



**FINAL DECISION**  
**ActewAGL distribution**  
**determination**  
**2015–16 to 2018–19**

**Attachment 17 – Negotiated**  
**services framework and criteria**

April 2015

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Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 520  
Melbourne Vic 3001

Tel: (03) 9290 1444

Fax: (03) 9290 1457

Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

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## Note

This attachment forms part of the AER's final decision on ActewAGL's revenue proposal 2015–19. It should be read with all other parts of the final decision.

The final 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

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## Shortened forms

Shortened form	Extended form
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
augex	augmentation expenditure
capex	capital expenditure
CCP	Consumer Challenge Panel
CESS	capital expenditure sharing scheme
CPI	consumer price index
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
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

Shortened form	Extended form
RIN	regulatory information notice
RPP	revenue and 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 services framework and criteria

The NER requires us to make constituent decisions on:

- the negotiating framework that is to apply to ActewAGL (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 final decision is not to classify any distribution services as negotiated distribution services, the NER require us to set out these matters irrespective of our classification decisions. ActewAGL submitted a negotiating framework to us on 22 October 2014 for our consideration.<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 final decision on ActewAGL's negotiating framework and NDSC.

### 17.1 Final decision

#### Negotiating framework

We approve ActewAGL's proposed negotiating framework as it meets the requirements of the NER.<sup>4</sup> Therefore, our final decision is to accept the negotiating framework submitted by ActewAGL for the 2015–19 regulatory control period.<sup>5</sup>

#### Negotiated distribution service criteria

Our final decision is to retain the NDSC that we published for ActewAGL in September 2014<sup>6</sup> with one amendment to criteria two to clarify the meaning of 'fair and reasonable'<sup>7</sup> for the 2015–19 regulatory control period. The NDSC give effect to the negotiated distribution service principles.<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> ActewAGL, *Regulatory proposal (resubmitted)*, July 2014, pp. 325–327.

<sup>4</sup> NER, cl. 6.7.5.

<sup>5</sup> NER, cl. 6.12.1(15).

<sup>6</sup> AER, *Proposed Negotiated Distribution Service Criteria for ActewAGL – period commencing 1 July 2014*, September 2014.

<sup>7</sup> As proposed by ActewAGL in its submission to the AER on the NDSC of 23 October 2014 and ActewAGL, *Revised proposal*, January 2015, p. 681.

<sup>8</sup> NER, cl. 6.7.1.

## 17.2 ActewAGL's revised proposal

ActewAGL accepted our draft decision on the negotiating framework. ActewAGL also accepted our draft decision on the NDSC, subject to us considering ActewAGL's comments on clarifying the meaning of the term 'fair and reasonable'.<sup>9</sup>

## 17.3 AER's assessment approach

### Negotiating framework

To be approved, a proposed negotiating framework must specify the obligations in clause 6.7.5(c) of the NER. We examined whether ActewAGL's proposed negotiating framework has done that.

### Negotiated distribution service criteria

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

## 17.4 Reasons for final decision

### Negotiating framework

We approve ActewAGL's proposed negotiating framework because it specifies the minimum requirements of the NER.<sup>10</sup> Those requirements include, among other things, a statement that a distributor will negotiate in good faith and a description for dealing with disputes.

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

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<sup>9</sup> ActewAGL, *Revised proposal*, January 2015, p. 682.

<sup>10</sup> NER, cl. 6.7.5(c).



**Table 17.1 AER's assessment of ActewAGL's proposed negotiating framework**

NER requirements	AER assessment of framework for ActewAGL
Requirement for a distributor and applicant <sup>11</sup> to negotiate in good faith— cl. 6.7.5(c)(1)	Section 3 of ActewAGL's 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 7 of ActewAGL's 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 7.1.3 of ActewAGL's 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)	Sections 5 and 6 of ActewAGL's 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 4 of ActewAGL's 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 11 of ActewAGL's framework
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 12 of ActewAGL's 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 9.1 of ActewAGL's 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 9.2 of ActewAGL's framework
Requirement that the distributor publish the results of negotiations on its website — cl. 6.7.5(c)(10)	Section 15 of ActewAGL's framework

Source: AER analysis.

A copy of ActewAGL's negotiating framework is at appendix A.

<sup>11</sup> An applicant or service applicant is the person who wishes to receive a negotiated distribution service. NER, Ch. 10.

## Negotiated distribution services criteria

In September 2014, we published an invitation for submissions on our proposed NDSC for ActewAGL. ActewAGL responded suggesting that we consider clarifying the meaning of the term 'fair and reasonable' in criterion two by adding the words 'the price for a negotiated distribution service is to be treated as being fair and reasonable...'. ActewAGL stated that this amendment would make the criterion consistent with clause 6.7.1(9) of the NER.<sup>12</sup> We have adopted this suggestion. The NDSC we have decided to apply to ActewAGL 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*

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 (for these purposes, the price for a negotiated distribution service is to be treated as being fair and reasonable if it complies with criteria 5 to 12).
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.
4. 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*

5. 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.

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<sup>12</sup> ActewAGL, *Submission on AER proposed NDSC*, 23 October 2014, p. 1. In our draft decision we incorrectly stated that we did not receive any submissions on the proposed NDSC.

6. 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.
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 schedule 5.1a and 5.1 of the NER,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 distributor's incremental cost of providing that service (as appropriate).
8. 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).
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.
10. 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.
11. 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.

### ***Criteria for access charges***

#### *Access Charges*

12. 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).
13. 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).

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

## A ActewAGL's negotiating framework

### **Proposed Negotiating Framework for Negotiated Distribution Services**

**2015-2019 Regulatory Period**

**ActewAGL Distribution**

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## **1. Background**

- 1.1. The National Electricity Rules ("NER") provide that:
  - 1.1.1. a Distribution Network Service Provider must prepare a document (the "negotiating framework") setting out the procedure to be followed during negotiations between it and any person (the "Service Applicant") who wishes to be provided with a Negotiated Distribution Service as to the terms and conditions of access for the provision of the service (Clause 6.7.5(a) of the NER);
  - 1.1.2. the negotiating framework must comply with and be consistent with the applicable requirements of a distribution determination applying to the Distribution Network Service Provider (Clause 6.7.5(b)(1) of the NER); and
  - 1.1.3. the negotiating framework must comply with and be consistent with clause 6.7.5(c) of the NER, which sets out the minimum requirements for a negotiating framework (Clause 6.7.5(b)(2) of the NER).
- 1.2. This document has been prepared to satisfy ActewAGL Distribution's obligation under clause 6.7.5(a) of the NER to establish a negotiating framework.
- 1.3. This document applies to ActewAGL Distribution and any Service Applicant who wishes to receive a Negotiated Distribution Service from ActewAGL Distribution.
- 1.4. As at 1 July 2015, a Negotiated Distribution Service is a service provided by ActewAGL Distribution that has been classified as such by the AER in accordance with clauses 6.2.1 and 6.12.1(1) of the NER.

## **2. Application of negotiating framework**

- 2.1. This negotiating framework applies to ActewAGL Distribution and each Service Applicant who has made an application in writing to ActewAGL Distribution for the provision of a Negotiated Distribution Service.
- 2.2. ActewAGL Distribution and any Service Applicant who wishes to receive a Negotiated Distribution Service from ActewAGL Distribution must comply with the requirements of this negotiating framework in accordance with its terms.

- 2.3. The requirements set out in this negotiating framework are additional to, and must not be inconsistent with, any of the requirements or obligations of clauses 5.3, 5.3A, 5.4A and 5.5 of the NER and any other relevant provisions in Chapters 6 and 6A. In the event of any inconsistency between this negotiating framework and those requirements of the NER, those requirements of the NER will prevail.
- 2.4. Nothing in this negotiating framework or in the NER will be taken as imposing an obligation on ActewAGL Distribution to provide any service to a Service Applicant or an applicant.

### **3. Obligation to negotiate in good faith**

- 3.1. ActewAGL Distribution and the Service Applicant must negotiate in good faith the terms and conditions of access to a Negotiated Distribution Service.

### **4. Timeframe for commencing, progressing and finalising negotiations**

- 4.1. Clause 4.4 sets out the timeframe for commencing, progressing and finalising negotiations with the Service Applicant for the provision of the Negotiated Distribution Service.
- 4.2. The timeframe set out in clause 4.4 may be suspended in accordance with clause 10.
- 4.3. ActewAGL Distribution and the Service Applicant shall use reasonable endeavours to adhere to the time periods specified in clause 4.4 during the negotiation for the provision of the Negotiated Distribution Service.
- 4.4. Timeframes:
  - 4.4.1. The specified times for commencing, progressing and finalising negotiations with a Service Applicant are as set out in Table 4.1.
  - 4.4.2. The preliminary program finalised under C in Table 4.1 may be modified from time to time by agreement of the parties, where such agreement must not be unreasonably withheld. Any such amendment to the preliminary program shall 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 clause 4.3 applies to the last amended preliminary program.



**Table 4.1: Timeframes**

	<b>Event</b>	<b>Timeframe</b>
A.	Receipt of written application for a Negotiated Distribution Service	X
B.	Parties meet to discuss a preliminary program with milestones for the supply of the Negotiated Distribution Service that represents a reasonable period of time for commencing, progressing and finalizing negotiations	X + 20 business days
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 any affected Distribution Network Users.</li> </ul>	X + 50 business days
D.	ActewAGL Distribution provides Service Applicant with an offer for the Negotiated Distribution Service	X + 65 business days
E.	Parties finalise negotiations	X + 85 business days

**4.5.** Subject to clause 4.3, ActewAGL Distribution and the Service Applicant must, following a request by the Service Applicant, use their reasonable endeavours to:

- 4.5.1.** hold a meeting within 5 Business Days of receipt of the application by the Service Applicant, or such other period as agreed by the parties, in order to agree a timetable for the conduct of negotiations and to commence discussion regarding other relevant issues;
- 4.5.2.** progress the negotiations for the provision of the Negotiated Distribution Service by ActewAGL Distribution such that the negotiations may be finalised in accordance with the timetable agreed under 4.5.1;
- 4.5.3.** adhere to any timetable established for the negotiation and to progress the negotiation in an expeditious manner; and
- 4.5.4.** finalise the negotiations for the provision of the Negotiated Distribution Service by ActewAGL Distribution within the time period agreed by the parties.

**4.6.** Notwithstanding clause 4.1 or any other provision of this negotiating

framework, the timeframes set out in clause 4.4:

- 4.6.1. do not commence until payment of the amount to ActewAGL Distribution pursuant to clause 12; and
- 4.6.2. recommence if there is a material change in the nature of the Negotiated Distribution Service sought by the Service Applicant, unless ActewAGL Distribution agrees otherwise.

## **5. Provision of initial Commercial Information by Service Applicant**

### **Obligation to provide Initial Commercial Information**

- 5.1. Within a time agreed by the parties ActewAGL Distribution must use its reasonable endeavours to give notice to the Service Applicant requesting Commercial Information held by the Service Applicant that is reasonably required by ActewAGL Distribution to enable it to engage in effective negotiations with the Service Applicant for the provision of the Negotiated Distribution Service and to enable ActewAGL Distribution to submit Commercial Information to the Service Applicant.
- 5.2. Subject to clauses 5.3 and 5.4, the Service Applicant must use its reasonable endeavours to provide ActewAGL Distribution with the Commercial Information requested by ActewAGL Distribution in accordance with clause 5.1 within 10 Business Days of that request, or within a time period as agreed by the parties.
- 5.3. Notwithstanding clause 5.1, the obligation under clause 5.1 is suspended as at the date of notification of a dispute if a dispute under this negotiating framework arises until conclusion of the dispute in accordance with clause 10.

### **Confidentiality Requirements – Commercial Information**

- 5.4. For the purposes of this clause 5, Commercial Information does not include:
  - 5.4.1. confidential information provided to the Service Applicant by another person; or
  - 5.4.2. information that the Service Applicant is prohibited, by law, from disclosing to ActewAGL Distribution.
- 5.5. Commercial Information may be provided by the Service Applicant subject to a condition that ActewAGL Distribution must not provide

any part of that Commercial Information to any other person without the prior written consent of the Service Applicant.

- 5.6. The Service Applicant may require ActewAGL Distribution to enter into a confidentiality agreement, on terms reasonably acceptable to both parties, with the Service Applicant in respect of any Commercial Information provided to ActewAGL Distribution.
- 5.7. A consent provided by the Service Applicant in accordance with clause 5.5 may be subject to the condition that the person to whom ActewAGL Distribution provides the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

## **6. Provision of additional Commercial Information by the Service Applicant**

### **Obligation to provide additional Commercial Information**

- 6.1. ActewAGL Distribution may give a notice to the Service Applicant requesting the Service Applicant to provide ActewAGL Distribution with any additional Commercial Information that is reasonably required by ActewAGL Distribution to enable it to engage in effective negotiations with the Service Applicant in relation to the provision of the Negotiated Distribution Service or to clarify any Commercial Information provided pursuant to clause 5.
- 6.2. The Service Applicant must use its reasonable endeavours to provide ActewAGL Distribution with the Commercial Information requested by ActewAGL Distribution in accordance with clause 6.1 within 10 Business Days of the date of the request under clause 6.1, or such other period as agreed by the parties.

### **Confidentiality requirements**

- 6.3. For the purposes of this clause 6, Commercial Information does not include:
  - 6.3.1. confidential information provided to the Service Applicant by another person; or
  - 6.3.2. information that the Service Applicant is prohibited, by law, from disclosing to ActewAGL Distribution; and
- 6.4. Commercial Information may be provided by the Service Applicant subject to a condition that ActewAGL Distribution must not provide any part of that the Commercial Information to any other person without the prior written consent of the Service Applicant consents in 5

writing to the disclosure.

- 6.5. The Service Applicant may require ActewAGL Distribution to enter into a confidentiality agreement, on terms reasonably acceptable to both parties, with the Service Applicant in respect of any Commercial Information provided to ActewAGL Distribution.
- 6.6. A consent provided by the Service Applicant in accordance with clause 6.4 may be subject to the condition that the person to whom ActewAGL Distribution provides the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

## **7. Provision of Commercial Information by ActewAGL Distribution**

### **Obligation to provide Commercial Information**

- 7.1. ActewAGL Distribution shall provide the Service Applicant with all Commercial Information held by ActewAGL Distribution that is reasonably required by a Service Applicant to enable it to engage in effective negotiations with ActewAGL Distribution for the provision of the Negotiated Distribution Service within a timeframe agreed by the parties, including the following information:
  - 7.1.1. a description of the nature of the Negotiated Distribution Service including what ActewAGL Distribution would provide to the Service Applicant as part of that service;
  - 7.1.2. the terms and conditions on which ActewAGL Distribution would provide the Negotiated Distribution Service to the Service Applicant;
  - 7.1.3. 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).

### **Confidentiality requirements**

- 7.2. For the purposes of clause 7.1, Commercial Information does not include:
  - 7.2.1. confidential information provided to ActewAGL Distribution by another person; or
  - 7.2.2. information that ActewAGL Distribution is prohibited, by law, <sup>6</sup>

from disclosing to the Service Applicant.

- 7.3. Commercial Information may be provided by ActewAGL subject to a condition that the Service Applicant must not provide any part of that Commercial Information to any other person without the prior written consent of ActewAGL Distribution.
- 7.4. ActewAGL Distribution may require the Service Applicant to enter into a confidentiality agreement with ActewAGL Distribution, on terms reasonably acceptable to both parties, in respect of Commercial Information provided to the Service Applicant.
- 7.5. A consent provided by a Service Applicant in accordance with clause 7.3 may be subject to the condition that the person to whom the Service Applicant provides the Commercial Information must enter into a separate confidentiality agreement with ActewAGL Distribution.

## **8. Arrangement for assessment and review of charges**

- 8.1. ActewAGL Distribution will assess and review the basis for its charges to the Service Applicant for the Negotiated Distribution Service, following an application by the Service Applicant for such a review.
- 8.2. Where the Service Applicant submits an application for review, the Service Applicant must provide the reason why it considers such a review to be appropriate, plus the supporting information required in order for ActewAGL Distribution to be able to assess the application.

## **9. Determination of impact on other Distribution Network Users and consultation with affected Distribution Network Users**

- 9.1. ActewAGL Distribution must determine the potential impact on Distribution Network Users, other than the Service Applicant, of the provision of the Negotiated Distribution Service.
- 9.2. ActewAGL Distribution must notify and consult with any affected Distribution Network Users and ensure that the provision of the Negotiated Distribution Service does not result in non-compliance with obligations in relation to other Distribution Network Users under the NER.

## **10. Suspension of Timeframe for Provision of the Negotiated Distribution Service**

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- 10.1.** The timeframes for negotiation of provision of the Negotiated Distribution Service as contained within this negotiating framework, or as otherwise agreed between the parties, are suspended if:
- 10.1.1.** within 15 Business Days of ActewAGL Distribution providing the Commercial Information to the Service Applicant pursuant to clause 7.1, the Service Applicant does not formally accept that Commercial Information and the parties have agreed a date for the undertaking and conclusion of commercial negotiations;
  - 10.1.2.** a dispute in relation to the Negotiated Distribution Service has been notified to the AER under Part L of Chapter 6, from the date of notification of that dispute to the AER until:
    - (a) the withdrawal of the dispute;
    - (b) the termination of the dispute by the AER in accordance with clause 6.22.3 of the NER; or
    - (c) determination of the dispute by the AER under clause 6.22.2;
  - 10.1.3.** within 10 Business Days of ActewAGL Distribution requesting additional Commercial Information from the Service Applicant pursuant to clause 6, the Service Applicant has not supplied that Commercial Information;
  - 10.1.4.** without limiting clauses 10.1.1 to 10.1.3, either of the parties does not promptly conform with any of its obligations as required by this negotiating framework or as otherwise agreed by the parties;
  - 10.1.5.** ActewAGL Distribution has been required to notify and consult with any affected Distribution Network Users under clause 9.2, from the date of notification to the affected Distribution Network Users until the end of the time limit specified by ActewAGL Distribution for any affected Distribution Network Users, or the receipt of such information from the affected Distribution Network Users whichever is the later regarding the provision of the Negotiated Distribution Service.

## **11. Dispute Resolution**

- 11.1.** All disputes between the parties as to the terms and conditions of access for the provision of the Negotiated Distribution Service are to

be dealt with in accordance with Part L of Chapter 6 of the NER.

## **12. Payment of ActewAGL Distribution's reasonable Expenses**

- 12.1. Prior to commencing negotiations, the Service Applicant shall pay an application fee to ActewAGL Distribution.
- 12.2. The application fee lodged pursuant to clause 12.1 will be deducted from the reasonable Expenses incurred in processing the Service Applicant's application to ActewAGL Distribution for the provision of the Negotiated Distribution Service.
- 12.3. From time to time, ActewAGL Distribution may give the Relevant Service Applicant a notice setting out the reasonable Expenses incurred by ActewAGL Distribution under clause 12.2 and the off-set of any amount applicable under clause 12.1.
- 12.4. If the aggregate of the Expenses referred to in clause 12.2 exceeds the amount paid by the Service Applicant pursuant to clause 12.1, the Service Applicant must, within 20 Business Days of the receipt of a notice in accordance with clause 12.3, pay ActewAGL Distribution the amount stated in the notice.
- 12.5. ActewAGL Distribution may require the Service Applicant to enter into a binding agreement addressing conditions, guarantees and other matters in relation to the payment of any Expenses incurred in excess of the application fee.

## **13. Termination of Negotiations**

- 13.1. The Service Applicant may elect not to continue with its application for the Negotiated Distribution Service and may terminate the negotiations by giving ActewAGL Distribution written notice of its decision to do so.
- 13.2. ActewAGL Distribution may terminate a negotiation under this framework by giving the Service Applicant written notice of its decision to do so where:
  - 13.2.1. ActewAGL Distribution believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;
  - 13.2.2. the Service Applicant consistently fails to comply with the requirements of the negotiating framework;
  - 13.2.3. the Service Applicant fails to comply with an obligation in this

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negotiating framework to undertake or complete an action within a specified or agreed timeframe, and does not complete the relevant action within 20 Business Days of a written request from ActewAGL Distribution;

- 13.2.4. An act of Solvency Default occurs in relation to the Service Applicant.



## 14. Giving notices

- 14.1.** A notice, consent, information, application or request that must or may be given or made to a party under this document 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 3 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.

<b>ActewAGL Distribution</b>	
Name	ActewAGL Distribution
Address	40 Bunda St, Canberra ACT, 2600
<b>Service Applicant</b>	
Name:	Service Applicant
Address:	The nominated address of the Service Applicant provided in writing to ActewAGL Distribution as part of the application

### Time notice is given

- 14.2.** A notice, consent, information, application or request is to be treated as given or made at the following time:
- 14.2.1.** if it is delivered, when it is left at the relevant address; or
  - 14.2.2.** if it is sent by post, 2 Business Days after it is posted.
  - 14.2.3.** 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) .
- 14.3.** 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.

## 15. Publication of Results of Negotiations on Website

- 15.1.** ActewAGL Distribution will publish the outcomes of negotiations for

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Negotiated Distribution Services on its website.

## 16. Definitions and interpretation

### Definitions

#### 16.1. In this document the following definitions apply:

**ActewAGL Distribution** means ActewAGL Distribution Pty Limited, ABN 76 670 568 688.

**Business Day** means a day that is not:

- a) A Saturday or Sunday; or
- b) Observed as a public holiday on the same day in the Australian Capital Territory.

**Commercial information** shall include at a minimum, 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 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.

**Expenses** means any direct expenses incurred by ActewAGL Distribution in processing a Service Applicant's application to provide the Negotiated Distribution Service.

**Solvency Default** means the occurrence of any of the following events in relation to the Service Applicant:

- (a) 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;
- (b) 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;

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- (c) 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;
- (d) A mortgage, charge or other security is enforced by its holder or becomes enforceable or can become enforceable with the giving of notice, lapse of time or fulfilment of a condition;
- (e) The Service Applicant stops payment of, or admits in writing its inability to pay, its debts as they fall due;
- (f) The Service Applicant applies for, consents to, or acquiesces in the appointment of a trustee or receiver of the Service Applicant or any of its property;
- (g) A court appoints a liquidator, provisional liquidator, receiver or trustee, whether permanent or temporary, of all or any part of the Service Applicant's property;
- (h) The Service Applicant takes any step to obtain protection or is granted protection from its creditors under any applicable legislation or a meeting is convened or a resolution is passed to appoint an administrator or controller (as defined in the *Corporations Act 2001*), in respect of the Service Applicant;
- (i) A controller (as defined in the *Corporations Act 2001*) is appointed in respect of any part of the property of the Service Applicant;
- (j) Except to reconstruct or amalgamate while solvent, the Service Applicant enters into or resolves to enter into a scheme of arrangement, compromise or reconstruction proposed with its creditors (or any class of them) or with its members (or any class of them) or proposes re-organisation, re-arrangement moratorium or other administration of the Service Applicant's affairs;
- (k) The Service Applicant is the subject of an event described in section 459C(2)(b) of the *Corporations Act 2001*; or
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens in relation to the Service Applicant.

#### Interpretation

**16.2.** In this document, unless the context otherwise requires:

- 16.2.1.** terms defined in the NER have the same meaning in this negotiating framework;
- 16.2.2.** a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-

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- enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 16.2.3.** a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 16.2.4.** a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document unless otherwise stated;
- 16.2.5.** an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency; and
- 16.2.6.** a covenant or agreement on the part of two or more persons binds them jointly and severally.