

11.02

# Proposed negotiating framework

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# 1 OVERVIEW

## 1.1 Introduction

Ausgrid must prepare a document (i.e. this negotiating framework) that sets out the procedures to be followed by Ausgrid and applicants who wish to be provided with Negotiated Distribution Services.

Whilst the Australian Energy Regulator (AER) has not classified any distribution services as negotiated for the control period from 1 July 2019 to 30 June 2024, there is some scope under the National Electricity Rules (NER) for services provided by Ausgrid's transmission network to be treated as Negotiated Distribution Services. These are explained further under "Background".

The minimum requirements for the framework are generally set out in the NER – Part D of Chapter 6, clauses 6.7.5(c) and (d). These requirements are comprehensive and include:

- Requirements around provision of information, including specific cost information
- Specified timeframes for negotiation (to be specified by Ausgrid in proposing its negotiating framework)
- Disputes must be resolved on the basis of the dispute resolution process set out in the Law and the NER
- The framework must not be inconsistent with the requirements of rules 5.3, 5.3A, 5.3AA and 5.4A of the NER.

## 1.2 Background

The NER set out in Part D of Chapter 6 that:

- Ausgrid must prepare a document setting out the procedure to be followed during negotiations between it and any person who wishes to receive a Negotiated Distribution Service as to the terms and conditions of access for the provision of the service (clause 6.7.5(a))
- The negotiating framework required by the NER must comply with, and be consistent with, the applicable requirements of a distribution determination applying to the provider
- The negotiating framework must comply with and be consistent with the applicable requirements of Part D of Chapter 6 which set out the minimum requirements for a negotiating framework.

This document has been prepared in fulfilment of Ausgrid's obligation under Clause 6.7.5(a) to establish a negotiating framework which is to be followed during negotiations between Ausgrid and any person (known as a Service Applicant) who asks Ausgrid for access to a Negotiated Distribution Service.

A Negotiated Distribution Service is any service that is provided by Ausgrid by means of, or in connection with, Ausgrid's dual function assets that would be a negotiated transmission service under Chapter 6A of the NER. The NER treats these services as Negotiated Distribution Services.

Dual function assets are any part of Ausgrid's network which operates between 66kV and 220kV and which operates in parallel, and provides support, to the higher voltage transmission network (i.e. Ausgrid's transmission assets).

Negotiated transmission services are defined in Chapter 10 of the NER as:

1. a shared transmission service that either:
  - a. exceeds the network performance requirements (whether as to quality or quantity) (if any) as that shared transmission service is required to meet under any jurisdictional electricity legislation; or
  - b. except to the extent that the network performance requirements which that shared transmission service is required to meet are prescribed under any jurisdictional electricity legislation, exceeds or does not meet the network performance requirements (whether as to quality or quantity) as are set out in schedule 5.1a or 5.1 of the NER;

*This effectively refers to a service provided by Ausgrid's transmission assets at a higher or lower standard in terms of quality or reliability than would otherwise apply to that customer's service.*

2. connection services that are provided to serve a Transmission Network User, or a group of Transmission Network Users, at a single transmission network connection point, other than connection services that are provided by one Network Service Provider to another Network Service Provider to connect their networks where neither provider is a Market Network Service Provider; or

*This effectively refers to a new connection to Ausgrid's transmission assets other than a connection by another network service provider.*

3. services that are specified to be negotiated transmission services under rule 5.2A.4 of the NER.

*Rule 5.2A.4 of the NER sets out how the various services required to connect to the transmission network are classified, including the classification of non-contestable services which must be negotiated as a negotiated transmission service.*

Negotiated transmission services, as defined in the NER, do not include an above-standard system shared transmission service or a market network service.

## **2 AUSGRID'S NEGOTIATING FRAMEWORK**

### **1 Application of negotiating framework**

- 1.1 This negotiating framework applies to Ausgrid and each Service Applicant who has made an application in writing to Ausgrid for the provision of a Negotiated Distribution Service.
- 1.2 Ausgrid and any Service Applicant who asks Ausgrid for access to a Negotiated Distribution Service must comply with the requirements of this negotiating framework.
- 1.3 The requirements set out in this negotiating framework are additional to any requirements or obligations contained in Chapters 5, 6 and 6A of the NER, including rules 5.3, 5.3A, 5.3AA and 5.4A. In the event of any inconsistency between this negotiating framework and any other requirements in the NER, the requirements of the NER will prevail.
- 1.4 Nothing in this negotiating framework or in the NER will be taken as imposing an obligation on Ausgrid to provide any service to the Service Applicant.

### **2 Obligation to negotiate in good faith**

- 2.1 Ausgrid and the Service Applicant must negotiate in good faith the terms and conditions of access for the provision by Ausgrid of the Negotiated Distribution Service sought by the Service Applicant.

### **3 Timeframe for commencing, progressing and finalising Negotiations**

- 3.1 Clause 3.4 and Table 1 set out the timeframe for commencing, progressing and finalising negotiations in relation to applications for a Negotiated Distribution Service.
- 3.2 The timeframes set out in Table 1 will not apply where a timeframe is specified in Chapter 5 in relation to any application for Negotiated Distribution Services, and in that case the time period specified in Chapter 5 will apply.
- 3.3 The timeframes set out in clause 3.4 may be suspended in accordance with clause 9.
- 3.4 Timeframes:
  - (a) The specified time for commencing, progressing and finalising negotiations with a Service Applicant is as set out in Table 1.
  - (b) Ausgrid and the Service Applicant shall use reasonable endeavours to adhere to the time periods specified in Table 1 and may, by agreement, extend any such time period.
  - (c) The preliminary program finalised under C in Table 1 may be modified from time to time by agreement of the parties, where such agreement must not be unreasonably withheld. Any such amendment to the preliminary program shall be taken to be a reasonable period of time for commencing, progressing and finalising negotiations with a Service Applicant for the provision of the Negotiated Distribution Service. The requirement in clause 3.4(b) applies to the last amended preliminary program.

**Table 1.**

	Event	Indicative timeframe
A.	Receipt of written application for a Negotiated Distribution Service. The application must be made by Completing an Application Form.	X
B.	Parties meet to discuss a preliminary negotiation program with milestones that represent a reasonable period of time for commencing, progressing and finalising negotiations. This program must take into account, and be consistent with, any preliminary program agreed as part of the connection inquiry process.	X + 15 Business Days
C.	Parties finalise negotiation program, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> <li>• The provision of information by Ausgrid to meet the obligation in clause 5.1.</li> <li>• The request and provision of commercial information by Ausgrid and the Service Applicant (see clauses 4 and 5).</li> <li>• Notification and consultation with any affected Distribution Network Users (see clause 7).</li> <li>• The Negotiated Distribution Service being formally specified by the Service Applicant.</li> <li>• The notification by Ausgrid of its reasonable direct expenses incurred in processing the application and the payment of those expenses by the Service Applicant (see clause 10).</li> </ul>	X + 30 Business Days
D.	Parties progress negotiations and the Service Applicant specifies to Ausgrid the exact Negotiated Distribution Service which is required to be provided.	X + 40 Business Days
E.	Parties finalise negotiations.	X + 60 Business Days or (where the reasonable direct expenses of Ausgrid have been requested but not paid by the Service Applicant) within 20 Business Days of those expenses being paid to Ausgrid.

#### 4 Provision of commercial information by Service Applicant

- 4.1 Ausgrid may give notice to the Service Applicant requesting commercial information held by the Service Applicant that is reasonably required by Ausgrid to enable it to engage in effective negotiations with the Service Applicant in relation to the application and to enable Ausgrid to submit commercial information to the Service Applicant.
- 4.2 Subject to clauses 4.3 and 4.4, the Service Applicant must use its reasonable endeavours to provide Ausgrid with the commercial information requested by Ausgrid in accordance with clause 4.1 within 10 Business Days of that request, or within a time period as agreed by the parties.
- 4.3 For the purposes of this clause 4, commercial information does not include:
- confidential information provided to the Service Applicant by another person; or
  - information that the Service Applicant is prohibited, by law, from disclosing to Ausgrid.
- 4.4 Subject to clause 4.5, commercial information may be provided by the Service Applicant subject to conditions including the condition that Ausgrid must not disclose the commercial information to any other person unless the Service Applicant consents in writing to the disclosure. The Service Applicant may require Ausgrid to enter into a confidentiality agreement, on terms reasonably acceptable to both parties, in respect of any commercial information provided to Ausgrid.

- 4.5 The Service Applicant must not impose any condition pursuant to clause 4.4 that would prevent Ausgrid from complying with its obligations under the NER or any other law, including but not limited to any obligation under the NER requiring Ausgrid to publish certain information.
- 4.6 A consent provided by the Service Applicant in accordance with clause 4.4 may be subject to the condition that the person to whom Ausgrid discloses the commercial information must enter into a separate confidentiality agreement with the Service Applicant.

## **5 Provision of commercial information by Ausgrid**

- 5.1 Ausgrid must provide the following information to the Service Applicant in accordance with the negotiation program prepared in accordance with clause 3.4:
  - (a) the reasonable Costs and/or the increase or decrease in Costs (as appropriate) of providing the Negotiated Distribution Service to the Service Applicant;
  - (b) a demonstration to the Service Applicant that the proposed charges for providing the Negotiated Distribution Service reflect those Costs and/or the Cost increment or decrement (as appropriate); and
  - (c) Ausgrid's arrangements for the assessment and review of the charges and the basis upon which they are made.
- 5.2 The Service Applicant may give a notice to Ausgrid requesting that Ausgrid provide it with all commercial information held by Ausgrid that is reasonably required by the Service Applicant to enable it to engage in effective negotiations with Ausgrid for the provision of a Negotiated Distribution Service, including the following:
  - (a) a description of the nature of the Negotiated Distribution Service including what Ausgrid would provide to the Service Applicant as part of that service;
  - (b) the terms and conditions on which Ausgrid would provide the Negotiated Distribution Service to the Service Applicant;
  - (c) the reasonable Costs and/or the increase or decrease in Costs (as appropriate) of providing the Negotiated Distribution Service to the Service Applicant if not previously provided in accordance with subclause 5.1(a);
  - (d) a demonstration to the Service Applicant that the proposed charges for providing the Negotiated Distribution Service reflect those Costs and/or the Cost increment or decrement (as appropriate) if not previously provided in accordance with subclause 5.1(b); and
  - (e) Ausgrid's proposed arrangements for the assessment and review of the proposed charges for the Negotiated Distribution Service and the basis upon which those charges are made if not previously provided in accordance with subclause 5.1(c).
- 5.3 Ausgrid must consider and respond to a notice provided by a Service Applicant under clause 5.2, in accordance with the requirements of the NER.

## **Confidentiality Requirements**

- 5.4 For the purposes of clause 5, commercial information does not include:
  - (a) confidential information provided to Ausgrid by another person; or
  - (b) information that Ausgrid is prohibited, by law, from disclosing to the Service Applicant.

- 5.5 Ausgrid may provide the commercial information in accordance with clause 5 subject to relevant conditions including the condition that the Service Applicant must not disclose the commercial information to any other person unless Ausgrid consents in writing to the disclosure. Ausgrid may require the Service Applicant to enter into a confidentiality agreement with Ausgrid, on terms reasonably acceptable to both parties, in respect of commercial information provided to the Service Applicant.
- 5.6 A consent provided to a Service Applicant in accordance with clause 5.5 may be subject to the condition that the person to whom the Service Applicant discloses the commercial information must enter into a separate confidentiality agreement with Ausgrid.

## **6 Assessment and Review of Charges and Basis of Charges**

- 6.1 Ausgrid must have arrangements for the assessment and review of the proposed charges for the Negotiated Distribution Service and the basis upon which those charges are made.
- 6.2 Ausgrid must provide these arrangements to the Service Applicant in accordance with clause 5.1 or 5.2 as applicable.

## **7 Determination of impact on other Distribution Network Users and consultation with affected Distribution Network Users**

- 7.1 Ausgrid must determine the potential impact on Distribution Network Users, other than the Service Applicant, of the provision of the Negotiated Distribution Service.
- 7.2 Ausgrid must 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 to other Distribution Network Users under the NER.
- 7.3 The Service Applicant acknowledges that Ausgrid has obligations in respect of other Distribution Network Users and will reasonably cooperate with Ausgrid to facilitate its compliance with those obligations.

## **8 Suspension of Timeframe for Provision of a Negotiated Distribution Service**

- 8.1 The timeframes for negotiation of provision of a Negotiated Distribution Service in Table 1, or as otherwise agreed between the parties, are suspended if:
  - (a) a dispute in relation to the Negotiated Distribution Service has been notified to the AER under Part 10 of the NEL, from the date of notification of that dispute to the AER until:
    - (i) the withdrawal of the dispute under section 126 of the NEL;
    - (i) the termination of the dispute by the AER under section 131 or 132 of the NEL; or
    - (i) determination of the dispute by the AER under section 128 of the NEL;
  - (b) within 15 Business Days of Ausgrid requesting additional commercial information from the Service Applicant pursuant to clause 4, the Service Applicant has not supplied that commercial information;
  - (c) without limiting clauses 8.1(a) and (b), either of the parties does not promptly conform with any of its obligations as required by this negotiating framework or as otherwise agreed by the parties; or
  - (d) if Ausgrid has been required to notify and consult with any affected Distribution Network Users under clause 7, from the date of notification to the affected Distribution Network Users until the end of the time limit specified by Ausgrid for



any affected Distribution Network Users or the receipt of such information from the affected Distribution Network Users, whichever is later, regarding the provision of the Negotiated Distribution Service.

- 8.2 Each party will notify the other party if it considers that the timeframe has been suspended, within 5 Business Days of that suspension.

## **9 Dispute Resolution**

- 9.1 All disputes between the parties as to the terms and conditions of access for the provision of a Negotiated Distribution Service are to be dealt with by the AER in accordance with Part 10 of the NEL.

## **10 Payment of Ausgrid's Reasonable Costs**

- 10.1 Ausgrid may give the Service Applicant a notice setting out Ausgrid's reasonable direct expenses incurred in processing the Service Applicant's application.
- 10.2 The Service Applicant must, within 20 days of a notice being given in accordance with this clause 10, pay to Ausgrid the amount set out in the notice.

## **11 Termination of Negotiations**

- 11.1 The Service Applicant may elect not to continue with its application for a Negotiated Distribution Service and may terminate the negotiations by giving Ausgrid written notice of its decision to do so.
- 11.2 Ausgrid may terminate a negotiation under this framework by giving the Service Applicant written notice of its decision to do so where:
- (a) Ausgrid believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;
  - (b) the Service Applicant consistently fails to comply with the requirements of the negotiating framework;
  - (c) the Service Applicant fails to comply with an obligation in this negotiating framework to undertake or complete an action within a specified or agreed timeframe, and does not complete the relevant action within 20 Business Days of a written request from Ausgrid; or
  - (d) an act of Solvency Default occurs in relation to the Service Applicant.

## **12 Publication of Results of Negotiations on Website**

- 12.1 Ausgrid will publish the outcomes of negotiations for Negotiated Distribution Services on its website.

## **13 Giving notices**

- 13.1 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 3 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 latest address.

**Ausgrid**

Name: Ausgrid  
Address: GPO Box 4009, Sydney, NSW 2001  
Attention: Network Connections

**Service Applicant Name**

Name: Service Applicant  
Address: The nominated address of the Service Applicant provided in writing to Ausgrid as part of the application

**Time notice is given**

- 13.3 A notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if it is delivered, when it is left at the relevant address;
  - (b) if it is sent by post, 2 Business Days after it is posted; or
  - (c) if it is sent by facsimile transmission, on the day the transmission is sent (but only if the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission)
- 13.4 If a notice, consent, information, application or request is delivered after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

**14 Miscellaneous****Governing law and jurisdiction**

- 14.1 This document is governed by the law of the State of New South Wales.
- 14.2 The parties submit to the non-exclusive jurisdiction of the courts of the state of New South Wales.
- 14.3 The parties will not object to the exercise of judgment by the courts of the State of New South Wales on any basis.

**Severability**

- 14.4 If a clause or part of a clause of this negotiating framework can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 14.5 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this negotiating framework, but the rest of this negotiating framework is not affected.

**Time for Action**

- 14.6 If the day on or by which something is required to be done or may be done is not a Business Day, that thing must be done on or by the next Business Day.

**15 Definitions and interpretation****15.1 Definitions**

In this document the following definitions apply:

**Ausgrid** means the Ausgrid Operator Partnership (ABN 78 508 211 731), trading as Ausgrid, a partnership carried on under that name by:

- (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
- (e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.

**Business Day** means a day on which all banks are open for business generally in Sydney, NSW.

**Costs** means any costs or expenses incurred by Ausgrid in complying with this negotiating framework or otherwise advancing the Service Applicant's request for the provision of a Negotiated Distribution Service or such other costs or expenses consistent with the NER, Ausgrid's Cost Allocation Methodology or any relevant part of a distribution determination applying to Ausgrid.

**Solvency Default** means the occurrence of any of the following events in relation to the Service Applicant:

- (a) an originating process or application for the winding up of the Service Applicant (other than a frivolous or vexatious application) is filed in a court or a special resolution is passed to wind up the Service Applicant, and is not dismissed before the expiration of 60 days from service on the Service Applicant;
- (b) a receiver, receiver and manager or administrator is appointed in respect of all or any part of the assets of the Service Applicant, or a provisional liquidator is appointed to the Service Applicant;
- (c) a mortgagee, chargee or other holder of security, by itself or by or through an agent, enters into possession of all or any part of the assets of the Service Applicant;
- (d) a mortgage, charge or other security is enforced by its holder or becomes enforceable or can become enforceable with the giving of notice, lapse of time or fulfilment of a condition;
- (e) the Service Applicant stops payment of, or admits in writing its inability to pay, its debts as they fall due;
- (f) the Service Applicant applies for, consents to, or acquiesces in the appointment of a trustee or receiver of the Service Applicant or any of its property;
- (g) a court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of the Service Applicant's property;
- (h) the Service Applicant takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act 2001), in respect of the Service Applicant;
- (i) a controller (as defined in the Corporations Act 2001) is appointed in respect of any part of the property of the Service Applicant;
- (j) except to reconstruct or amalgamate while solvent, the Service Applicant enters into or resolves to enter into a scheme of arrangement, compromise or reconstruction

proposed with its creditors (or any class of them) or with its members (or any class of them) or proposes re-organisation, re-arrangement moratorium or other administration of the Service Applicant's affairs;

- (k) the Service Applicant is the subject of an event described in section 459C(2)(b) of the Corporations Act 2001; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the Service Applicant.

## **15.2 Interpretation**

In this document, unless the context otherwise requires:

- (a) terms defined in the NEL and the NER have the same meaning in this negotiating framework;
- (b) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (c) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (d) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;
- (e) an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- (f) a covenant or agreement on the part of two or more persons binds them jointly and severally.