

PRELIMINARY DECISION

SA Power Networks determination 2015−16 to 2019−20

Attachment 17 − Negotiated services framework and criteria

April 2015

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Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

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

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

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

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1. Shortened forms

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

# Negotiated services framework and criteria

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

* the negotiating framework that is to apply to SA Power Networks (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. SA Power Networks provides a number of negotiated distribution services (see attachment 13). SA Power Networks submitted a negotiating framework as part of its regulatory proposal.[[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. The NDSC 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 preliminary decision on SA Power Networks' negotiating framework and NDSC.

## Preliminary decision

1. Negotiating framework

We propose a variation to SA Power Networks' proposed negotiating framework for the 2015–20 regulatory control period.[[4]](#footnote-4) Specifically, our preliminary decision is to delete the word 'classification' at section 3 and schedule 1 of the negotiating framework and replace it with 'category'.

1. Negotiated distribution service criteria

Our preliminary decision is to retain the NDSC that we published on our website for SA Power Networks in November 2014[[5]](#footnote-5) for the 2015–20 regulatory control period. The NDSC give effect to the negotiated distribution service principles.[[6]](#footnote-6) We consider SA Power Networks proposed inclusion of 'economic' costs at criteria 3, 5, 12 and 13 would not reflect the NER. Therefore, we reject SA Power Networks' proposed NDSC.

## 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 SA Power Networks' 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 and SA Power Networks' proposed NDSC reflect the negotiated distribution service principles in clause 6.7.1 of the NER.

## Reasons for preliminary decision

1. Negotiating framework
2. A negotiating framework must specify a number of minimum requirements set out in the NER.[[7]](#footnote-7) Those requirements include, among other things, a statement that a distributor will negotiate in good faith and a description for dealing with disputes.

Table 17.1 summarises our assessment of SA Power Networks' proposed negotiating framework. It shows that each of the NER requirements for a negotiating framework is addressed.

Table 17.1 AER's assessment of SA Power Networks' proposed negotiating framework

| 1. NER requirements | 1. AER assessment of SAPN |
| --- | --- |
| Requirement for a distributor and applicant to negotiate in good faith— cl. 6.7.5(c)(1) | Section 4 of SAPN’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 6 of SAPN’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 6.1 of SAPN’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 5 of SAPN’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 9 of SAPN’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) | Sections 15 and 25 of SAPN’s framework |
| Requirements to specify arrangements for the payment of a distributor's reasonable direct expenses incurred in processing the application to provide the negotiated distribution service— cl. 6.7.5(c)(7) | Sections 16 and 26 of SAPN’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) | Sections 13 and 24 of SAPN’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 24 of SAPN’s framework. |
| Requirement that the distributor publish the results of negotiations on its website − cl. 6.7.5(c)(10) | Sections 17A and 27 of SAPN’s framework |

Source: AER analysis.

However, we propose one variation to SA Power Networks' proposed negotiating framework for the 2015–20 regulatory control period.[[8]](#footnote-8) Our preliminary decision is to vary the use of the word 'classification' at section 3 of the negotiating framework.

This variation was raised in a submission from Trans Tasman Energy Group (TTEG).[[9]](#footnote-9)

TTEG made a submission on SA Power Networks' proposed negotiating framework and its proposed NDSC. TTEG submitted that SA Power Networks' proposed use of the word 'classification' in Part A, section 3 of its framework titled 'Classification of negotiated distribution services' is confusing. TTEG noted that it is our role to classify services and that to avoid confusion an alternative term should be adopted. We agree with this point. Our preliminary decision is to amend Part A, section 3 and Schedule 1 of the negotiating framework by using 'category' and removing any reference to 'classification'.

A copy of SA Power Networks' framework is at appendix A. In reading SA Power Networks' framework, our preliminary decision is to delete:

* 'Part, 3. Classification of negotiated distribution services' and replace it with text in attachment B
* 'classification' from the title and table headings of schedule 1 and replace it with 'categorisation'

but to otherwise adopt SA Power Networks' proposed negotiating framework.

1. Negotiated distribution services criteria
2. In November 2014, we published an invitation for submissions on our proposed NDSC for SA Power Networks. We received a submission from SA Power Networks.[[10]](#footnote-10)
3. SA Power Networks submitted that negotiating parties can have differing interpretations of the meaning of the word 'costs'. SA Power Networks submitted that negotiated distribution services charges should recover, at a minimum, the economic costs to provide the assets and services, including an allocation for overheads. It goes on to submit that these costs should include at least a return on the capital employed, using an appropriate weighted average cost of capital; the depreciation cost of the assets; the operating costs; and an allowance for tax obligations. These costs should be subject to indexation to account for inflation.[[11]](#footnote-11)
4. SA Power Networks submitted that differing interpretations of the meaning of 'costs' is the basis for a protracted negotiation which is now in a formal dispute resolution process. For this reason, SA Power Networks submitted that we amend our proposed NDSC to clarify that negotiated prices reflect the economic costs incurred by a distributor in providing these services.[[12]](#footnote-12) Alternatively SA Power Networks submitted that we include the definition of 'costs' contained in its negotiating framework in the NDSC.
5. We have considered SA Power Networks' proposed inclusion of 'economic' costs. We consider that the inclusion of 'economic' costs is unlikely to prevent future disputes. We also consider that adopting 'economic' would be a departure from the NER. The NDSC must give effect to and be consistent with the negotiated distribution services principles set out in the NER.[[13]](#footnote-13) While the NER does not define 'costs', the objective of the regulatory framework is that consumers only fund the efficient cost of safe and reliable network services.[[14]](#footnote-14) Further, chapter 6 of the NER, including provisions relating to negotiated distribution services, refers only to 'efficient costs' or 'costs'.[[15]](#footnote-15)

We are not satisfied that including the definition of 'costs' contained in the proposed negotiating framework will resolve future customer disputes on the meaning of costs, which appears to be SA Power Networks' goal. This is because SA Power Networks must comply with both the negotiating framework and the NDSC when it is negotiating the terms and conditions of access to negotiated distribution services.[[16]](#footnote-16)

1. Therefore, we consider the inclusion of 'economic' costs as defined by SA Power Networks would not give effect to or be consistent with the relevant principles set out in the NER.
2. The NDSC we have decided to apply to SA Power Networks follows:
3. 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 distributor 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

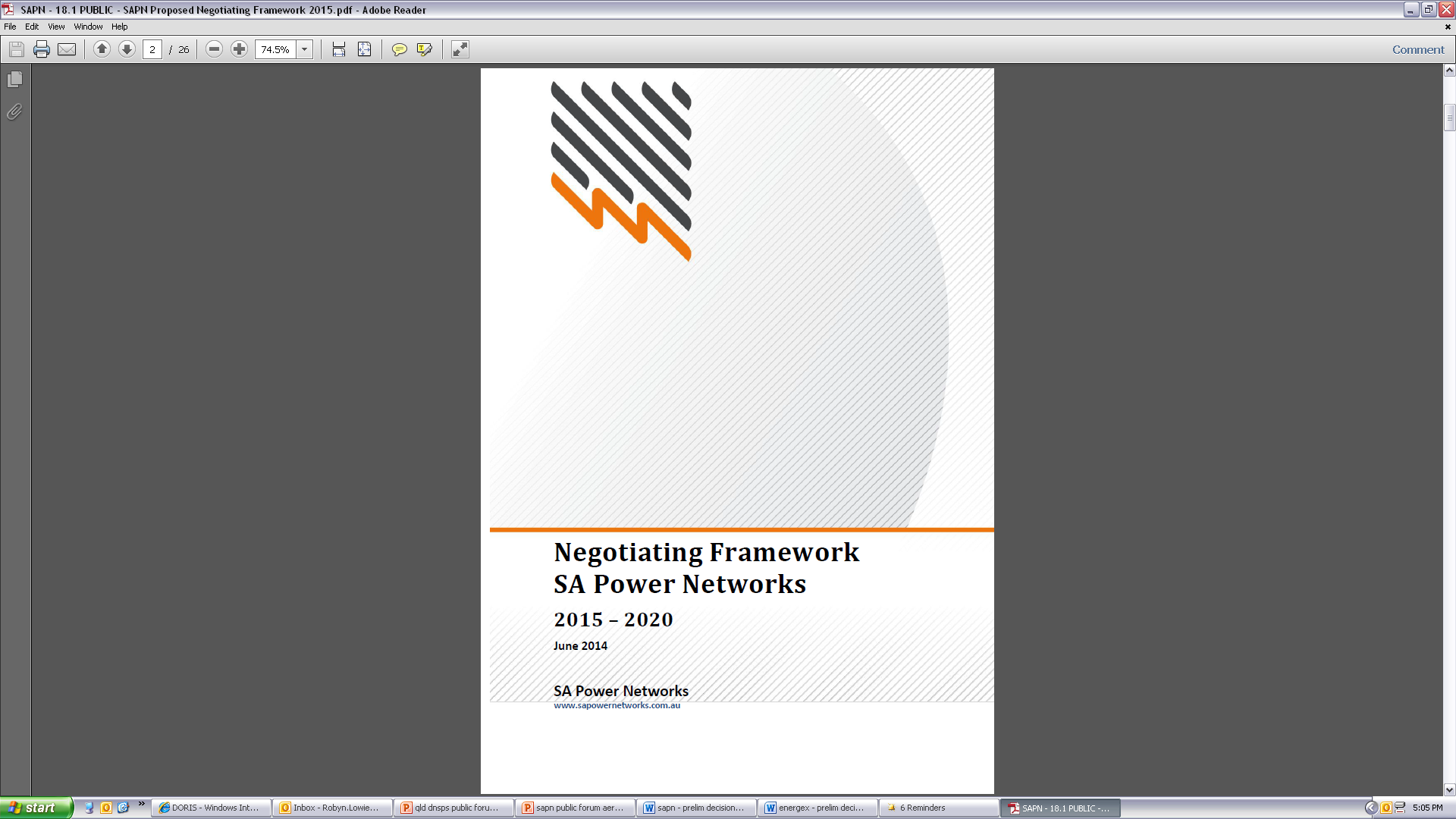
Access Charges

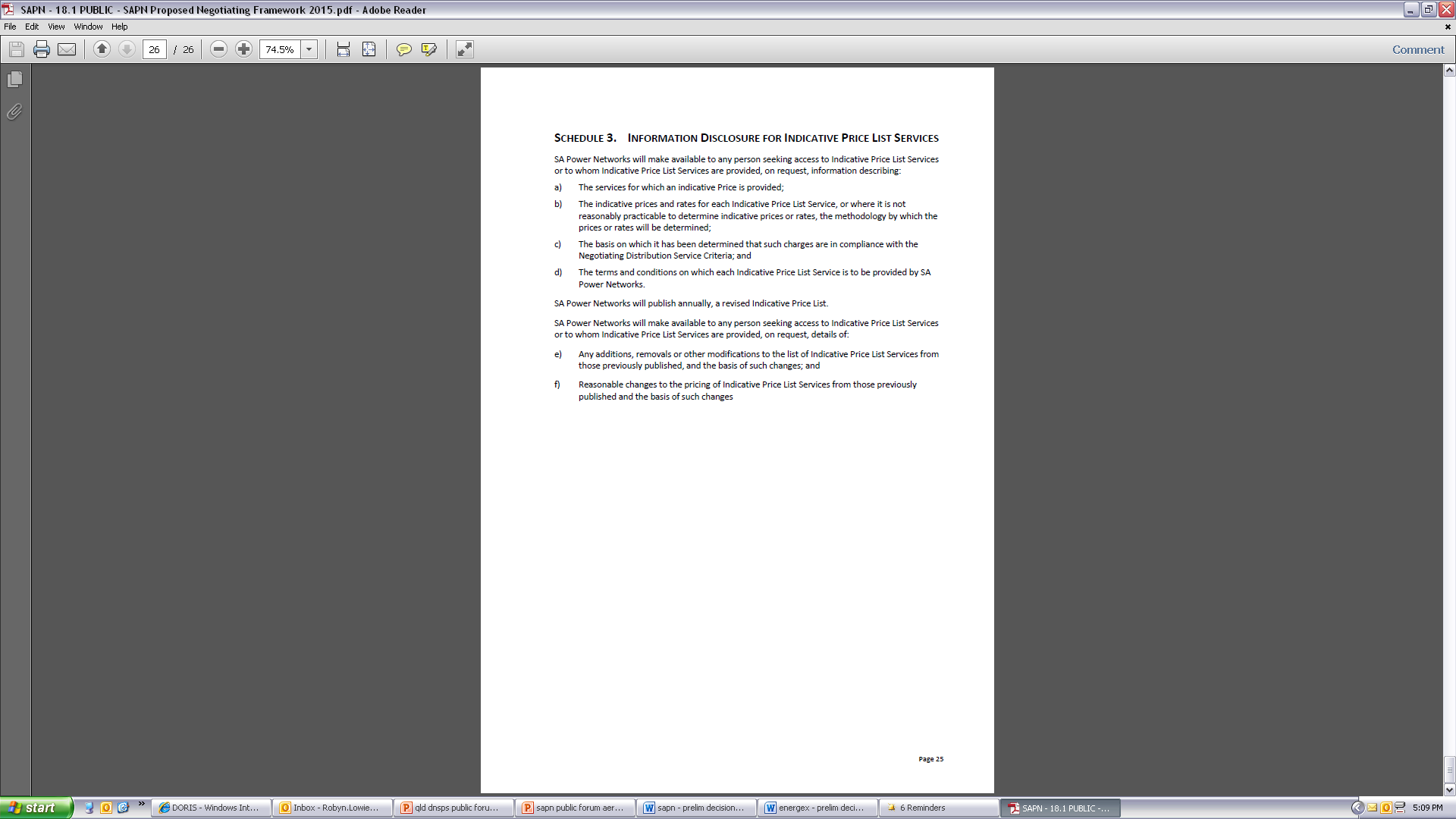
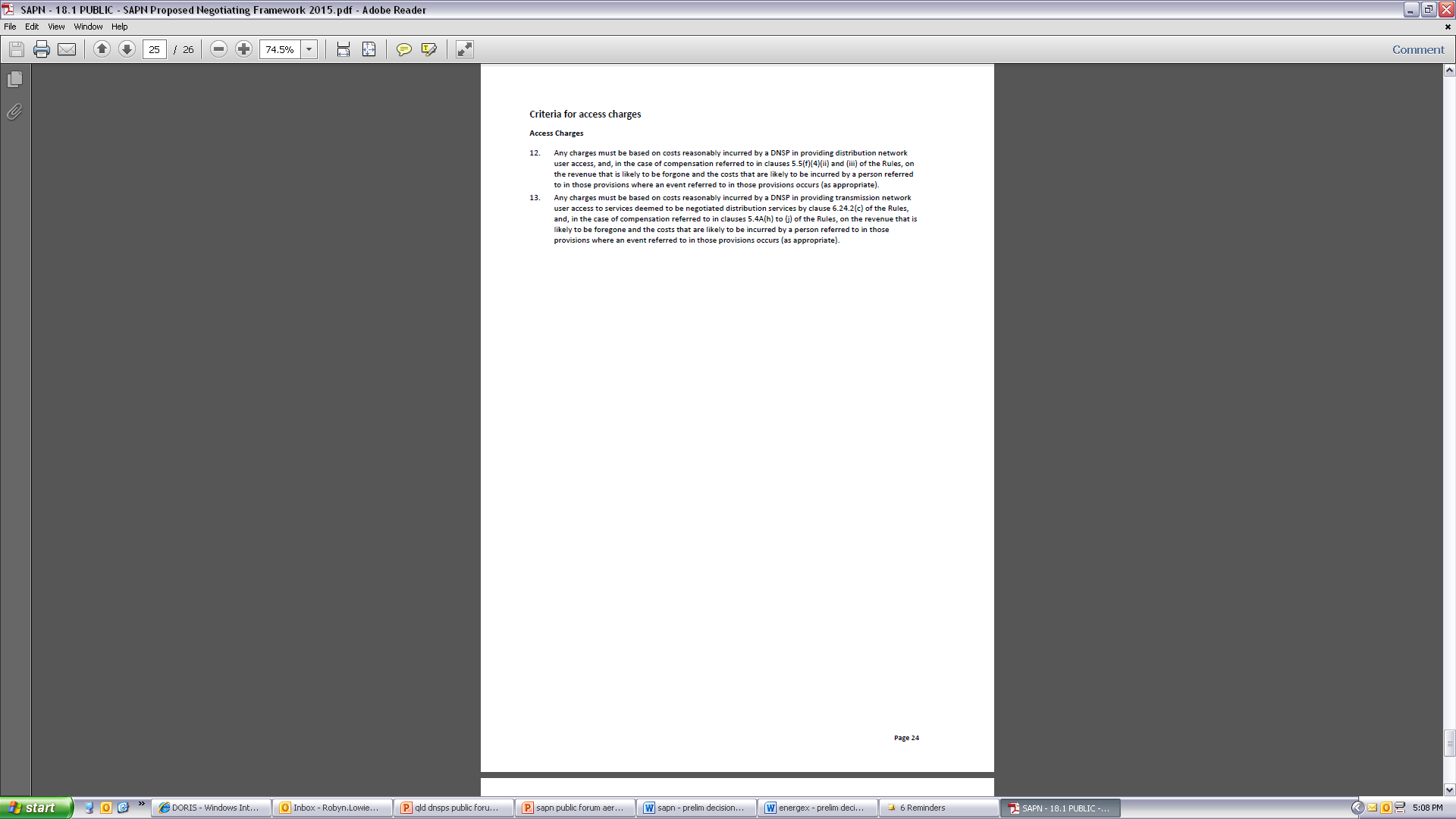
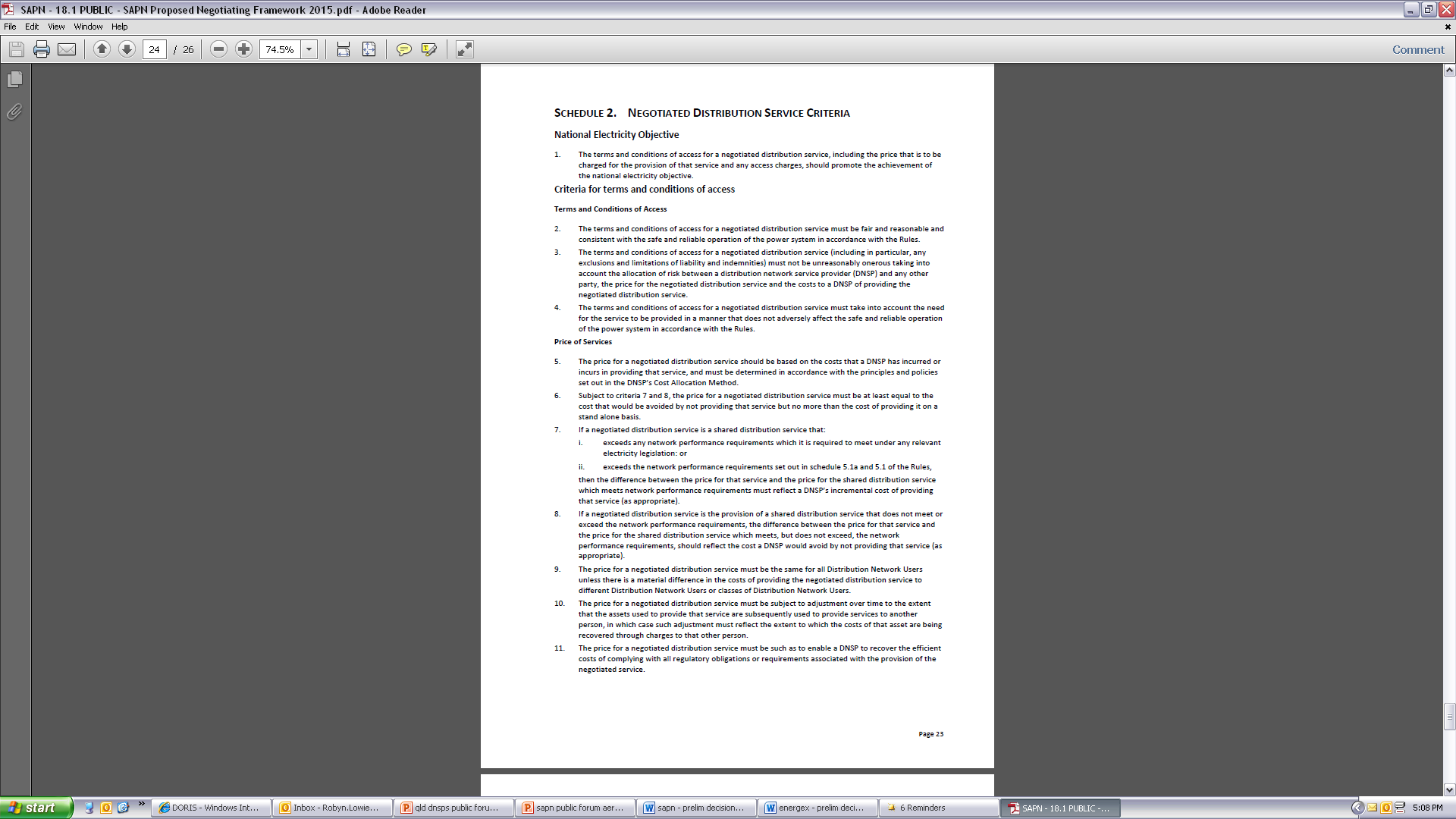
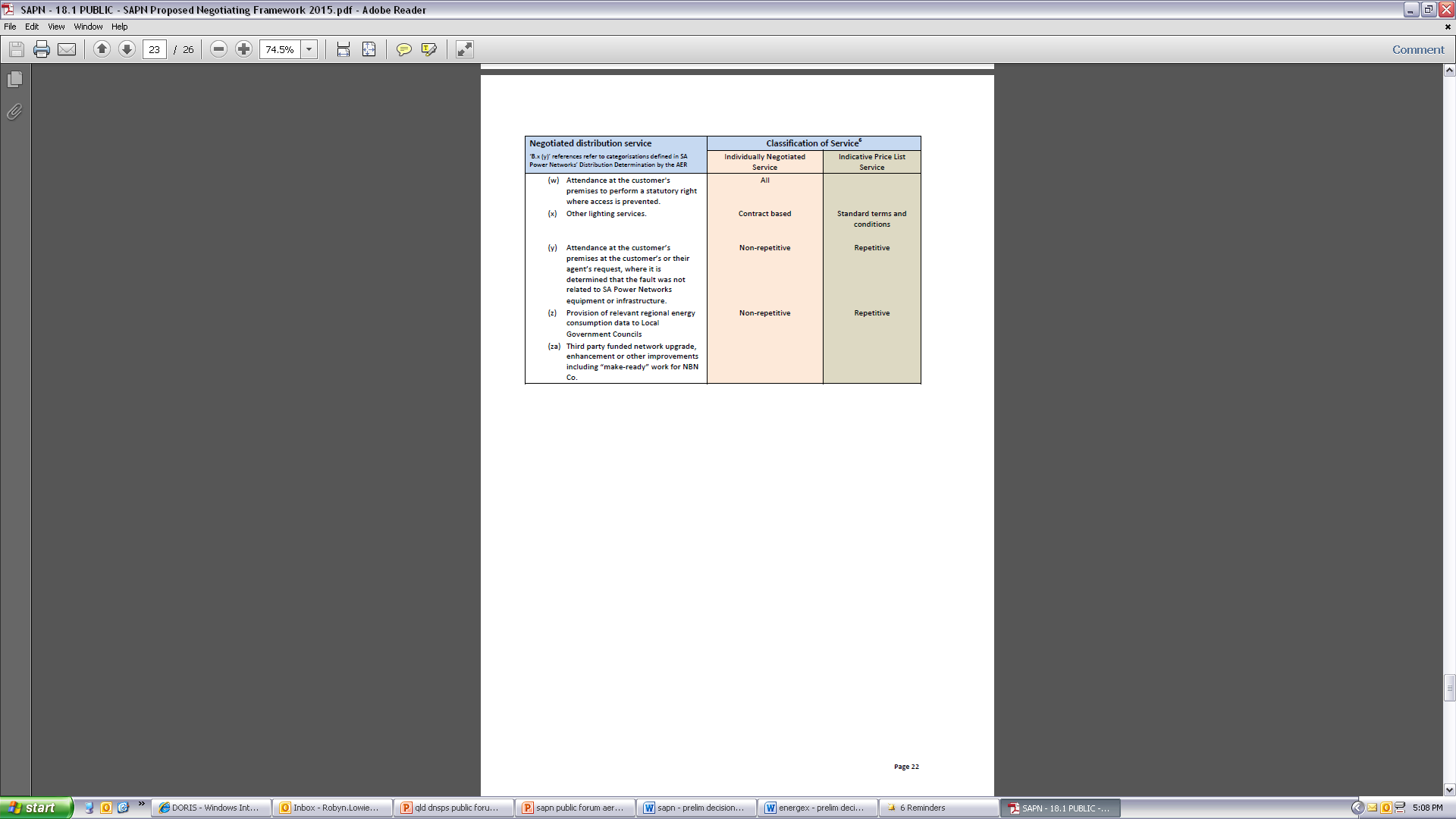
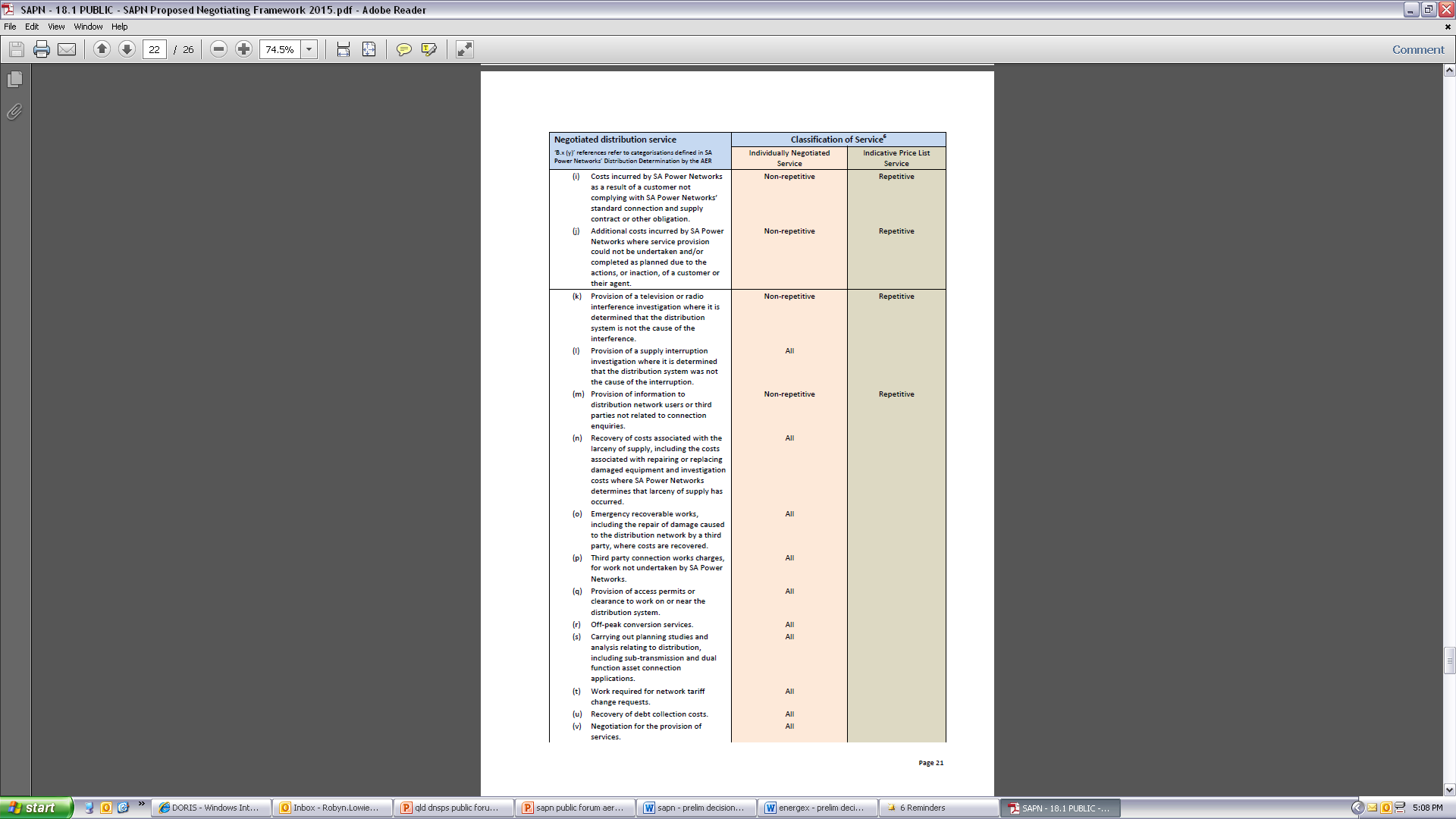
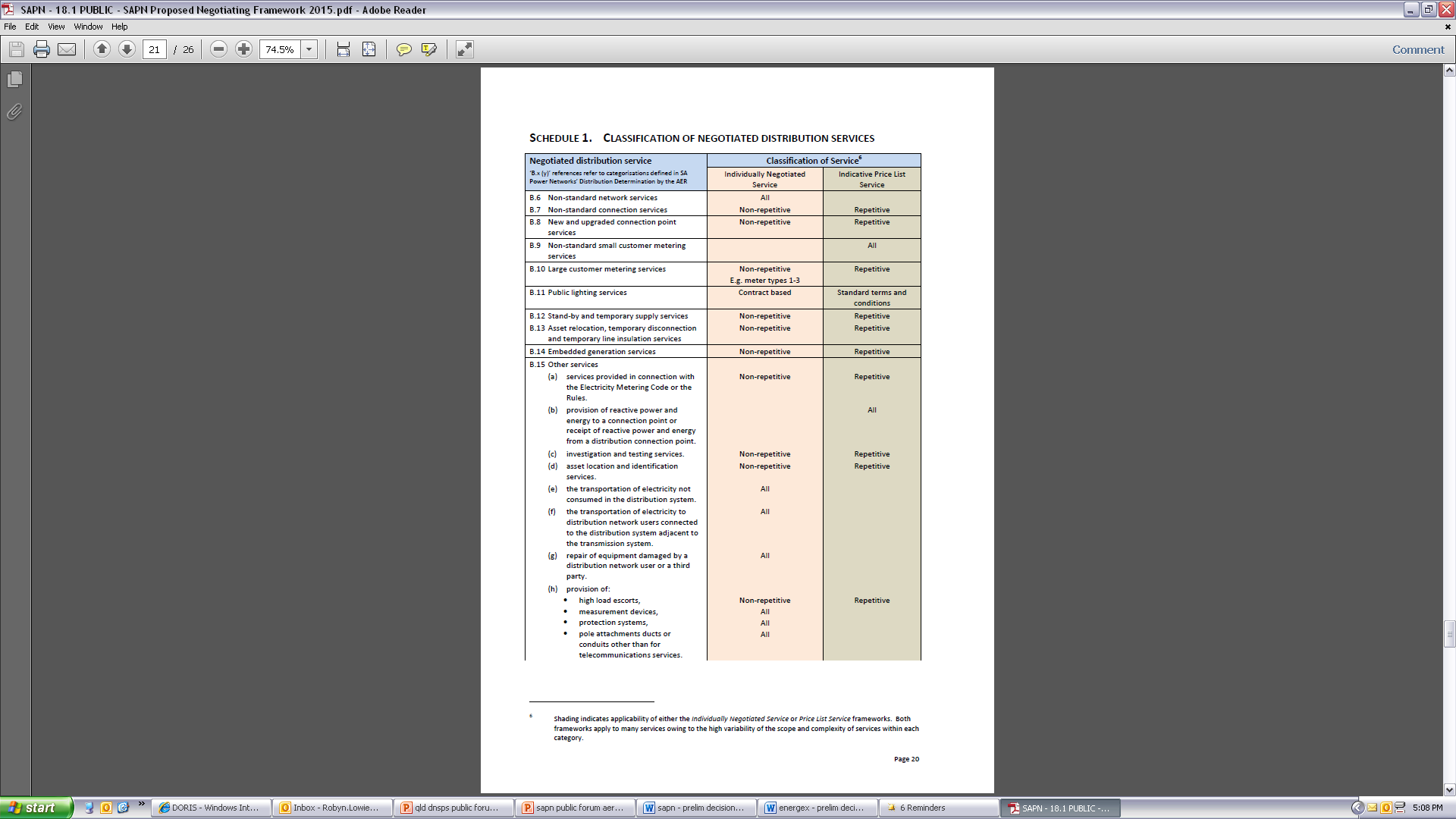
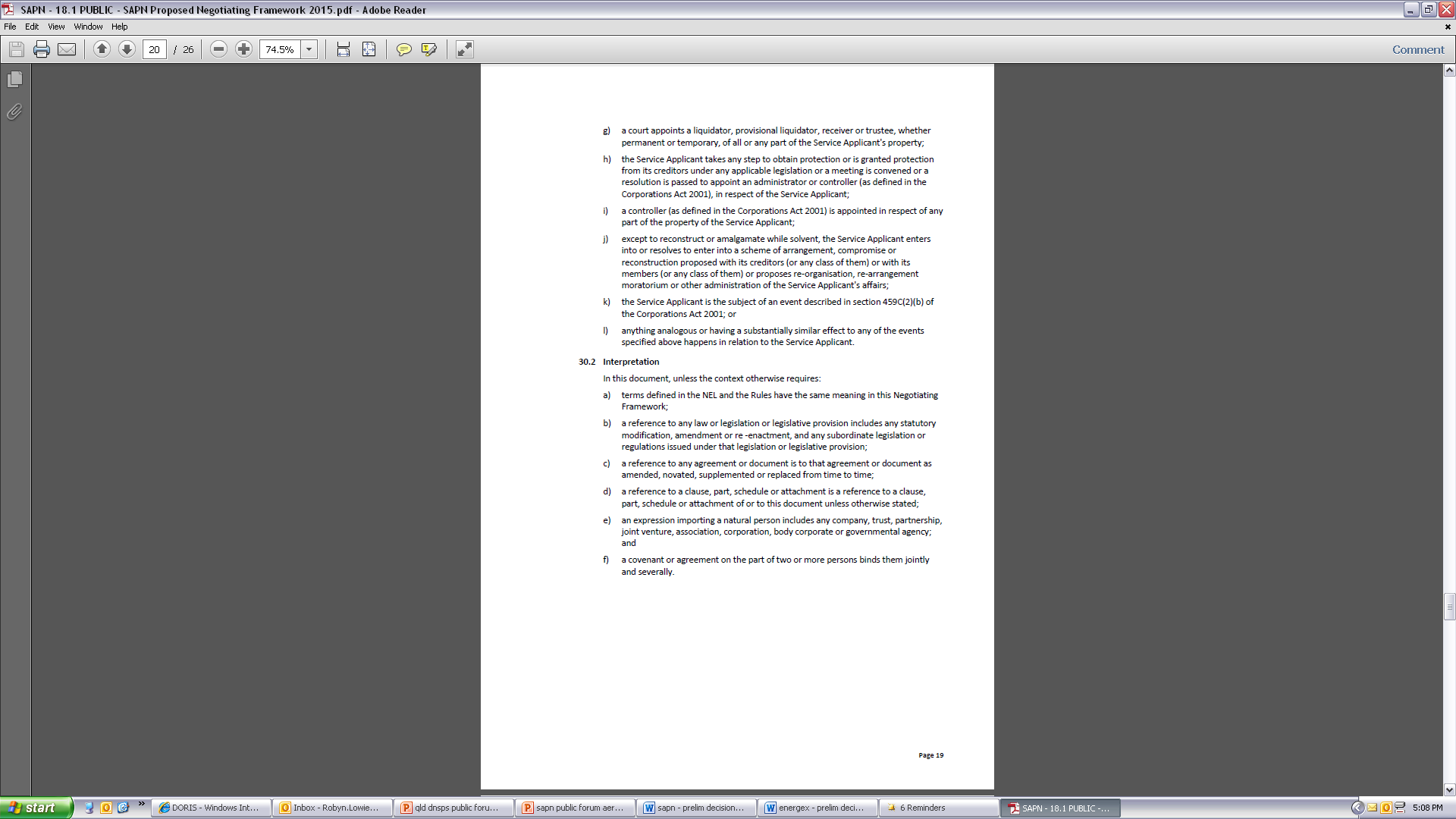
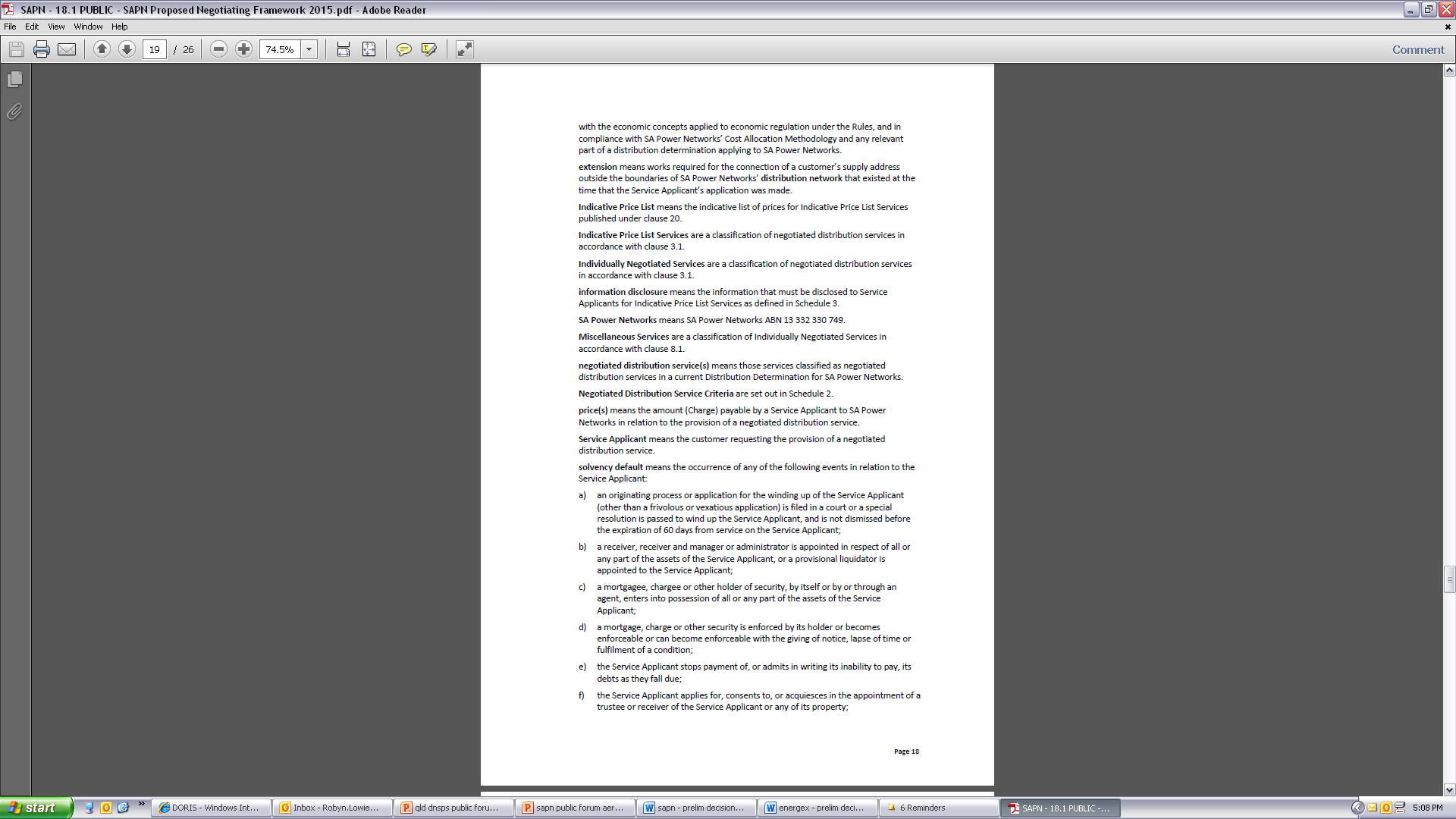
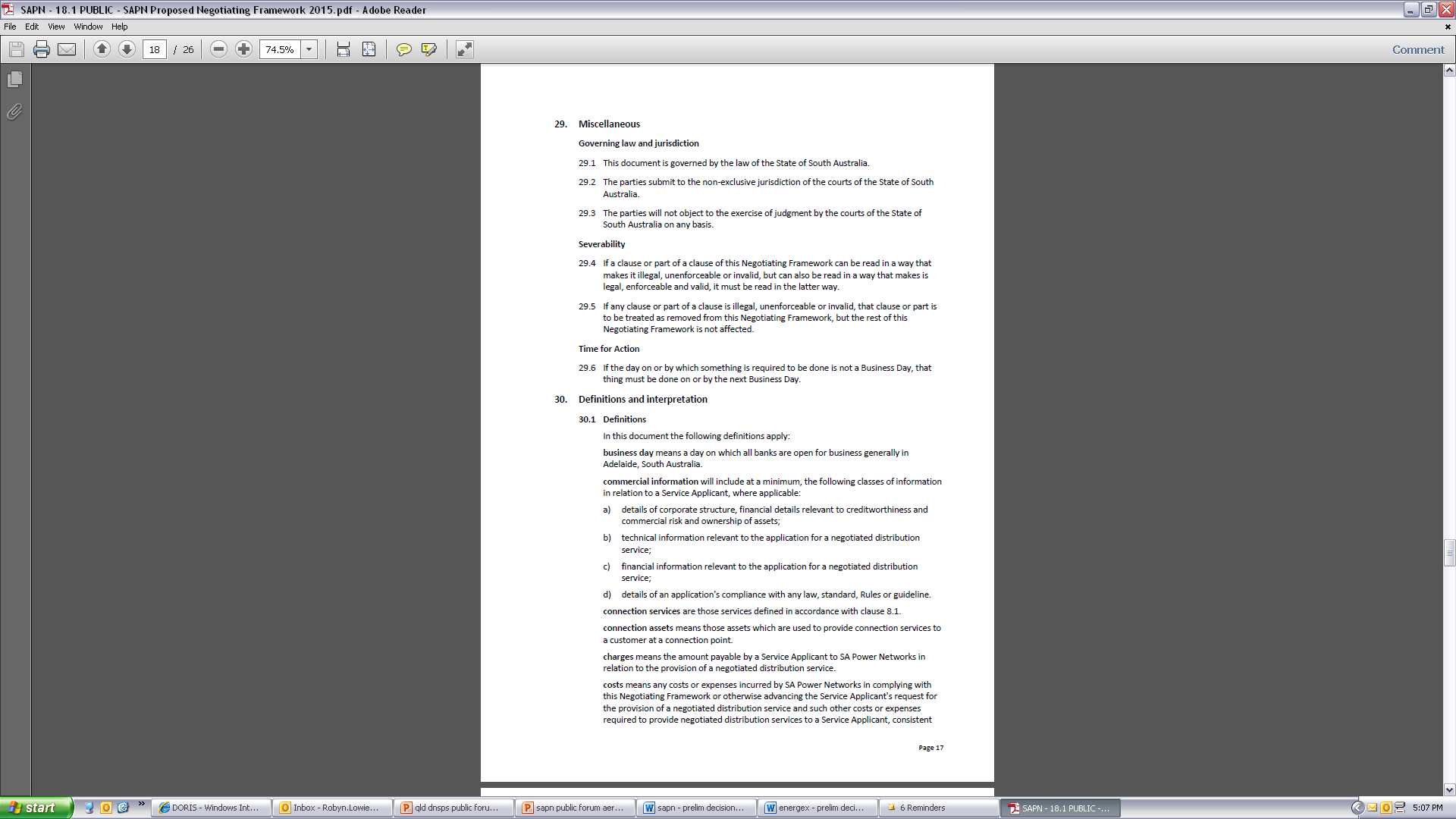
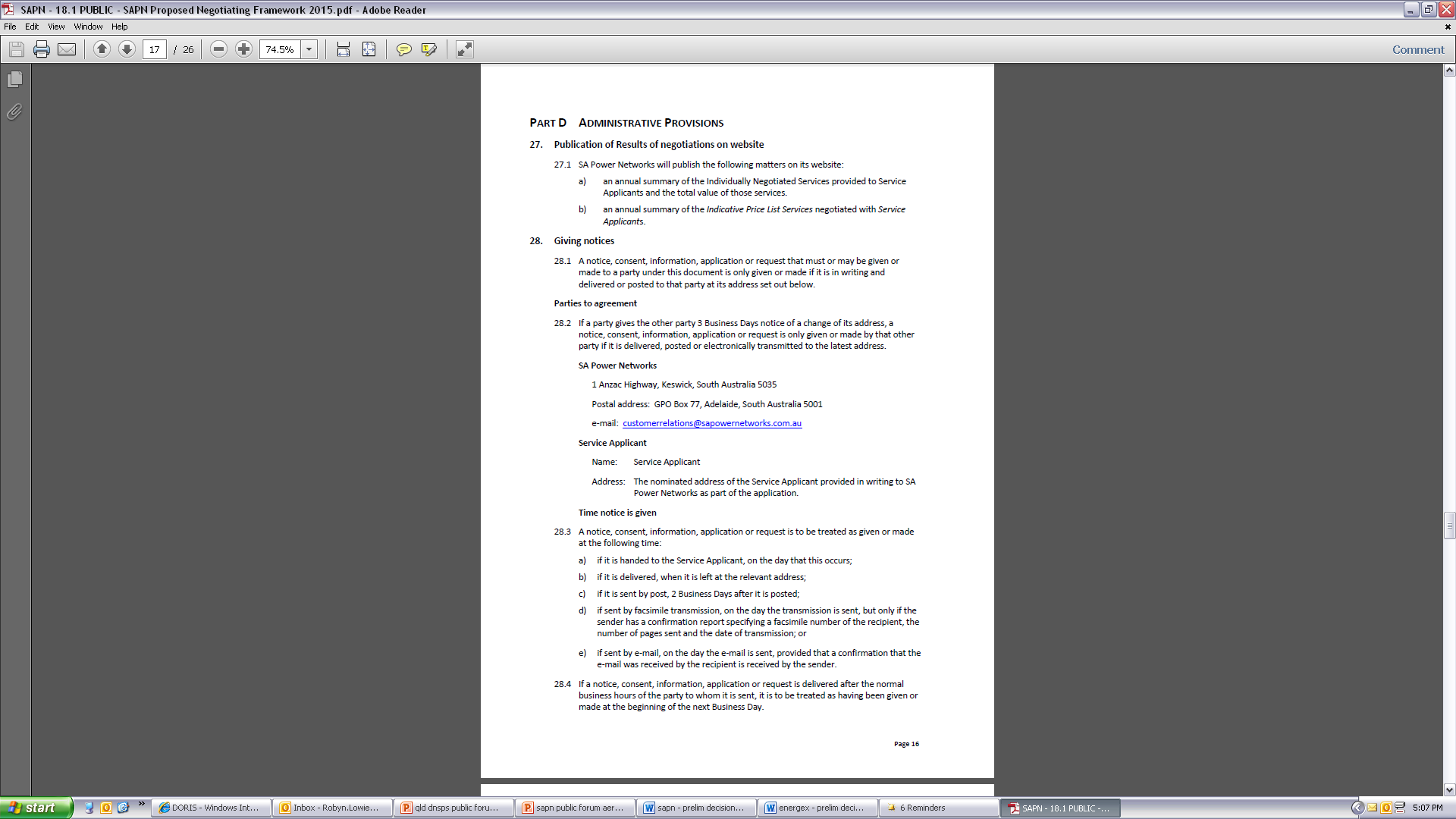
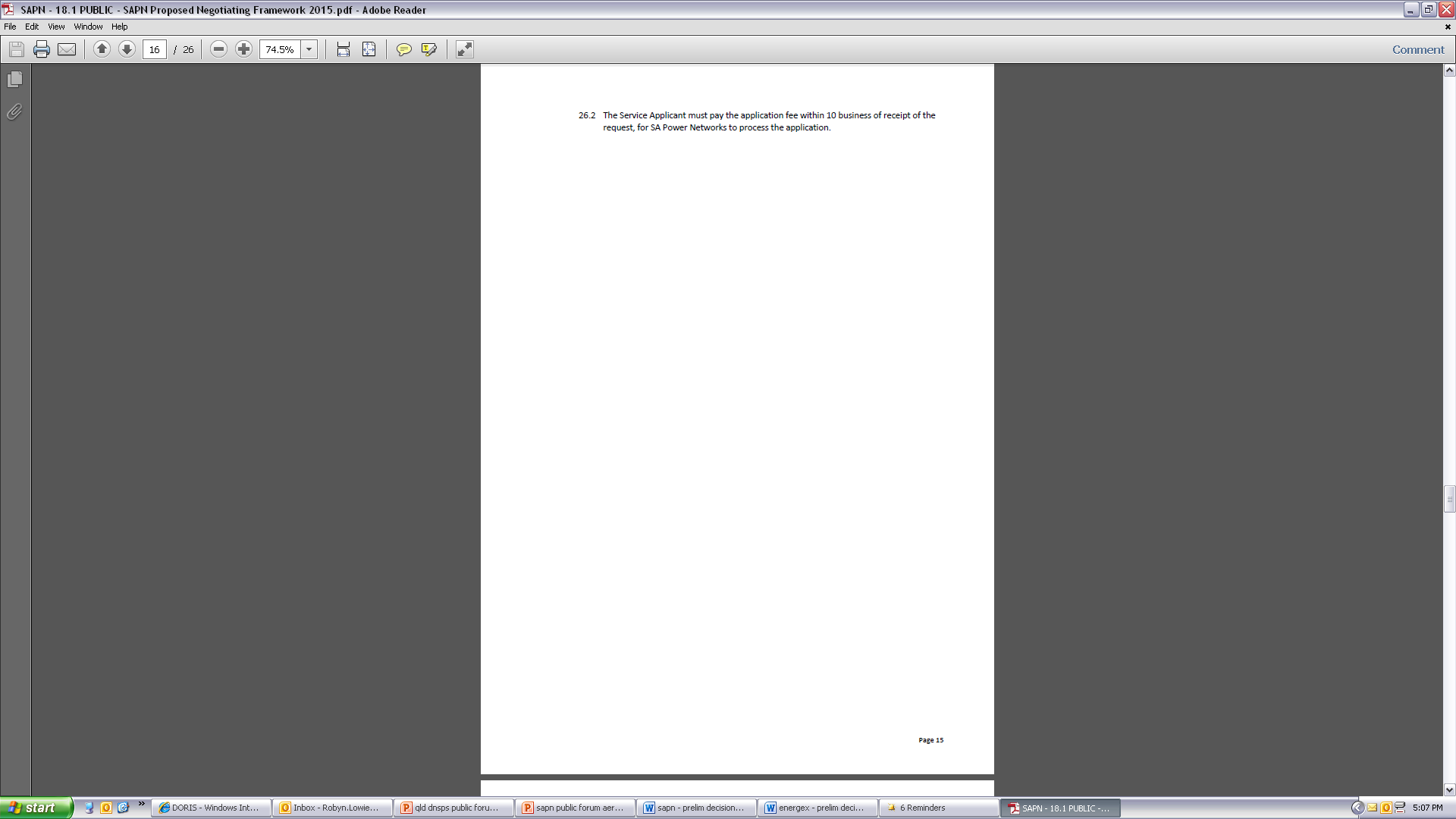
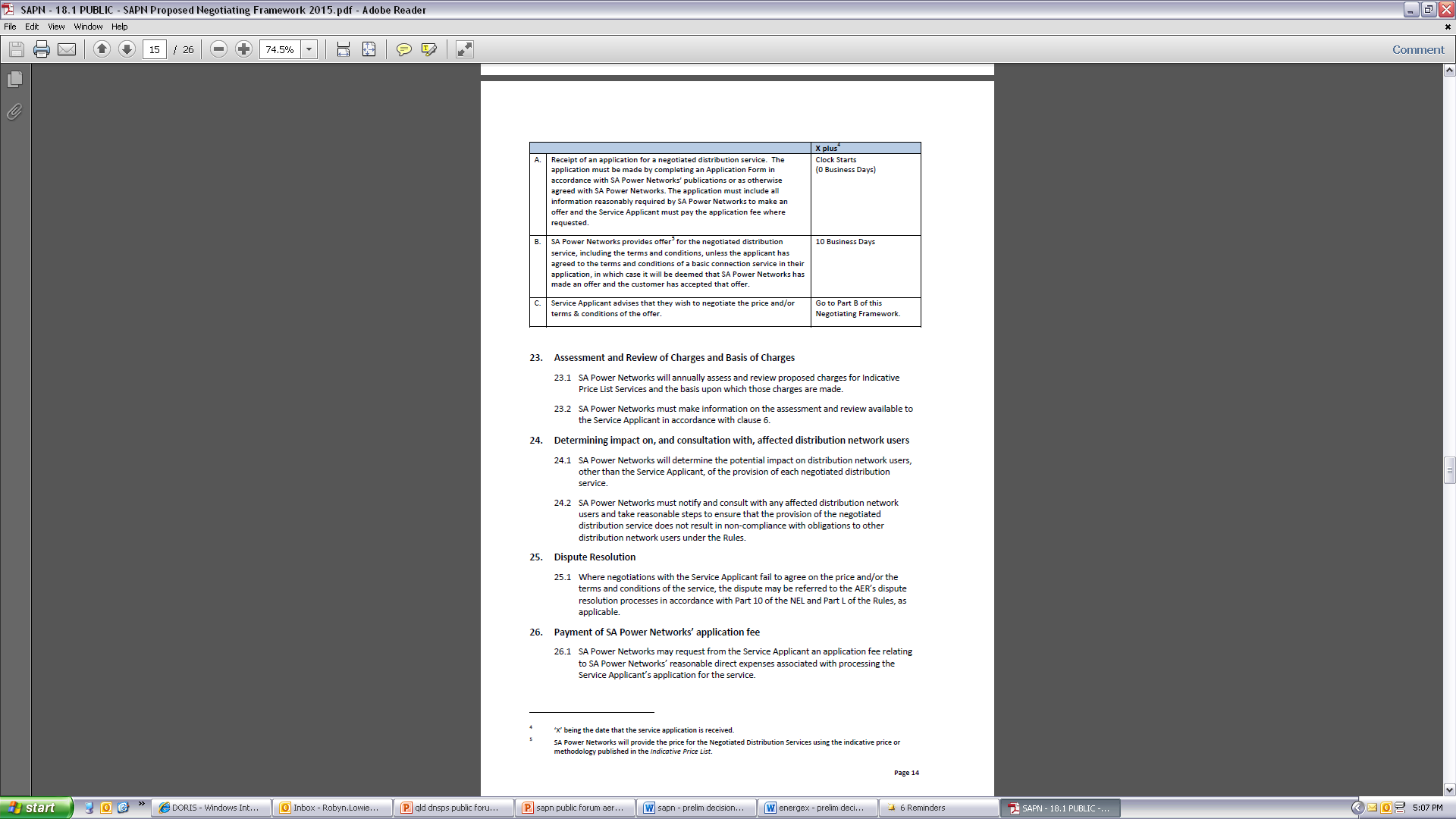
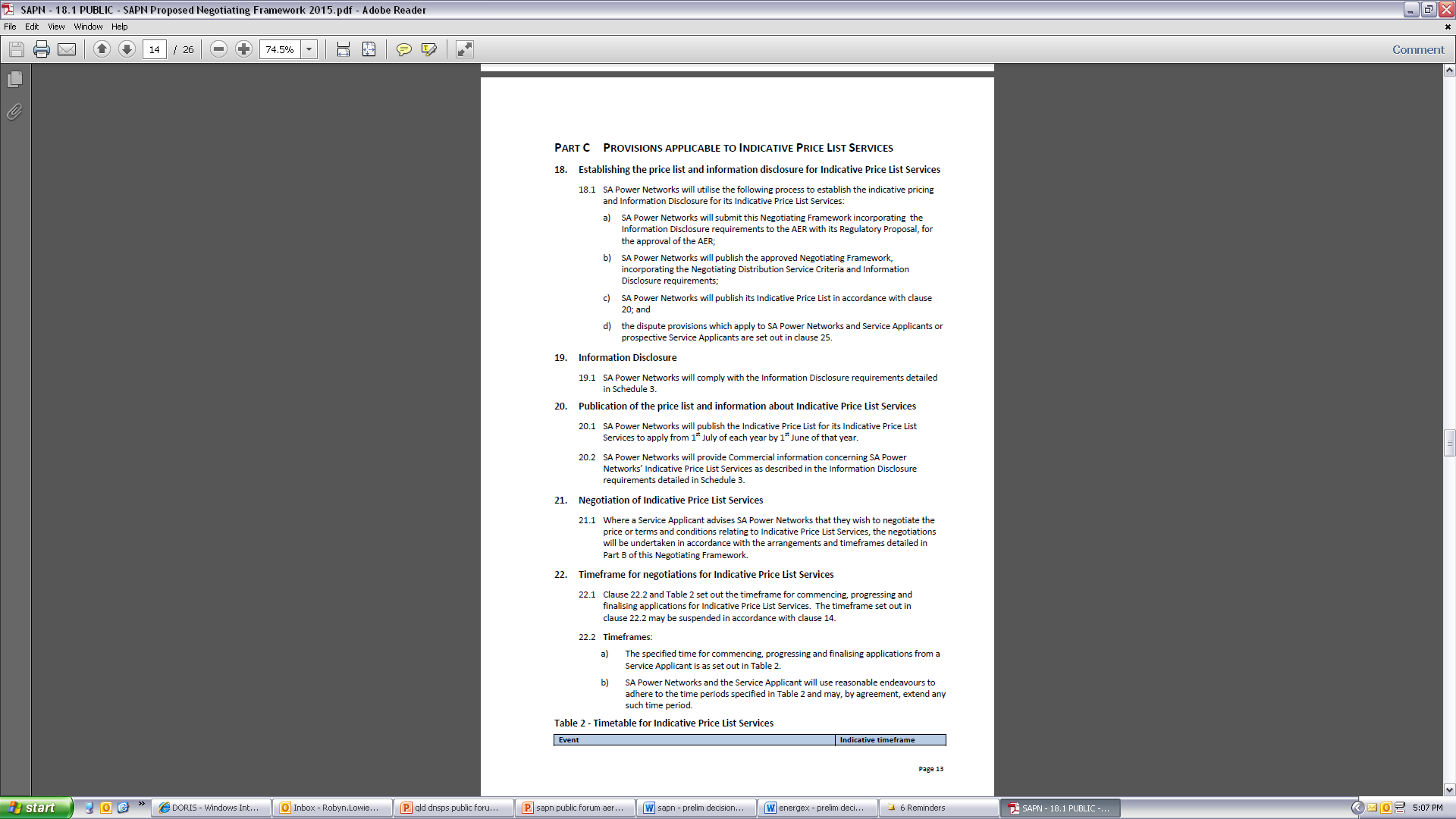
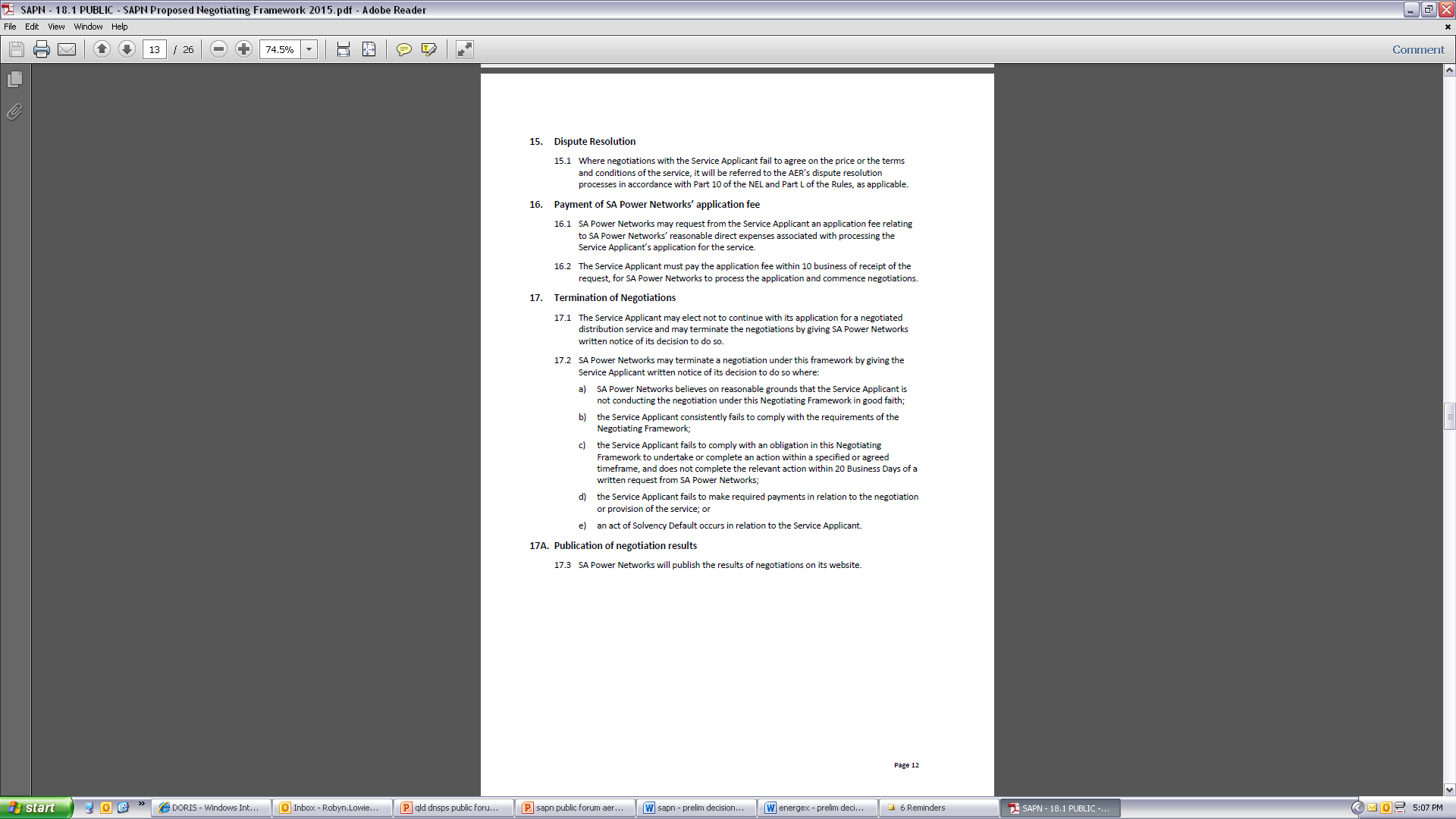
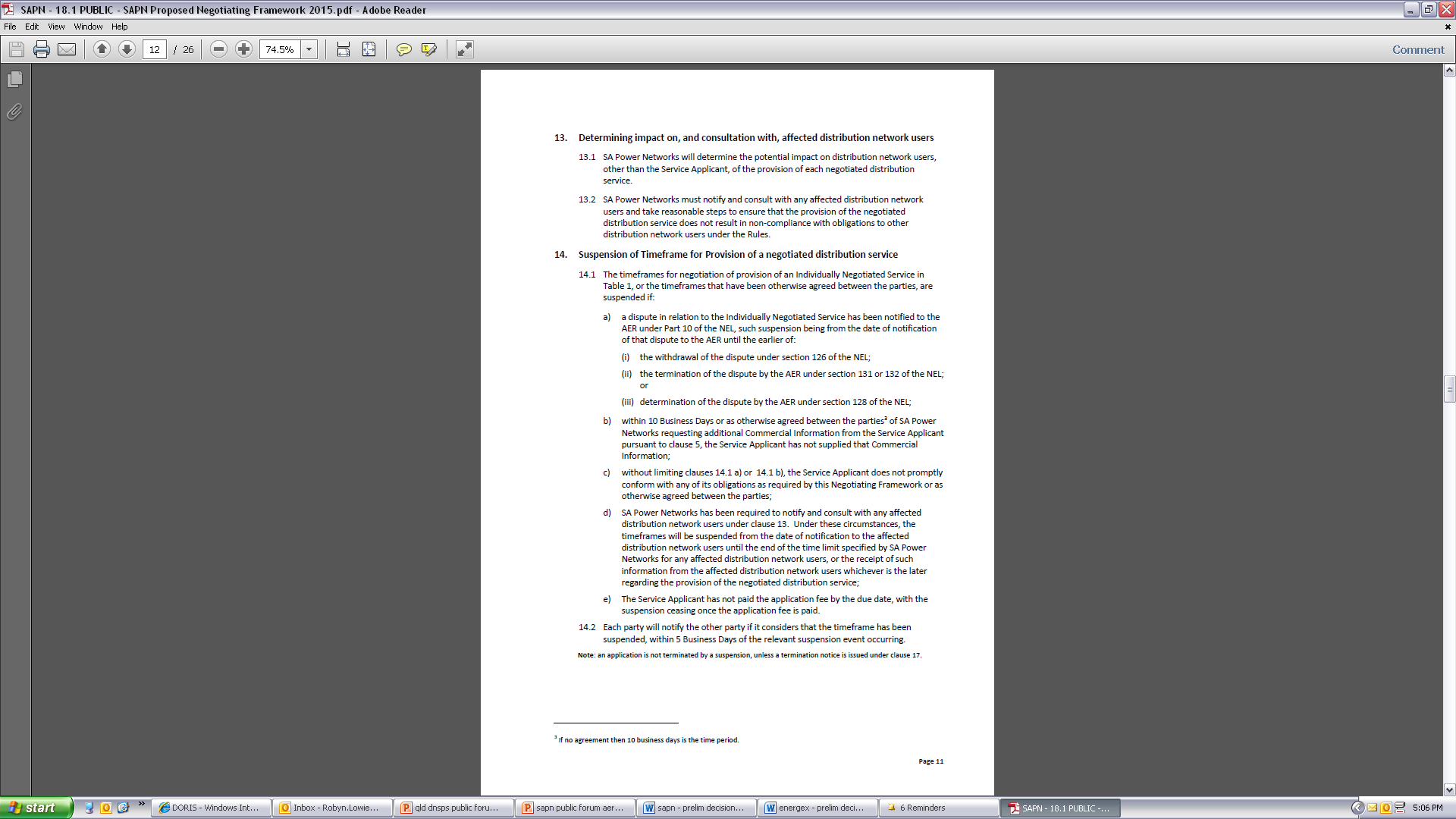
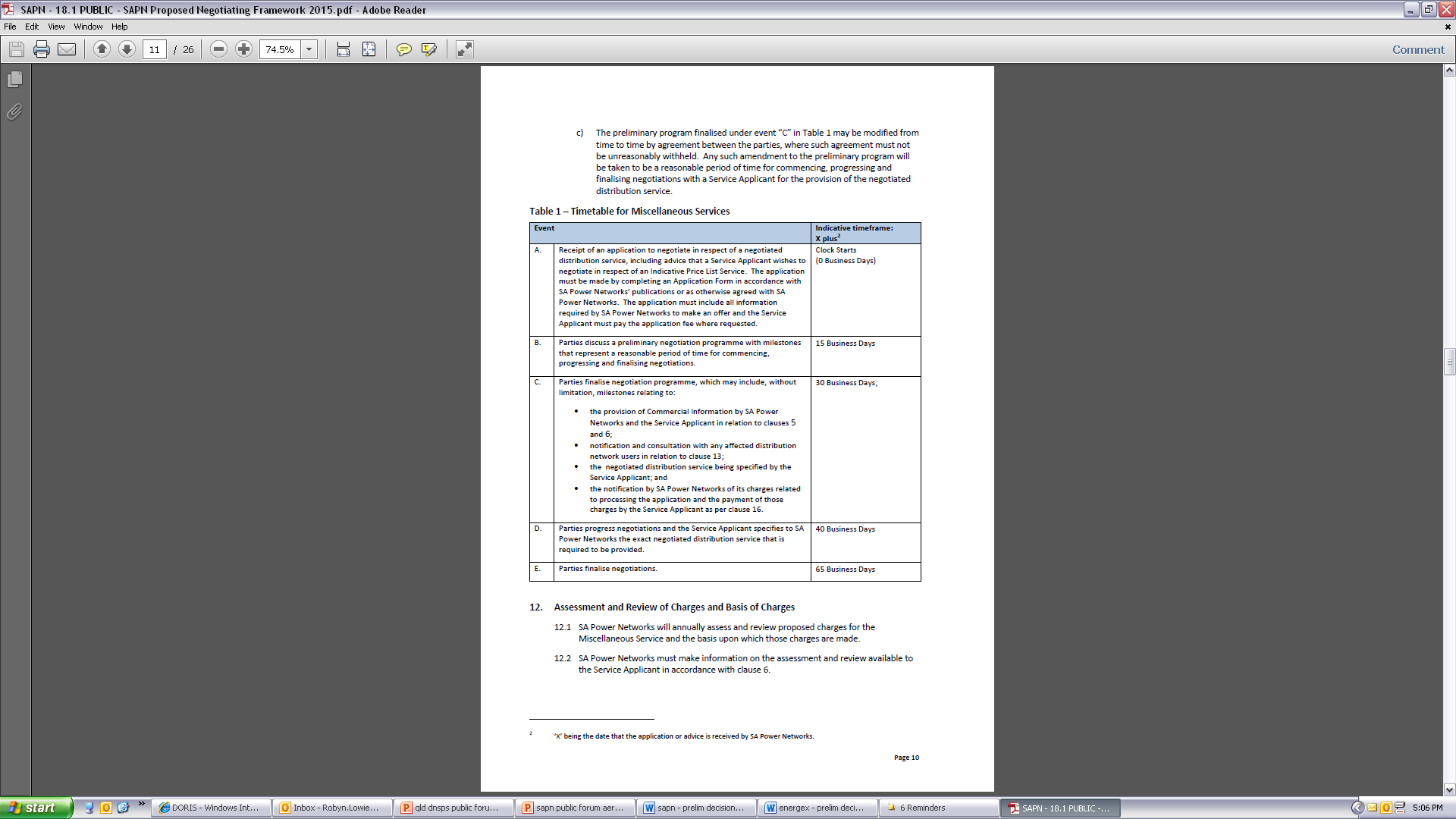
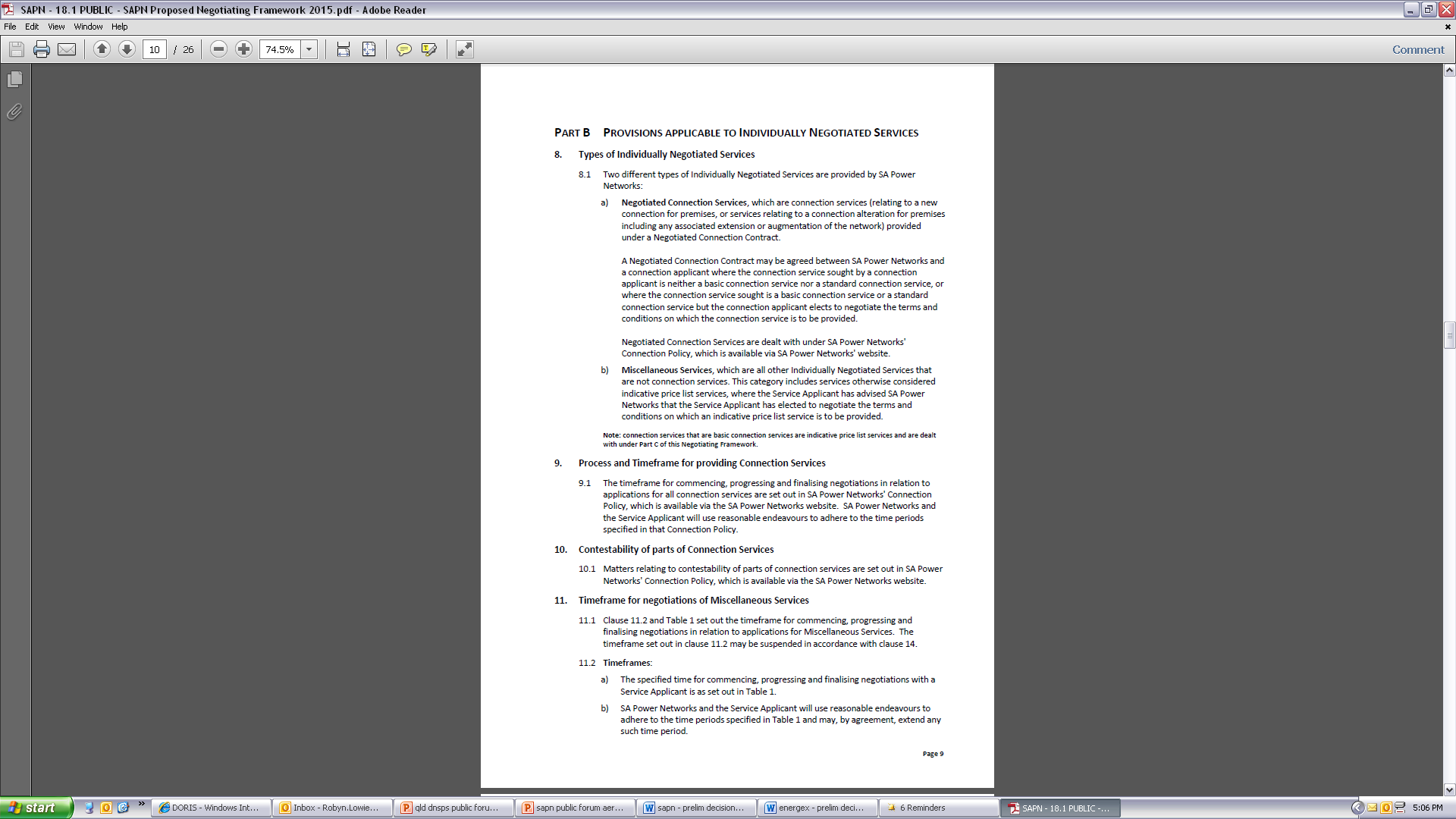
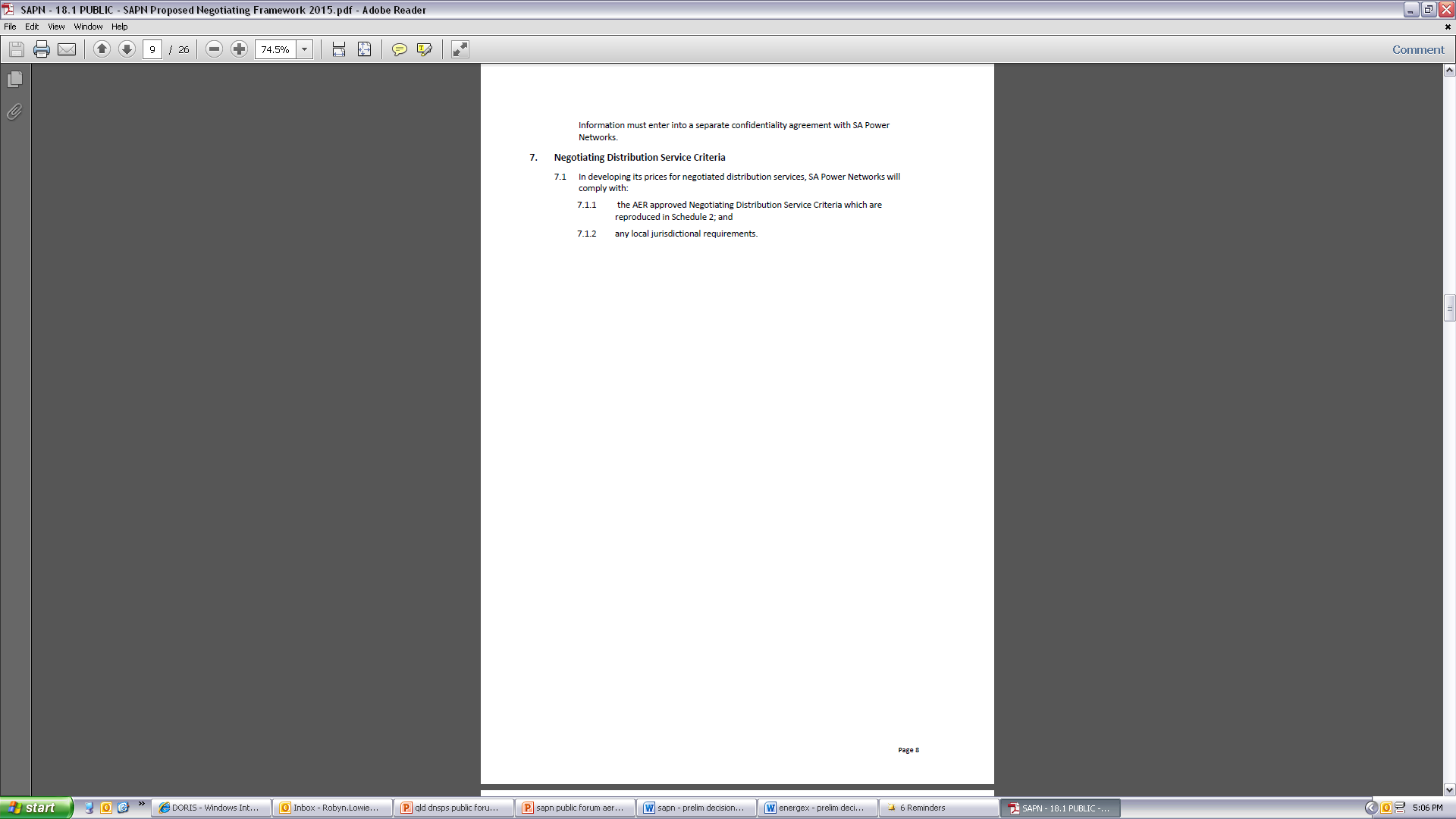
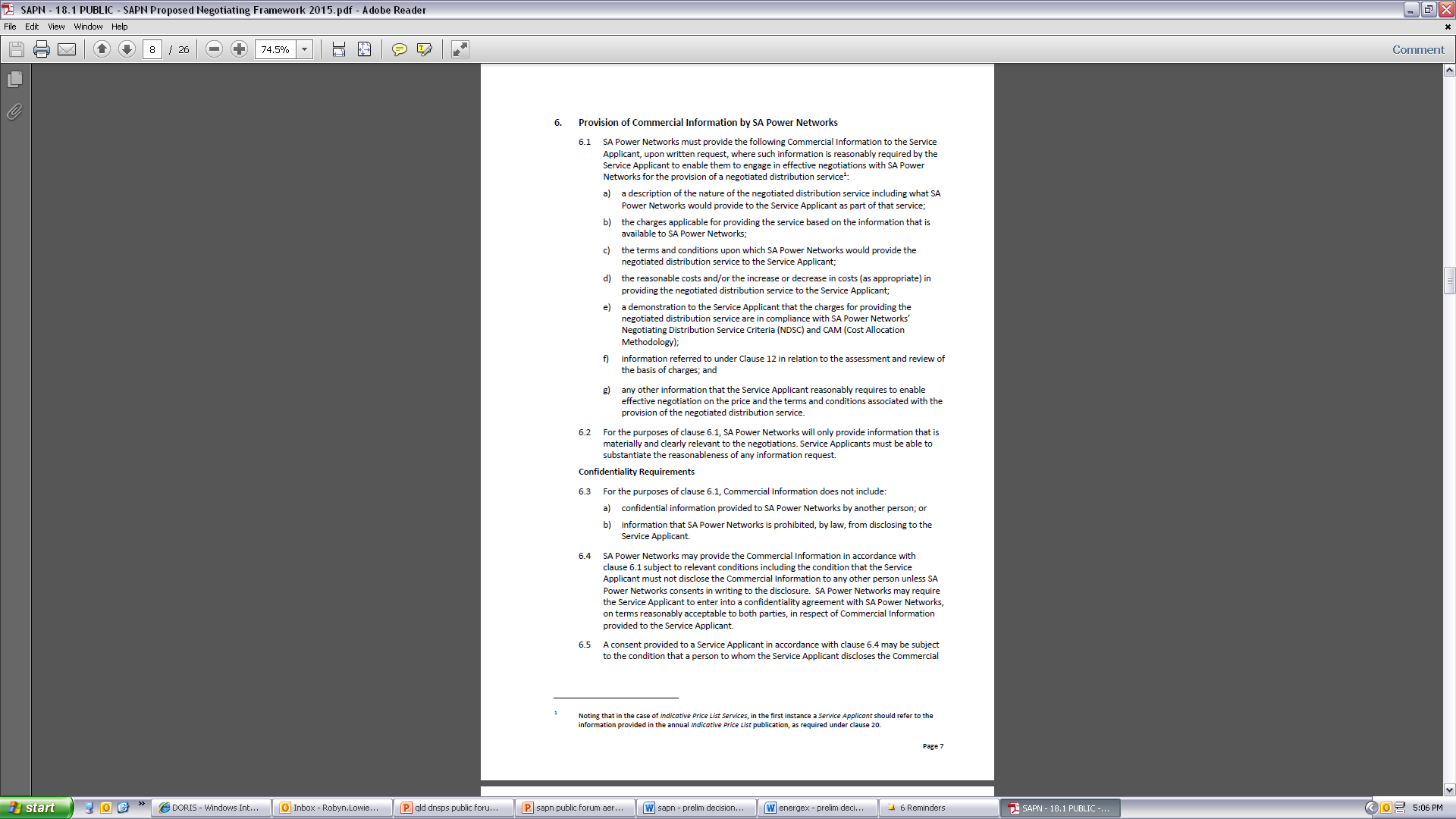
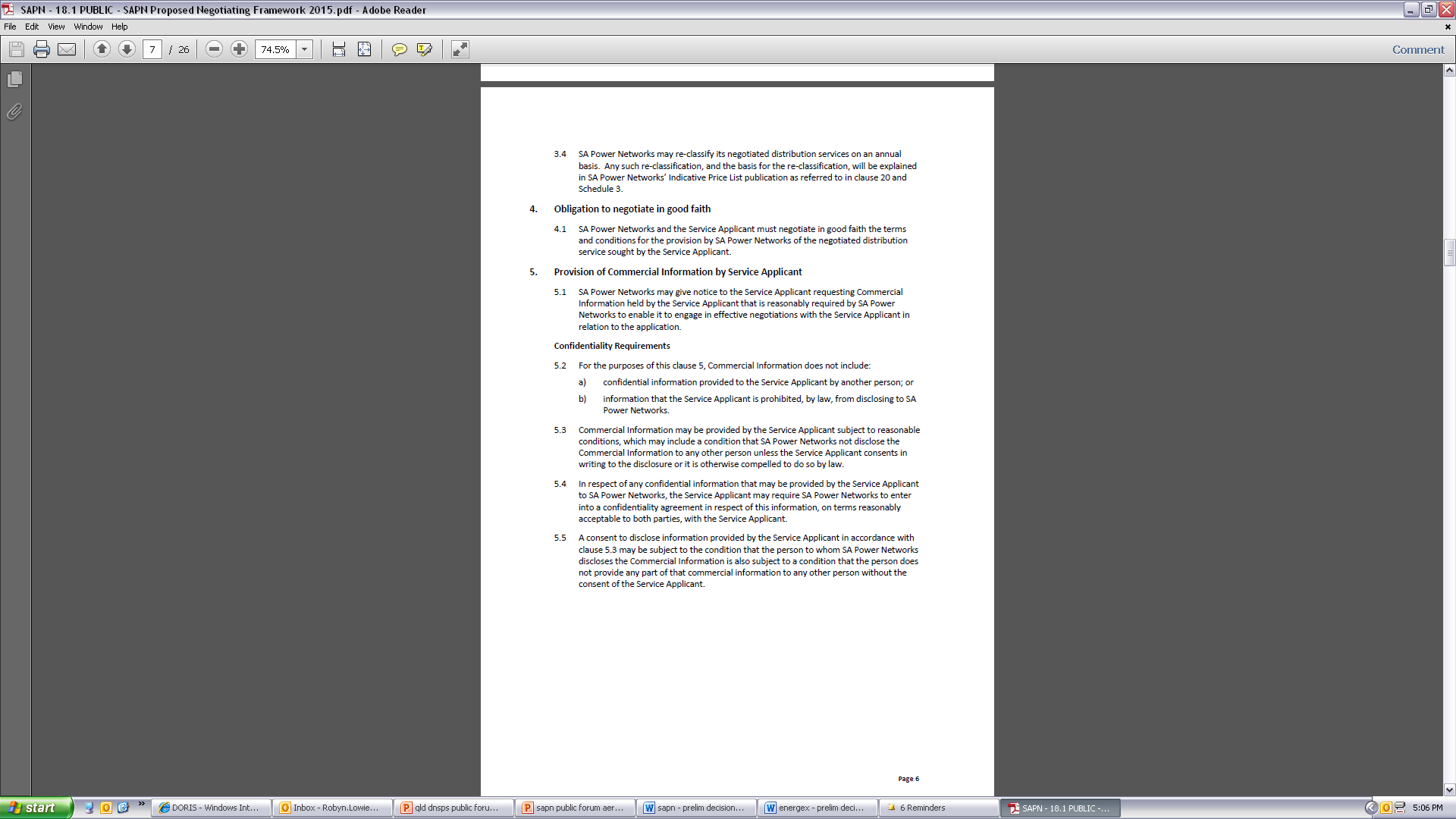
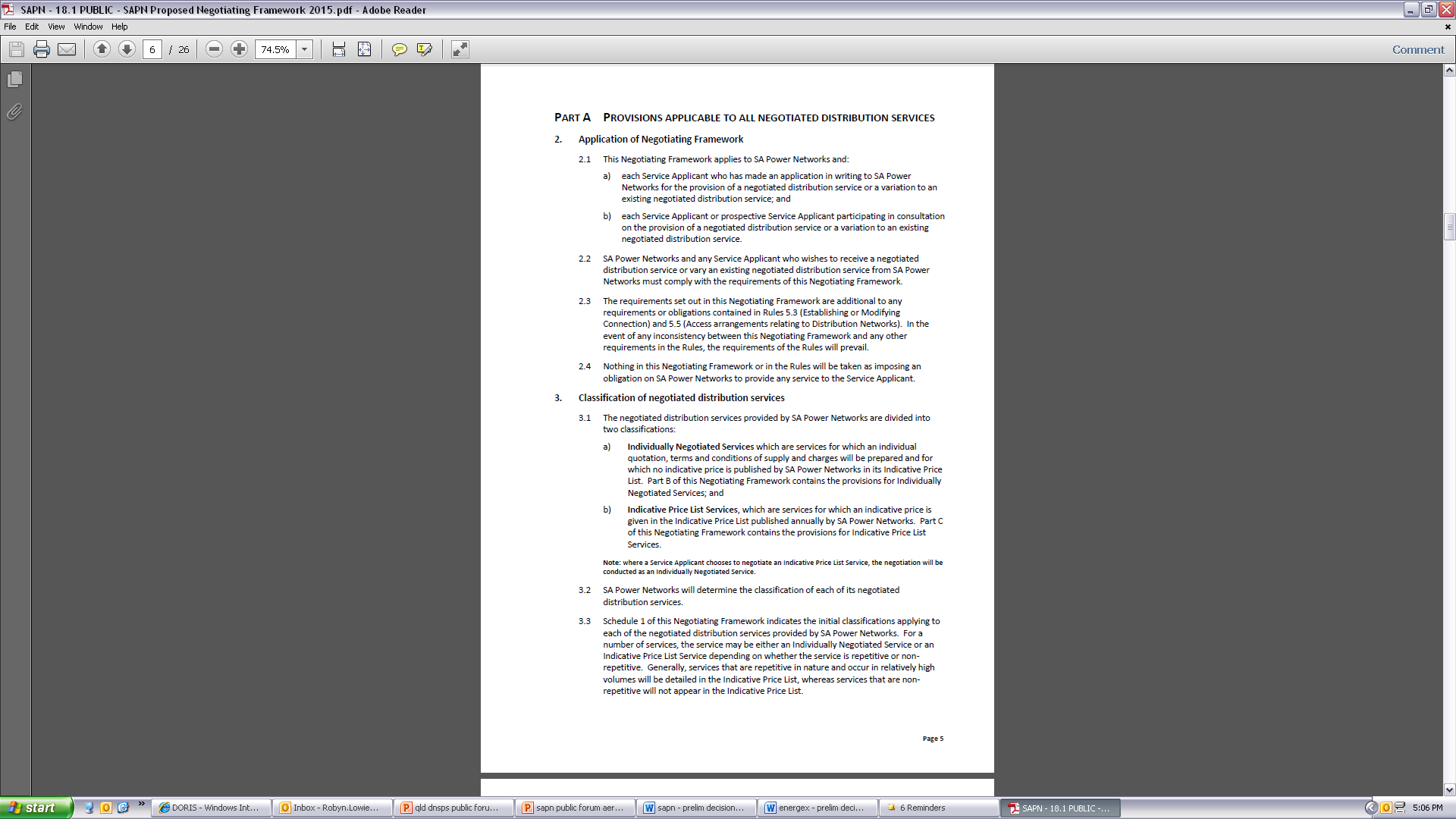
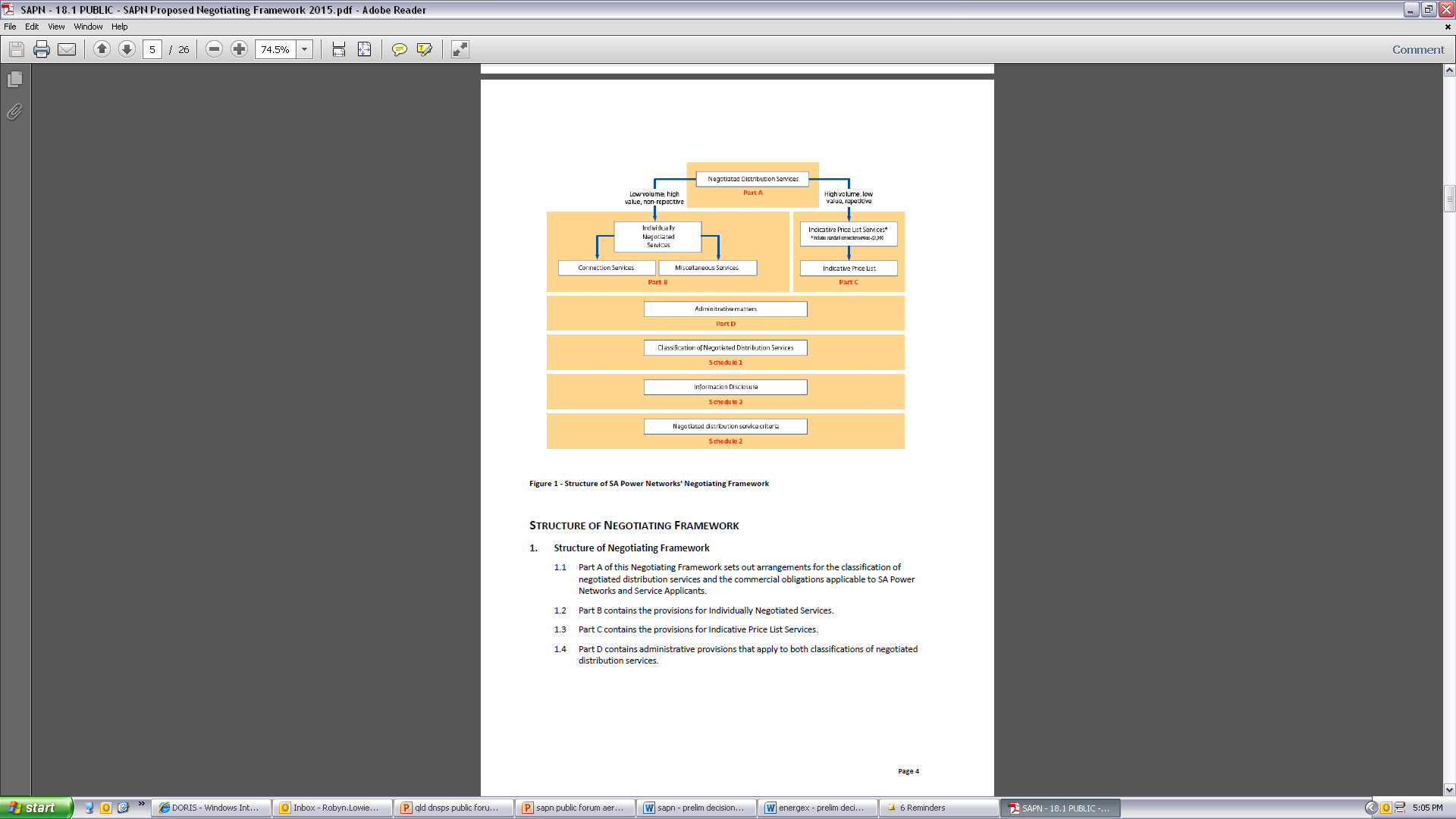
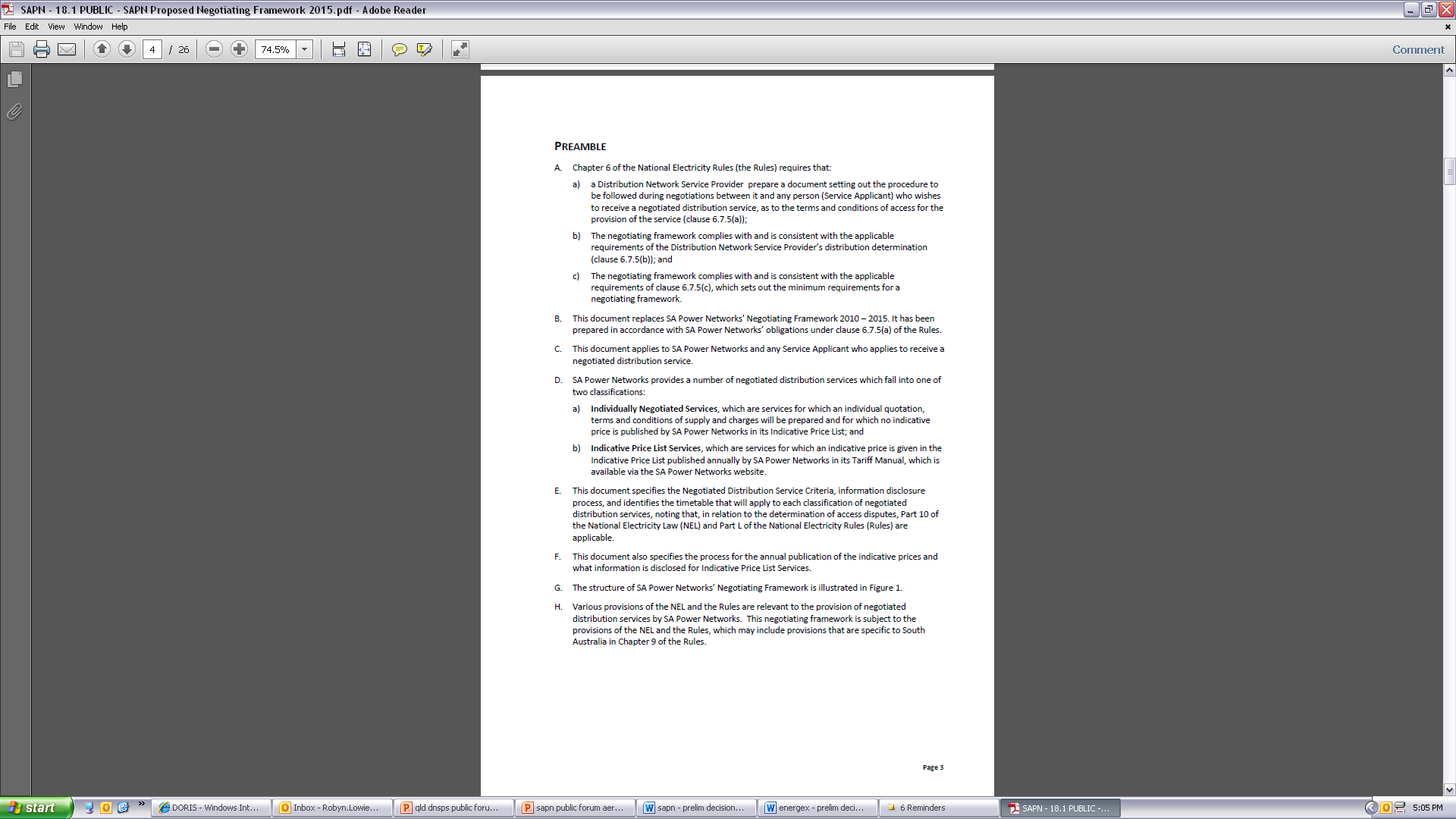
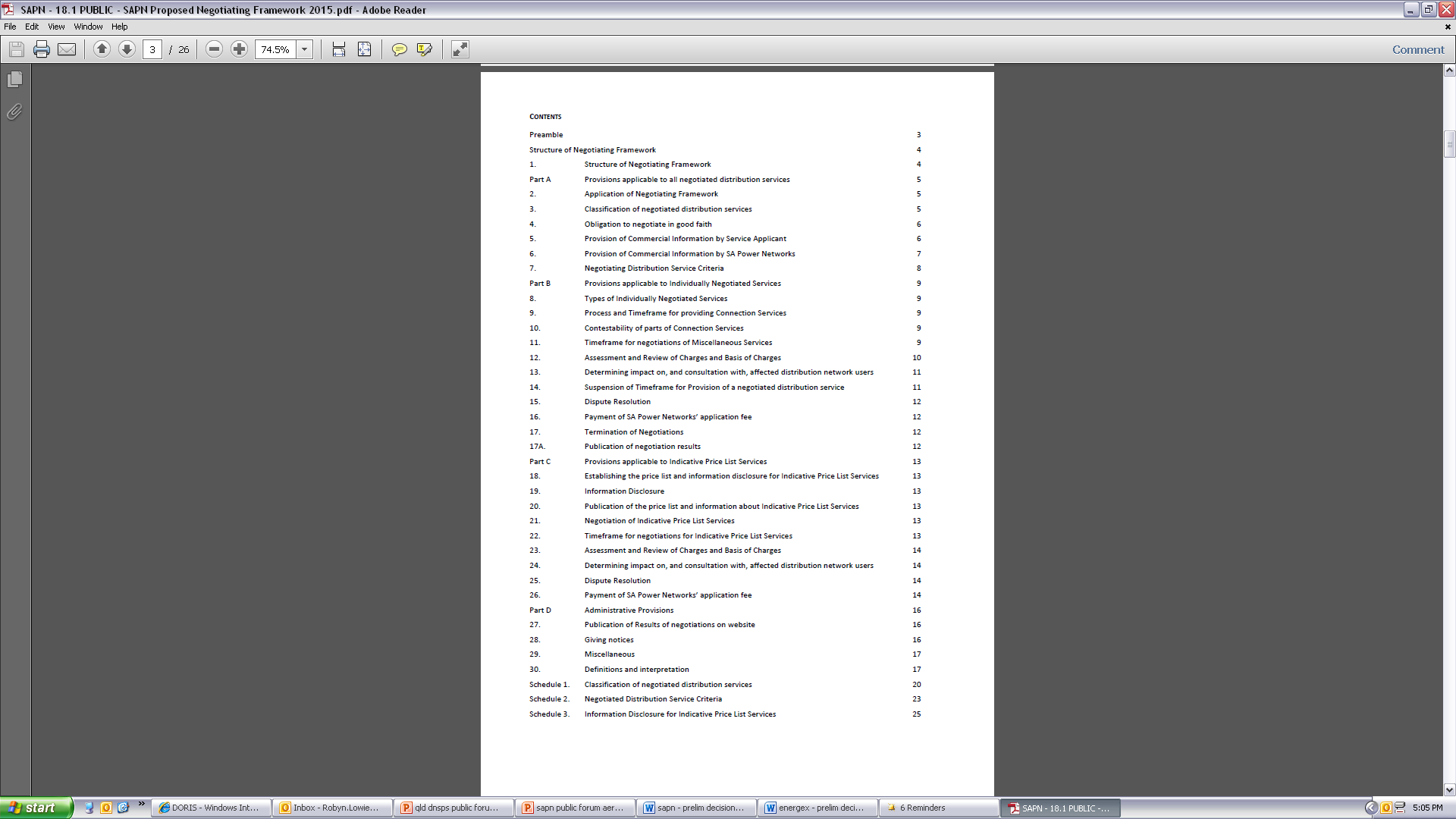
* 1. Any charges must be based on costs reasonably incurred by a distributor in providing distribution network user access, and, in the case of compensation referred to in clauses 5.5(f)(4)(ii) and (iii) of the NER, on the revenue that is likely to be foregone and the costs that are likely to be incurred 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 SA Power Networks for the 2015–20 regulatory control period.

## Further submissions

1. Finally, TTEG raised concerns that SA Power Networks' connection policy, while referring to negotiations, did not reference SA Power Networks' negotiating framework. That is, TTEG contends that all negotiated services, which include connections, must follow the negotiating framework.[[17]](#footnote-17) SA Power Networks' connection policy only applies to connections classified as standard control services. The negotiating framework only applies to services we have classified as negotiated distribution services. For this reason, it is not necessary for the documents to be cross-referenced.
2. TTEG also submitted that SA Power Networks must be required to consult or negotiate with stakeholders on its vegetation management and that such consultation or negotiation should be done within the negotiating framework.[[18]](#footnote-18) Such an approach is not necessary. This is because the NER require us to have regard to a range of opex and capex factors when considering SA Power Networks' regulatory proposal.[[19]](#footnote-19) One of the factors is for us to have regard to the extent to which the opex or capex forecast includes expenditure to address the concerns of any electricity consumers to the extent those concerns have been identified by SA Power Networks in the course of its consumer engagement.[[20]](#footnote-20) These provisions therefore compel SA Power Networks to engage on expenditure proposals like vegetation management.
3. SA Power Networks' negotiating framework





1. Amended Part A, section 3 of SA Power Networks' negotiating framework

A copy of SA Power Networks' framework is at appendix A. In reading SA Power Networks' framework, our preliminary decision is to delete:

* 'Part, 3. Classification of negotiated distribution services' and replace it with text in this attachment
* 'classification' from the title and table headings of schedule 1 and replace it with 'categorisation'.

**3. Categorisation of negotiated distribution services**

3.1 The negotiated distribution services provided by SA Power Networks are divided into two categories:

1. Individually Negotiated Services which are services for which an individual quotation, terms and conditions of supply and charges will be prepared and for which no indicative price is published by SA Power Networks in its Indicative Price List. Part B of this Negotiating Framework contains the provisions for Individually Negotiated Services; and
2. Indicative Price List Services, which are services for which an indicative price is given in the Indicative Price List published annually by SA Power Networks. Part C of this Negotiating Framework contains the provisions for Indicative Price List Services.

Note: where a Service Applicant chooses to negotiate an Indicative Price List Service, the negotiation will be conducted as an Individually Negotiated Service.

3.2 SA Power Networks will determine the categorisation of each of its negotiated distribution services.

3.3 Schedule 1 of this Negotiating Framework indicates the initial categorisations applying to each of the negotiated distribution services provided by SA Power Networks. For a number of services, the service may be either an Individually Negotiated Service or an Indicative Price List Service depending on whether the service is repetitive in nature or non-repetitive. Generally, services that are repetitive in nature and occur in relatively high volumes will be detailed in the Indicative Price List, whereas services that are non-repetitive will not appear in the Indicative Price List.

3.4 SA Power Networks may re-categorise its negotiated distribution services on an annual basis. Any such re-categorisation, and the basis for the re-categorisation, will be explained in SA Power Networks' Indicative Price List publication as referred to in clause 20 and Schedule 3.

1. NER, cl. 6.12.1(15). [↑](#footnote-ref-1)
2. NER, cl. 6.12.1 (16). [↑](#footnote-ref-2)
3. SAPN, Regulatory proposal – Proposed negotiated framework— Attachment 18.1 October 2014. [↑](#footnote-ref-3)
4. NER, cl. 6.12.1(15). [↑](#footnote-ref-4)
5. AER, Proposed Negotiated Distribution Service Criteria for Energex, Ergon Energy and SA Power Networks – period commencing 1 July 2015, November 2014. [↑](#footnote-ref-5)
6. NER, cl. 6.7.1. [↑](#footnote-ref-6)
7. NER, cl. 6.7.5(c). [↑](#footnote-ref-7)
8. NER, cl. 6.12.1(15). [↑](#footnote-ref-8)
9. Trans Tasman Energy Group, Submission on SAPN's regulatory proposal, 30 January 2015, item 4. TTEG also submitted that item 12 of SAPN's negotiating framework appeared to be a new clause. We have reviewed SAPN's negotiating framework for 2010−15 and confirm that item 12 is contained in that framework and therefore is not a new clause. [↑](#footnote-ref-9)
10. SAPN, Proposed negotiated distribution service criteria − SA Power Networks, 30 January 2015. [↑](#footnote-ref-10)
11. SAPN, Proposed negotiated distribution service criteria − SA Power Networks, 30 January 2015, pp. 1 and 2. [↑](#footnote-ref-11)
12. SAPN proposed that 'economic' be inserted at criteria3, 5, 12 and 13 of our proposed NDSC − SAPN, Proposed negotiated distribution service criteria − SA Power Networks, 30 January 2015, pp. 3 and 4. [↑](#footnote-ref-12)
13. NER, cl. 6.7.4(b) and cl. 6.7.1. [↑](#footnote-ref-13)
14. NEL, s. 7. [↑](#footnote-ref-14)
15. For example, cll. 6.7.1(1) and (7). [↑](#footnote-ref-15)
16. NER, cl. 6.7.2(a)(1) and (2). [↑](#footnote-ref-16)
17. Trans Tasman Energy Group, Submission on SAPN's regulatory proposal, 30 January 2015, item. 3. [↑](#footnote-ref-17)
18. Trans Tasman Energy Group, Submission on SAPN's regulatory proposal, 30 January 2015, item 5. [↑](#footnote-ref-18)
19. NER, cll. 6.5.6(e) and 6.5.7(e). [↑](#footnote-ref-19)
20. NER, cll. 6.5.6(e)(5A) and 6.5.7(e)(5A). [↑](#footnote-ref-20)