

FINAL DECISION

United Energy distribution determination

2016 to 2020

Attachment 17 – Negotiated services framework and criteria

May 2016

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1. Note
2. This attachment forms part of the AER's final decision on United Energy's distribution determination for 2016–20. It should be read with all other parts of the final decision.
3. The final decision includes the following documents:
4. 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 - f-factor scheme

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1. Shortened forms

| 1. Shortened form | 1. Extended form |
| --- | --- |
| 1. AEMC | 1. Australian Energy Market Commission |
| 1. AEMO | 1. Australian Energy Market Operator |
| 1. AER | 1. Australian Energy Regulator |
| 1. AMI | 1. advanced metering infrastructure |
| 1. augex | 1. augmentation expenditure |
| 1. capex | 1. capital expenditure |
| 1. CCP | 1. Consumer Challenge Panel |
| 1. CESS | 1. capital expenditure sharing scheme |
| 1. CPI | 1. consumer price index |
| 1. DRP | 1. debt risk premium |
| 1. DMIA | 1. demand management innovation allowance |
| 1. DMIS | 1. demand management incentive scheme |
| 1. distributor | 1. distribution network service provider |
| 1. DUoS | 1. distribution use of system |
| 1. EBSS | 1. efficiency benefit sharing scheme |
| 1. ERP | 1. equity risk premium |
| 1. Expenditure Assessment Guideline | 1. Expenditure Forecast Assessment Guideline for electricity distribution |
| 1. F&A | 1. framework and approach |
| 1. MRP | 1. market risk premium |
| 1. NEL | 1. national electricity law |
| 1. NEM | 1. national electricity market |
| 1. NEO | 1. national electricity objective |
| 1. NER | 1. national electricity rules |
| 1. NSP | 1. network service provider |
| 1. opex | 1. operating expenditure |
| 1. PPI | 1. partial performance indicators |
| 1. PTRM | 1. post-tax revenue model |
| 1. RAB | 1. regulatory asset base |
| 1. RBA | 1. Reserve Bank of Australia |
| 1. repex | 1. replacement expenditure |
| 1. RFM | 1. roll forward model |
| 1. RIN | 1. regulatory information notice |
| 1. RPP | 1. revenue and pricing principles |
| 1. SAIDI | 1. system average interruption duration index |
| 1. SAIFI | 1. system average interruption frequency index |
| 1. SLCAPM | 1. Sharpe-Lintner capital asset pricing model |
| 1. STPIS | 1. service target performance incentive scheme |
| 1. WACC | 1. 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 United Energy (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. United Energy submitted a negotiating framework as part of its initial regulatory proposal for our consideration.[[3]](#footnote-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 United Energy's negotiating framework and NDSC.

## Final decision

1. Negotiating framework

In our preliminary decision, we proposed variations to United Energy’s proposed negotiating framework for the 2016–20 regulatory control period.[[4]](#footnote-4) Specifically, our preliminary decision was to:

* delete section 10 (a) of United Energy’s negotiating framework which provides that ‘all disputes between the parties as to the terms and conditions for the provision of a negotiated distribution services are to be dealt with by United Energy’s dispute resolution processes in the first instance’[[5]](#footnote-5)
* amend section 10 (b) of United Energy’s negotiating framework to state that 'all disputes arising during the course of the negotiation shall be dealt with in accordance with Part 10 of the NEL and Part L of Chapter 6 of the NER'[[6]](#footnote-6)
* otherwise adopt United Energy’s proposed negotiating framework.

Our final decision is to maintain the variations set out in our preliminary decision.

1. Negotiated distribution service criteria

Our final decision is to retain the NDSC that we published for United Energy in May 2015[[7]](#footnote-7) for the 2016–20 regulatory control period. The NDSC give effect to the negotiated distribution service principles.[[8]](#footnote-8)

## 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 United Energy'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

A negotiating framework must specify a number of minimum requirements set out in the NER. Those requirements include, among other things, a statement that a distributor will negotiate in good faith and a process for dealing with disputes. In our preliminary decision, we proposed variations to United Energy’s proposed negotiating framework so it meets the minimum requirements of the NER.[[9]](#footnote-9) In its revised proposal, United Energy rejected our proposed variations.[[10]](#footnote-10)

United Energy submitted that its dispute resolution process contained in section 10 of its proposed negotiating framework is identical to that contained in the framework we approved for the 2011−15 regulatory control period. It further submitted that removing its ability to internally resolve disputes with service applicants in the first instance results in additional complexity and regulatory burden.[[11]](#footnote-11)

Where the parties cannot reach an agreement on access, section 10(a) of United Energy's proposed negotiating framework can be interpreted as excluding the customer's ability to refer the dispute immediately to the AER without first going through United Energy's internal process. This would limit the customer's ability to raise a dispute with the AER under Part 10 of the NEL. While Part 10 allows a dispute about access to be dealt with through other processes[[12]](#footnote-12), it does give a customer the ability to raise the dispute immediately with the AER if the customer wishes to do so. Section 10(a) of United Energy's proposed negotiating framework attempts to limit this ability. It is therefore not consistent with Part 10 of the NEL and not consistent with clause 6.7.5(c)(6) of the NER.

We do not agree that our variations to section 10(b) of United Energy's proposed negotiating framework would mean that all disputes must be referred, in the first instance, to the AER. Our variation to section 10(b) states that "all disputes arising during the course of negotiation shall be dealt with in accordance with Part 10 of the NEL and Part L of the Chapter 6 of the NER". As mentioned above, Part 10 of the NEL envisages that a dispute about access may be dealt with through other processes. Therefore, our amended section 10(b) does not prevent the parties from agreeing to an alternative process, including United Energy's internal process. However, in the circumstances where the customer does not wish to go through United Energy's internal process, the Negotiating Framework should not prevent a customer from raising the dispute immediately with the AER.

This is why we maintain our view that United Energy's section 10(a) must be deleted and section 10(b) must be amended.

Our final decision is to maintain our variation to section 10(b) of United Energy’s negotiating framework to state that 'all disputes arising during the course of the negotiation shall be dealt with in accordance with Part 10 of the NEL and Part L of Chapter 6 of the NER'.[[13]](#footnote-13)

Finally, United Energy maintained its reference to disputes being addressed under Chapter 8 of the NER. United Energy did not address this aspect of the variation in its revised regulatory proposal.

This variation removes United Energy's reference to chapter 8 of the NER. Chapter 8 of the NER relates to administrative functions and while it covers dispute resolution processes, it specifically excludes a distribution services access dispute to which Part L of chapter 6 of the NER applies.[[14]](#footnote-14) Part L of chapter 6 of the NER provides for a specific dispute resolution process where a dispute arises between a distributor and a service applicable as to the terms and conditions of access to a negotiated distribution service.[[15]](#footnote-15)

1. Table 17.1 summarises our assessment of United Energy's proposed negotiating framework. It indicates where in United Energy’s negotiating framework the relevant NER requirements are addressed. Our view is that (subject to the comments above) each of the NER requirements for a negotiated framework is satisfactorily addressed.

Table 17.1 AER's assessment of United Energy's proposed negotiating framework

| 1. NER requirements | 1. Requirement addressed in United Energy’s negotiating framework |
| --- | --- |
| Requirement for a distributor and applicant[[16]](#footnote-16) to negotiate in good faith— cl. 6.7.5(c)(1) | Section 7 of United Energy'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 United Energy'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 of United Energy'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 United Energy'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 6 of United Energy'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 10 of United Energy'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 11 of United Energy'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 8 of United Energy'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 8 of United Energy's framework |
| Requirement that the distributor publish the results of negotiations on its website − cl. 6.7.5(c)(10) | Section 13 of United Energy's framework |

Source: AER analysis.

1. A copy of United Energy's framework is at appendix A, subject to our variations as set out in section 17.1.
2. Negotiated distribution services criteria
3. In May 2015, we published an invitation for submissions on our proposed NDSC for the Victorian distributors including United Energy. We did not receive any submissions in response to our proposed NDSC. The NDSC we have decided to apply to United Energy 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).

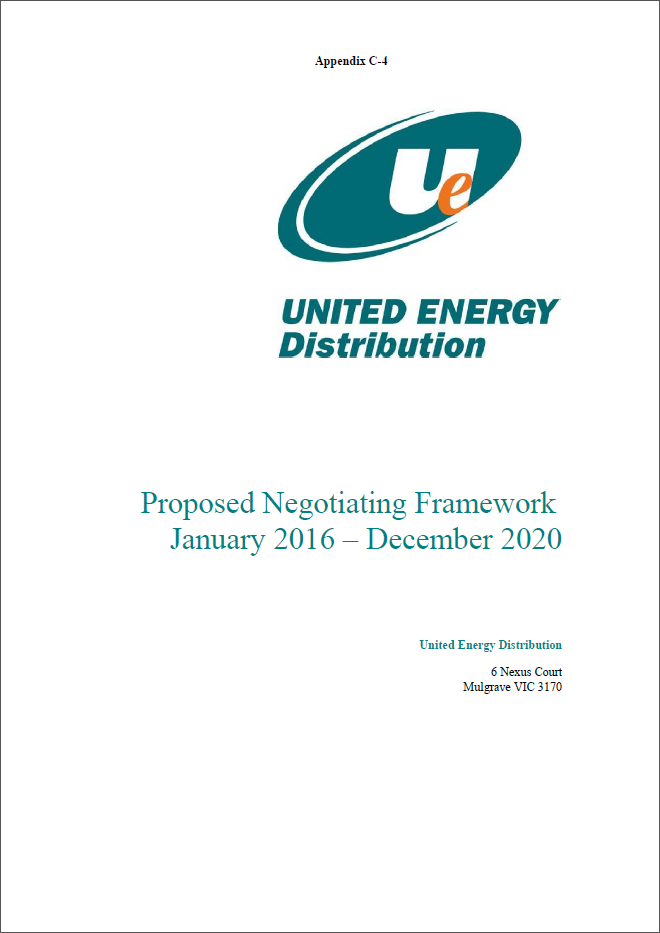
* 1. If a negotiated distribution service is the provision of a shared distribution service that does not meet or exceed the network performance requirements, the difference between the price for that service and the price for the shared distribution service which meets, but does not exceed, the network 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.

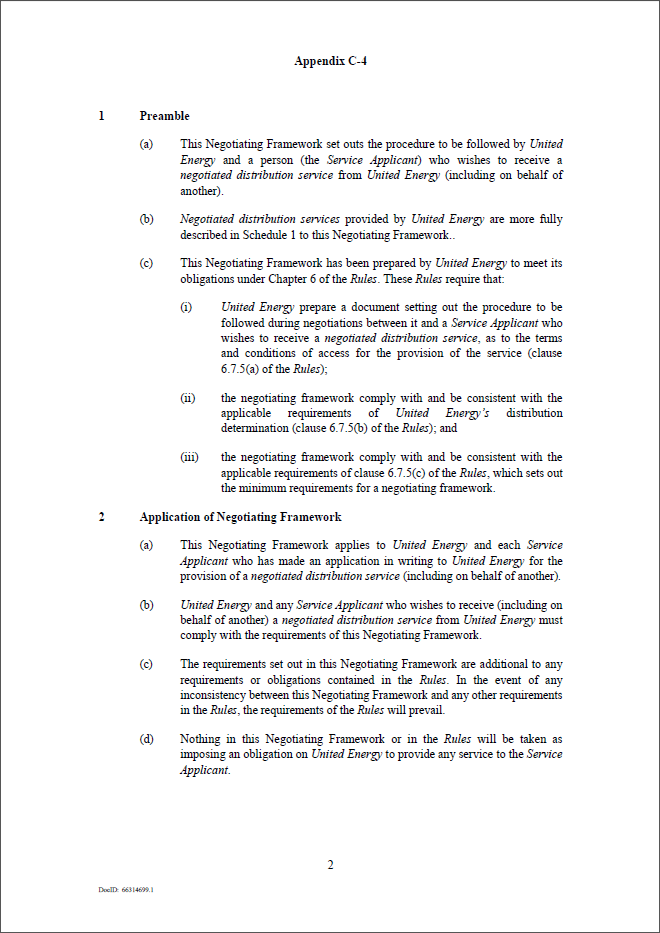
Criteria for access charges

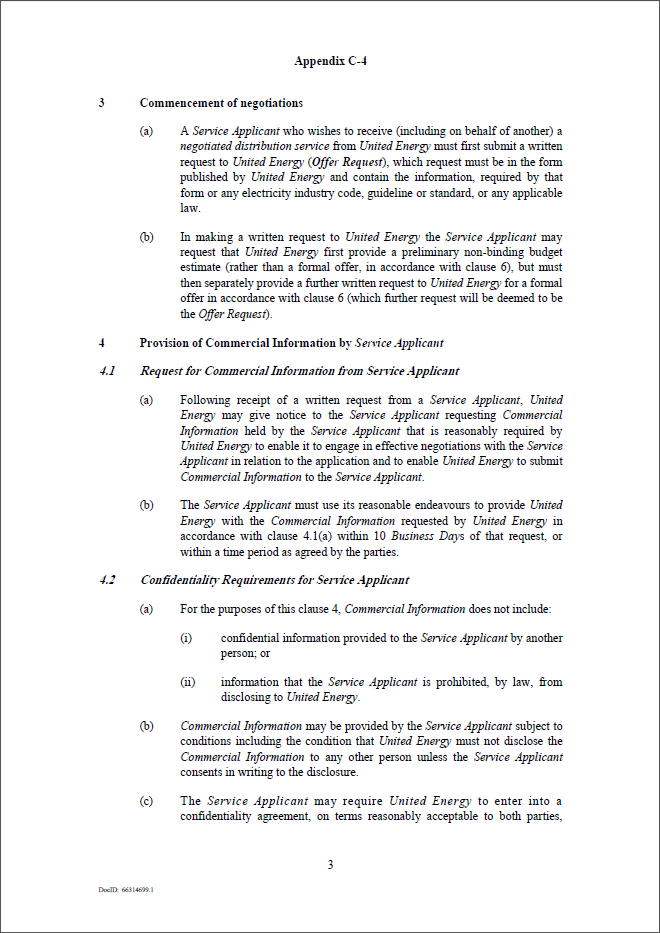
Access Charges

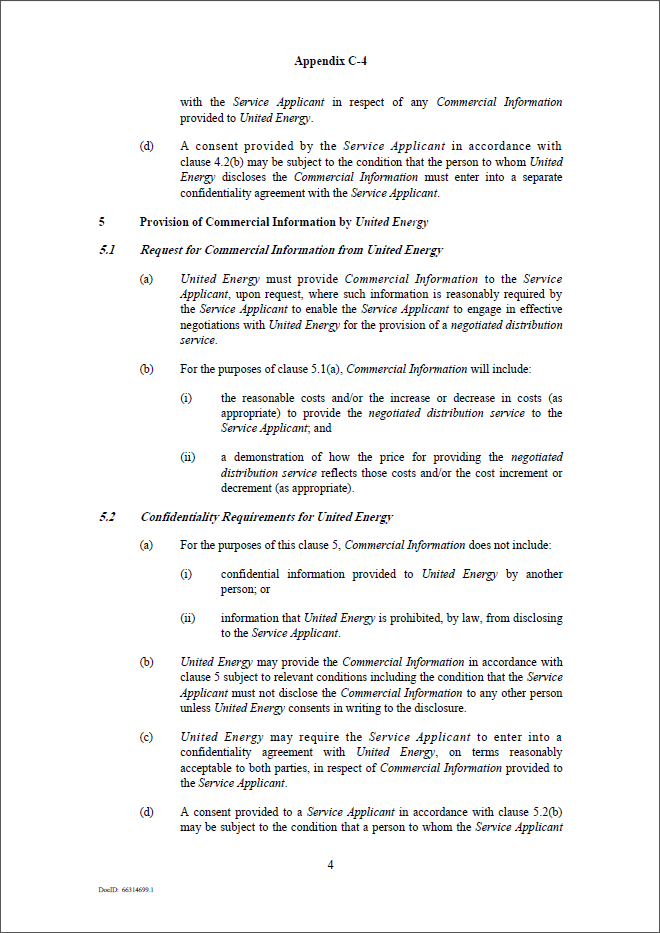
* 1. Any charges must be based on costs reasonably incurred by a distributor in providing distribution network user access, and, in the case of compensation referred to in clauses 5.5(f)(4)(ii) and (iii) of the NER, on the revenue that is likely to be foregone and the costs that are likely to be incurred 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).

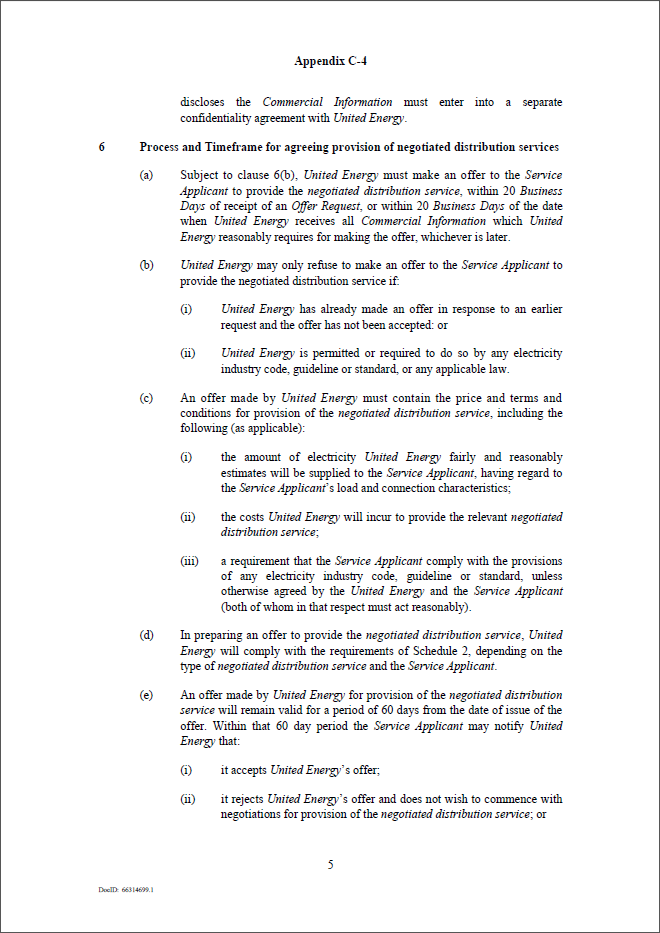
1. The above therefore constitutes our constituent decisions on the negotiating framework and NDSC to apply to United Energy for the 2016–20 regulatory control period.
2. United Energy's negotiating framework

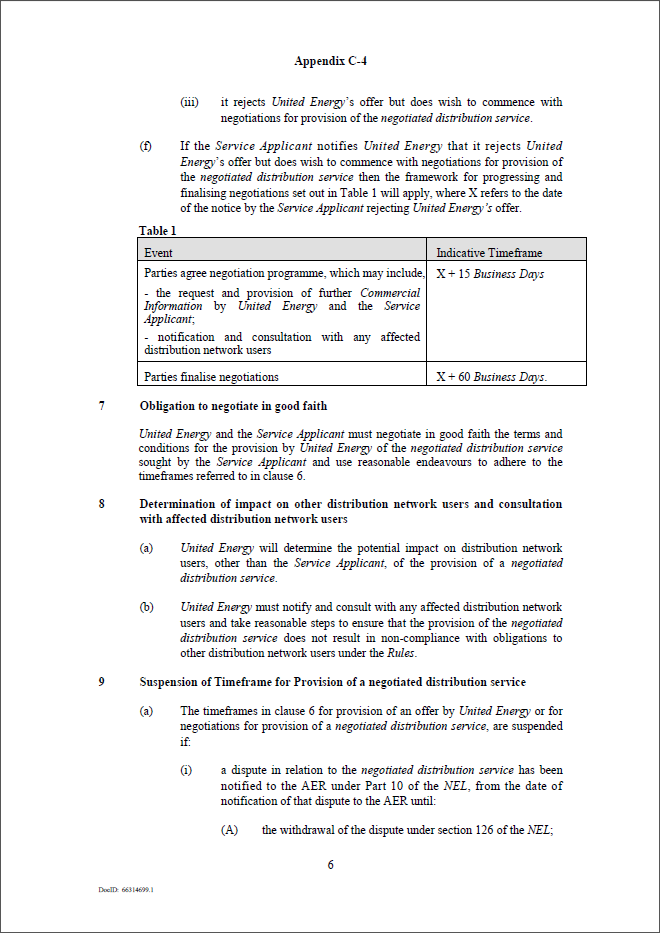


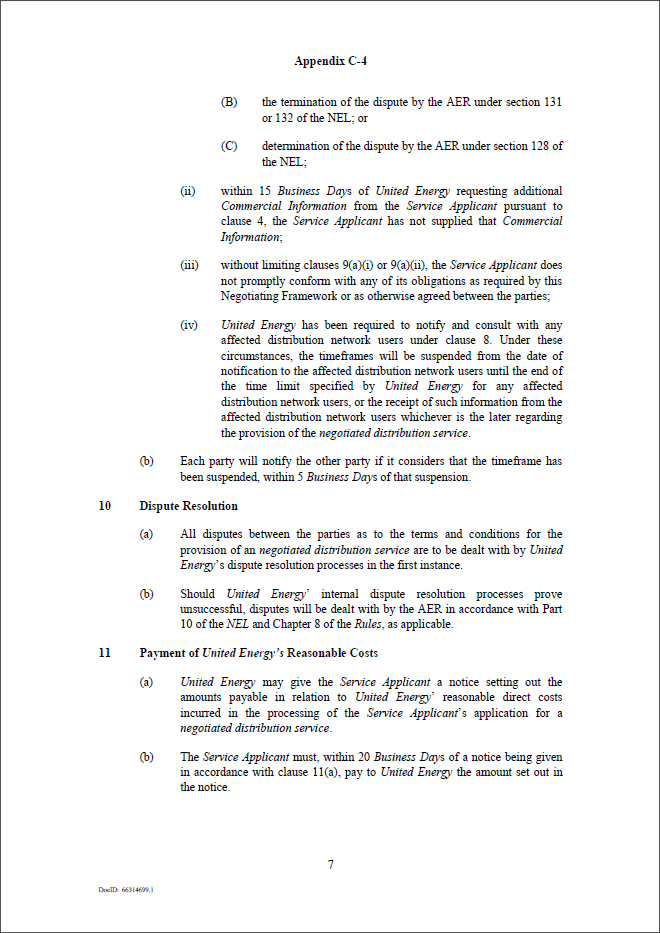


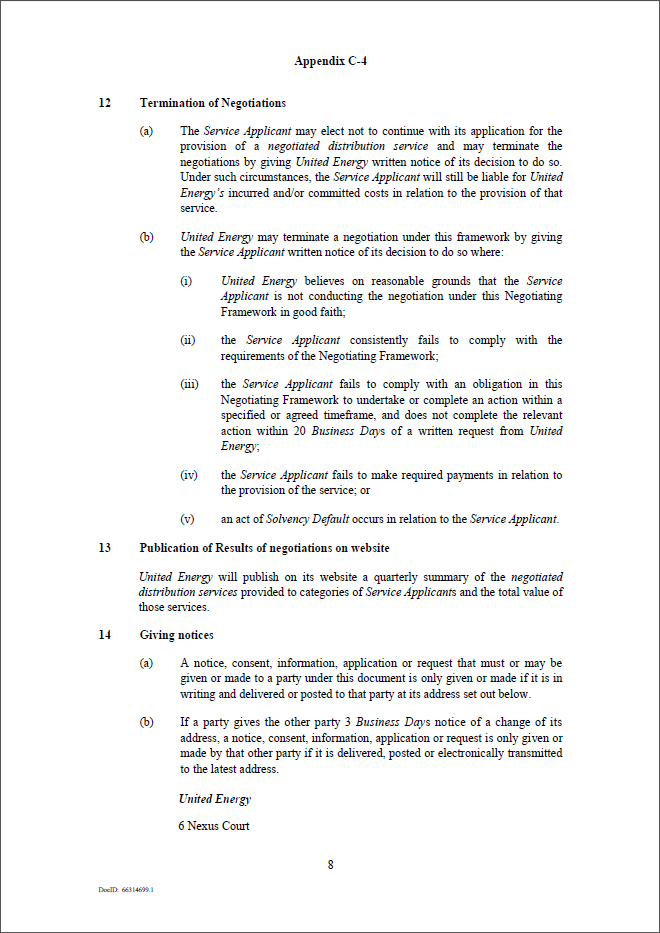


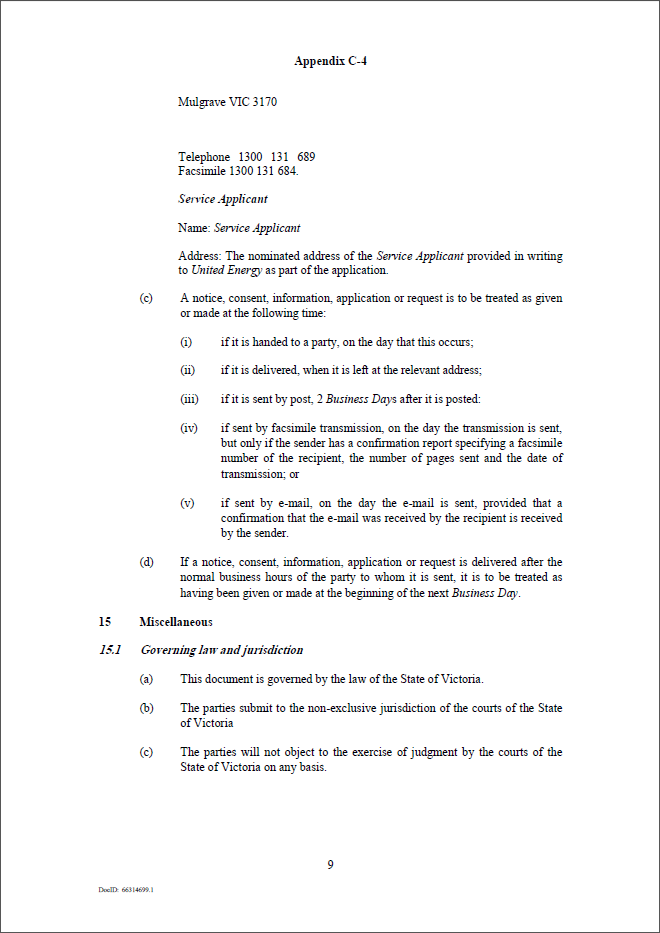


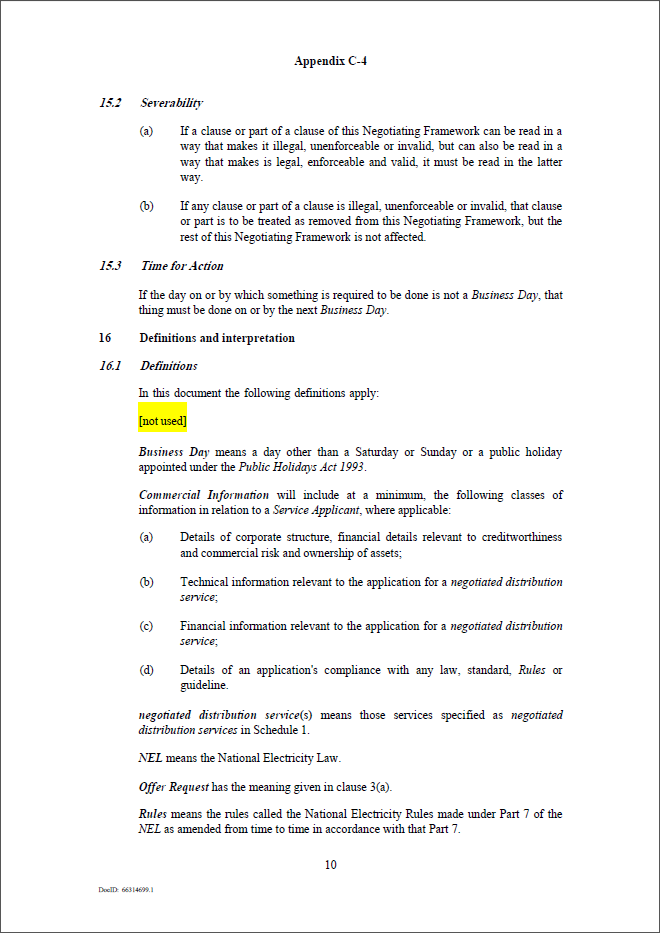


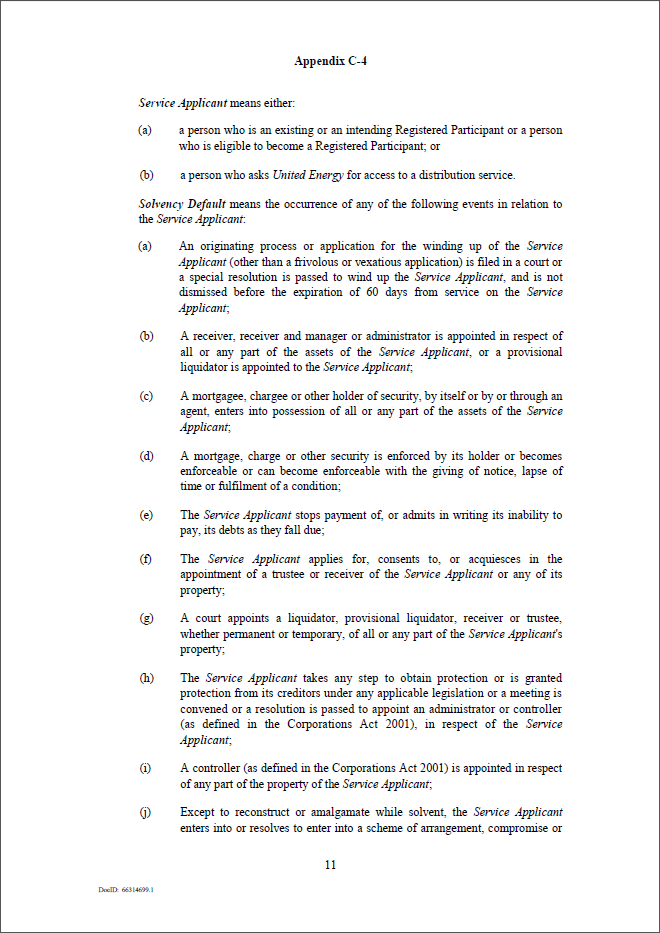


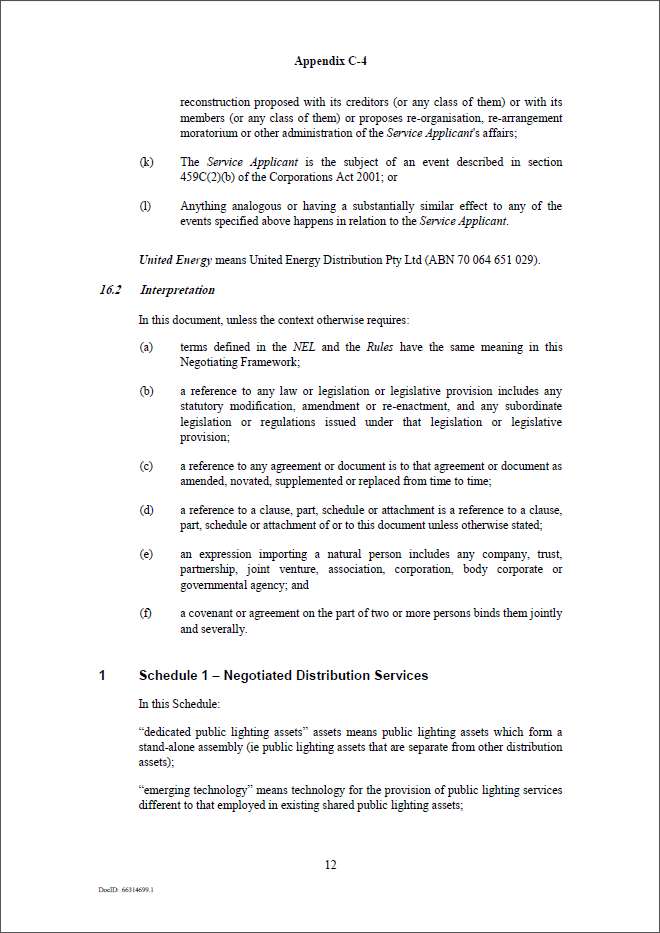


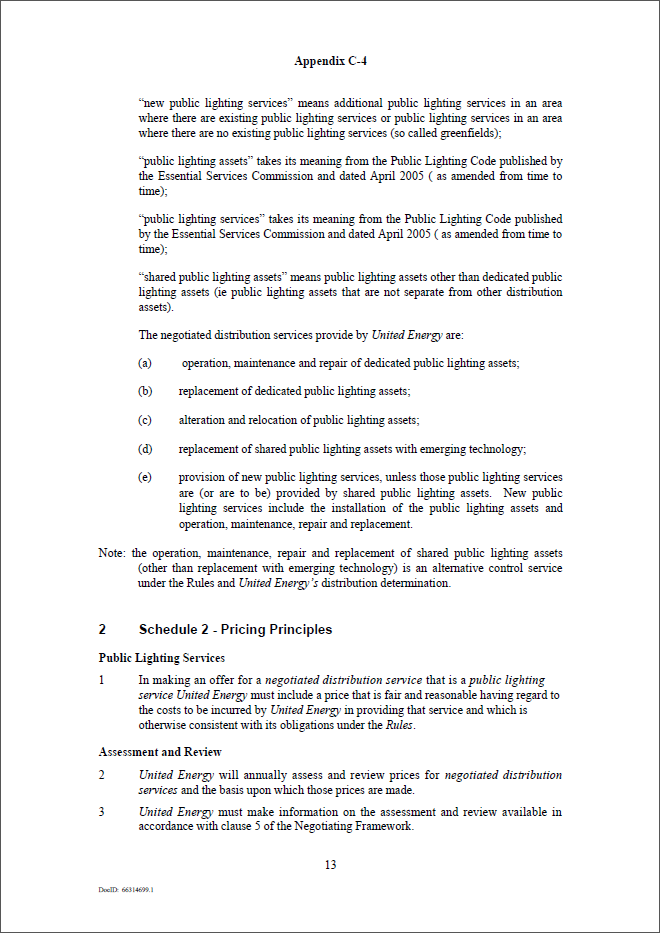












1. NER, cl. 6.12.1(15). [↑](#footnote-ref-1)
2. NER, cl. 6.12.1 (16). [↑](#footnote-ref-2)
3. United Energy, Proposed negotiating framework Appendix C.4, April 2015. [↑](#footnote-ref-3)
4. NER, cl. 6.12.1(15). [↑](#footnote-ref-4)
5. To comply with NER, cl. 6.7.5(c)(6). [↑](#footnote-ref-5)
6. To comply with NER, cl. 6.7.5(c)(6) and refer to the correct dispute resolution provisions under the NER. [↑](#footnote-ref-6)
7. AER, Proposed Negotiated Distribution Service Criteria for Victorian distributors – period commencing 1 January 2016, May 2015. [↑](#footnote-ref-7)
8. NER, cl. 6.7.1. [↑](#footnote-ref-8)
9. NER, cl. 6.7.5(c). [↑](#footnote-ref-9)
10. United Energy, Revised regulatory proposal, January 2016, p. 118. [↑](#footnote-ref-10)
11. United Energy, Revised regulatory proposal, January 2016, p. 118. [↑](#footnote-ref-11)
12. NEL, s. 124. [↑](#footnote-ref-12)
13. To comply with NER, cl. 6.7.5(c)(6) and refer to the correct dispute resolution provisions under the NER. [↑](#footnote-ref-13)
14. NER, cl. 8.2.1(h)(15). [↑](#footnote-ref-14)
15. NER, cl. 6.22.1(a). [↑](#footnote-ref-15)
16. An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, ch. 10. [↑](#footnote-ref-16)