

Tasmanian Networks Pty Ltd

Distribution Negotiating Framework

Commencing 1 July 2017

Revisions:

| Rev N° | Date | Revision description | Approval | | |
|-------------------|-----------|---|---------------------------------------|-------------------|--|
| | | | Prepared by: | Reviewed by: | Approved by: |
| 1 | 18/1/2016 | Framework to meet requirements of the <i>National Electricity Rules</i> | Team Leader NEM Strategy & Compliance | Leader Regulation | General Manager Strategy and Stakeholder Relations |
| Next review date: | | | 1 July 2018 | | |

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1 National Electricity Rules

- 1.1 It is a requirement of the *National Electricity Rules (Rules)* that TasNetworks prepare this *negotiating framework* to govern the procedure for negotiations between TasNetworks and any person (the *Service Applicant*) who wishes to receive a *negotiated distribution service*, as to the *terms and conditions of access* for the provision of the service and its negotiations with *Service Applicants for negotiated distribution services*.
- 1.2 This *negotiating framework* must comply with, and be consistent with:
- 1.2.1 the applicable requirements of TasNetworks' distribution determination; and
 - 1.2.2 the minimum requirements for a *negotiating framework* as prescribed by section 6.7.5(c) of the *Rules*.

2 Application of this Negotiating Framework

- 2.1 This *negotiating framework* applies to TasNetworks and a *Service Applicant* that has made an application in writing to TasNetworks for the provision of a *Negotiated Distribution Service*, and sets out the procedure to be followed during negotiations as to the *terms and conditions of access* for the provision of that *distribution service*.
- 2.2 TasNetworks and any *Service Applicant* who wishes to receive a *negotiated distribution service* from TasNetworks must comply with the requirements of this *negotiating framework*.
- 2.3 The requirements set out in this *negotiating framework* are in addition to any requirements or obligations contained in the *Rules* or a relevant regulatory instrument of Tasmania.
- 2.4 In the case of inconsistency between the *Rules* or a relevant regulatory instrument of Tasmania, and this *negotiating framework*, the *Rules* or the relevant regulatory instrument will prevail.
- 2.5 Nothing in this *negotiating framework* or in the *Rules* will be taken to impose an obligation on TasNetworks to provide any *negotiated distribution services* to the *Service Applicant* and TasNetworks has the sole discretion to determine if it will provide the *negotiated distribution service* to the *Service Applicant* at the conclusion of the negotiation process.
- 2.6 The *Service Applicant* acknowledges that TasNetworks is not liable for any loss or costs incurred or suffered by the *Service Applicant* (if any) as a result of TasNetworks not providing the *negotiated distribution service* at the conclusion of the negotiation process for such service.

3 Request for Negotiated Distribution Service

- 3.1 A *Service Applicant* who wishes to receive a *negotiated distribution service* from TasNetworks must submit a written request to TasNetworks.

4 Obligation to negotiate in good faith

- 4.1 TasNetworks and the *Service Applicant* must negotiate in good faith the *terms and conditions of access* to a *negotiated distribution service* sought by the *Service Applicant*.

5 Provision of Commercial Information to Service Applicant

- 5.1 The *Service Applicant* may request certain Commercial Information from TasNetworks that the *Service Applicant* reasonably requires to engage in effective negotiation with TasNetworks for the provision of the *negotiated distribution service*.
- 5.2 Subject to clause 5.4 of this *negotiating framework*, TasNetworks must provide all such Commercial Information a *Service Applicant* requests pursuant to clause 5.1 of this *negotiating framework*.
- 5.3 Subject to clause 5.4 of this *negotiating framework*, TasNetworks will use its reasonable endeavours to provide the *Service Applicant* with information requested under clause 5.1 of this *negotiating framework* within 10 Business Days of that request, or within such other time period as agreed by the parties.
- 5.4 TasNetworks reserves the right to withhold information requested by the *Service Applicant* pursuant to clause 5.1 of this *negotiating framework* if such information is legally privileged.
- 5.5 TasNetworks shall identify and provide to the *Service Applicant* the following information, regardless of whether it has been requested by the *Service Applicant* (the Requisite Information):
- 5.5.1 reasonable costs and/or increase or decrease in costs of providing the *negotiated distribution service*;
 - 5.5.2 a demonstration of how the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement; and
 - 5.5.3 an appropriate arrangement for assessment and review of the charges and the basis on which they are made.
- 5.6 TasNetworks agrees to provide the Requisite Information to the *Service Applicant* within a timeframe agreed by the parties, but in any case prior to or in conjunction with the provision of the *negotiated distribution service* offer.

6 Provision of Commercial Information to TasNetworks

- 6.1 TasNetworks may request the *Service Applicant* to provide TasNetworks with Commercial Information held by the *Service Applicant* that TasNetworks reasonably requires to enable it to engage in effective negotiation with that applicant for the provision of the *negotiated distribution service*.
- 6.2 The *Service Applicant* must provide TasNetworks with the Commercial Information requested under clause 6.1 of this *negotiating framework* within 10 Business Days of that request, or within such other time period as agreed by the parties.
- 6.3 TasNetworks may request the *Service Applicant* to provide TasNetworks with any additional information, or to clarify any information provided to TasNetworks pursuant to clauses 6.1 and 6.5 of this *negotiating framework*, that it reasonably requires to enable it to engage in effective negotiation with that applicant for the provision of the *negotiated distribution service*.
- 6.4 The *Service Applicant* must use its reasonable endeavours to provide TasNetworks the information requested by TasNetworks under clause 6.3 of this *negotiating framework* within 10 Business Days of the date of the request, or within such other period as agreed by the parties.

- 6.5 The *Service Applicant* must use its reasonable endeavours to provide the following information to TasNetworks within 10 Business Days of the written request (Step 1 of Table 1 in clause 8 of this *negotiating framework*) being submitted to TasNetworks, regardless of whether it is requested by TasNetworks under clause 6.1 of this *negotiating framework*:
- 6.5.1 technical information such as life cycle analysis, maintenance requirements, performance criteria, electrical specifications, or any other information relevant to the application for a *negotiated distribution service*;
 - 6.5.2 financial information such as technology costs, maintenance costs, or any other information relevant to the application for a *negotiated distribution service*;
 - 6.5.3 details of the compliance of the *Service Applicant's* application with any law, the *Rules*, or applicable guidelines; and
 - 6.5.4 details of the compliance of the *Service Applicant's* application with AS/NZ 3000:2007, or AS 1158 or any other applicable standard.

7 Confidentiality

- 7.1 A party disclosing information pursuant to clause 5 or 6 of this *negotiating framework* may be required by the party receiving such information to enter into a confidentiality agreement on terms reasonably acceptable to both parties, before the disclosure of the Confidential Information to that person.
- 7.2 Notwithstanding clause 7.1 of this *negotiating framework*, a party in receipt of Confidential Information under this *negotiating framework* (the Disclosing Party) shall:
- (a) keep confidential the Confidential Information of the Disclosing Party;
 - (b) take all reasonable steps to protect the confidentiality and security of the Confidential Information of the Disclosing Party;
 - (c) without limiting the preceding paragraph, comply with the Disclosing Party's instructions regarding security of its Confidential Information;
 - (d) not, directly or indirectly, divulge, use, disclose or publish the Confidential Information of the Disclosing Party to any person;
 - (e) not make or allow to be made copies of, or extracts of, any part of the Confidential Information, except for the purpose of negotiating the terms and conditions of access to a negotiated distribution service sought by the Service Applicant.
- 7.3 Nothing in clause 7.2 of this *negotiating framework* restricts the disclosure of such information to the extent required by law.
- 7.4 Each party is liable for and indemnifies the other in respect of any claim, action, damage, loss, liability, cost, expenses or payment which the Disclosing Party suffers or incurs or is liable for as a result of a breach of this clause 8.

8 Process and timeframe for progressing negotiations

- 8.1 The target timeframe for commencing, progressing and finalising negotiations for the supply of a *negotiated distribution service* is set out in Table 1 (Target Timeframes) of this clause 8.

Table 1: Target timeframes

| | Event | Target Timeframe |
|----|---|---|
| 1 | <i>Service Applicant</i> makes written request to TasNetworks. | N/A |
| 2 | <i>Service Applicant</i> provides to TasNetworks the Commercial Information set out in clause 6.5 of this <i>negotiating framework</i> . | No more than 10 Business Days after written request. |
| 3 | TasNetworks and the <i>Service Applicant</i> meet to discuss: <ul style="list-style-type: none"> technical matters and the level of any technical evaluation required by TasNetworks; and a preliminary project plan setting out a reasonable period of time for technical evaluation, including pilot studies, and the commencement, progression and finalisation of negotiations. | No more than 20 days after written request. |
| 4 | TasNetworks and the <i>Service Applicant</i> finalise the preliminary project plan for commencing, progressing and finalising negotiations. The program may include, but is not limited to, milestones relating to: <ul style="list-style-type: none"> the technical evaluation required by TasNetworks pursuant to step 3 of this Table 1; the provision of information by TasNetworks pursuant to clause 5 of this <i>negotiating framework</i>; the provision of information by the <i>Service Applicant</i> pursuant to clause 6 of this <i>negotiating framework</i>; the notification and consultation with any affected <i>Distribution Network Users</i> in accordance with clause 12.1; and/or the notification by TasNetworks of the reasonable direct expenses incurred in processing the application to provide the <i>negotiated distribution service</i> pursuant to clause 11.1 of this <i>negotiating framework</i>. | No more than 30 days after written request. |
| 5 | TasNetworks and the <i>Service Applicant</i> commence negotiations. | In accordance with negotiated timeframes. |
| 6 | TasNetworks provides to <i>Service Applicant</i> the Commercial Information set out in clause 5 of this <i>negotiating framework</i> . | In accordance with negotiated timeframes. |
| 7 | TasNetworks completes its assessment of the Commercial Information, technical evaluations, and/or other relevant information. | In accordance with negotiated timeframes. |
| 8 | TasNetworks provides to <i>Service Applicant</i> the information set out in clause 5.5 of this <i>negotiating framework</i> in accordance with clause 5.6 of this <i>negotiating framework</i> . | In accordance with negotiated timeframes, but not subsequent to step 9 of this Table 1. |
| 9 | TasNetworks provides the <i>Service Applicant</i> with an offer to provide the <i>negotiated distribution service</i> . | In accordance with negotiated timeframes. |
| 10 | TasNetworks and the <i>Service Applicant</i> finalise negotiations. | In accordance with negotiated timeframes. |

8.2 TasNetworks and the *Service Applicant* must use reasonable endeavours to meet the timeframes set out in this clause 8, subject to the *Service Applicant* providing the required information to TasNetworks pursuant to clause 6.5 of this *negotiating framework*.

8.3 The timeframe set out in Table 1 of this *negotiating framework* may be varied by agreement between TasNetworks and the *Service Applicant*, and any such agreement must not be unreasonably withheld or delayed.

- 8.4 Any project plan finalised in accordance with step 4 of Table 1 of this clause 8 may be modified from time to time by further agreement between TasNetworks and the *Service Applicant*, where such agreement must not be unreasonably withheld or delayed.
- 8.5 TasNetworks may request that the *Service Applicant* obtain technical and financial evaluation of any equipment associated with the *negotiated distribution service* that is proposed by the *Service Applicant*, and that the *Service Applicant* must provide this within the timeframes specified in Table 1.
- 8.6 Commencement of negotiations with a *Service Applicant* for the provision of the *negotiated distribution service* may be subject to the successful outcome of technical and financial evaluation pursuant to clause 8.5 of this *negotiating framework*.

9 Suspension timeframe for negotiation

- 9.1 The timeframes for negotiation of the provision of a *negotiated distribution service* set out in Table 1 of clause 8 of this *negotiating framework* are suspended if:
- 9.1.1 a dispute in relation to the *negotiated distribution service* is notified to the AER under Part 10 of the *National Electricity Law (NEL)*, from the date of the notification of that dispute to the AER until:
- (a) the withdrawal of the dispute under section 126 of the *NEL*;
 - (b) the termination of the dispute by the AER under section 131 or section 132 of the *NEL*; or
 - (c) a determination is made in respect of the dispute by the AER in accordance with section 128 of the *NEL*.
- 9.1.2 after 15 Business Days of TasNetworks requesting additional information under clause 6.3 of this *negotiating framework*, or, where an alternative timeframe for the provision of the Commercial Information has been agreed pursuant to clause 6.4 of this *negotiating framework*, after 5 Business Days after the date agreed for the provision of the requested information, the *Service Applicant* has not provided such information;
- 9.1.3 the *Service Applicant* fails to pay the reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service* in accordance with clause 11.3 of this *negotiating framework*, from the next business day after the amount is due until such time as the *Service Applicant* has paid the outstanding amount;
- 9.1.4 where TasNetworks has been required to notify and consult with any affected *Distribution Network Users* in accordance with clause 12.2 of this *negotiating framework*, from the date of the notification to the affected *Distribution Network User* until the end of the time limit specified by TasNetworks for any affected *Distribution Network Users* to provide to TasNetworks information regarding the impact of the provision of the *negotiated distribution service*, or the date on which TasNetworks receives such information from the affected *Distribution Network Users*, whichever is the later; or
- 9.1.5 Where TasNetworks has been required to notify and consult with the Australian Energy Market Operator (AEMO), regarding the provision of the *negotiated distribution service*, from the date of the notification to AEMO until the date on which TasNetworks receives such information from AEMO.
- 9.2 Each party will notify the other party if it considers that the timeframe has been suspended, within 5 Business Days of the date that the party considers the suspension took effect.

10 Dispute resolution

- 10.1 All disputes with respect to the *terms and conditions of access* for the provision of *negotiated distribution services* are to be dealt with in accordance with the relevant provisions of Part 10 of the *NEL* and Part L of Chapter 6 of the *Rules* for dispute resolution.

11 Payment arrangements

- 11.1 The *Service Applicant* may be required to pay TasNetworks' reasonable direct expenses which are incurred in processing the application to provide the *negotiated distribution service*.
- 11.2 From time to time, TasNetworks may give the *Service Applicant* a notice and tax invoice setting out the reasonable direct expenses incurred in processing the application to provide the *negotiated distribution service*.
- 11.3 The *Service Applicant* must, within 10 Business Days of the notice and tax invoice given pursuant to clause 11.2 of this *negotiating framework*, pay to TasNetworks the amount set out in the notice in the manner set out in the notice.

12 Impact on other Distribution Network Users

- 12.1 TasNetworks must determine the potential impact on other *Distribution Network Users* of the provision of the *negotiated distribution service*.
- 12.2 TasNetworks must notify and consult with any affected *Distribution Network Users* and ensure that the provision of *negotiated distribution service* does not result in non-compliance with obligations in relation to other *Distribution Network Users* under the *Rules* and the Tasmanian Electricity Code (TEC).
- 12.3 If TasNetworks is required to consult the affected *Distribution Network Users* pursuant to clause 12.2 of this *negotiating framework*, the timeframes provided for in clause 8 of this *negotiating framework* shall be suspended until the information required to assess the impact is received from the affected *Distribution Network User*.

13 Results of negotiations

- 13.1 TasNetworks must publish the results of negotiations for access to a *negotiated distribution service* on its website.

14 Interpretation and Definitions

- 14.1 Words and expressions in *italics* have the same meaning as they do in the *NEL* and the *Rules*, unless context requires otherwise.
- 14.2 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.
- 14.3 The following definitions apply in this *negotiating framework* :
- AEMO** means Australian Energy Market Operator.
- AER** means the Australian Energy Regulator, as defined by the *Rules*.

Business Day means a day other than a Saturday or Sunday or a public holiday appointed under the *Statutory Holidays Act 2000 (Tas)*.

Commercial Information does not include Confidential Information provided to either party by another person, and will include at a minimum, the following classes of information in relation to a *Service Applicant*, where applicable:

- (a) Details of corporate structure, financial details relevant to creditworthiness and commercial risk and ownership of assets;
- (b) technical information relevant to the application for a *negotiated distribution service*;
- (c) financial information relevant to the application for a *negotiated distribution service*; and
- (d) details of an application's compliance with any law, standard, *Rules* or guideline.

Confidential Information means information held by either party that is, by its nature confidential, is marked confidential or the receiving party knows or ought to know is confidential, and specifically includes:

- (a) information relating to or about the business affairs and operations of TasNetworks;
- (b) Commercial Information and Requisite Information provided by TasNetworks to a *Service Applicant* pursuant to clauses 5.1 and 5.4 (respectively) of this *negotiating framework* ;
- (c) information provided to TasNetworks by the *Service Applicant* pursuant to clause 7 of this *negotiating framework*; and
- (d) trade secrets, information, ideas, concepts, know-how, technology, processes and knowledge and the like provided, to or obtained by, a party by the other party (including but not limited to in relation to a party, all information reports, accounts or data in relation to that party's business affairs, finances, properties and methods of operations, regardless of the form in which it is recorded or communicated).

Disclosing Party has the meaning provided in clause 7.2 of this *negotiating framework*.

Distribution Network User means a *Distribution Customer* or an *Embedded Generator* as defined by the *Rules*.

NEL means the National Electricity (Tasmania) Law pursuant to *Electricity – National Scheme (Tasmania) Act 1999*.

negotiated distribution service means a *distribution service* that is not a *standard control service* and that is specified as that service by the *Rules* or the *AER*.

New Public Lighting Technology means a *distribution service* relating to the provision of public lighting services by TasNetworks for the purpose of testing and piloting new public lighting technologies.

Regulatory Control Period means a period for which TasNetworks is subject to a control mechanism imposed by a distribution determination, as defined by the *Rules*.

Requisite Information has the meaning provided in clause 5.4 of this *negotiating framework*.

Rules mean the National Electricity *Rules* made under Part 7 of the NEL as amended from time to time in accordance with that Part 7.

Service Applicant means a person who asks TasNetworks for access to a distribution service, as defined by the *Rules*.

TasNetworks means Tasmanian Networks Pty Ltd.

TEC means the *Tasmanian Electricity Code*.

terms and conditions of access means the terms and conditions described in clause 6.1.3 of the *Rules*, as defined by the *Rules*.