



Power and Water Corporation Distribution Determination 2019 to 2024

April 2019

Attachment A
Negotiating Framework



Negotiating Framework



Negotiating Framework

Requirement for a Negotiating Framework

Pursuant to clause 6.7.5 of the Northern Territory National Electricity Rules (NT NER), as a *Distribution Network Service Provider* (DNSP), Power and Water Corporation (Power and Water) must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between Power and Water and any person (the *Service Applicant* or *applicant*) who wishes to receive a *negotiated distribution service* from Power and Water, as to the *terms and conditions of access* for the provision of the service.

Power and Water has prepared this Negotiating Framework for that purpose, consistent with the requirements of clause 6.7.5(b) and (c) of the NT NER.

As at January 2018, none of Power and Water services have been classified by the AER as a *negotiated distribution service*, and Power and Water does not offer any *negotiated distribution services*.

Nevertheless, should Power and Water do so in the future, such *negotiated distribution services* would be negotiated and provided in accordance with the procedures, terms and conditions set out in this Negotiating Framework.

1. Application of this Negotiating Framework

- 1.1 This Negotiating Framework will apply to Power and Water and to each *Service Applicant* who has applied in writing to Power and Water for provision of a *negotiated distribution service*. Power and Water and any *Service Applicant* who wishes to receive a *negotiated distribution service* from Power and Water must comply with the requirements of this Negotiating Framework.
- 1.2 The requirements set out in this Negotiating Framework are in addition to any requirements or obligations contained in the NT NER (including in applicable *negotiated distribution service criteria*, if any, made by the AER under those rules) or in a relevant Northern Territory Regulatory Instrument.
- 1.3 If there is any inconsistency between the NT NER or a relevant Northern Territory Instrument and this Negotiating Framework, the NT NER or the relevant Northern Territory Instrument will prevail.
- 1.4 Nothing in this Negotiating Framework or in the NT NER will be taken to impose an obligation on Power and Water to provide any service to the *Service Applicant*.

2. Obligation to negotiate in good faith

- 2.1 Power and Water and the *Service Applicant* must negotiate in good faith the terms and conditions of access for the provision of



negotiated distribution services. This obligation to negotiate in good faith does not require any party to act contrary to its own commercial interests.

3. Timeframe for commencing, progressing and finalising negotiations

Commencement of process

- 3.1 A *Service Applicant* who wishes to receive a *negotiated distribution service* from Power and Water must submit a request to Power and Water to the address stipulated in clause 13 of this Negotiating Framework.
- 3.2 The request may be made on a Power and Water application form for *negotiated distribution service* requests¹ or may be made by written request, and it must confirm the *Service Applicant's* agreement to conduct a negotiation under this Negotiating Framework.
- 3.3 On receipt of a request under clause 3.1, Power and Water and the *Service Applicant* will proceed to negotiate in good faith the terms and conditions of access in accordance with this Negotiating Framework.

Timeframes

- 3.4 Following receipt of a request for a negotiated distribution service under clause 3.2 above, Power and Water and the *Service Applicant* will use their reasonable endeavours to:
 - a) agree the milestones, information requirements, and commence discussions regarding other relevant issues within 20 Business Days of receipt by Power and Water of the request;
 - b) adhere to any timetable established for negotiations, and progress negotiations in an expeditious manner; and
 - c) finalise negotiations within 130 Business Days of the initial request.
- 3.5 Power and Water and the *Service Applicant* must use reasonable endeavours to adhere to the timeframes set out in Table [1] or agreed pursuant to paragraph (a) above during the negotiation for the supply of a negotiated distribution service.

Table [1] – Timeframe for negotiations

Event		Timeframe
1	Receipt by Power and Water of written application from a <i>Service Applicant</i> for a <i>negotiated distribution service</i>	X
2	Parties meet (in person, by electronic communication or by telephone) to discuss: <ul style="list-style-type: none"> • the nature of the services required; 	X + 20 Business Days

¹ If developed, such forms will be made available for potential applicants on Power and Water's website.



Event	Timeframe
<ul style="list-style-type: none"> a preliminary program with milestones for progressing the <i>negotiated distribution service</i>, 	
<p>3 Parties finalise preliminary program, which may include (without limitation) milestones relating to:</p> <ul style="list-style-type: none"> requesting and providing Commercial Information (by both the <i>Service Applicant</i> and Power and Water); and notification and consultation with affected <i>Distribution Network Users</i> and/or the Market Operator. 	X + 50 Business Days
<p>4 All necessary information is received by Power and Water to enable it to make an offer, including:</p> <ul style="list-style-type: none"> the <i>Service Applicant's</i> initial and any additional Commercial Information; and consultation feedback where required. <p>The <i>Service Applicant</i> has paid the application fee to Power and Water.</p>	Y
<p>5 Power and Water provides the <i>Service Applicant</i> with an offer for the <i>negotiated distribution service</i>.</p>	Y + 25 Business Days
<p>6 Parties finalise negotiations</p>	Y + 80 Business Days

Modifying timeframes by agreement

- 3.6 Notwithstanding the provisions in clause 3.5 above, the parties may agree to modify the timeframes set out in Table 1. Where either party requests such a modification, the other party's agreement must not be unreasonably withheld. The parties agree that any resulting modified negotiating timeframe is reasonable.

Suspension of timeframes

- 3.7 The timeframes for the negotiation and provision of a *negotiated distribution service* may be suspended at the discretion of Power and Water if:
- a) a dispute is raised in relation to the *negotiated distribution service* being provided;
 - b) a dispute is raised in relation to this Negotiating Framework; or
 - c) Power and Water determines in its reasonable opinion that insufficient information has been provided by the *Service Applicant*.
- 3.8 The timeframe will remain suspended until the dispute is resolved or abandoned, or the information is provided (as applicable).
- 3.9 Timeframes may also be suspended in accordance with clause 9.



4. Termination of negotiations

Termination by Service Applicant

- 4.1 The *Service Applicant* may elect not to continue with its application for a *negotiated distribution service* and may terminate the negotiations under this Negotiating Framework by written notice to Power and Water of its decision to do so.

Termination by Power and Water

- 4.2 Power and Water may terminate a negotiation under this Negotiating Framework by giving the *Service Applicant* written notice of its decision to do so where:
- Power and Water is of the reasonable opinion that the *Service Applicant* will not acquire the *negotiated distribution service*;
 - Power and Water believes on reasonable grounds that the *Service Applicant* is not conducting the negotiations in good faith;
 - the *Service Applicant* fails to comply with the obligations in this Negotiating Framework;
 - the *Service Applicant* fails to pay the application fee specified in clause 10;
 - Power and Water is permitted or required to do so by any Northern Territory Regulatory Instrument, or any applicable law; or
 - an Insolvency Event occurs in respect of the *Service Applicant*.

5. Provision of Commercial Information by Service Applicant

Obligation to provide initial Commercial Information

- 5.1 Within a timeframe agreed by the parties, Power and Water must use its reasonable endeavours to notify and request from the *Service Applicant* any Commercial Information held by the *Service Applicant* that Power and Water reasonably requires to enable Power and Water to engage in effective negotiations with the *Service Applicant* for the provision of negotiated distribution services.
- 5.2 Subject to the clauses 3.7 [suspension] and 7 [confidential information], the *Service Applicant* must use its reasonable endeavours to provide the Commercial Information requested by Power and Water within 10 Business Days of receiving Power and Water's request, or within such other time period as agreed by the parties.

Obligation to provide additional Commercial Information

- 5.3 Power and Water may request the *Service Applicant* to provide Power and Water with any additional Commercial Information that Power and Water reasonably requires to enable it to engage in



effective negotiations with the *Service Applicant* in relation to the provision of negotiated distribution services, or to clarify any Commercial Information provided pursuant to paragraph 5.2.

- 5.4 Subject to clause 7, the *Service Applicant* must use its reasonable endeavours to provide the additional Commercial Information requested by Power and Water within 10 Business Days of receiving Power and Water's request, or within such other time period as agreed by the parties.

6. Provision of Commercial Information by Power and Water

Obligation to provide Commercial Information (including cost information)

- 6.1 Power and Water will provide to the *Service Applicant*, within the timeframe agreed by the parties, all such Commercial Information as the *Service Applicant* may reasonably require to enable the *Service Applicant* to engage in effective negotiations for the provision of negotiated distribution services, including the cost information set out in clause 6.3.
- 6.2 Power and Water may impose reasonable conditions on its provision of Commercial Information, including without limitation, a condition that the *Service Applicant* does not disclose the Commercial Information to any other person without Power and Water's written consent.
- 6.3 Power and Water will provide to the *Service Applicant*:
- a) a description of the nature of the *negotiated distribution service*, including what Power and Water would provide to the *Service Applicant* as part of that service;
 - b) the terms and conditions on which Power and Water would provide the *negotiated distribution service*; and
 - c) cost information including information that will:
 - (i) identify and inform the *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the *negotiated distribution service*; and
 - (ii) 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); and
 - d) the period during which Power and Water's offer will remain open, which period must not be less than 40 Business Days.
- 6.4 Arrangements to assess and review charges and the basis on which they are made are set out in clause 8.



7. Confidentiality requirements

- 7.1 Commercial Information that is provided either:
- a) to Power and Water by the *Service Applicant* under clause 5; or
 - b) to the *Service Applicant* by Power and Water under clause 6,
- may be provided subject to the condition that the receiving party must not disclose the Commercial Information to any other person unless the party providing the Commercial Information consents in writing to the disclosure, or the disclosure is required by law.
- 7.2 Either party may require the other party to enter into a confidentiality agreement in respect of Commercial Information it provides. The terms of the confidentiality agreement must be reasonably acceptable to both parties.
- 7.3 Any consent to disclosure to another person provided by a party in accordance with clause 7.1 may be given subject to the condition that the other person to whom the Commercial Information is to be disclosed must enter into a separate confidentiality agreement with the party who provides the relevant Commercial Information.
- 7.4 Commercial Information does not include confidential information provided to Power and Water or the *Service Applicant* (as the case may be) by another person, or information that a party is prohibited by law from disclosing.

8. Arrangement for assessment and review of charges

- 8.1 Power and Water will assess and review the basis for its charges to the *Service Applicant* for a negotiated distribution service, following a written request by the *Service Applicant* for such a review.
- 8.2 In requesting a review of charges, the *Service Applicant* must provide reasons why it considers the review to be appropriate, and any supporting information available to the *Service Applicant* that would assist Power and Water's assessment and review of charges.

9. Impact on other Distribution Network Users

- 9.1 Power and Water will determine the potential impact of the *negotiated distribution service* on Distribution Network Users other than the *Service Applicant*.
- 9.2 Power and Water will 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 and the NT NER.
- 9.3 If Power and Water is required to consult pursuant to this clause 9, the timeframes provided for in clause 3 will be suspended until the information required to assess the impact is received from the affected Distribution Network User.



10. Payment of Power and Water costs

Application fee

- 10.1 Prior to commencing negotiations, the *Service Applicant* must pay to Power and Water an application fee.
- 10.2 The application fee will be determined by Power and Water based upon an estimate of the minimum reasonable direct costs that will be incurred by Power and Water in relation to the *Service Applicant's* application for the provision of the *negotiated distribution service*.

Direct costs

- 10.3 From time to time, Power and Water may give the *Service Applicant* a notice setting out an estimate of any reasonable direct costs that Power and Water will incur in relation to the *Service Applicant's* application for the provision of the *negotiated distribution service* that exceed the application fee paid by the *Service Applicant* under paragraph 10.1.
- 10.4 Within 20 Business days of receipt of a notice under clause 10.3, the *Service Applicant* must pay to Power and Water the amount specified in that notice.
- 10.5 If the aggregate direct costs incurred by Power and Water in relation to the *Service Applicant's* application for the provision of *negotiated distribution services* are less than the amount paid by the *Service Applicant* under paragraphs 10.1 and 10.4, Power and Water will:
 - a) offset the excess amount against the price for the *negotiated distribution service*; or
 - b) refund the excess amount if the *Service Applicant* does not acquire the *negotiated distribution service*.
- 10.6 Power and Water may require the *Service Applicant* to enter into a binding agreement addressing conditions, guarantees and other matters in relation to the payment of on-going costs in accordance with this clause 10.

11. Results of negotiation

- 11.1 At the conclusion of the negotiations between Power and Water and the *Service Applicant*, Power and Water will publish the results of the negotiations on its website. Results will be published whether or not agreement is reached, and where negotiations are terminated in accordance with this Negotiating Framework.

12. Dispute resolution

- 12.1 All disputes arising during the course of negotiating a *negotiated distribution service* must be dealt with in accordance with:



- a) Part 10 of the NEL and Part L of Chapter 6 of the NT NER in the event that those provisions have commenced and are in force in the Northern Territory at the time the dispute arises and apply to the dispute; or
- b) such alternative measures as are approved for that purpose under a Northern Territory Regulatory Instrument; or
- c) in the event that neither 12.1 (a) nor 12.1(b) applies, the following process:
 - (i) Representatives of Power and Water and a Service Applicant must meet within 5 business days after a written request by a disputing party, and must attempt to resolve the dispute by negotiations in good faith.
 - (ii) If the dispute is not resolved within 10 business days after their first meeting, the dispute must be referred to the senior executive officer of each disputing party who must attempt to resolve the dispute by negotiations in good faith.
 - a. If the dispute is resolved under sub-clause (i) or (ii), the disputing parties must enter into a written agreement or deed recording the terms of the resolution, sign the agreement or deed and must adhere to its terms.

12.2 In the event that the dispute resolution process in clause 12.1b) (if applicable) or 12.1c) does not resolve the dispute, then the dispute must be dealt with in accordance with:

- a) the NT National Electricity Law and Chapter 8 of the NT NER in the event that those provisions have commenced and are in force in the Northern Territory at the time the dispute arises and apply to the dispute; or
- b) such alternative measures as are approved for that purpose under a Northern Territory Regulatory Instrument; or
- c) in the event that neither 12.2 (a) nor 12.2(b) applies, then the parties must endeavour to resolve the dispute by mediation as follows:
 - (i) Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000; telephone: 02 9251 3366, email: infoaus@resolution.institute) or the Chair's designated representative.
 - (ii) The Resolution Institute Mediation Rules will apply to the mediation.



- (iii) It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.

13. Giving notices

- 13.1 Except as otherwise indicated in this Negotiating Framework, a notice, consent, information, application or request that must or may be given or made to a party under this Negotiating Framework is only given or made if it is in writing and delivered or posted to that party at its address set out below.
- 13.2 If a party gives the other party 5 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 other party's most recent address.

Power and Water

Name: Power and Water Corporation
PO Box: **GPO Box 3596, Darwin NT 080**
Email: **customerservice@powerwater.com.au**

Service Applicant

Name: *Service Applicant*
Address: The nominated address of the *Service Applicant* provided in writing to Power and Water by the *Service Applicant* as part of its application for a *negotiated distribution service*.

14. Definitions

In this Negotiating Framework, words in italics have the same meaning as given to those words in the NT NER.

Capitalised words are defined as follows:

“**Business Day**” means a day on which banks are open for business generally in Darwin, Northern Territory.

“**Commercial Information**” includes, but is not limited to, 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 the *negotiated distribution service*;
- financial information relevant to the application for the *negotiated distribution service*;



- details of an application's compliance with any law, standard, rule or guideline,

but does not include:

- confidential information provided by another person to either the *Service Applicant* or Power and Water;
- information that the *Service Applicant* or Power and Water is prohibited by law from disclosing.

"Insolvency Event" means the occurrence of any of the following events in relation to the *Service Applicant*:

- (a) a "controller" (as defined in section 9 of the Commonwealth Corporations Act 2001), manager, trustee, administrator, or similar officer is appointed in respect of the *Service Applicant*;
- (b) a liquidator or provisional liquidator is appointed in respect of the *Service Applicant*;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up the *Service Applicant*; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the *Service Applicant* or the *Service Applicant*'s estate under any insolvency provision;
- (e) a moratorium of any debts of the *Service Applicant*, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with the *Service Applicant*'s creditors or any similar proceeding or arrangement by which the assets of the *Service Applicant* are subjected conditionally or unconditionally to the control of the *Service Applicant*'s creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) the *Service Applicant* becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the *Service Applicant*.

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“**Northern Territory Regulatory Instrument**” means an Act, regulation, licence, code guideline or other regulatory instrument to which Power and Water is subject under Northern Territory law.

“**NT NER**” means the National Electricity Rules having the force of law in the Northern Territory under section 9 of the National Electricity (NT) Law.