

Proposed negotiated distribution service criteria

Ausgrid, Endeavour Energy, Essential Energy,
Evoenergy, TasNetworks and Power & Water
Corporation 2024-29

February 2023

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Tel: 1300 585 165

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1 Introduction

The Australian Energy Regulator (AER) exists to ensure energy consumers are better off, now and in the future. Consumers are at the heart of our work, and we focus on ensuring a secure, reliable, and affordable energy future for Australia. The regulatory framework governing electricity transmission and distribution networks is the National Electricity Law and Rules (NEL and NER). Our work is guided by the National Electricity Objective (NEO).

A regulated network business must periodically apply to us for a determination of the revenue it can recover from consumers using its network. On 31 January 2023 we received revenue proposals from:

- New South Wales electricity distribution network service providers (DNSPs) Ausgrid, Endeavour Energy and Essential Energy
- Australian Capital Territory DNSP Evoenergy
- Tasmanian DNSP TasNetworks
- Northern Territory DNSP Power & Water Corporation

for the period 1 July 2024 to 30 June 2029 (2024–29 period).

Each of these networks provides distribution services that we classify as direct control services, the revenue recoverable from which is subject to our determination and subject to annual pricing approval processes.

If we classify any distribution services as negotiated distribution services, we do not set revenue, prices or the negotiating terms and conditions the distributor must comply with. These services are, however, subject to a dispute resolution process.

Under clause 6.12.1(16) of the NER, as part of each distribution determination we are required to make a decision on the Negotiated Distribution Service Criteria to apply the relevant network. These are criteria that each distributor must apply in negotiating terms and conditions of access for its negotiated distribution services. We will use the criteria to resolve any access dispute about any of the terms and conditions of access, as required under clause 6.7.4(a) of the NER. Under clause 6.7.4(b) of the NER, the criteria must give effect to and be consistent with the negotiated distribution service principles set out in clause 6.7.1 of the NER.

Clause 6.9.3 of the NER requires us to publish our proposed criteria for consultation in conjunction with the publication of each distributor's regulatory proposal. Invitation for submissions

Interested stakeholders are invited to make submissions on the proposed negotiated distribution service criteria **by 12 May 2023**, together with any submission on the regulatory proposals.

Submissions should be sent to: AERresets2024-29@aer.gov.au

Alternatively, submissions can be sent to:

Arek Gulbenkoglul
General Manager
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Submissions should be in Microsoft Word or another text readable document format.

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information should:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on our website.

2 Proposed negotiated distribution service criteria

The criteria we propose for the 2024–29 period are consistent with those that have applied in the current period, and with criteria approved for other DNSPs.

2.1 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.

2.2 Criteria for terms and conditions of access

2.2.1 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) should 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 should 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.

2.2.2 Price of services

5. The price for a negotiated distribution service should 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 should 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 schedules 5.1a and 5.1 of the NER,

then the differential between the price for that service and the price for the shared distribution service which meets the network performance requirements under any jurisdictional electricity legislation or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the distributor's incremental cost of providing that service.

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 differential 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 should 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 should 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.

2.3 Criteria for access charges

2.3.1 Access Charges

12. In respect of providing distribution network user access to negotiated distribution services which would have been negotiated distribution services regardless of the operation of clause 6.24.2(c) should be based on the costs reasonably incurred by the distributor in providing that access and, in the case of compensation referred to in clauses 5.3AA(f)(4)(ii) and (iii), 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; and
13. For the declared transmission system of an adoptive jurisdiction, in respect of providing transmission network user access to negotiated distribution services which would have been treated as negotiated transmission services were it not for the operation of clause 6.24.2(c) should be based on the costs reasonably incurred by the distributor in providing that access and, in the case of compensation referred to in clauses 5.4A(h) - (j) (as preserved under clause 11.98.8(a)(2)), 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

Glossary

Term	Definition
AER	Australian Energy Regulator
DNSP	Distribution network service provider
NEL	National electricity law
NEO	National Electricity Objective
NER	National Electricity Rules
