



**Draft decision**

**Essential Energy distribution determination**

**2015–16 to 2018–19**

**Attachment 17: Negotiated distribution  
services framework and criteria**

November 2014

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## Note

This attachment forms part of the AER's draft decision on Essential Energy's 2015–19 distribution determination. It should be read with other parts of the draft decision.

The draft decision includes the following documents:

Overview

Attachment 1 – Annual revenue requirement

Attachment 2 – Regulatory asset base

Attachment 3 – Rate of return

Attachment 4 – Value of imputation credits

Attachment 5 – Regulatory depreciation

Attachment 6 – Capital expenditure

Attachment 7 – Operating expenditure

Attachment 8 – Corporate income tax

Attachment 9 – Efficiency benefit sharing scheme

Attachment 10 – Capital expenditure sharing scheme

Attachment 11 – Service target performance incentive scheme

Attachment 12 – Demand management incentive scheme

Attachment 13 – Classification of services

Attachment 14 – Control mechanism

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## Shortened forms

Shortened form	Extended form
AARR	aggregate annual revenue requirement
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ASRR	aggregate service revenue requirement
augex	augmentation expenditure
capex	capital expenditure
CCP	Consumer Challenge Panel
CESS	capital expenditure sharing scheme
CPI	consumer price index
CPI-X	consumer price index minus X
DRP	debt risk premium
DMIA	demand management innovation allowance
DMIS	demand management incentive scheme
distributor	distribution network service provider
DUoS	distribution use of system
EBSS	efficiency benefit sharing scheme
ERP	equity risk premium
expenditure assessment guideline	expenditure forecast assessment guideline for electricity distribution
F&A	framework and approach
MRP	market risk premium

Shortened form	Extended form
NEL	national electricity law
NEM	national electricity market
NEO	national electricity objective
NER	national electricity rules
NSP	network service provider
opex	operating expenditure
PPI	partial performance indicators
PTRM	post-tax revenue model
RAB	regulatory asset base
RBA	Reserve Bank of Australia
repex	replacement expenditure
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue pricing principles
SAIDI	system average interruption duration index
SAIFI	system average interruption frequency index
SLCAPM	Sharpe-Lintner capital asset pricing model
STPIS	service target performance incentive scheme
WACC	weighted average cost of capital

## 17 Negotiated distribution services framework and criteria

The NER requires us to make a constituent decision on:

- the negotiating framework that is to apply to Essential Energy (which may be as proposed by the distributor, some variant of it, or a framework substituted by us),<sup>1</sup> and
- a decision on the negotiated distribution service criteria (NDSC) for the distributor.<sup>2</sup>

While our draft decision is not to classify any distribution services as negotiated distribution services, the rules require us to set out these matters irrespective of our classification decisions. Essential Energy did not submit a negotiating framework with its regulatory proposal.<sup>3</sup>

The NDSC set out criteria that a distributor must apply in negotiating terms and conditions including the prices for negotiated distribution services. They also contain the criteria that a commercial arbitrator must apply to resolve disputes about such terms and conditions and/or prices. This section sets out our draft decision on Essential Energy's negotiating framework and NDSC.

### 17.1 Draft decision

#### Negotiating framework

The NER does not give us the option to not have a negotiating framework. Therefore, our draft decision is to substitute our own negotiating framework to apply to Essential Energy for the 2015–19 regulatory control period.<sup>4</sup>

#### Negotiated distribution service criteria

Our draft decision is that the NDSC that we published for Essential Energy in June 2014<sup>5</sup> will apply to it for the 2015–19 regulatory control period. The NDSC give effect to the negotiated distribution service principles.<sup>6</sup>

### 17.2 AER's assessment approach

#### Negotiating framework

A negotiating framework must specify the obligations in clause 6.7.5(c) of the NER. As Essential Energy did not submit a negotiating framework, we are applying a substitute negotiating framework we have developed. This framework aligns closely with those submitted by the other NSW distributors, Ausgrid<sup>7</sup> and Endeavour Energy.<sup>8</sup>

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<sup>1</sup> NER, cl. 6.12.1(15).

<sup>2</sup> NER, cl. 6.12.1 (16).

<sup>3</sup> Essential Energy, *Regulatory proposal*, May 2014, p. 130.

<sup>4</sup> NER, cl. 6.12.1(15).

<sup>5</sup> AER, *Proposed Negotiated Distribution Service Criteria for Essential Energy – period commencing 1 July 2014*, June 2014.

<sup>6</sup> NER, cl. 6.7.1.

<sup>7</sup> Ausgrid, *Regulatory proposal*, May 2014 – Attachment 9.05.

<sup>8</sup> Endeavour Energy, *Regulatory proposal*, May 2014 – Attachment 0.15.

## Negotiated distribution service criteria

We consider NDSC that adopt the negotiated distribution service principles would satisfy the NER. We therefore assessed whether our proposed NDSC reflect the negotiated distribution service principles in clause 6.7.1 of the NER.

### 17.3 Reasons for draft decision

#### Negotiating framework

We are satisfied that negotiating framework we are applying to Essential Energy specifies the minimum requirements of the NER.<sup>9</sup> Those requirements include, among other things, a statement that a distributor will negotiated in good faith and a description for dealing with disputes.

Table 17.1 summarise our assessment of the negotiating framework applying to Essential Energy for the 2015–19 regulatory control period. It shows that each of the NER requirements for a negotiated framework is satisfactorily addressed.

**Table 17.1 AER's assessment of negotiating framework to apply to Essential Energy**

NER requirements	AER assessment of framework for Essential Energy
Requirement for a distributor and applicant <sup>10</sup> to negotiate in good faith— cl. 6.7.5(c)(1)	Section 4 of negotiating framework
Requirement for a distributor to provide all such commercial information reasonably required to enable the applicant of a negotiated distribution service to engage in effective negotiations— cl. 6.7.5(c)(2)	Section 8 of negotiating framework
Requirement for a distributor to identify and inform the applicant of the reasonable costs of providing the negotiated service; demonstrate the charges reflect costs and have appropriate arrangements for assessment and review of the charges and the basis on which they are made— cl. 6.7.5(c)(3)	Section 8.1.3 of negotiating framework
Requirement for the applicant to provide all such commercial information reasonably required for a distributor to engage in effective negotiation— cl. 6.7.5(c)(4)	Section 6 of negotiating framework
Requirement to specify a reasonable period of time for commencing, progressing and finalising negotiations; and a requirement for each party to use their reasonable endeavours to adhere to those time periods during the negotiation— cl. 6.7.5(c)(5)	Section 5 of negotiating framework
Requirement to specify a process for dispute resolution in accordance with the relevant provisions for dispute resolution— cl. 6.7.5(c)(6)	Section 12 of negotiating framework

<sup>9</sup> NER, cl. 6.7.5(c).

<sup>10</sup> An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, ch. 10.



NER requirements	AER assessment of framework for Essential Energy
Requirements to specify arrangements for the payment of a distributor's reasonable direct expenses incurred in processing the application to provide the negotiated distribution service— cl. 6.7.5(c)(7)	Section 13 of negotiating framework
Requirement for a distributor to determine the potential impact of the provision of a negotiated distribution service on other distribution network users— cl. 6.7.5(c)(8)	Section 10.1 of negotiating framework
Requirement for a distributor to notify and consult with any affected distribution network user and ensure that the provision of the negotiation distribution service does not result in noncompliance with obligations in relation to other network users under the NER— cl. 6.7.5(c)(9)	Section 10.2 of negotiating framework
Requirement that the distributor publish the results of negotiations on its website	Section 5.7 of negotiating framework

Source: AER analysis.

A copy of our negotiating framework to apply to Essential Energy is at appendix A.

## Negotiated distribution services criteria

In June 2014, we published an invitation for submissions on our proposed NDSC for Essential Energy. We did not receive any submissions in response to our proposed NDSC. The NDSC we have decided to apply to Essential Energy follow:

### *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.

### *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 account the allocation of risk between a distribution network service provider (DNSP) and any other party, the price for the negotiated distribution service and the costs to a DNSP 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.

## **Price of Services**

1. The price for a negotiated distribution service must reflect the costs that a DNSP 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.
2. 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.
3. 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 schedule 5.1a and 5.1 of the NER,
4. then the difference between the price for that service and the price for the shared distribution service which meets network performance requirements must reflect a DNSP's incremental cost of providing that service (as appropriate).
5. 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 DNSP would avoid by not providing that service (as appropriate).
6. 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.
7. 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.
8. The price for a negotiated distribution service must be such as to enable a DNSP to recover the efficient costs of complying with all regulatory obligations or requirements associated with the provision of the negotiated service.

## **Criteria for access charges**

### **Access Charges**

1. Any charges must be based on costs reasonably incurred by a DNSP 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).
2. Any charges must be based on costs reasonably incurred by a DNSP 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).

The above therefore constitutes our constituent decisions on the negotiating framework and NDSC to apply to Essential Energy for the 2015–19 regulatory control period.

# **A Negotiating framework to apply to Essential Energy**

## **A.1 National Electricity Rules**

1.1 The National Electricity Rules (NER) provide that a distribution network service provider (distributor) must prepare a negotiating framework setting out the procedure to be followed during negotiations between that provider and any person (the service applicant) who wishes to receive a negotiated distribution service from the provider, as to the terms and conditions of access for the provision of the service.

1.2 This negotiating framework must comply with and be consistent with the applicable requirements of the distributor's distribution determination and the minimum requirements for a negotiating framework prescribed in subclause 6.7.5(c) of the NER.

## **A.2 Negotiated distribution services**

2.1 This negotiating framework applies to services nominated by the AER as being negotiated distribution services and items not included in the Essential Energy price list. This framework does not govern the provision of unregulated services. Direct control services (standard control services and alternative control services, including metering types 5 and 6), third party shared or forced access services and contestable connection services.

## **A.3 Application of this negotiating framework**

3.1 This negotiating framework applies to Essential Energy and each service applicant that has made an application in writing to Essential Energy for the provision of a negotiated distribution service.

3.2 Essential Energy and any service applicant who wishes to receive a negotiated distribution service from Essential Energy must comply with the requirements of this negotiating framework.

3.3 The requirements set out in this negotiating framework are in addition to any requirements or obligations contained in the NER.

3.4 In the event of inconsistent between the NER and this negotiating framework, the requirements of the NER will prevail.

3.5 Nothing in this negotiated framework or in the NER will be taken to impose an obligation on Essential Energy to provide a negotiated distribution service to the service applicant. Essential Energy 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.

3.6 The service applicant acknowledges that Essential Energy is not liable for any loss or costs incurred or suffered by the service applicant as a result of Essential Energy not providing the negotiated distribution service at the conclusion of any negotiation process for such service.

## **A.4 Obligation to negotiate in good faith**

4.1 Essential Energy and the service applicant must negotiate in good faith the terms and conditions of access for the provision by Essential Energy of the negotiated distribution service sought by the service applicant.

## A.5 Timeframe for commencing, progressing and finalising negotiations

5.1 Paragraph 5.4 sets out the timeframe for commencing, progressing and finalising negotiations in relation to applications for negotiated distribution services under the NER.

5.2 The timeframes set out in paragraph 5.4 may be suspended in accordance with paragraph 10.

5.3 Essential Energy and the service applicant must use reasonable endeavours to adhere to the time periods specified in paragraph 5.4 during the negotiation for the supply of a negotiated distribution service.

5.4 The preliminary program finalised under C in table 1 may be modified from time to time by the agreement of the parties, where such agreement must not be unreasonably withheld. Any such amendment to the preliminary program 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 service. The requirement in paragraph 5.3 applies to the last amended preliminary program.

**Table 1: Negotiating timeframe**

Event	Indicative timeframe	Paragraph reference
A Receipt of written application for a negotiated distribution services	X	
B Parties meet to discuss a preliminary program with milestones for supply of the negotiated distribution service that represent a reasonable period of time for commencing, progressing and finalising negotiations for the provision of the negotiated distribution service.	X + 20 business days, or negotiated timeframe	5.5.1
C Parties finalise preliminary program, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> <li>▪ the request and provision of commercial information, and</li> <li>▪ notification and consultation with AEMO</li> <li>▪ negotiation with affected distribution network users</li> <li>▪ notification of Essential Energy's reasonable direct expenses incurred in processing the application and the payment of those expenses by the service applicant</li> </ul>	X + 30 business days, or negotiated timeframe taking into account any request for additional information	5.5.2 7.4 9
D Essential Energy provides service applicant with an offer for the negotiated distribution service	X + 120 business days, or negotiated timeframe	5.5.3
E Parties finalise negotiations	X + 160 business days, or negotiated timeframe taking into account the above variations to the timeframe	5.5.4

5.5 Subject to paragraphs 5.2 to 5.4, Essential Energy and the service applicant must, following a request for a negotiated distribution service, use their reasonable endeavours to:

5.5.1 hold a meeting within 20 business days of receipt of the application, or such other period of time as agreed by the parties, in order to agree to a timetable for the conduct of negotiations and to commence discussion regarding other relevant issues;

5.5.2 progress the negotiations for the provision of a negotiated distribution service by Essential Energy such that the negotiations for the preliminary program may be finalised in accordance with the timetable referred to in paragraph 5.5.1;

5.5.3 adhere to any timetable established for the negotiation and to progress the negotiation in an expeditious manner; and

5.5.4 finalise the negotiations for the provision of a negotiated distribution service by Essential Energy within a time period agreed by the parties.

5.6 Notwithstanding paragraph 5.1, or any other provision of this negotiation framework, the timeframes set out in paragraphs 5.2 to 5.4:

5.6.1 do not commence until payment of the amount to Essential Energy pursuant to paragraph 13;

5.6.2 recommence if there is a material change in the negotiated distribution service sought by the service applicant, unless Essential Energy agrees otherwise.

5.7 At the conclusion of the negotiations between Essential Energy and the service applicant, whether by way of agreed outcome or by termination pursuant to paragraph 14 of the negotiating framework, Essential Energy must publish the results of the negotiations on its website.

## **A.6 Provisions of initial commercial information by service applicant**

6.1 Essential Energy must request the service applicant to provide it with the commercial information held by the service applicant that Essential Energy reasonably requires to enable it to engage in effective negotiations with the service applicant in relation to the service applicant's application and to enable Essential Energy to submit commercial information to the service applicant for the provision of the negotiated distribution service. Essential Energy must use its reasonable endeavours to make the request within the period of time agreed by the parties pursuant to paragraph 5.

6.2 The service applicant must provide Essential Energy with the commercial information which Essential Energy reasonably requires to engage in effective negotiations with the service applicant in relation to the application. Subject to paragraphs 6.3 and 6.4, the service applicant must use its reasonable endeavours to provide Essential Energy with the commercial information requested by Essential Energy in accordance with paragraph 6.1 within 10 business days of the request, or within a time period as agreed to by the parties.

6.3 Notwithstanding paragraph 6.1, the obligation under paragraph 6.1 is suspended as at the date of the notification of a dispute, if a dispute under this negotiating framework arises, until the resolution of the dispute in accordance with paragraph 12.

### **Confidentiality requirements – commercial information**

6.4 Commercial information may be provided by the service applicant subject to the condition that Essential Energy must not disclose the commercial information to any other person unless the service applicant consents in writing to the disclosure. The service applicant may require Essential Energy to enter into a confidentiality agreement with the service applicant, on terms reasonably acceptable to both parties, in respect of any commercial information provided to Essential Energy.

6.5 A consent provided by the service applicant in accordance with paragraph 6.4 may be subject to the condition that the person to whom Essential Energy discloses the commercial information must enter into a separate confidentiality agreement with the service applicant.

## **A.7 Provisions of additional commercial information by service applicant**

### **Obligation to provide additional commercial information**

7.1 Essential Energy may give a notice to the service applicant requesting the service applicant to provide Essential Energy with any additional commercial information that is reasonably required by Essential Energy to enable it to engage in effective negotiations with the service applicant in relation to the provision of a negotiated distribution service or to clarify any commercial information provided pursuant to paragraph 6.

7.2 The service applicant must use its reasonable endeavours to provide Essential Energy with the commercial information requested by Essential Energy in accordance with paragraph 7.1, within 10 business days of the date of the request under paragraph 7.1, or such other period as agreed to by the parties.

7.3 The provision of additional commercial information by the service applicant pursuant to paragraph 7.2 is subject to the provisions in paragraphs 6.4 and 6.5 above.

7.4 The service applicant must use its reasonable endeavours to provide the following information to Essential Energy within 10 business days of the written request (step C of table 1 in paragraph 5.4) being submitted to Essential Energy, regardless of whether it is requested by Endeavour Energy under paragraphs 6.1 and 7.1:

7.4.1 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;

7.4.2 financial information such as technology costs, maintenance costs, or any other information relevant to the application for a negotiated distribution service;

7.4.3 details of the compliance of the service applicant's application with any law, the NER, or applicable guidelines; and

7.4.4 details of the compliance of the service applicant's application with AS/NZ 3000:2007, or AS1158, AS61000 series or any other applicable standard.

## **A.8 Provisions of commercial information by Essential Energy**

### **Obligation to provide commercial information**

8.1 Essential Energy must provide the service applicant with all commercial information held by Essential Energy that is reasonably required by the service applicant to enable it to engage in effective negotiations with Essential Energy for the provision of a negotiated distribution service within a timeframe agreed to by the parties including the following information:

8.1.1 a description of the nature of the negotiated distribution service including what Essential Energy would provide to the service provider as part of that service;

8.1.2 the terms and conditions on which Essential Energy would provide the negotiated distribution service to the service applicant; and

8.1.3 the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the negotiated distribution service to the service applicant which 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).

8.2 Essential Energy reserves the right to withhold information requested by the service applicant pursuant to paragraph 8.1 if such information is legally privileged.

8.3 For the purpose of paragraph 8.1.3, Essential Energy must have appropriate arrangements in place for the assessment and review of the charges and the basis on which they are made.

### **Confidentiality requirements**

8.4 Essential Energy may provide the commercial information in accordance with paragraph 8.1 subject to the condition that the service applicant must not disclose the commercial information to any other person unless Essential Energy consents in writing to the disclosure. Essential Energy may require the service applicant to enter into a confidentiality agreement with Essential Energy, on terms reasonably acceptable to both parties, in respect of commercial information provided to the service applicant.

8.5 A consent provided by a service applicant in accordance with paragraph 8.4 may be subject to the condition that the person to whom the service applicant discloses the commercial information must enter into a separate confidentiality agreement with Essential Energy.

## **A.9 Confidential information**

9.1 A party disclosing information pursuant to paragraphs 6, 7 or 8 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.

9.2 Notwithstanding paragraph 9.1, a party in receipt of confidential information under this negotiating framework (the disclosing party) shall:

- keep confidential the confidential information of the disclosing party
- take all reasonable steps to protect the confidentiality and security of the confidential information of the disclosing party



- without limiting paragraph 9.1, comply with the disclosing party's instructions regarding security of its confidential information
- not, directly or indirectly, divulge, use, disclose or publish the confidential information of the disclosing party to any person
- not make or allow to be made copies of, or extracts of, any part of the confidential information, except for the purposes of negotiating the terms and conditions of access to a negotiated distribution service sought by the service applicant.

9.3 Nothing in paragraph 9.2 restricts the disclosure of such information to the extent required by law.

9.4 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 paragraph 9.

## **A.10 Impact on other distribution network users**

10.1 Essential Energy must determine the potential impact on distribution network users, other than the service applicant, of the provision of the negotiation distribution service.

10.2 Essential Energy must notify and consult with any affected distribution network users and ensure that the provision of the negotiation distribution service does not result in non-compliance with obligations in relation to other distribution network users under the NER.

10.3 Essential Energy is required to consult the affected distribution network users pursuant to paragraph 10.2, the timeframes provided for in paragraph 5 shall be suspended until the information requires to assess the impact is received from the affected distribution network user,

## **A.11 Suspension of timeframe for negotiation**

11.1 The timeframes for negotiating the provision of a negotiated distribution service as contained within this negotiating framework, or as otherwise agreed to between the parties, are suspended if:

11.1.1 within 10 business days of Essential Energy providing the commercial information to the service applicant pursuant to paragraph 6.1, the service applicant does not formally accept that commercial information and the parties have agreed to a date for the undertaking and conclusion of commercial negotiations;

11.1.2 a dispute in relation to the negotiated distribution service has been notified to the AER under Part 10 of the National Electricity Law (NEL). In this event, the timeframe for the negotiations will be suspended from the date of that notification of the 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.

11.1.3 within 10 business days of Essential Energy requesting additional commercial information from the service applicant pursuant to paragraph 7, the service applicant has not supplied that commercial information

11.1.4 without limiting paragraphs 11.1.1 to 11.1.3, if either of the parties does not promptly meet any of its obligations as required by this negotiating framework or as otherwise agreed to by the parties;

11.1.5 Essential Energy has been required to notify and consult with any affected distribution network users under paragraph 10.2, or AEMO at any time regarding the provision of the negotiated distribution service. In those circumstances, the time frame for the negotiations will be suspended from the date of notification to the affected distribution network users or AEMO until:

(a) the end of the time limit specified by Essential Energy for any affected distribution network users or AEMO; or

(b) the receipt of information from the affected distribution network users or AEMO regarding the provision of the negotiation distribution service,

whichever is the later.

## **A.12 Dispute resolution**

12.1 All disputes between the parties as to the terms and conditions of access for the provision of a negotiated distribution service are to be dealt with in accordance with the relevant provisions of Part 10 of the NEL and Part L of Chapter 6 of the NER for dispute resolution.

## **A.13 Payment of Essential Energy's Costs**

13.1 Prior to commencing negotiations, the service applicant must pay an application fee to Essential Energy. The fee must be no more than Essential Energy's reasonable estimate of its costs in dealing with the application.

13.2 The application fee lodged pursuant to section 13.1 will be deducted from the reasonable direct costs incurred in processing the service applicant's application to Essential Energy for the provision of a negotiated distribution service.

13.3 From time to time, Essential Energy may give the service applicant a notice setting out the reasonable direct costs incurred by Essential Energy and the off-set of any amount applicable under paragraph 13.1.

13.4 If the aggregate of the reasonable direct costs exceed the amount paid by the service applicant pursuant to paragraph 13.1, the service applicant must, within 20 business days of the receipt of a notice in accordance with paragraph 13.3, pay Essential Energy the amount stated in the notice. If the aggregate of its actual reasonable direct costs is less than the amount paid by the service applicant pursuant to paragraph 13.1, Essential Energy must promptly notify the service applicant and must within 20 business days of the date of that notice refund to the service applicant the amount by which the application fee paid by the service applicant under paragraph 13.1 exceeds Essential Energy's actual aggregate reasonable direct costs.

13.5 Essential Energy 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.

## A.14 Termination of negotiation

14.1 The service applicant may elect not to continue with its application for a negotiated distribution service and may terminate the negotiations by giving Essential Energy written notice of its decision to do so.

14.2 Essential Energy may terminate a negotiation under this framework by giving the service applicant written notice of its decision to do so where:

14.2.1 Essential Energy has reasonable grounds to believe that the service applicant is not conducting the negotiation under this negotiating framework in good faith;

14.2.2 Essential Energy has reasonable grounds to believe that the service applicant will not acquire any negotiated distribution services;

14.2.3 An act of solvency default occurs in relation to the service applicant.

## A.15 Giving notices

15.1 A notice, consent, information, application or request that is to be given to or made of 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 latest address.

### Essential Energy

Name: Essential Energy  
Address: PO Box 5730, Port Macquarie NSW 2444

### Service applicant

Name: Service applicant  
Address: The nominated address of the service applicant provided in writing to Essential Energy as part of the application.

### Time notice is given

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

15.2.1 if it delivered, when it is left at the relevant address;

15.2.2 if it is sent by post, 2 business days after it is posted;

15.2.3 if sent by facsimile transmission, on the day the transmission is sent (but only if the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission); or

15.2.4 if sent by email once acknowledged as received by the addressee.

15.3 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.

## A.16 Definitions and interpretation

16.1 Words and expressions have the same meaning as they do in the NEL and NER unless context requires otherwise.

16.2 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issues under that legislation or legislative provision.

### Definitions

16.3 In this document the following definitions apply:

**AEMO** means Australian Energy Market Operator

**AER** means the Australian Energy Regulator, as defined by the NER

**business day** means a day on which all banks are open for business generally in Sydney, New South Wales

**commercial information** includes, but is not limited to, the following classes of information:

- details of corporate structure
- financial details relevant to credit worthiness and commercial risk
- ownership of assets
- technical information relevant to the application for a negotiated distribution service
- financial information relevant to the application for a negotiated distribution service
- details of an application's compliance with any law, standard, NER or guideline

but does not include:

- confidential information provided by another person to either:
  - the service applicant; or
  - Essential Energy
- information that the service applicant is prohibited, by law, from disclosing to Essential Energy; or
- information that Essential Energy is prohibited, by law, from disclosing to the service applicant.

**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:

- information relating to or about the business affairs and operations of Essential Energy

- commercial information provided by Essential Energy to the service applicant pursuant to paragraph 8
- information provided to Essential Energy by the service applicant pursuant to paragraphs 6 and 7, and
- 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).

**Costs** means any costs or expenses incurred by Essential Energy in complying with this negotiating framework or otherwise advancing the service applicant's request for the provision of a negotiated distribution service.

**Disclosing party** has the meaning provided in paragraph 9.2.

**Distribution network user** means a distribution customer or an embedded generator as defined in the NER.

**Essential Energy** means Essential Energy, ABN 37 428 185 226.

**Negotiated distribution service** means a distribution service that is not a standard control service and that is specified as that service the NER or the AER.

**NEL** means the National Electricity (NSW) Law.

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

**Service applicant** means a person who asks Essential Energy for access to a distribution service, as defined by the NER.

**Solvency default** means the occurrence of any of the following events in relation to the service applicant:

- 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
- 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
- the service applicant stops payment of, or admits in writing its inability to pay, its debts as they fall due

- 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
- a court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of the service applicant property
- the service applicant takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the Corporations Act 2001), in respect of the service applicant
- a controller (as defined in the Corporations Act 2001) is appointed in respect of any part of the property of the service applicant
- 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 affairs
- the service applicant is the subject of an event described in section 459C(2)(b) of the Corporations Act 2001, or
- anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the service applicant.

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

### Interpretation

16.4 In this document, unless the context otherwise requires:

16.4.1 terms defined in the NER have the same meaning in this negotiating framework

16.4.2 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

16.4.3 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time

16.4.4 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

16.4.5 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or government agency, and

16.4.6 a covenant or agreement on the part of two or more persons binds.