



**FINAL DECISION**  
**United Energy distribution**  
**determination**  
**2016 to 2020**

**Attachment 17 – Negotiated**  
**services framework and criteria**

May 2016

© Commonwealth of Australia 2016

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication. The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the:

Director, Corporate Communications  
Australian Competition and Consumer Commission  
GPO Box 4141, Canberra ACT 2601

or [publishing.unit@acc.gov.au](mailto:publishing.unit@acc.gov.au).

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)

## Note

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.

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 - f-factor scheme

# Contents

<b>Note</b> .....	<b>17-2</b>
<b>Contents</b> .....	<b>17-3</b>
<b>Shortened forms</b> .....	<b>17-4</b>
<b>17 Negotiated services framework and criteria</b> .....	<b>17-6</b>
<b>17.1 Final decision</b> .....	<b>17-6</b>
<b>17.2 AER’s assessment approach</b> .....	<b>17-7</b>
<b>17.3 Reasons for final decision</b> .....	<b>17-7</b>
<b>A United Energy’s negotiating framework</b> .....	<b>17-12</b>

## 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

Shortened form	Extended form
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

# 17 Negotiated services framework and criteria

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),<sup>1</sup> and
- a decision on the negotiated distribution service criteria (NDSC) for the distributor.<sup>2</sup>

United Energy submitted a negotiating framework as part of its initial regulatory proposal for our consideration.<sup>3</sup>

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.

## 17.1 Final decision

### Negotiating framework

In our preliminary decision, we proposed variations to United Energy's proposed negotiating framework for the 2016–20 regulatory control period.<sup>4</sup> 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'<sup>5</sup>
- 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'<sup>6</sup>
- otherwise adopt United Energy's proposed negotiating framework.

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

---

<sup>1</sup> NER, cl. 6.12.1(15).

<sup>2</sup> NER, cl. 6.12.1 (16).

<sup>3</sup> United Energy, *Proposed negotiating framework Appendix C.4*, April 2015.

<sup>4</sup> NER, cl. 6.12.1(15).

<sup>5</sup> To comply with NER, cl. 6.7.5(c)(6).

<sup>6</sup> To comply with NER, cl. 6.7.5(c)(6) and refer to the correct dispute resolution provisions under the NER.

## Negotiated distribution service criteria

Our final decision is to retain the NDSC that we published for United Energy in May 2015<sup>7</sup> for the 2016–20 regulatory control period. The NDSC give effect to the negotiated distribution service principles.<sup>8</sup>

### 17.2 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 United Energy'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.

### 17.3 Reasons for final decision

#### 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.<sup>9</sup> In its revised proposal, United Energy rejected our proposed variations.<sup>10</sup>

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.<sup>11</sup>

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

---

<sup>7</sup> AER, *Proposed Negotiated Distribution Service Criteria for Victorian distributors – period commencing 1 January 2016*, May 2015.

<sup>8</sup> NER, cl. 6.7.1.

<sup>9</sup> NER, cl. 6.7.5(c).

<sup>10</sup> United Energy, *Revised regulatory proposal*, January 2016, p. 118.

<sup>11</sup> United Energy, *Revised regulatory proposal*, January 2016, p. 118.



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<sup>12</sup>, 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'.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup>

Table 17.1 summarises our assessment of United Energy's proposed negotiating framework. It indicates where in United Energy's negotiating framework the relevant

---

<sup>12</sup> NEL, s. 124.

<sup>13</sup> To comply with NER, cl. 6.7.5(c)(6) and refer to the correct dispute resolution provisions under the NER.

<sup>14</sup> NER, cl. 8.2.1(h)(15).

<sup>15</sup> NER, cl. 6.22.1(a).

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**

NER requirements	Requirement addressed in United Energy's negotiating framework
Requirement for a distributor and applicant <sup>16</sup> 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.

A copy of United Energy's framework is at appendix A, subject to our variations as set out in section 17.1.

<sup>16</sup> An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, ch. 10.

## Negotiated distribution services criteria

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:

### *National Electricity Objective*

1. The terms and conditions of access for a negotiated distribution service, including the price that is to be charged for the provision of that service and any access charges, should promote the achievement of the national electricity objective.

### *Criteria for terms and conditions of access*

#### *Terms and Conditions of Access*

2. The terms and conditions of access for a negotiated distribution service must be fair and reasonable and consistent with the safe and reliable operation of the power system in accordance with the NER.
3. The terms and conditions of access for a negotiated distribution service (including in particular, any exclusions and limitations of liability and indemnities) must not be unreasonably onerous taking into account the allocation of risk between a distributor and any other party, the price for the negotiated distribution service and the costs to a distributor of providing the negotiated distribution service.
4. The terms and conditions of access for a negotiated distribution service must take into account the need for the service to be provided in a manner that does not adversely affect the safe and reliable operation of the power system in accordance with the NER.

#### *Price of Services*

5. The price for a negotiated distribution service must reflect the costs that a distributor has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the relevant Cost Allocation Method.
6. Subject to criteria 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 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*

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 United Energy for the 2016–20 regulatory control period.

## A United Energy's negotiating framework

Appendix C-4



**UNITED ENERGY  
Distribution**

Proposed Negotiating Framework  
January 2016 – December 2020

United Energy Distribution

6 Nexus Court  
Mulgrave VIC 3170

## Appendix C-4

### 1 Preamble

- (a) This Negotiating Framework set outs the procedure to be followed by *United Energy* and a person (the *Service Applicant*) who wishes to receive a *negotiated distribution service* from *United Energy* (including on behalf of another).
- (b) *Negotiated distribution services* provided by *United Energy* are more fully described in Schedule 1 to this Negotiating Framework..
- (c) This Negotiating Framework has been prepared by *United Energy* to meet its obligations under Chapter 6 of the *Rules*. These *Rules* require that:
  - (i) *United Energy* prepare a document setting out the procedure to be followed during negotiations between it and a *Service Applicant* 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) of the *Rules*);
  - (ii) the negotiating framework comply with and be consistent with the applicable requirements of *United Energy's* distribution determination (clause 6.7.5(b) of the *Rules*); and
  - (iii) the negotiating framework comply with and be consistent with the applicable requirements of clause 6.7.5(c) of the *Rules*, which sets out the minimum requirements for a negotiating framework.

### 2 Application of Negotiating Framework

- (a) This Negotiating Framework applies to *United Energy* and each *Service Applicant* who has made an application in writing to *United Energy* for the provision of a *negotiated distribution service* (including on behalf of another).
- (b) *United Energy* and any *Service Applicant* who wishes to receive (including on behalf of another) a *negotiated distribution service* from *United Energy* must comply with the requirements of this Negotiating Framework.
- (c) The requirements set out in this Negotiating Framework are additional to any requirements or obligations contained in the *Rules*. In the event of any inconsistency between this Negotiating Framework and any other requirements in the *Rules*, the requirements of the *Rules* will prevail.
- (d) Nothing in this Negotiating Framework or in the *Rules* will be taken as imposing an obligation on *United Energy* to provide any service to the *Service Applicant*.

## Appendix C-4

### 3 Commencement of negotiations

- (a) A *Service Applicant* who wishes to receive (including on behalf of another) a *negotiated distribution service* from *United Energy* must first submit a written request to *United Energy* (*Offer Request*), which request must be in the form published by *United Energy* and contain the information, required by that form or any electricity industry code, guideline or standard, or any applicable law.
- (b) In making a written request to *United Energy* the *Service Applicant* may request that *United Energy* first provide a preliminary non-binding budget estimate (rather than a formal offer, in accordance with clause 6), but must then separately provide a further written request to *United Energy* for a formal offer in accordance with clause 6 (which further request will be deemed to be the *Offer Request*).

### 4 Provision of Commercial Information by *Service Applicant*

#### 4.1 *Request for Commercial Information from Service Applicant*

- (a) Following receipt of a written request from a *Service Applicant*, *United Energy* may give notice to the *Service Applicant* requesting *Commercial Information* held by the *Service Applicant* that is reasonably required by *United Energy* to enable it to engage in effective negotiations with the *Service Applicant* in relation to the application and to enable *United Energy* to submit *Commercial Information* to the *Service Applicant*.
- (b) The *Service Applicant* must use its reasonable endeavours to provide *United Energy* with the *Commercial Information* requested by *United Energy* in accordance with clause 4.1(a) within 10 *Business Days* of that request, or within a time period as agreed by the parties.

#### 4.2 *Confidentiality Requirements for Service Applicant*

- (a) For the purposes of this clause 4, *Commercial Information* does not include:
  - (i) confidential information provided to the *Service Applicant* by another person; or
  - (ii) information that the *Service Applicant* is prohibited, by law, from disclosing to *United Energy*.
- (b) *Commercial Information* may be provided by the *Service Applicant* subject to conditions including the condition that *United Energy* must not disclose the *Commercial Information* to any other person unless the *Service Applicant* consents in writing to the disclosure.
- (c) The *Service Applicant* may require *United Energy* to enter into a confidentiality agreement, on terms reasonably acceptable to both parties,



#### Appendix C-4

with the *Service Applicant* in respect of any *Commercial Information* provided to *United Energy*.

- (d) A consent provided by the *Service Applicant* in accordance with clause 4.2(b) may be subject to the condition that the person to whom *United Energy* discloses the *Commercial Information* must enter into a separate confidentiality agreement with the *Service Applicant*.

### **5 Provision of Commercial Information by United Energy**

#### **5.1 Request for Commercial Information from United Energy**

- (a) *United Energy* must provide *Commercial Information* to the *Service Applicant*, upon request, where such information is reasonably required by the *Service Applicant* to enable the *Service Applicant* to engage in effective negotiations with *United Energy* for the provision of a *negotiated distribution service*.
- (b) For the purposes of clause 5.1(a), *Commercial Information* will include:
  - (i) the reasonable costs and/or the increase or decrease in costs (as appropriate) to provide the *negotiated distribution service* to the *Service Applicant*, and
  - (ii) a demonstration of how the price for providing the *negotiated distribution service* reflects those costs and/or the cost increment or decrement (as appropriate).

#### **5.2 Confidentiality Requirements for United Energy**

- (a) For the purposes of this clause 5, *Commercial Information* does not include:
  - (i) confidential information provided to *United Energy* by another person; or
  - (ii) information that *United Energy* is prohibited, by law, from disclosing to the *Service Applicant*.
- (b) *United Energy* may provide the *Commercial Information* in accordance with clause 5 subject to relevant conditions including the condition that the *Service Applicant* must not disclose the *Commercial Information* to any other person unless *United Energy* consents in writing to the disclosure.
- (c) *United Energy* may require the *Service Applicant* to enter into a confidentiality agreement with *United Energy*, on terms reasonably acceptable to both parties, in respect of *Commercial Information* provided to the *Service Applicant*.
- (d) A consent provided to a *Service Applicant* in accordance with clause 5.2(b) may be subject to the condition that a person to whom the *Service Applicant*



#### Appendix C-4

discloses the *Commercial Information* must enter into a separate confidentiality agreement with *United Energy*.

- 6 Process and Timeframe for agreeing provision of negotiated distribution services**
- (a) Subject to clause 6(b), *United Energy* must make an offer to the *Service Applicant* to provide the *negotiated distribution service*, within 20 *Business Days* of receipt of an *Offer Request*, or within 20 *Business Days* of the date when *United Energy* receives all *Commercial Information* which *United Energy* reasonably requires for making the offer, whichever is later.
  - (b) *United Energy* may only refuse to make an offer to the *Service Applicant* to provide the *negotiated distribution service* if:
    - (i) *United Energy* has already made an offer in response to an earlier request and the offer has not been accepted; or
    - (ii) *United Energy* is permitted or required to do so by any electricity industry code, guideline or standard, or any applicable law.
  - (c) An offer made by *United Energy* must contain the price and terms and conditions for provision of the *negotiated distribution service*, including the following (as applicable):
    - (i) the amount of electricity *United Energy* fairly and reasonably estimates will be supplied to the *Service Applicant*, having regard to the *Service Applicant*'s load and connection characteristics;
    - (ii) the costs *United Energy* will incur to provide the relevant *negotiated distribution service*;
    - (iii) a requirement that the *Service Applicant* comply with the provisions of any electricity industry code, guideline or standard, unless otherwise agreed by the *United Energy* and the *Service Applicant* (both of whom in that respect must act reasonably).
  - (d) In preparing an offer to provide the *negotiated distribution service*, *United Energy* will comply with the requirements of Schedule 2, depending on the type of *negotiated distribution service* and the *Service Applicant*.
  - (e) An offer made by *United Energy* for provision of the *negotiated distribution service* will remain valid for a period of 60 days from the date of issue of the offer. Within that 60 day period the *Service Applicant* may notify *United Energy* that:
    - (i) it accepts *United Energy*'s offer;
    - (ii) it rejects *United Energy*'s offer and does not wish to commence with negotiations for provision of the *negotiated distribution service*; or

#### Appendix C-4

- (iii) it rejects *United Energy's* offer but does wish to commence with negotiations for provision of the *negotiated distribution service*.
- (f) If the *Service Applicant* notifies *United Energy* that it rejects *United Energy's* offer but does wish to commence with negotiations for provision of the *negotiated distribution service* then the framework for progressing and finalising negotiations set out in Table 1 will apply, where X refers to the date of the notice by the *Service Applicant* rejecting *United Energy's* offer.

**Table 1**

Event	Indicative Timeframe
Parties agree negotiation programme, which may include, <ul style="list-style-type: none"> <li>- the request and provision of further <i>Commercial Information</i> by <i>United Energy</i> and the <i>Service Applicant</i>;</li> <li>- notification and consultation with any affected distribution network users</li> </ul>	X + 15 <i>Business Days</i>
Parties finalise negotiations	X + 60 <i>Business Days</i> .

**7 Obligation to negotiate in good faith**

*United Energy* and the *Service Applicant* must negotiate in good faith the terms and conditions for the provision by *United Energy* of the *negotiated distribution service* sought by the *Service Applicant* and use reasonable endeavours to adhere to the timeframes referred to in clause 6.

**8 Determination of impact on other distribution network users and consultation with affected distribution network users**

- (a) *United Energy* will determine the potential impact on distribution network users, other than the *Service Applicant*, of the provision of a *negotiated distribution service*.
- (b) *United Energy* must notify and consult with any affected distribution network users and take reasonable steps to ensure that the provision of the *negotiated distribution service* does not result in non-compliance with obligations to other distribution network users under the *Rules*.

**9 Suspension of Timeframe for Provision of a negotiated distribution service**

- (a) The timeframes in clause 6 for provision of an offer by *United Energy* or for negotiations for provision of a *negotiated distribution service*, are suspended if:
  - (i) 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:
    - (A) the withdrawal of the dispute under section 126 of the *NEL*;

#### Appendix C-4

- (B) the termination of the dispute by the AER under section 131 or 132 of the NEL; or
  - (C) determination of the dispute by the AER under section 128 of the NEL;
- (ii) within 15 *Business Days* of *United Energy* requesting additional *Commercial Information* from the *Service Applicant* pursuant to clause 4, the *Service Applicant* has not supplied that *Commercial Information*;
  - (iii) without limiting clauses 9(a)(i) or 9(a)(ii), the *Service Applicant* does not promptly conform with any of its obligations as required by this Negotiating Framework or as otherwise agreed between the parties;
  - (iv) *United Energy* has been required to notify and consult with any affected distribution network users under clause 8. Under these circumstances, the timeframes will be suspended from the date of notification to the affected distribution network users until the end of the time limit specified by *United Energy* 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*.
- (b) Each party will notify the other party if it considers that the timeframe has been suspended, within 5 *Business Days* of that suspension.
- 10 Dispute Resolution**
- (a) All disputes between the parties as to the terms and conditions for the provision of an *negotiated distribution service* are to be dealt with by *United Energy*'s dispute resolution processes in the first instance.
  - (b) Should *United Energy*' internal dispute resolution processes prove unsuccessful, disputes will be dealt with by the AER in accordance with Part 10 of the *NEL* and Chapter 8 of the *Rules*, as applicable.
- 11 Payment of *United Energy*'s Reasonable Costs**
- (a) *United Energy* may give the *Service Applicant* a notice setting out the amounts payable in relation to *United Energy*' reasonable direct costs incurred in the processing of the *Service Applicant*'s application for a *negotiated distribution service*.
  - (b) The *Service Applicant* must, within 20 *Business Days* of a notice being given in accordance with clause 11(a), pay to *United Energy* the amount set out in the notice.

## Appendix C-4

### 12 Termination of Negotiations

- (a) The *Service Applicant* may elect not to continue with its application for the provision of a *negotiated distribution service* and may terminate the negotiations by giving *United Energy* written notice of its decision to do so. Under such circumstances, the *Service Applicant* will still be liable for *United Energy's* incurred and/or committed costs in relation to the provision of that service.
- (b) *United Energy* may terminate a negotiation under this framework by giving the *Service Applicant* written notice of its decision to do so where:
  - (i) *United Energy* believes on reasonable grounds that the *Service Applicant* is not conducting the negotiation under this Negotiating Framework in good faith;
  - (ii) the *Service Applicant* consistently fails to comply with the requirements of the Negotiating Framework;
  - (iii) 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 *United Energy*;
  - (iv) the *Service Applicant* fails to make required payments in relation to the provision of the service; or
  - (v) an act of *Solvency Default* occurs in relation to the *Service Applicant*.

### 13 Publication of Results of negotiations on website

*United Energy* will publish on its website a quarterly summary of the *negotiated distribution services* provided to categories of *Service Applicants* and the total value of those services.

### 14 Giving notices

- (a) 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.
- (b) 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, posted or electronically transmitted to the latest address.

*United Energy*

6 Nexus Court

#### Appendix C-4

Mulgrave VIC 3170

Telephone 1300 131 689  
Facsimile 1300 131 684.

#### *Service Applicant*

Name: *Service Applicant*

Address: The nominated address of the *Service Applicant* provided in writing to *United Energy* as part of the application.

- (c) A notice, consent, information, application or request is to be treated as given or made at the following time:
- (i) if it is handed to a party, on the day that this occurs;
  - (ii) if it is delivered, when it is left at the relevant address;
  - (iii) if it is sent by post, 2 *Business Days* after it is posted;
  - (iv) 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; or
  - (v) if sent by e-mail, on the day the e-mail is sent, provided that a confirmation that the e-mail was received by the recipient is received by the sender.
- (d) 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 Miscellaneous

##### 15.1 *Governing law and jurisdiction*

- (a) This document is governed by the law of the State of Victoria.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria
- (c) The parties will not object to the exercise of judgment by the courts of the State of Victoria on any basis.

## Appendix C-4

### 15.2 Severability

- (a) 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.
- (b) 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.

### 15.3 Time for Action

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

## 16 Definitions and interpretation

### 16.1 Definitions

In this document the following definitions apply:

[not used]

*Business Day* means a day other than a Saturday or Sunday or a public holiday appointed under the *Public Holidays Act 1993*.

*Commercial Information* will include at a minimum, the following classes of information in relation to a *Service Applicant*, where applicable:

- (a) Details of corporate structure, financial details relevant to creditworthiness and commercial risk and ownership of assets;
- (b) Technical information relevant to the application for a *negotiated distribution service*;
- (c) Financial information relevant to the application for a *negotiated distribution service*;
- (d) Details of an application's compliance with any law, standard, *Rules* or guideline.

*negotiated distribution service(s)* means those services specified as *negotiated distribution services* in Schedule 1.

*NEL* means the National Electricity Law.

*Offer Request* has the meaning given in clause 3(a).

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



#### Appendix C-4

*Service Applicant* means either:

- (a) a person who is an existing or an intending Registered Participant or a person who is eligible to become a Registered Participant; or
- (b) a person who asks *United Energy* for access to a distribution service.

*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

#### Appendix C-4

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*.

*United Energy* means United Energy Distribution Pty Ltd (ABN 70 064 651 029).

#### 16.2 Interpretation

In this document, unless the context otherwise requires:

- (a) terms defined in the *NEL* and the *Rules* 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; and
- (f) a covenant or agreement on the part of two or more persons binds them jointly and severally.

#### 1 Schedule 1 – Negotiated Distribution Services

In this Schedule:

“dedicated public lighting assets” assets means public lighting assets which form a stand-alone assembly (ie public lighting assets that are separate from other distribution assets);

“emerging technology” means technology for the provision of public lighting services different to that employed in existing shared public lighting assets;



#### Appendix C-4

“new public lighting services” means additional public lighting services in an area where there are existing public lighting services or public lighting services in an area where there are no existing public lighting services (so called greenfields);

“public lighting assets” takes its meaning from the Public Lighting Code published by the Essential Services Commission and dated April 2005 ( as amended from time to time);

“public lighting services” takes its meaning from the Public Lighting Code published by the Essential Services Commission and dated April 2005 ( as amended from time to time);

“shared public lighting assets” means public lighting assets other than dedicated public lighting assets (ie public lighting assets that are not separate from other distribution assets).

The negotiated distribution services provide by *United Energy* are:

- (a) operation, maintenance and repair of dedicated public lighting assets;
- (b) replacement of dedicated public lighting assets;
- (c) alteration and relocation of public lighting assets;
- (d) replacement of shared public lighting assets with emerging technology;
- (e) provision of new public lighting services, unless those public lighting services are (or are to be) provided by shared public lighting assets. New public lighting services include the installation of the public lighting assets and operation, maintenance, repair and replacement.

Note: the operation, maintenance, repair and replacement of shared public lighting assets (other than replacement with emerging technology) is an alternative control service under the Rules and *United Energy's* distribution determination.

## 2 Schedule 2 - Pricing Principles

### Public Lighting Services

- 1 In making an offer for a *negotiated distribution service* that is a *public lighting service* *United Energy* must include a price that is fair and reasonable having regard to the costs to be incurred by *United Energy* in providing that service and which is otherwise consistent with its obligations under the *Rules*.

### Assessment and Review

- 2 *United Energy* will annually assess and review prices for *negotiated distribution services* and the basis upon which those prices are made.
- 3 *United Energy* must make information on the assessment and review available in accordance with clause 5 of the Negotiating Framework.