

AusNet Electricity Services Pty Ltd

Electricity Distribution Price Review 2016–20

Appendix 21A: Proposed Negotiating Framework

PUBLIC

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Negotiating Framework

The National Electricity Rules (the Rules) require certain distribution services (*negotiated distribution services*) to be provided on terms and conditions of access that are negotiated between the *Distribution Network Service Provider* (DNSP) and the *Service Applicant(s)*. Pursuant to clause 6.7.5(a), AusNet Electricity Services Pty Ltd (ABN 91 064 651 118) (AusNet Services) has prepared a *negotiating framework* which sets out the procedures to be followed during negotiations. The *negotiating framework* must be consistent with:

- the applicable requirements of the relevant distribution determination; and
- the minimum requirements for a *negotiating framework* specified in clause 6.7.5(c).

AusNet Services may seek to amend or replace its *negotiating framework* at the time it submits its proposal for the next regulatory control period, by submitting a new proposed negotiating framework in accordance with the Rules as in force at that time.

For the period 1 July 2021 to 30 June 2026, AusNet Services is not proposing to offer any *negotiated distribution services*.

1. Application of Negotiating Framework

This *negotiating framework* applies to AusNet Services and each and every *Service Applicant* who has made an application in writing for the provision of *negotiated distribution services*.

The requirements of this *negotiating framework* are in addition to any requirements or obligations contained in the Rules. In the case of any inconsistency between this *negotiating framework* and the Rules, the Rules will prevail.

Notwithstanding this *negotiating framework*, in the event there is any inconsistency with any of the requirements of:

- (1) rules 5.3, 5.3A and 5.3AA insofar as the *negotiating framework* applies to *negotiated distribution services* which would have been *negotiated distribution service* regardless of the operation of clause 6.24.2(c); and
- (2) rules 5.3, 5.3A and 5.4A insofar as the *negotiating framework* applies 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),

and any other relevant provision of Chapter 6, the requirements of rules 5.3, 5.3A, 5.3AA and 5.4A will prevail.

2. Commencement of Negotiations

A *Service Applicant* who wishes to receive a *negotiated distribution service* from AusNet Services must submit a written request to the AusNet Services customer service centre in accordance with clause 7 of this framework. The request may be made on the AusNet Services application form for electricity supply requests or may be made by written request. The request must elect to conduct a negotiation under this *negotiating framework*.

3. Application for Negotiated Distribution Services

On receipt of an application form or written request (as applicable), AusNet Services and the *Service Applicant* will proceed to negotiate in good faith the terms and conditions of access in accordance with this *negotiation framework*.

Timeframe for Negotiation

In accordance with the Rules, AusNet Services will make an offer to the *Service Applicant* to provide the *negotiated distribution service*, within 20 *Business Days* of receipt of the request.

If the request does not comply with the requirements of the Rules or this *negotiating framework*, AusNet Services will make an offer to the *Service Applicant* to provide the *negotiated distribution service* within 20 *Business Days* of the date when AusNet Services receives all commercial information or information which AusNet Services deems reasonably necessary to provide the offer.

AusNet Services may refuse to make an offer to the *Service Applicant* to provide the *negotiated distribution service* if:

- (a) AusNet Services has already made an offer in response to an earlier request for that *negotiated distribution service* and the offer has not been accepted;
- (b) AusNet Services is of the reasonable opinion that the *Service Applicant* is not conducting the negotiations in good faith; or
- (c) AusNet Services is permitted or required to do so by any electricity industry code, guideline or standard, or any applicable law.

The offer made to the *Service Applicant* will contain the price and terms and conditions for provision of the *negotiated distribution service*, including the following (as applicable):

- (a) a description of the *connection assets*;
- (b) the amount of the *Service Applicant's* capital contribution for new works and augmentation;
- (c) the costs AusNet Services will incur to provide relevant services;
- (d) a requirement that the *Service Applicant* comply with the provisions of any electricity industry code, guideline or standard, unless otherwise agreed by AusNet Services and the *Service Applicant* (both of whom in that respect must act reasonably).

In preparing an offer to provide the *negotiated distribution service*, AusNet Services will comply with the Pricing Principles, to the extent that those principles apply to the relevant *negotiated distribution service*.

An offer made for provision of the *negotiated distribution service* will remain valid for a period of 60 *Business Days* from the date of issue of the offer. Within those 60 *Business Days* the *Service Applicant* must notify AusNet Services if:

- (a) it accepts the offer;
- (b) it rejects the offer and does not wish to commence negotiations for provision of the *negotiated distribution service*; or
- (c) it rejects the offer but does wish to commence negotiations for provision of the *negotiated distribution service*.

If the *Service Applicant* notifies AusNet Services that it rejects AusNet Services' offer in accordance with sub-clause (c) above then:

- (a) AusNet Services may request further information from the *Service Applicant* in order to determine a negotiation program reasonably acceptable to both parties; and

- (b) AusNet Services will finalise negotiations in accordance with that program.

Both the *Service Applicant* and AusNet Services will use reasonable endeavours to adhere to the time limits specified in this Negotiating Framework. The timeframes are summarised in Table 1.

Table 1

| Event | Indicative Timeframe |
|--|---|
| AusNet Services makes an offer to the <i>Service Applicant</i> to provide the <i>negotiated distribution service</i> | Within 20 Business Days of AusNet Services receiving all relevant information from the <i>Service Applicant</i> |
| Parties finalise negotiations | Within 60 Business Days of the date of issue of the offer |

Suspension of Timeframe

The timeframes indicated above for the provision of a *negotiated distribution service* may be suspended at the discretion of AusNet Services in the event that:

- (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) AusNet Services determines in its reasonable opinion that insufficient information has been provided by the *Service Applicant*.

The timeframe will remain suspended until:

- (a) the dispute is resolved;
 - (b) the dispute is abandoned; or
 - (c) the information is provided,
- (as applicable).

Fees for Offer and Costs of *Negotiated Distribution Service*

Prior to commencing negotiations, the *Service Applicant* must pay to AusNet Services an application fee. The application fee will be AusNet Services' reasonable estimate of the direct costs that will be incurred by AusNet Services in processing the application.

AusNet Services may also require the *Service Applicant* to enter into an agreement addressing the payment of the costs associated with the processing of the offer to provide the *negotiated distribution services*.

Termination of Negotiation

AusNet Services may terminate a negotiation under this *negotiating framework* by giving the *Service Applicant* written notice of its intention to do so where:

- (a) AusNet Services is of the reasonable opinion that the *Service Applicant* will not acquire the *negotiated distribution service*;
- (b) AusNet Services believes on reasonable grounds that the *Service Applicant* is not conducting the negotiations in good faith;

- (c) the *Service Applicant* fails to comply with the obligations in this *negotiating framework*;
- (d) the *Service Applicant* fails to pay the fees specified in this clause 3; or
- (e) an Insolvency Event occurs in respect of the *Service Applicant*.

Results of Negotiation

At the conclusion of the negotiations between AusNet Services and the *Service Applicant*, (regardless of whether the outcome is agreed or terminated) AusNet Services will publish the results of the negotiations on its website.

4. Provision of Information

Following a request from a *Service Applicant* to receive a *negotiated distribution service*, AusNet Services may request all commercial information reasonably required by AusNet Services to enable AusNet Services to assess the application and negotiate the requested services.

Commercial information for the purposes of this *negotiating framework* will include, but not be limited to:

- if the *Service Applicant* is a company, information in relation to the company's corporate structure;
- financial information;
- asset ownership; and
- details of the *Service Applicant's* compliance with any law, standard, guidelines, code or the Rules.

Commercial information to be provided by a *Service Applicant* does not include *confidential information* provided to AusNet Services by another person.

Following a request from AusNet Services the *Service Applicant* must use reasonable endeavours to provide the requested commercial information within 10 *Business Days* of the request being issued, or within the time period nominated by AusNet Services being not less than 10 *Business Days*.

AusNet Services will not disclose commercial information to any other person unless authorised by the *Service Applicant* to do so or required by law to do so. The *Service Applicant* may require AusNet Services to enter into a confidentiality agreement in respect of the provision of the commercial information requested. The terms of the confidentiality agreement must be reasonably acceptable to both parties.

Following a request from the *Service Applicant*, AusNet Services will:

- (i) identify and inform a *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the *negotiated distribution service*;
- (ii) demonstrate to a *Service Applicant* that the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement (as appropriate); and
- (iii) have appropriate arrangements for assessment and review of the charges and the basis on which they are made.

AusNet Services will provide all such commercial information a *Service Applicant* may reasonably require to enable that applicant to engage in effective negotiation with AusNet Services for the provision of the *negotiated distribution service* to the *Service Applicant*. AusNet Services may impose conditions on the provision of that commercial information, including but not limited to, the condition that the *Service Applicant* must not disclose the commercial information to any other person

unless AusNet Services consents in writing. AusNet Services may require the *Service Applicant* to enter into a confidentiality agreement prior to the release of the information. The terms and conditions of the confidentiality agreement must be reasonably acceptable to both parties.

The information provided to the *Service Applicant* in accordance with this clause may be subject to the condition that the person to whom the *Service Applicant* discloses the information must enter into a separate confidentiality agreement with AusNet Services.

5. Determination of Impact on Other Distribution Users

In accordance with clause 6.7.5(c)(8), AusNet Services will determine the potential impact on other distribution network users of the provision of the *negotiated distribution service*.

If there is a potential impact determined, AusNet Services will notify and consult with any affected distribution network user 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 in accordance with the Rules.

If AusNet Services is required to consult pursuant to this clause 5, the timeframe provided for in clause 3 shall be suspended until the information required to assess the impact is received from the affected distribution network user(s).

6. Dispute Resolution

All disputes arising during the course of the negotiation shall be dealt with in accordance with Part 10 of the National Electricity Law and Part L of Chapter 6 of the Rules.

7. Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this *negotiating framework* to AusNet Services must be addressed as follows (or as otherwise notified by AusNet Services from time to time):

To AusNet Services:

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|------------------------------|--|
| <i>Address:</i> | Locked Bag 14051 Melbourne City Mail Centre Melbourne VIC 8001 |
| <i>Email:</i> | customersupport@ausnetservices.com.au |
| <i>For the attention of:</i> | The Customer Support Centre |

unless otherwise agreed by AusNet Services.

Each communication must also:

- (a) be signed by the *Service Applicant* making it or (on the *Service Applicant's* behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, the *Service Applicant*;
- (b) be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, or emailed to the address listed above; and

is taken to be received by AusNet Services:

- (c) (in the case of prepaid post) on the fifth *Business Day* after the date of posting;
- (d) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent, but if the communication is taken to be received on a day that is not a *Business Day* or after 5.00 pm, it is taken to be received at 9.00 am on the next *Business Day*
- (e) (in the case of email) at the time in the place to which it is sent which is shown on the email as it appears in the Customer Support Centre's email inbox, but if the communication is taken to be received on a day that is not a *Business Day* or after 5.00 pm on a *Business Day*, it is taken to be received at 9.00 am on the next *Business Day*; and
- (f) (in the case of delivery by hand) on delivery, but if the communication is taken to be received on a day that is not a *Business Day* or after 5.00 pm, it is taken to be received at 9.00 am on the next *Business Day*.

Where a *Service Applicant* sends a communication by prepaid post, the *Service Applicant* is presumed to have used the Regular postal service offered by Australia Post, and the timeframe for receipt specified in paragraph (c) above applies.

8. Definitions and Interpretation

In this *negotiating framework* words in italics have the same meaning as given to those words in the Rules. Capitalised words are defined as follows:

"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*.

"Pricing Principles" means the *Negotiated Distribution Service Principles* set out in clause 6.7.1 of the Rules.