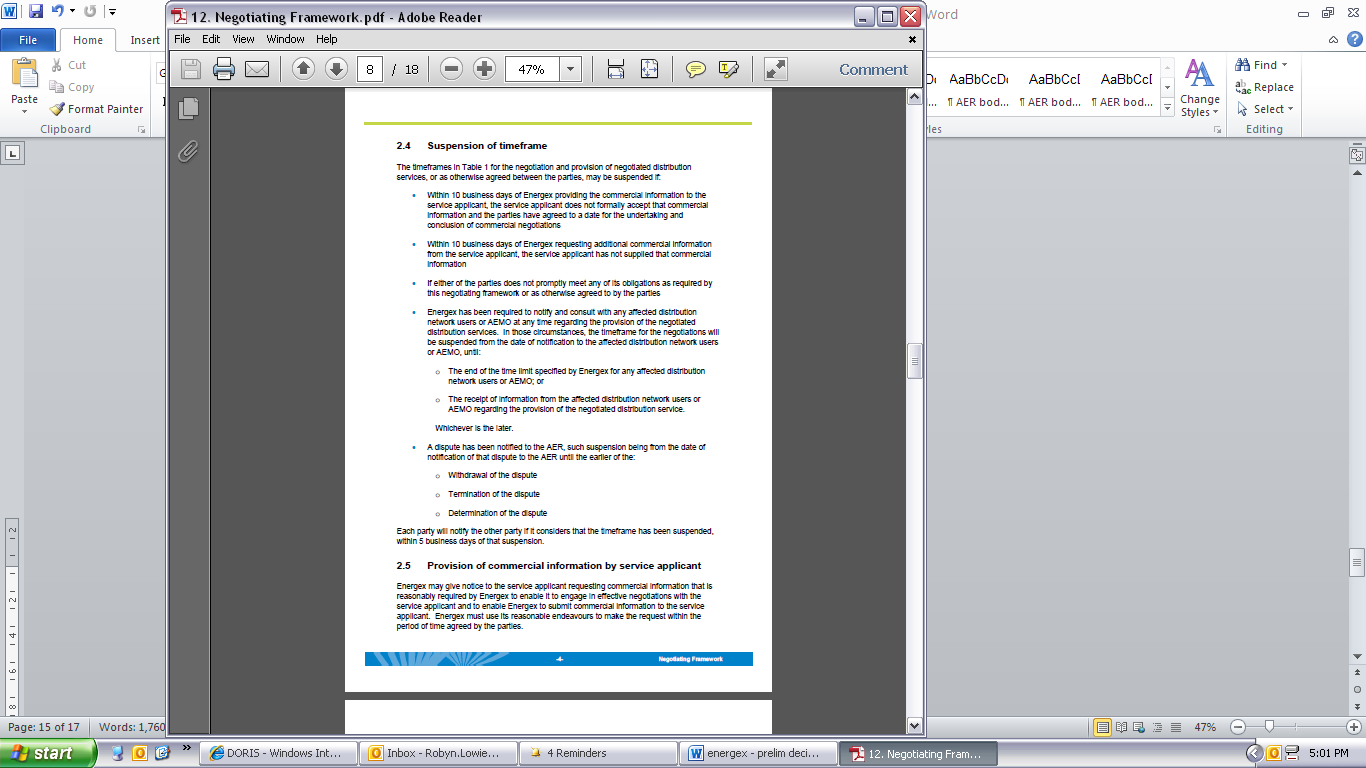
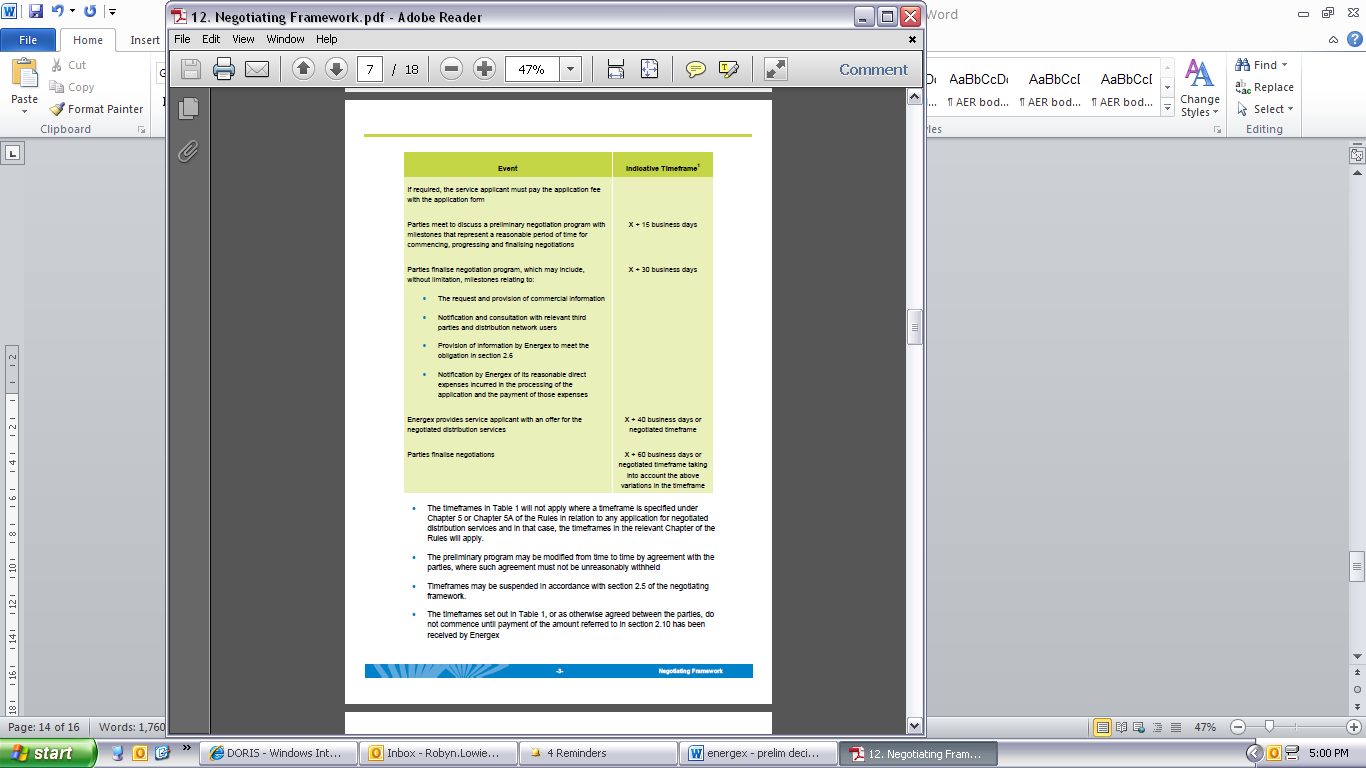
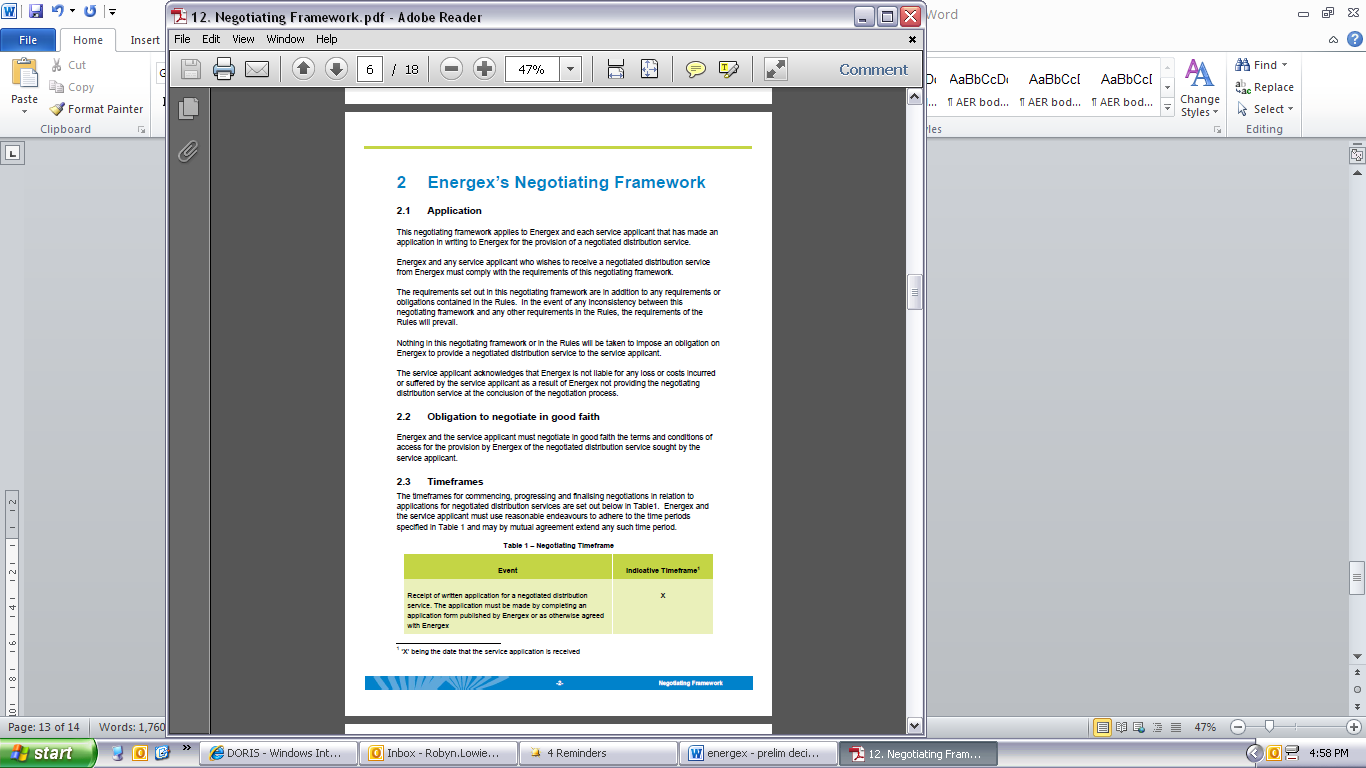
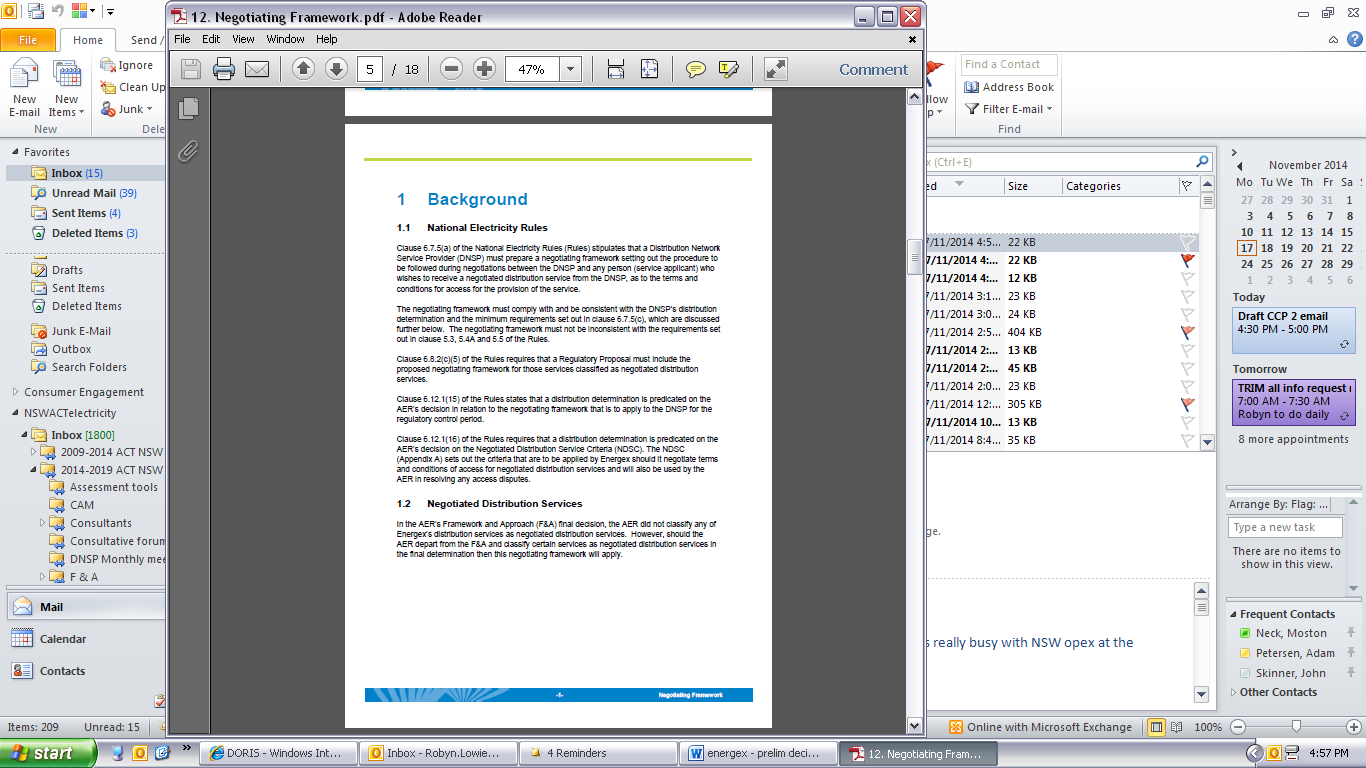
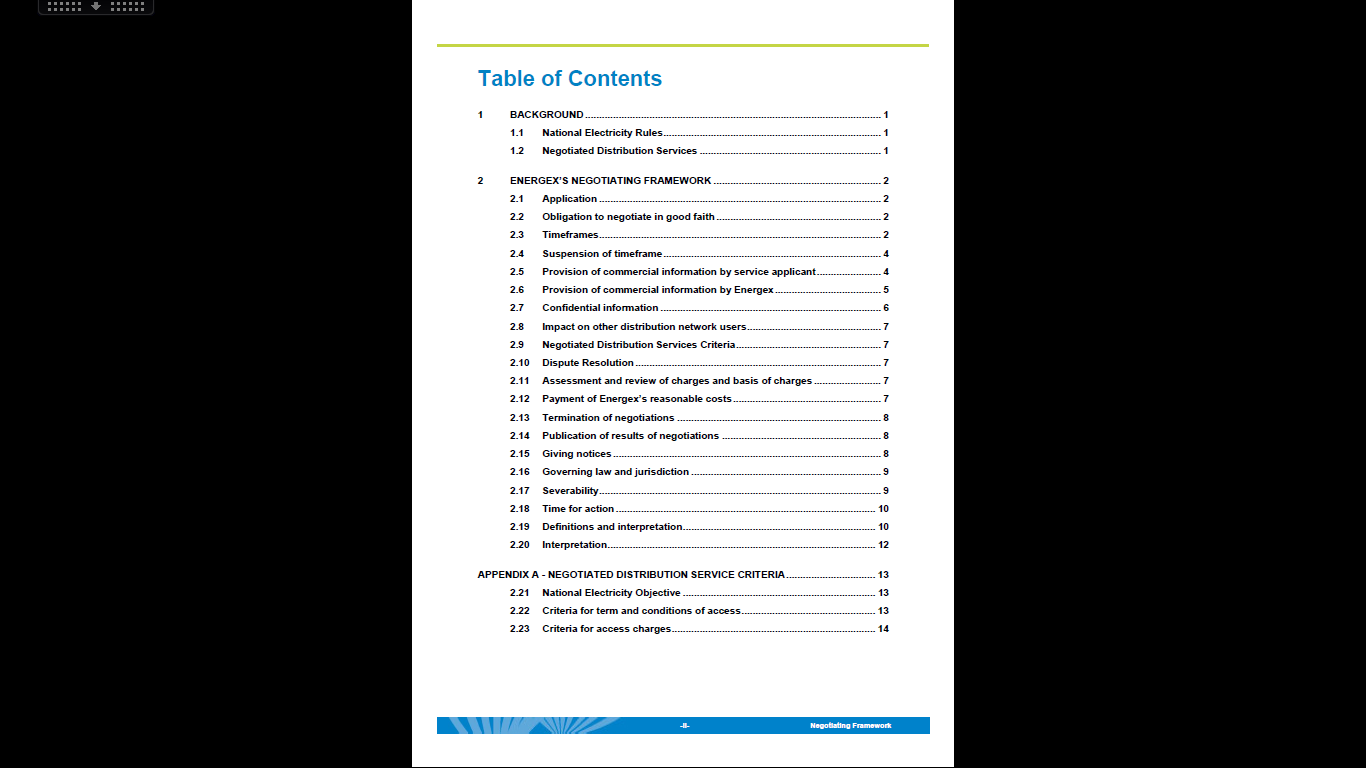
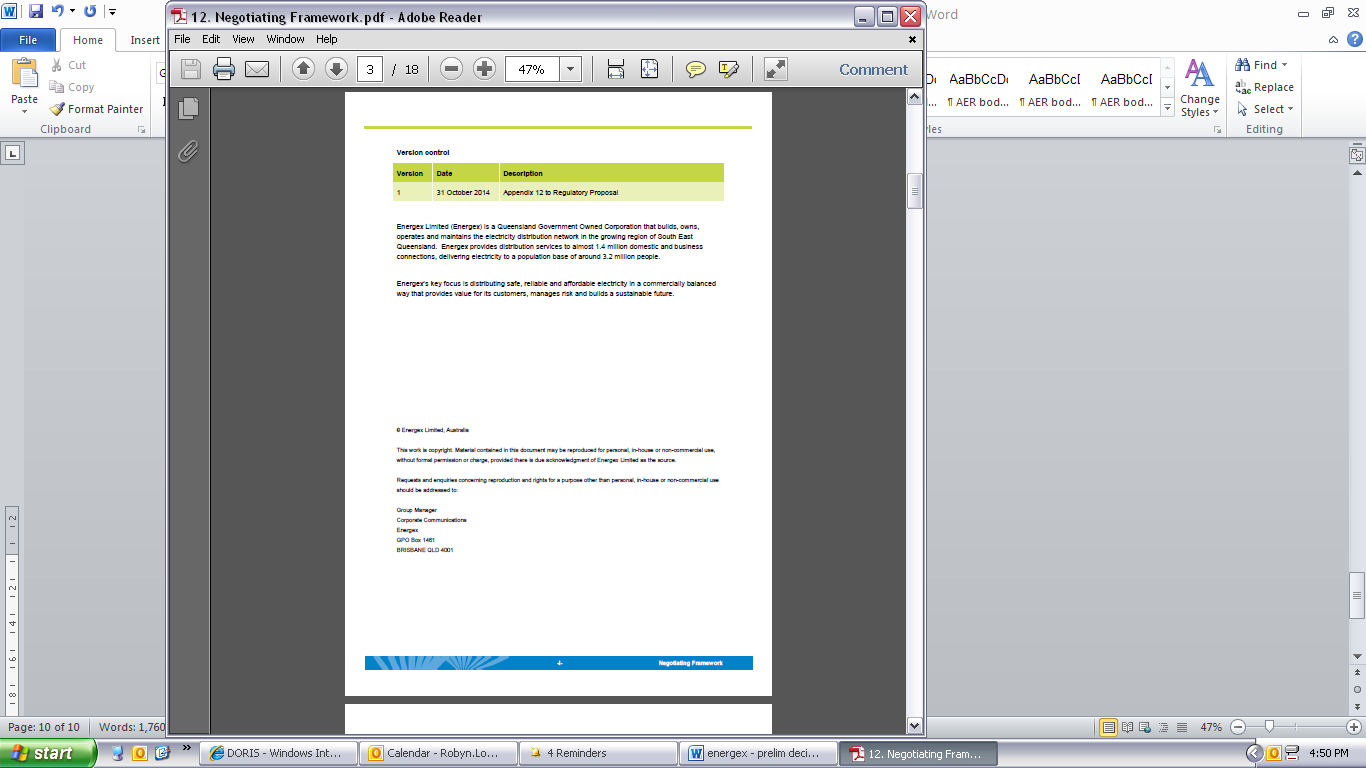
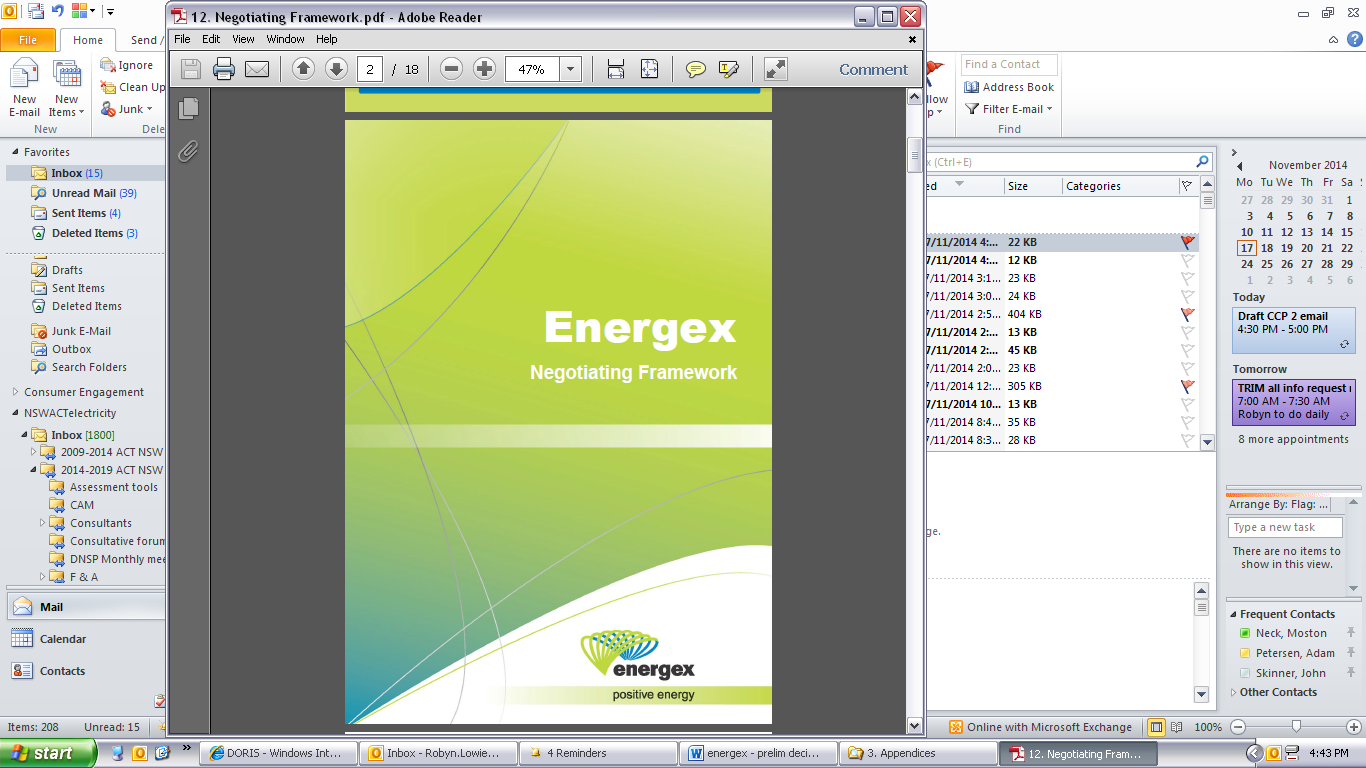
* 1. If a negotiated distribution service is the provision of a shared distribution service that does not meet or exceed the network performance requirements, the difference between the price for that service and the price for the shared distribution service which meets, but does not exceed, the network performance requirements should reflect the cost a distributor would avoid by not providing that service (as appropriate).
  2. 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.
  3. 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.
  4. The price for a negotiated distribution service must be such as to enable a DNSP 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

* 1. 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).
  2. 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).

We did not receive any submissions in response to our preliminary decision on negotiated services framework and criteria. On this basis, the negotiated services framework and criteria set out in this attachment will apply to Energex for the 2015–20 regulatory control period.

* + - * 1. Energex’s negotiating framework

1. NER, cl. 6.12.1(15). [↑](#footnote-ref-1)
2. NER, cl. 6.12.1 (16). [↑](#footnote-ref-2)
3. Energex, Regulatory proposal, October 2014, appendix 12. [↑](#footnote-ref-3)
4. NER, cl. 6.7.5. [↑](#footnote-ref-4)
5. NER, cl. 6.12.1(15). [↑](#footnote-ref-5)
6. AER, Proposed Negotiated Distribution Service Criteria for Energex, Ergon Energy and SA Power Networks – period commencing 1 July 2015, November 2014. [↑](#footnote-ref-6)
7. NER, cl. 6.7.1. [↑](#footnote-ref-7)
8. NER, cl. 6.7.5(c). [↑](#footnote-ref-8)
9. An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, ch. 10. [↑](#footnote-ref-9)