



Attachment 12.03

Negotiating framework and negotiated
distribution service criteria

31 January 2023

PowerWater

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1. Introduction and Context

A negotiating framework sets out the procedure which the DNSP will follow during negotiations with any person to agree the terms and conditions upon which a negotiated distribution service will be provided by Power and Water.

This Attachment introduces Power and Water's proposed Negotiating Framework and explains the context in which the Negotiating Framework may apply to its services.

1.1 What are Negotiated Distribution Services?

Negotiated Distribution Services are generally services that the AER has classified negotiated because it has as determined that the provision of those services do not require any form of direct control under the distribution determination such that the parties should be able to negotiate the price paid (as well as the terms and conditions) of these services.

These services are subject to a light-handed regime under which the DNPS must negotiate in accordance with a Negotiating Framework and Negotiated Distribution Service Criteria approved by the AER. Further, the AER can be called upon to resolve disputes that arise between the parties in negotiating the services.

1.1.1 Power and Water and Negotiated Distribution Services

No distribution services were identified as appropriate for classification as negotiated distribution services as part of the AER's Framework Approach process and the final Framework and Approach paper¹. However the NT NER make special provision in relation to services provided by Power and Water's transmission network.

Power and Water's network is both a transmission and distribution network for the purposes of the NT NER. This is because under the NT NER, a transmission network is a network operating at nominal voltages of 66kV and above².

For the purposes of economic regulation by the AER, the NT NER provide³ that all of Power and Water Corporation's regulated network services are treated as distribution services, which means that services that would be prescribed transmission services are classified as direct control services and subject to economic regulation under Chapter 6, and that services that would be negotiated transmission services will be taken to be a negotiated distribution service⁴.

Under the NT NER, *negotiated transmission services* are defined in the Chapter 10 Glossary as:

"Any of the following services:

(a) a *shared transmission service* that:

(1) 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

¹ AER Final Framework and Approach: Power and Water Corporation (Northern Territory) Regulatory Control period commencing 1 July 2024, July 2022 at page 6

² NT NER, Chapter 10, Glossary definition of transmission network.

³ NT NER Rule 6.0A(b)(1)

⁴ NT NER Rule 6.0A (b)(2)

(2) 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;

(b) *connection services* that are provided to serve a *Transmission Network User*, or 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 of the *Network Service Providers* is a *Market Network Service Provider*;

(c) services specified to be *negotiated transmission services* under clause 5.2A.4; or

(d) undertaking *system strength connection works*,

but does not include an *above-standard system shared transmission service* or a *market network service*.

Element (b) of the definition captures connections to Power and Water's transmission network.

This means that services related to connection to the Power and Water Transmission Network under Chapter 5 (Rule 5.3) are classified as negotiated transmission Services and are taken to be classified as Negotiated Distribution Services.

Consequently, Power and Water's Negotiating Framework and the AER's Negotiated Distribution Service Criteria will apply to connections to Power and Water's transmission network.

1.2 What are the Rule requirements for a Negotiating Framework?

A DNSP's Regulatory Proposal must include a Negotiating Framework that meets the requirements of NT NER Rule 6.7.

Clause 6.7.5 of the NT Rules sets out the following key requirements in relation to a negotiating framework:

- negotiations must be in good faith;
- A requirement that the DNSP provide all of the commercial information that the customer may reasonably require to enable that person to engage in effective negotiation;
- Detailed information regarding the cost of providing the service;
- A requirement that the customer provide all commercial information that the DNSP may reasonably require to enable the provider to engage in effective negotiation;
- Requirements regarding the time frames for each stage of the negotiation;
- A process for dispute resolution; and
- Arrangements for payment by the customer of the DNSP'S reasonable direct expenses incurred in processing the applications to provide the service.

1.3 Power and Water's Negotiating Framework for 2024-29

PWC has reviewed the Negotiating Framework that was approved as part of its 2019-2024 Determination and Negotiating Frameworks which have been approved by the AER since that time and notes that the form of Negotiating Frameworks approved by the AER is now generally settled. Consequently only minor modifications are required to update PWC's Negotiating Framework. These minor updates have been made

in addition to amendments to clarify the application of the Negotiating Framework to connections to Power and Water’s transmission network.

Power and Water’s Proposed Negotiating Framework is set out at Appendix A

Table 1.1 describes how Power and Water’s Proposed Negotiating Framework meets the requirements of NT NER 6.7.5.

Table 1.1 How Power and Water meets the requirements of NT NER 6.7.5.

Rule	Requirement	Where addressed
6.7.5(b)(1)	The applicable requirements of the relevant distribution determination.(Negotiated Distribution Service Criteria)	1.2
6.7.5(c)(1)	Negotiations between DNPS and Service applicant must be in good faith	2.1
6.7.5(c)(2)	A requirement that the DNSP provide all of the commercial information that the customer may reasonably require to enable that person to engage in effective negotiation	5.1
6.7.5(c)(l)	Detailed information regarding the cost of providing the service;	5.3(c)
6.7.5(4)(2)	A requirement that the customer provide all commercial information that the DNSP may reasonably require to enable the provider to engage in effective negotiation;	4.2 and 4.4
6.7.5(c)(5)	A requirement that negotiations be commenced and finalised within specified periods and a requirement that each party to the negotiations must make reasonable endeavours to adhere to the specified time limits.	3.4 and 3.5
6.7.5(c)(6)	A process for dispute resolution	12
6.7.5(c)(7)	Arrangements for the customer to pay the reasonable direct expenses incurred in processing the application to provide the negotiated distribution service	9
6.7.5(c)(8)	A requirement for the DNSP to determine the impact on other network users of the provision of the negotiated distribution service.	8
6.7.5(c)(9)	Requirement that the DNPS must notify and consult with any affected network users and ensure that the provision of the negotiated services does not result in non-compliance with	8.2

Rule	Requirement	Where addressed
	obligations in relation to other network users under the Rules	
6.7.5(c)(10)	A requirement that the DNSP publish the results of negotiations on its website.	11
6.7.5(d)	The negotiating framework must not be inconsistent with rules 5.3 and 5.3A and any other relevant provision of Chapter 6.	1.3

1.4 Negotiated Distribution Service Criteria

Negotiated Distribution Service Criteria are set by the AER as part of its distribution determination and set out the criteria to be applied by the DNSP when negotiating terms and conditions of access (including prices and access charges) during the regulatory control period and the criteria to be applied by the AER in resolving disputes in relation to prices and access charges.

1.5 What are the Rule Requirements for Negotiated Distribution Service Criteria?

Clauses 6.7. and 6.7.4 of the NT NER require the AER to specify requirements relating to the Negotiating Framework that are to be complied with by a DNSP, including the Negotiated Distribution Service Criteria to be applied by the DNSP, when negotiating terms and conditions and by the AER in resolving a dispute about such terms and conditions.

The Negotiated Distribution Service Criteria set by the AER must give effect to and be consistent with the Negotiated Distribution Service Principles set out in clause 6.7.1 of the NT NER.

The Negotiated Distribution Service Principles are:

- (1) the price for a *negotiated distribution service* should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the *Cost Allocation Method* for the relevant *Distribution Network Service Provider*;
- (2) subject to subparagraphs (3) and (4), the price for a *negotiated distribution service* should be at least equal to the cost that would be avoided by not providing the service but no more than the cost of providing it on a stand alone basis;
- (3) if the negotiated distribution service is the provision of a shared distribution service that exceeds the network performance requirements (if any) which that shared distribution service is required to meet under any jurisdictional electricity legislation, then 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 under any jurisdictional electricity legislation should reflect the increase in the Distribution Network Service Provider's incremental cost of providing that service;
- (4) if the *negotiated distribution service* is the provision of a *shared distribution service* that does not meet (and does not exceed) the *network performance requirements* set out in *jurisdictional electricity legislation*, 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 set out in schedules 5.1a and 5.1 should reflect the cost the *Distribution Network Service Provider* would avoid by not providing that service;

(5) 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*;

(6) 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 the adjustment should reflect the extent to which the costs of that asset are being recovered through charges to that other person;

(7) the price for a *negotiated distribution service* should be such as to enable the *Distribution Network Service Provider* to recover the efficient costs of complying with all *regulatory obligations or requirements* associated with the provision of the *negotiated distribution service*;

(8) any *access charges*:

(A) in respect of providing *distribution network user access to distribution services* should be based on the costs reasonably incurred by the *Distribution Network Service Provider* in providing that access and, in the case of compensation referred to in rules 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

(B) 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 *Distribution Network Service Provider* 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;

(9) the *terms and conditions of access* for a *negotiated distribution service* should be fair and reasonable and consistent with the safe and reliable operation of the *power system* in accordance with the *Rules* (for these purposes, the price for a *negotiated distribution service* is to be treated as being fair and reasonable if it complies with principles (1) to (7) of this clause);

(10) 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 the *Distribution Network Service Provider* and the other party, the price for the *negotiated distribution service* and the costs to the *Distribution Network Service Provider* of providing the *negotiated distribution service*;

(11) 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 *Rules*.

(12) in relation to *negotiated transmission services* that are taken to be *negotiated distribution services*, principles (11), (12) and (13) in schedule 5.11 that apply for the purposes of this Chapter.

Principle (12) applies to Power and Water as its negotiated transmission services are taken to be negotiated distribution services by virtue of Clause 6.0A(b) of the NT NER. Consequently the following principles from schedule 5.11 also apply to Power and Water.

11 The *Connection Applicant* should only be required to pay the costs directly incurred as a result of its *connection*, including its share of costs associated with an *identified user shared asset*.

12 Subsequent connections to an *identified user shared asset* by other *connecting parties* should not adversely affect the *negotiated transmission services* provided to the original *identified user group* for that *identified user shared asset*.

13 Subject to principle 11, future *Connection Applicants* should pay for a proportion of the costs paid by the *identified user groups* for *negotiated transmission services*. The proportion of costs will be calculated with respect to:

- (1) the relative capacity of the *Connection Applicant's generating plant*; or
- (2) the relative number of bays; or
- (3) respective bays,

with the applicable cost sharing methodology determined as appropriate by the nature of the *negotiated transmission services*.

1.6 Negotiated Distribution Services Criteria supported by Power and Water.

The criteria set by the AER for PWC in the 2019-2024⁵ determination, appropriately gave effect to the Negotiated Distribution Service Principles. Power and Water notes that the AER has adopted a similar approach in more recent determinations⁶ and supports the continuation of this approach for the 2024-2029 period. For completeness the form of Negotiated Distribution Services Criteria that Power and Water supports to continue for the 2024-2029 is set out below.

1.6.1 National Electricity Objective

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.

1.6.2 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

⁵ AER Proposed Negotiated Distribution Service Criteria for Power and Water Corporation, Regulatory Control Period 1 July 2019 to 0 June 2024, February 2018, adopted in AER's Final Decision Power and Water Corporation 2019-2024 Overview at page 25.

⁶ AER Proposed Negotiated Distribution Service criteria for Ausnet Services, CitiPower, Jemena, PowerCor and United Energy February 2020.

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.

Prices for Services

4. 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.
5. 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.
6. If a negotiated distribution service is a shared distribution service that:
 - a. exceeds any network performance requirements which it is required to meet under any relevant electricity legislation, or
 - b. exceeds the network performance requirements set out in schedule 5.1a and 5.1 of the NERthen 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).
7. 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).
8. 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.
9. 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.
10. 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.

1.6.3 Criteria for Access Charges

Access Charges

11. 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);

12. 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)

Appendix A

Proposed negotiating framework

**Power and Water Corporation
2024 to 2029**

**Negotiating
Framework**



Negotiating Framework

Requirement for a Negotiating Framework

Pursuant to clause 6.7.5 of the Northern Territory National Electricity Rules (NT NER), as a *Distribution Network Service Provider* (DNSP), Power and Water Corporation (Power and Water) must prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between Power and Water and any person (the *Service Applicant* or *applicant*) who wishes to receive a *negotiated distribution service* from Power and Water, as to the *terms and conditions of access* for the provision of the service.

Power and Water's Negotiated Distribution Services

The NT NER make special provision in relation to services provided by Power and Water's transmission network. Power and Water's network is both a transmission and distribution network for the purposes of the NT NER. This is because under the NT NER, a transmission network is a network operating a nominal voltages of 66kV and above¹.

The NT NER further provide that services that would be negotiated transmission services will be taken to be a negotiated distribution service².

Under the NT NER connections to Power and Water's transmission network are negotiated transmission services which means that services related to connection to the Power and Water Transmission Network under Chapter 5 (Rule 5.3) are classified as negotiated transmission Services and are taken to be classified as Negotiated Distribution Services.

Power and Water's Negotiating Framework and the AER's Negotiated Distribution Service Criteria will apply to connections to Power and Water's transmission network during the 2024-2029 regulatory control period.

Power and Water has prepared this Negotiating Framework for that purpose, consistent with the requirements of clause 6.7.5(b) and (c) of the NT NER.

1. Application of this Negotiating Framework

- 1.1 This Negotiating Framework will apply to Power and Water and to each *Service Applicant* who has applied in writing to Power and Water for provision of a *negotiated distribution service*. Power and Water and any *Service Applicant* who wishes to receive a *negotiated distribution service* from Power and Water must comply with the requirements of this Negotiating Framework.
- 1.2 The requirements set out in this Negotiating Framework are in addition to any requirements or obligations contained in the NT NER (including in applicable *negotiated distribution service criteria*, if any, made by the AER under those rules) or in a relevant Northern Territory Regulatory Instrument.
- 1.3 If there is any inconsistency between the NT NER or a relevant Northern Territory Instrument and this Negotiating Framework, the

¹ NT NER, Chapter 10, Glossary definition of transmission network.

² NT NER Rule 6.OA (b)(2)

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NT NER or the relevant Northern Territory Instrument will prevail.

- 1.4 Nothing in this Negotiating Framework or in the NT NER will be taken to impose an obligation on Power and Water to provide any service to the *Service Applicant*.

2. Obligation to negotiate in good faith

- 2.1 Power and Water and the *Service Applicant* must negotiate in good faith the terms and conditions of access for the provision



Negotiating Framework

negotiated distribution services. This obligation to negotiate in good faith does not require any party to act contrary to its own commercial interests.

3. Timeframe for commencing, progressing and finalising negotiations

Commencement of process

- 3.1 A *Service Applicant* who wishes to receive a *negotiated distribution service* from Power and Water must submit a request to Power and Water to the address stipulated in clause 13 of this Negotiating Framework.
- 3.2 The request may be made on a Power and Water application form for *negotiated distribution service* requests¹ or may be made by written request, and it must confirm the *Service Applicant's* agreement to conduct a negotiation under this Negotiating Framework.
- 3.3 On receipt of a request under clause 3.1, Power and Water and the *Service Applicant* will proceed to negotiate in good faith the terms and conditions of access in accordance with this Negotiating Framework.

Timeframes

- 3.4 Following receipt of a request for a negotiated distribution service under clause 3.2 above, Power and Water and the *Service Applicant* will use their reasonable endeavours to:
 - a) agree the milestones, information requirements, and commence discussions regarding other relevant issues within 20 Business Days of receipt by Power and Water of the request;
 - b) adhere to any timetable established for negotiations, and progress negotiations in an expeditious manner; and
 - c) finalise negotiations within 130 Business Days of the initial request.
- 3.5 Power and Water and the *Service Applicant* must use reasonable endeavours to adhere to the timeframes set out in Table [1] or agreed pursuant to paragraph (a) above during the negotiation for the supply of a negotiated distribution service.

Table [1] – Timeframe for negotiations

Event	Timeframe	
1	Receipt by Power and Water of written application from a <i>Service Applicant</i> for a <i>negotiated distribution service</i>	X
2	Parties meet (in person, by electronic communication or by telephone) to discuss: <ul style="list-style-type: none">• the nature of the services required;	X + 20 Business Days

¹ If developed, such forms will be made available for potential applicants on Power and Water's website.



Event	Timeframe	
	<ul style="list-style-type: none"> a preliminary program with milestones for progressing the <i>negotiated distribution service</i>, 	
3	<p>Parties finalise preliminary program, which may include (without limitation) milestones relating to:</p> <ul style="list-style-type: none"> requesting and providing Commercial Information (by both the <i>Service Applicant</i> and Power and Water); and notification and consultation with affected <i>Distribution Network Users</i> and/or the Market Operator. 	X + 50 Business Days
4	<p>All necessary information is received by Power and Water to enable it to make an offer, including:</p> <ul style="list-style-type: none"> the <i>Service Applicant's</i> initial and any additional Commercial Information; and consultation feedback where required. <p>The <i>Service Applicant</i> has paid the application fee to Power and Water.</p>	Y
5	Power and Water provides the <i>Service Applicant</i> with an offer for the <i>negotiated distribution service</i> .	Y + 25 Business Days
6	Parties finalise negotiations	Y + 80 Business Days

Modifying timeframes by agreement

- 3.6 Notwithstanding the provisions in clause 3.5 above, the parties may agree to modify the timeframes set out in Table 1. Where either party requests such a modification, the other party's agreement must not be unreasonably withheld. The parties agree that any resulting modified negotiating timeframe is reasonable.

Suspension of timeframes

- 3.7 The timeframes for the negotiation and provision of a *negotiated distribution service* may be suspended at the discretion of Power and Water if:
- 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) Power and Water determines in its reasonable opinion that insufficient information has been provided by the *Service Applicant*.
- 3.8 The timeframe will remain suspended until the dispute is resolved or abandoned, or the information is provided (as applicable).
- 3.9 Timeframes may also be suspended in accordance with clause 9.

Negotiating Framework

4. Provision of Commercial Information by Service Applicant

Obligation to provide initial Commercial Information

- 4.1 Within a timeframe agreed by the parties, Power and Water must use its reasonable endeavours to notify and request from the *Service Applicant* any Commercial Information held by the *Service Applicant* that Power and Water reasonably requires to enable Power and Water to engage in effective negotiations with the *Service Applicant* for the provision of negotiated distribution services.
- 4.2 Subject to the clauses 3.7 [suspension] and 5 [confidential information], the *Service Applicant* must use its reasonable endeavours to provide the Commercial Information requested by Power and Water within 10 Business Days of receiving Power and Water's request, or within such other time period as agreed by the parties.

Obligation to provide additional Commercial Information

- 4.3 Power and Water may request the *Service Applicant* to provide Power and Water with any additional Commercial Information that Power and Water reasonably requires to enable it to engage in



effective negotiations with the *Service Applicant* in relation to the provision of negotiated distribution services, or to clarify any Commercial Information provided pursuant to paragraph 4.2.

- 4.4 Subject to clause 5, the *Service Applicant* must use its reasonable endeavours to provide the additional Commercial Information requested by Power and Water within 10 Business Days of receiving Power and Water's request, or within such other time period as agreed by the parties.

5. Provision of Commercial Information by Power and Water

Obligation to provide Commercial Information (including application processing cost information)

- 5.1 Power and Water will provide to the *Service Applicant*, within the timeframe agreed by the parties, all such Commercial Information as the *Service Applicant* may reasonably require to enable the *Service Applicant* to engage in effective negotiations for the provision of negotiated distribution services, including the cost information set out in clause 9.3.
- 5.2 Power and Water may impose reasonable conditions on its provision of Commercial Information, including without limitation, a condition that the *Service Applicant* does not disclose the Commercial Information to any other person without Power and Water's written consent.
- 5.3 Power and Water will provide to the *Service Applicant*:
- a) a description of the nature of the *negotiated distribution service*, including what Power and Water would provide to the *Service Applicant* as part of that service;
 - b) the terms and conditions on which Power and Water would provide the *negotiated distribution service*; and
 - c) cost information including information that will:
 - (i) identify and inform the *Service Applicant* of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the *negotiated distribution service*; and
 - (ii) demonstrate to the *Service Applicant* that the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement (as appropriate); and
 - d) the period during which Power and Water's offer will remain open, which period must not be less than 40 Business Days.
- 5.4 Arrangements to assess and review charges and the basis on which they are made are set out in clause 9.



6. Confidentiality requirements

- 6.1 Commercial Information that is provided either:
 - a) to Power and Water by the *Service Applicant* under clause 4; or
 - b) to the *Service Applicant* by Power and Water under clause 5,may be provided subject to the condition that the receiving party must not disclose the Commercial Information to any other person unless the party providing the Commercial Information consents in writing to the disclosure, or the disclosure is required by law.
- 6.2 Either party may require the other party to enter into a confidentiality agreement in respect of Commercial Information it provides. The terms of the confidentiality agreement must be reasonably acceptable to both parties.
- 6.3 Any consent to disclosure to another person provided by a party in accordance with clause 6.1 may be given subject to the condition that the other person to whom the Commercial Information is to be disclosed must enter into a separate confidentiality agreement with the party who provides the relevant Commercial Information.
- 6.4 Commercial Information does not include confidential information provided to Power and Water or the *Service Applicant* (as the case may be) by another person, or information that a party is prohibited by law from disclosing.

7. Arrangement for assessment and review of charges

- 7.1 Power and Water will assess and review the basis for its charges to the *Service Applicant* for a negotiated distribution service, following a written request by the *Service Applicant* for such a review.
- 7.2 In requesting a review of charges, the *Service Applicant* must provide reasons why it considers the review to be appropriate, and any supporting information available to the *Service Applicant* that would assist Power and Water's assessment and review of charges.

8. Impact on other Distribution Network Users

- 8.1 Power and Water will determine the potential impact of the *negotiated distribution service* on Distribution Network Users other than the *Service Applicant*.
- 8.2 Power and Water 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 and the NT NER.
- 8.3 If Power and Water is required to consult pursuant to this clause 8, the timeframes provided for in clause 3 will be suspended until the information required to assess the impact is received from the affected Distribution Network User.



9. Payment of Power and Water costs

Application fee

- 9.1 Prior to commencing negotiations, the *Service Applicant* must pay to Power and Water an application fee.
- 9.2 The application fee will be determined by Power and Water based upon an estimate of the minimum reasonable direct costs that will be incurred by Power and Water in relation to the *Service Applicant's* application for the provision of the *negotiated distribution service*.

Direct costs

- 9.3 From time to time, Power and Water may give the *Service Applicant* a notice setting out an estimate of any reasonable direct costs that Power and Water will incur 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 9.1.
- 9.4 Within 20 Business days of receipt of a notice under clause 9.3, the *Service Applicant* must pay to Power and Water the amount specified in that notice.
- 9.5 If the aggregate direct costs incurred by Power and Water in relation to the *Service Applicant's* application for the provision of *negotiated distribution services* are less than the amount paid by the *Service Applicant* under paragraphs 9.1 and 9.4, Power and Water 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*.
- 9.6 Power and Water 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 clause 9.

10. Termination of negotiations

Termination by Service Applicant

- 10.1 The *Service Applicant* may elect not to continue with its application for a *negotiated distribution service* and may terminate the negotiations under this Negotiating Framework by written notice to Power and Water of its decision to do so.

Termination by Power and Water

- 10.2 Power and Water may terminate a negotiation under this Negotiating Framework by giving the *Service Applicant* written notice of its decision to do so where:
 - a) Power and Water is of the reasonable opinion that the *Service Applicant* will not acquire the *negotiated distribution*



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service;

- b) Power and Water 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 application fee specified in clause 9;
- e) Power and Water is permitted or required to do so by any Northern Territory Regulatory Instrument, or any applicable law; or
- f) an Insolvency Event occurs in respect of the *Service Applicant*.

11. Results of negotiation

- 11.1 At the conclusion of the negotiations between Power and Water and the *Service Applicant*, Power and Water will publish the results of the negotiations on its website. Results will be published whether or not agreement is reached, and where negotiations are terminated in accordance with this Negotiating Framework.

12. Dispute resolution

- 12.1 All disputes arising during the course of negotiating a *negotiated distribution service* must be dealt with in accordance with:



- a) Part 10 of the NEL and Part L of Chapter 6 of the NT NER in the event that those provisions have commenced and are in force in the Northern Territory at the time the dispute arises and apply to the dispute; or
- b) such alternative measures as are approved for that purpose under a Northern Territory Regulatory Instrument; or
- c) in the event that neither 12.1 (a) nor 12.1(b) applies, the following process:
 - (i) Representatives of Power and Water and a Service Applicant must meet within 5 business days after a written request by a disputing party, and must attempt to resolve the dispute by negotiations in good faith.
 - (ii) If the dispute is not resolved within 10 business days after their first meeting, the dispute must be referred to the senior executive officer of each disputing party who must attempt to resolve the dispute by negotiations in good faith.
 - a. If the dispute is resolved under sub-clause (i) or (ii), the disputing parties must enter into a written agreement or deed recording the terms of the resolution, sign the agreement or deed and must adhere to its terms.

12.2 In the event that the dispute resolution process in clause 12.1b) (if applicable) or 12.1c) does not resolve the dispute, then the dispute must be dealt with in accordance with:

- a) the NT National Electricity Law and Chapter 8 of the NT NER in the event that those provisions have commenced and are in force in the Northern Territory at the time the dispute arises and apply to the dispute; or
- b) such alternative measures as are approved for that purpose under a Northern Territory Regulatory Instrument; or
- c) in the event that neither 12.2 (a) nor 12.2(b) applies, then the parties must endeavour to resolve the dispute by mediation as follows:
 - (i) Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000; telephone: 02 9251 3366, email: infoaus@resolution.institute) or the Chair's designated representative.
 - (ii) The Resolution Institute Mediation Rules will apply to the mediation



- (iii) It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.

13. Giving notices

- 13.1 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.
- 13.2 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.

Power and Water

Name: Power and Water Corporation
PO Box: **GPO Box 3596, Darwin NT 080**
Email: **customerservice@powerwater.com.au**

Service Applicant

Name: *Service Applicant*
Address: The nominated address of the *Service Applicant* provided in writing to Power and Water by the *Service Applicant* as part of its application for a *negotiated distribution service*.

14. Definitions

In this Negotiating Framework, words in italics have the same meaning as given to those words in the NT NER.

Capitalised words are defined as follows:

“**Business Day**” means a day on which banks are open for business generally in Darwin, Northern Territory.

“**Commercial Information**” includes, but is not limited to, the following classes of information:

- 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, rule or guideline,

but does not include:

- confidential information provided by another person to either the *Service Applicant* or Power and Water;
- information that the *Service Applicant* or Power and Water is prohibited by law from disclosing.

"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*.

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“Northern Territory Regulatory Instrument” means an Act, regulation, licence, code guideline or other regulatory instrument to which Power and Water is subject under Northern Territory law.

“NT NER” means the National Electricity Rules having the force of law in the Northern Territory under section 9 of the National Electricity (NT) Law.

Contact

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