



Jemena Electricity Networks (Vic) Ltd

2021-26 Electricity Distribution Price Review Revised Proposal

Attachment 10-01

Response to the AER's draft decision - Negotiated distribution services framework



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Overview

This document sets out Jemena Electricity Networks (Vic) Ltd's (**JEN's**) revised revenue proposal for negotiated services over the 2021-26 regulatory control period. It is an update to our initial regulatory proposal of 31 January 2020 (**initial proposal**) and responds to the Australian Energy Regulator's (**AER's**) 2021-26 draft decision (**draft decision**).

Our negotiation framework proposed in our initial proposal is a continuation of the framework accepted by the AER in the 2016-20 regulatory control period; it is also the same framework we included in our initial proposal.

The AER considered our negotiated framework and accepted it without changes in its draft decision. We accept the AER's draft decision. For completeness, we include our negotiated framework in this revised proposal as accepted by the AER in its draft decision and without change.

1. Application of negotiating framework

This negotiating framework applies to distribution services classified as Negotiated Distribution Services for which JEN must negotiate in good faith with Service Applicants to provide the services on fair and reasonable terms in accordance with the National Electricity Rules (**NER**)¹.

1.1 Who the negotiating framework applies to

This negotiating framework applies to JEN and any Service Applicant who has applied in writing to JEN for the provision of a Negotiated Distribution Service.

1.2 Obligation to comply

JEN and any Service Applicant who wishes to receive a Negotiated Distribution Service from JEN must comply with the requirements of this negotiating framework.

1.3 Interaction with other regulatory instruments

The requirements set out in this negotiating framework are in addition to any requirements or obligations contained in the NER or a relevant Victorian Regulatory Instrument.

In the case of inconsistency between the NER or a relevant Victorian Regulatory Instrument and this negotiating framework, the NER or the relevant Victorian Regulatory Instrument will prevail.

1.4 No obligation to provide service

Nothing in this negotiating framework will be taken to impose an obligation on JEN to provide any service to the Service Applicant.

1.5 Obligation to negotiate in good faith

JEN and the Service Applicant must negotiate the terms and conditions of access for the provision by JEN of the Negotiated Distribution Service sought by the Service Applicant in good faith. The obligation to negotiate in good faith does not require a party to act contrary to its own commercial interests.

¹ NER cl 6.7.5.

2. Timeframes

2.1 Commencing, progressing and finalising negotiations

2.1.1 Subject to paragraphs 2.1.2 to 2.1.4, following a request for a Negotiated Distribution Service, JEN and the Service Applicant will use their reasonable endeavours to:

- A agree the milestones, information requirements and any other relevant issues within 5 Business Days of receipt by JEN of the application;
- B adhere to any timetable established for negotiations, and progress negotiations in an expeditious manner; and
- C finalise negotiations within 120 Business Days of the initial application.

2.1.2 JEN and the Service Applicant must use reasonable endeavours to adhere to the timeframes set out in paragraph 2.1.3 or agreed pursuant to paragraph 2.1.4 during the negotiation for the provision of a Negotiated Distribution Service.

2.1.3 The timeframes for negotiating Negotiated Distribution Services are set out in Table 2-1, together with a reference to other relevant paragraphs of this negotiating framework.

Table 2-1: Timeframe for negotiating negotiated distribution services

Event	References	Clause	Timeframe
A	Receipt of written application for a Negotiated Distribution Service.	1.1	X
B	<p>Parties discuss:</p> <ul style="list-style-type: none"> • the nature of the services required; • any Commercial Information to be provided by the Service Applicant; and • notification and consultation with affected Distribution Network Users and AEMO <p>[Note – These discussions may occur by electronic communication or by telephone, if appropriate.]</p> <p>Parties agree:</p> <ul style="list-style-type: none"> • timeframes for negotiation and consultation; and • milestones. <p>Service Applicant pays application fee.</p>	2.1.1, 2.2, 3, 6, 7	X + 5 Business Days
C	<p>Service Applicant provides Commercial Information to JEN.</p> <p>[Note – JEN may request additional Commercial Information if required, and if so, the Service Applicant must provide additional Commercial Information to JEN.]</p>	3	X + 20 Business Days [Additional 20 Business Days]
D	Where required, JEN consults with affected Distribution Network Users and AEMO	6	X + 40 Business Days

Event	References	Clause	Timeframe
E	<p>All necessary information is received by JEN, including:</p> <ul style="list-style-type: none"> the completed application; the Service Applicant's Commercial Information; and consultation feedback where required. <p>The Service Applicant has paid the relevant fee.</p>	1.1, 3, 7	Y
F	JEN provides Commercial Information and makes Negotiated Distribution Service offer.	4,5	Y + 20 Business Days
G	Parties finalise negotiations.	2.1.1	Y + 80 Business Days

2.1.4 The timeframes set out in paragraph 2.1.3 may be modified from time to time by agreement between the parties, where each party's agreement must not be unreasonably withheld. Any such amended negotiating timeframe will 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 Services.

2.2 Suspension of timeframes

2.2.1 The timeframes for negotiation of the provision of a Negotiated Distribution Service set out in paragraph 2.1.3 or agreed pursuant to paragraph 2.1.4 are suspended as follows:

- A the obligations of both parties are suspended if a dispute in relation to the Negotiated Distribution Service has been notified to JEN or the Service Applicant (as applicable) in accordance with paragraph 10. The timeframes are suspended from the date of that notification until the date of the withdrawal of the dispute or resolution of the dispute under paragraph 10; or
- B JEN's obligations are suspended if the Service Applicant has not supplied additional Commercial Information requested by JEN pursuant to paragraph 3.2 within 20 Business Days of that request or the Service Applicant does not otherwise comply with a relevant requirement of the timeframes set out in paragraph 2.1.3 or agreed pursuant to paragraph 2.1.4.

3. Provision of commercial information by service applicant

3.1 Obligation to provide commercial information

- 3.1.1 The Service Applicant must, if requested by JEN, provide JEN with Commercial Information held by the Service Applicant that JEN reasonably requires to enable it to engage in effective negotiations with the Service Applicant in relation to the Service Applicant's application.
- 3.1.2 Subject to paragraph 2.2, the Service Applicant must use its reasonable endeavours to provide JEN the Commercial Information requested by JEN within 10 Business Days of that request, or within such other period as agreed by the parties.

3.2 Obligation to provide additional commercial information

- 3.2.1 JEN may request the Service Applicant to provide JEN with any additional Commercial Information that is reasonably required by JEN to enable it to engage in effective negotiations with the Service Applicant in relation to the Service Applicant's application or to clarify any Commercial Information provided pursuant to paragraph 3.1.
- 3.2.2 Subject to paragraph 2.2, the Service Applicant must use its reasonable endeavours to provide JEN the Commercial Information requested by JEN in accordance with paragraph 3.2.1 within 10 Business Days of the date of the request, or within such other period as agreed by the parties.

3.3 Confidentiality requirements

- 3.3.1 Commercial Information provided to JEN by the Service Applicant may be provided subject to the condition that JEN must not disclose the Commercial Information to any other person unless the Service Applicant consents in writing to the disclosure or as required by law. The Service Applicant may require JEN to enter into a confidentiality agreement with the Service Applicant in respect of Commercial Information provided by the Service Applicant to JEN. The terms of the confidentiality agreement must be reasonably acceptable to both parties.
- 3.3.2 A consent provided by the Service Applicant in accordance with paragraph 3.3.1 may be given subject to the condition that the person to whom JEN discloses the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

4. Provision of commercial information by JEN

4.1 Obligation to provide commercial information (including cost information)

- 4.1.1 JEN will provide the Service Applicant with all Commercial Information held by JEN that is reasonably required by the Service Applicant to enable it to engage in effective negotiations with JEN for the provision of the Negotiated Distribution Service sought by the Service Applicant.
- 4.1.2 The information will be provided within a timeframe agreed by the parties, but in any case prior to or contemporaneous with the provision of the Negotiated Distribution Service offer, and will include the following information:
- A a description of the nature of the Negotiated Distribution Service, including what JEN would provide to the Service Applicant as part of that service;
 - B the terms and conditions on which JEN would provide the Negotiated Distribution Service to the Service Applicant; and
 - C an explanation of the reasonable costs and/or the increase or decrease in costs (as appropriate) associated with providing the Negotiated Distribution Service to the Service Applicant. The purpose of this explanation is to demonstrate that the charges reflect the costs and/or cost increment or decrement (as appropriate) of providing the Negotiated Distribution Service.
- 4.1.3 For the purpose of paragraph 4.1.2C, JEN will have appropriate arrangements to assess and review charges and the basis on which they are made.

4.2 Confidentiality requirements

- 4.2.1 Commercial Information provided by JEN in accordance with paragraph 4.1 may be provided subject to the condition that the Service Applicant must not disclose the Commercial Information to any other person unless JEN consents in writing to the disclosure or as required by law. JEN may require the Service Applicant to enter into a confidentiality agreement with JEN in respect of Commercial Information provided by JEN to the Service Applicant. The terms of the confidentiality agreement must be reasonably acceptable to both parties.
- 4.2.2 A consent provided by JEN to a Service Applicant in accordance with paragraph 4.2.1 may be given subject to the condition that the person to whom the Service Applicant discloses the Commercial Information must enter into a separate confidentiality agreement with JEN.

5. Pricing principles

JEN will comply with the Negotiated Distribution Service Principles set out in clause 6.7.1 of the NER.

6. Consultation with affected parties

6.1 JEN to determine potential impact on Distribution Network Users

JEN will determine the potential impact on Distribution Network Users, other than the Service Applicant, of the provision of the Negotiated Distribution Service.

6.2 JEN to notify and consult

JEN will 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 in relation to other Distribution Network Users under the NER.

7. Payment of JEN's Costs

7.1 Application fee

- 7.1.1 Prior to commencing negotiations, the Service Applicant must pay an application fee to JEN.
- 7.1.2 The application fee will be determined by JEN based upon an estimate of the minimum reasonable direct Costs that will be incurred by JEN in relation to the Service Applicant's application for the provision of the Negotiated Distribution Service.

7.2 Direct Costs

- 7.2.1 From time to time, JEN may give the Service Applicant a notice setting out an estimate of any reasonable direct Costs that will be incurred by JEN in relation to the Service Applicant's application for the provision of the Negotiated Distribution Service that exceed the application fee paid by the Service Applicant under paragraph 7.1.2.
- 7.2.2 The Service Applicant must, within 20 Business Days of the receipt of that notice, pay to Jemena the amount stated in the notice provided by JEN under paragraph 7.2.1.
- 7.2.3 If the aggregate direct Costs incurred by JEN in relation to the Service Applicant's application for the provision of the Negotiated Distribution Service are less than the amount paid by the Service Applicant under paragraphs 7.1.1 and 7.2.2, JEN will:
- A offset the excess amount against the price for the Negotiated Distribution Service; or
 - B refund the excess amount if the Service Applicant does not acquire the Negotiated Distribution Service.
- 7.2.4 JEN may require the Service Applicant to enter into a binding agreement addressing conditions, guarantees and other matters in relation to the payment of on-going Costs in accordance with this paragraph 7.

8. Termination of negotiations

8.1 Termination by Service Applicant

The Service Applicant may elect not to continue with its application for a Negotiated Distribution Service and may terminate the negotiations by giving JEN written notice of its decision to do so.

8.2 Termination by JEN

JEN may terminate a negotiation under this negotiating framework by giving the Service Applicant written notice of its decision to do so where:

- 8.2.1 JEN believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;
- 8.2.2 JEN reasonably believes that the Service Applicant will not acquire any Negotiated Distribution Service; or
- 8.2.3 an act of Solvency Default occurs in relation to the Service Applicant.

9. Publication of results of negotiation

9.1 JEN to publish results

At the conclusion of the negotiations between JEN and the Service Applicant, whether by way of agreed outcome or termination pursuant to paragraph 8 of this negotiating framework, JEN will publish the results of the negotiations on its website.

9.2 Form of publication

JEN will publish the results described in paragraph 9.1 in a quarterly summary on its website.

10. Dispute resolution

All disputes between the parties as to the terms and conditions of access for the provision of a Negotiated Distribution Service will be dealt with in accordance with the National Electricity Law and Chapter 8 of the NER.

11. Giving notices

11.1 Address for notices

Except as otherwise indicated in this negotiating framework, 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.

If a party gives the other party 5 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 other party's most recent address.

JEN

Name: Jemena Electricity Networks (Vic) Ltd

Address: Level 16, 567 Collins Street
Melbourne, VIC 3000

PO Box: 16182, Melbourne, VIC 3000

Service Applicant

Name: Service Applicant

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

11.2 Time notice is given

11.2.1 A notice, consent, information, application or request is to be treated as given or made at the following time:

- if it is delivered, when it is left at the relevant address;
- if it is sent by post, 2 Business Days after it is posted; or
- if sent by email once acknowledged as received by the addressee.

11.2.2 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.

12. Terms & abbreviations

12.1 Definitions

In this document the definitions outlined in Table 12-1 apply.

Table 12-1: Definitions

Term	Definition
Business Day	A day on which all banks are open for business generally in Melbourne, Victoria.
Commercial Information	Includes, but is not limited to, the following classes of information: <ul style="list-style-type: none"> • details of corporate structure; • financial details relevant to creditworthiness and commercial risk; • ownership of assets; • technical information relevant to the application for the Negotiated Distribution Service; • financial information relevant to the application for the Negotiated Distribution Service; • details of an application's compliance with any law, standard, NER or guideline, but does not include: <ul style="list-style-type: none"> • confidential information provided by another person to either: <ul style="list-style-type: none"> – the Service Applicant; or – JEN; • information that the Service Applicant is prohibited, by law, from disclosing to JEN; or • information that JEN is prohibited, by law, from disclosing to the Service Applicant.
Costs	Any costs or expenses incurred by JEN in complying with this negotiating framework or otherwise advancing the Service Applicant's request for the provision of a Negotiated Distribution Service.
JEN	Jemena Electricity Networks (Vic) Ltd, ABN 82 064 651 083
National Electricity Law	The National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> of South Australia, having force and effect as a law of Victoria pursuant to section 6 of the <i>National Electricity (Victoria) Act 2005</i> .
Negotiated Distribution Services	Distribution services classified by the Australian Energy Regulator as Negotiated Distribution Services in the Final Decision – Jemena Distribution Determination 2021-26.
NER	The National Electricity Rules made under the National Electricity Law.
Service Applicant	The person requesting a Negotiated Distribution Service in accordance with this negotiating framework.
Solvency Default	The occurrence of any of the following events in relation to the Service Applicant: <ol style="list-style-type: none"> 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; 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; 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;

Term	Definition
	<p>(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;</p> <p>(e) the Service Applicant stops payment of, or admits in writing its inability to pay, its debts as they fall due;</p> <p>(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;</p> <p>(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;</p> <p>(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 <i>Corporations Act 2001</i>), in respect of the Service Applicant;</p> <p>(i) a controller (as defined in the <i>Corporations Act 2001</i>) is appointed in respect of any part of the property of the Service Applicant;</p> <p>(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;</p> <p>(k) the Service Applicant is the subject of an event described in section 459C(2)(b) of the <i>Corporations Act 2001</i>; or</p> <p>(l) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the Service Applicant.</p>
Victorian Regulatory Instrument	An Act, licence, code, guideline or other regulatory instrument to which JEN is subject under a law of Victoria.

12.2 Interpretation

In this negotiating framework, unless the context otherwise requires:

- terms defined in the NER have the same meaning in this negotiating framework;
- 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;
- a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- a reference to a paragraph, part, schedule or attachment is a reference to a paragraph, part, schedule or attachment of or to this document unless otherwise stated;
- an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency; and
- a covenant or agreement on the part of two or more persons binds them jointly and severally.