

# Proposed negotiated distribution service criteria

Ergon Energy Networks and Energex  
2025-30

February 2024

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# 1 Introduction

The Australian Energy Regulator (AER) exists to ensure energy consumers are better off, now and in the future. Consumers are at the heart of our work, and we focus on ensuring a secure, reliable, and affordable energy future for Australia. The regulatory framework governing electricity transmission and distribution networks is the National Electricity Law and Rules (NEL and NER). Our work is guided by the National Electricity Objective (NEO).

A regulated network business must periodically apply to us for a determination of the revenue it can recover from consumers using its network. On 31 January 2024 we received proposals from Ergon Energy Networks (Ergon) and Energex for the period 1 July 2025 to 30 June 2030 (2025-30 period).

Ergon and Energex provide a range of distribution services that we classify as direct control services. The revenue recoverable by Ergon and Energex from direct control services is subject to our distribution determination and annual pricing approval processes.

Ergon and Energex do not currently provide negotiated services, and at this stage are not proposing to provide negotiated services in the 2025-30 period.

We do not set revenue, prices or the negotiated terms and conditions the distributor must comply with. Where negotiated distribution services are provided, they are subject to:

- a Negotiating Framework<sup>1</sup>, which Ergon and Energex have submitted as part of their proposals
- Negotiated Distribution Service Criteria<sup>2</sup>, which we develop and consult on in conjunction with Ergon's and Energex's proposals.<sup>3</sup>

The negotiating framework and criteria inform will inform negotiation of terms and conditions of access to any negotiated services that are provided by Ergon and Energex, and will apply to dispute resolution processes for negotiated services under the NER.

The Negotiated Distribution Service Criteria we propose for Ergon and Energex for the 2025-30 period are set out in section 2 below.

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<sup>1</sup> NER, cl. 6.7.5.

<sup>2</sup> NER, cl. 6.7.4.

<sup>3</sup> Under clause 6.12.1(16) of the NER, as part of each distribution determination we are required to decide the Negotiated Distribution Service Criteria to apply to the relevant network.

## 1.1 Invitation for submissions

Interested stakeholders are invited to make submissions on the proposed negotiated distribution service criteria **by 15 May 2024**, together with any submission on Ergon's and Energex's regulatory proposals.

Submissions should be sent to: [energyqueensland2025@aer.gov.au](mailto:energyqueensland2025@aer.gov.au)

Alternatively, submissions can be sent to:

Gavin Fox  
General Manager  
Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601

Submissions should be in Microsoft Word or another text readable document format.

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information should:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on our website.

## 2 Proposed negotiated distribution service criteria

The criteria we propose for the 2025-30 period are consistent with the criteria that have applied to Ergon and Energex in the 2020-25 period, and with criteria decided for other distributors in the 2024-29 period. The proposed criteria are consistent with, and give effect to, the negotiated distribution service principles in the NER.<sup>4</sup>

### 2.1 National Electricity Objective

1. 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.<sup>5</sup>

### 2.2 Criteria for terms and conditions of access

#### 2.2.1 Terms and conditions of access

2. 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.<sup>6</sup>
3. 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 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.<sup>7</sup>
4. 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 NER.<sup>8</sup>

#### 2.2.2 Price of services

5. The price for a negotiated distribution service should 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.<sup>9</sup>
6. Subject to criteria 7 and 8, the price for a negotiated distribution service should 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.<sup>10</sup>
7. If a negotiated distribution service is a shared distribution service that:
  - i) exceeds any network performance requirements which it is required to meet under any relevant electricity legislation, or
  - ii) exceeds the network performance requirements set out in schedules 5.1a and 5.1 of the NER,

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<sup>4</sup> As required by NER, cl. 6.7.4(b). NER, cl. 6.7.1 sets out the negotiated distribution service principles.

<sup>5</sup> NEL, s. 7 sets out the national electricity objective.

<sup>6</sup> NER, cl. 6.7.1(9).

<sup>7</sup> NER, cl. 6.7.1(10).

<sup>8</sup> NER, cl. 6.7.1(11).

<sup>9</sup> NER, cl. 6.7.1(1).

<sup>10</sup> NER, cl. 6.7.1(2).

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 or as set out in schedules 5.1a and 5.1 (as the case may be) should reflect the increase in the distributor's incremental cost of providing that service.<sup>11</sup>

8. If a negotiated distribution service is the provision of a shared distribution service that does not meet or exceed the network performance requirements set out in schedules 5.1a and 5.1 of the NER, 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 should reflect the cost a distributor would avoid by not providing that service.<sup>12</sup>
9. 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.<sup>13</sup>
10. 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 such adjustment must reflect the extent to which the costs of that asset are being recovered through charges to that other person.<sup>14</sup>
11. The price for a negotiated distribution service should 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 distribution service.<sup>15</sup>

## 2.3 Criteria for access charges

### 2.3.1 Access Charges

12. In respect of providing distribution network user access to negotiated distribution services which would have been negotiated distribution services regardless of the operation of clause 6.24.2(c), any access charges should be based on the costs reasonably incurred by the distributor in providing that access and, in the case of compensation referred to in clauses 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.<sup>16</sup>
13. 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), any access charges should be based on the costs reasonably incurred by the distributor 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

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<sup>11</sup> NER, cl. 6.7.1(3).

<sup>12</sup> NER, cl. 6.7.1(4).

<sup>13</sup> NER, cl. 6.7.1(5).

<sup>14</sup> NER, cl. 6.7.1(6).

<sup>15</sup> NER, cl. 6.7.1(7).

<sup>16</sup> NER, cl. 6.7.1(8)(A).

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.<sup>17</sup>

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<sup>17</sup> NER, cl. 6.7.1(8)(B).



## Glossary

Term	Definition
AER	Australian Energy Regulator
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules

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