



FINAL DECISION
Powerlink transmission
determination
2017–22

Attachment 14 – Negotiated
services

April 2017

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Note

This attachment forms part of the AER's final decision on Powerlink's transmission determination for 2017–22. It should be read with all other parts of the final decision.

This final decision consists of an Overview and 11 attachments. As many issues were settled at the draft decision stage or required only minor updates we have not prepared final decision attachments for:

- Regulatory depreciation
- Operating expenditure; and
- Corporate income tax.

The AER's final decision on these matters is set out in the Overview. For ease of reference the remaining attachments have been numbered consistently with the attachment numbering in our draft decision.

The final decision includes the following documents:

Overview

Attachment 1 – Maximum allowed revenue

Attachment 2 – Regulatory asset base

Attachment 3 – Rate of return

Attachment 4 – Value of imputation credits

Attachment 6 – Capital expenditure

Attachment 9 – Efficiency benefit sharing scheme

Attachment 10 – Capital expenditure sharing scheme

Attachment 11 – Service target performance incentive scheme

Attachment 12 – Pricing methodology

Attachment 13 – Pass through events

Attachment 14 – Negotiated services

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Shortened forms

Shortened form	Extended form
AARR	aggregate annual revenue requirement
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ASRR	annual service revenue requirement
augex	augmentation expenditure
capex	capital expenditure
CCP	Consumer Challenge Panel
CESS	capital expenditure sharing scheme
CPI	consumer price index
DMIA	demand management innovation allowance
DRP	debt risk premium
EBSS	efficiency benefit sharing scheme
ERP	equity risk premium
MAR	maximum allowed revenue
MRP	market risk premium
NEL	national electricity law
NEM	national electricity market
NEO	national electricity objective
NER	national electricity rules
NSP	network service provider
NTSC	negotiated transmission service criteria
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

Shortened form	Extended form
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
STPIS	service target performance incentive scheme
TNSP	transmission network service provider
TUoS	transmission use of system
WACC	weighted average cost of capital

14 Negotiated services

Our transmission determination imposes control over revenues that a transmission network service provider (TNSP) can recover from its provision of prescribed transmission services. However we do not determine the terms and conditions of negotiated transmission services. Under the National Electricity Rules (NER), negotiated services are provided under an agreement or as a result of a determination of a commercial arbitrator. These processes are facilitated by:

- a negotiating framework
- negotiated transmission service criteria (NTSC).

A TNSP must prepare a negotiating framework that sets out procedures for negotiating the terms and conditions of access to a negotiated transmission service. The NTSC, which we develop in consultation with stakeholders, set out criteria that a TNSP must apply in negotiating those terms and conditions, including the prices and access charges for negotiated transmission services. They also contain the criteria that a commercial arbitrator must apply to resolve disputes about such terms and conditions and/or access charges.

This attachment sets out our final decision on Powerlink's negotiating framework for the 2017–22 regulatory control period.¹ We also specify the NTSC that are to apply to Powerlink.²

14.1 Final decision

Negotiating framework

Our final decision is to approve Powerlink's proposed negotiating framework for the 2017–22 regulatory control period because it meets the requirements in the NER.³ We approved the same negotiating framework in our draft decision.⁴ The approved negotiating framework is set out in attachment A of our final decision.

Negotiated transmission service criteria

Our final decision is to retain the NTSC that we previously developed and published for Powerlink in February 2016 for the 2017–22 regulatory control period.⁵ The NTSC give effect to the negotiated transmission service principles.⁶

¹ NER, cl. 6A.2.2(2); 6A.14.1(6).

² NER, cl. 6A.2.2(3); 6A.14.1(7).

³ NER, cl. 6A.9.5(c).

⁴ AER, *Draft decision, Powerlink transmission determination 2017–18 to 2021–22: Attachment 14—Negotiated services*, September 2016.

⁵ AER, *Negotiated transmission service criteria for Powerlink - Call for submissions*, February 2016.

⁶ NER, cl. 6A.9.1.

14.2 Powerlink's revised proposal

Powerlink's revised proposal accepted our draft decision.⁷ Therefore, Powerlink did not make any changes to its negotiating framework approved in our draft decision.

14.3 Assessment approach

Negotiating framework

To be approved, a proposed negotiating framework must specify each requirement set out in clause 6A.9.5(c) of the NER, and not be inconsistent with any of the requirements set out in clause 6A.9.5(d) of the NER. We examined whether Powerlink's proposed negotiating framework met these requirements.

Negotiated transmission service criteria

We consider that an NTSC that reflects the negotiated transmission service principles would satisfy the NER requirements. Therefore, we assessed whether the proposed NTSC reflects the negotiating transmission service principles in clause 6A.9.1 of the NER.

In forming our final decision, we also took into consideration submissions from interested parties. In particular, Aurizon Operations Ltd (Aurizon) raised several concerns with the proposed NTSC and suggested some specific amendments. We considered these initially in our draft decision and, following a further submission by Aurizon to our draft, we considered the further issues raised by Aurizon. Our views on Aurizon's issues and suggested amendments are discussed below.

14.4 Reasons for final decision

14.4.1 Negotiating framework

Our final decision maintains our draft decision to approve Powerlink's proposed negotiating framework because it specifies the matters that are set out as minimum requirements in the NER.⁸ Our assessment of Powerlink's negotiating framework is set out in table 14.1 in attachment 14 of our draft decision.⁹

14.4.2 Negotiated transmission service criteria

Our final decision on the NTSC is set out in appendix A of this attachment. This is the same NTSC as set out in our draft decision.

⁷ Powerlink, *2018–22 Powerlink Queensland revised revenue proposal*, December 2016, p. 21.

⁸ NER, cl. 6A.9.5(c).

⁹ AER, *Draft decision, Powerlink transmission determination - Attachment 14 - Negotiated services*, September 2016.

Our final decision does not accept Aurizon's proposed amendments to the NTSC.¹⁰ Our reasons are set out below.

Aurizon's proposed amended criteria

We do not accept Aurizon's proposed amendments to the NTSC for Powerlink for the 2017–22 regulatory control period.¹¹ Following consideration of Aurizon's further submissions on these matters, we maintain our draft decision that Aurizon's proposed amendments are not consistent with the cost reflectivity and non-discriminatory principles in clauses 6A.9.1(1) and 6A.9.1(5) of the NER.¹²

Aurizon's proposed amendments to the NTSC place substantial weight on the current prescribed transmission service arrangements when renegotiating its connection services.¹³ These connection services are currently treated as prescribed transmission services due to grandfathering arrangements in the NER.¹⁴ However, these arrangements will cease to apply when Aurizon renegotiates its connection agreement making them negotiated services.

Our draft decision did not accept Aurizon's proposed amendments because we considered they were not consistent with the negotiated transmission services principles.¹⁵ Principally, we considered Aurizon's proposal that the negotiated price be relative to the current prescribed arrangements for these services is not consistent with the cost reflectivity principle set out in clause 6A.9.1(1) of the NER. As stated in the NER, the negotiated price should be based on the costs for providing the service which may differ from the current prescribed arrangements.¹⁶

Further, our draft decision concluded that introducing criteria that would allow separate treatment for a certain class of customer (a customer whose connection services were previously a prescribed transmission services) is not consistent with the non-discriminatory principle.¹⁷

In response to our draft decision, Aurizon provided a further submission in support of its proposed amendments.¹⁸ It noted this further submission:¹⁹

¹⁰ Aurizon, *Submission on Powerlink regulatory proposal 2017-22*, 28 April 2016; Aurizon, *Submission on Powerlink draft decision*, 1 December 2016.

¹¹ AER, *Negotiated transmission service criteria for Powerlink - Call for submissions*, February 2016.

¹² AER, *Draft decision, Powerlink transmission determination - Attachment 14 - Negotiated services*, September 2016, p. 10.

¹³ AER, *Draft decision, Powerlink transmission determination - Attachment 14 - Negotiated services*, September 2016, pp. 9–12.

¹⁴ NER, cl. 11.6.11.

¹⁵ AER, *Draft decision, Powerlink transmission determination - Attachment 14 - Negotiated services*, September 2016, pp. 9–12.

¹⁶ NER, cl. 6A.9.1(1).

¹⁷ AER, *Draft decision, Powerlink transmission determination - Attachment 14 - Negotiated services*, September 2016, pp. 11–12.

¹⁸ Aurizon, *Submission on Powerlink draft decision*, 1 December 2016.

¹⁹ Aurizon, *Submission on Powerlink draft decision*, 1 December 2016, p. 3.

- clarifies the intention of the proposed amendments
- clarifies the limitation of the amendments to a customer in its circumstances
- establishes the amendments are supplementary to the NTSC and not contradictory to the requirements of cost reflectivity and non-discrimination
- demonstrates consistency with the National Electricity Objective (NEO).

Aurizon's further submission noted the primary purpose of the proposed amendments is to ensure the access charge is cost reflective and commensurate with the costs of the service immediately prior to the expiry of the connection agreement.²⁰ However, it acknowledged the costs—by way of the proposed amendments—may differ from those otherwise allocated in accordance with the approved cost allocation methodology.²¹

We consider a departure from costs allocated in accordance with the approved cost allocation methodology is not consistent with clause 6A.9.1(1) of the NER—the cost reflectivity principle. This clause states that the negotiated transmission service price should be based on the costs of providing that service as determined in accordance with the approved cost allocation methodology. Therefore, Aurizon's proposed amendments are not consistent with the requirements of the NER.

Aurizon's further submission noted the uncertainty around the future price outcomes for its services through negotiations and the possibility of Aurizon and its customers incurring price shocks.²² Aurizon posited that price shocks are not in the long-term interests of customers and therefore not consistent with the NEO. Its proposed amendments would remove price shocks because it contended prices under negotiation would be similar to those Aurizon currently incurs.

While keeping the price consistent across regulatory arrangements (prescribed to negotiated) eliminates price shocks, we note that if the price does not reflect the costs of providing the service then that price is not cost reflective. If the price is not cost reflective, then certain additional costs for these services are being recovered by other customers. That is, one customer is cross subsidising another customer. We consider distortion of cost reflective pricing and unnecessary cross-subsidisation is not in the long term interest of customers because they alter efficient decision making. This is not consistent with the NEO.

Aurizon's further submission made changes to the proposed amendments to further limit the scope of their application to only cover an entity in the circumstances of Aurizon.²³ This limitation ensures the proposed amendments would only apply to prescribed exit connection services that are not associated with a new connection.²⁴

²⁰ Aurizon, *Submission on Powerlink draft decision*, 1 December 2016, p. 6.

²¹ Aurizon, *Submission on Powerlink draft decision*, 1 December 2016, p. 8.

²² Aurizon, *Submission on Powerlink draft decision*, 1 December 2016, p. 8.

²³ Aurizon, *Submission on Powerlink draft decision*, 1 December 2016, p. 11.

²⁴ Aurizon, *Submission on Powerlink draft decision*, 1 December 2016, p. 9.

Consistent with our draft decision, we consider introducing criteria in the NTSC that would allow the separate treatment for a certain class of customer is not consistent with the non-discriminatory principle in clause 6A.9.1(5) of the NER.²⁵ The NER requires all customers be treated equally.

We also consider including customer specific criteria in the NTSC based on an individual negotiation may have unintended implications for other negotiations. That is, criteria introduced for one specific scenario may unintentionally impede negotiations for more general scenarios and situations. We consider this outcome is not desirable.

In addition, we do not consider the NTSC should be tailored for individual negotiations. Rather it should be broad enough to allow individual customer–service provider negotiations to be undertaken on fair and reasonable terms. We consider the NTSC we developed for Powerlink for the 2017–22 regulatory control period allows fair and reasonable negotiations.²⁶

Though we have not accepted the proposed amendments, we are not dismissing Aurizon's concerns. Aurizon's argument is that, because it considers its costs are different to those of other Powerlink customers, this difference should be taken into consideration in negotiating its connection agreement. However, we consider this concern is already accounted for in clause 6A.9.1(5) of the NER. That clause allows a negotiated transmission service price to differ if there is a material difference in the cost of providing services to different customers.

In addition, the NTSC does not prevent Aurizon and Powerlink negotiating on the terms proposed by Aurizon. As noted, the NTSC is broad enough to allow individual negotiations be undertaken on fair and reasonable terms. Powerlink supports this position stating that it's negotiating framework and the current NTSC provides sufficient flexibility to appropriately negotiate the transition of Aurizon's connection services from prescribed to negotiated transmission services.²⁷

We encourage Aurizon and Powerlink to engage in negotiations on fair and reasonable terms. We consider the negotiating framework and NTSC will allow this to occur.

²⁵ AER, *Draft decision, Powerlink transmission determination - Attachment 14 - Negotiated services*, September 2016, pp. 11–12.

²⁶ AER, *Negotiated transmission service criteria for Powerlink - Call for submissions*, February 2016.

²⁷ Powerlink, Response to information request#23, 7 March 2017.

A Negotiated transmission service criteria

National Electricity Objective

1. The terms and conditions of access for a negotiated transmission 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 transmission service must be fair, 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 negotiated transmission services, particularly any exclusions and limitations of liability and indemnities, must not be unreasonably onerous. Relevant considerations include the allocation of risk between the TNSP and the other party, the price for the negotiated transmission service and the cost to the TNSP of providing the negotiated service.
4. The terms and conditions of access for a negotiated transmission 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 of a negotiated transmission service must reflect the cost that Powerlink has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in Powerlink's Cost Allocation Methodology.
6. Subject to criteria 7 and 8, the price for a negotiated transmission service must be at least equal to the avoided cost of providing that service but no more than the cost of providing it on a stand alone basis.
7. If the negotiated transmission service is a shared transmission service that:
 - a. exceeds any network performance requirements which it is required to meet under any relevant electricity legislation; or
 - b. exceeds the network performance requirements set out in Schedules 5.1a and 5.1 of the NER²⁸

²⁸ NER, Schedule 5.1a System standards, and Schedule 5.1 Network Performance Requirements to be provided or Co-ordinated by Network Service Providers.

then the difference between the price for that service and the price for the shared transmission service which meets network performance requirements must reflect the Powerlink's incremental cost of providing that service (as appropriate).

8. For shared transmission services, the difference in price between a negotiated transmission service that does not meet or exceed network performance requirements and a service that meets those requirements should reflect Powerlink's avoided costs. Schedules 5.1a and 5.1 of the NER or any relevant electricity legislation must be considered in determining whether any network service performance requirements have not been met or exceeded.
9. The price for a negotiated transmission service must be the same for all Transmission Network Users. The exception is if there is a material difference in the costs of providing the negotiated transmission service to different Transmission Network Users or classes of Transmission Network Users.
10. The price for a negotiated transmission 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 such cases, the 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 transmission service must be such as to enable Powerlink to recover the efficient costs of complying with all regulatory obligations associated with the provision of the negotiated transmission service.

Criteria for access charges

Access charges

12. Any access charges must be based on the costs reasonably incurred by Powerlink in providing Transmission Network User access. This includes the compensation for forgone revenue referred to in clauses 5.4A(h) to (j) of the NER and the costs that are likely to be incurred by a person referred to in clauses 5.4A(h) to (j) of the NER (as appropriate).