



Call for submissions

**Proposed Negotiated Distribution Service  
Criteria for Energex and Ergon Energy**

July 2009

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## Call for Submissions

Under the National Electricity Law and the National Electricity Rules (NER), the Australian Energy Regulator (AER) is responsible for the economic regulation of certain electricity distribution services provided by distribution network service providers in the National Electricity Market.

The AER will make a distribution determination applying to Energex and Ergon Energy for the regulatory control period, 1 July 2010 to 30 June 2015. For distribution services classified as direct control the determination will impose controls over the prices and revenues that Energex and Ergon Energy may recover. Services classified as negotiated distribution services do not have their terms and conditions determined by the AER. They are however subject to a dispute resolution process.

Under clause 6.12.1(16) of the NER, as part of its distribution determination the AER is required to make a decision on the Negotiated Distribution Service Criteria (NDSC) to apply to Energex and Ergon Energy. The NDSC sets out the criteria that are to be applied by Energex and Ergon Energy in negotiating terms and conditions of access for their negotiated distribution services and will also be used by the AER in resolving any access dispute about any of the terms and conditions of access, as required under clause 6.7.4(a) of the NER. Under clause 6.7.4(b) of the NER, the NDSC must give effect to and be consistent with the negotiated distribution service principles set out in clause 6.7.1 of the NER.

Clause 6.9.3 of the NER requires the AER to publish its proposed NDSC, together with an invitation for written submissions, simultaneously with the publication of Energex and Ergon Energy's regulatory proposals. The AER is seeking submissions from interested parties in relation to the proposed NDSC to apply to Energex and Ergon Energy. Submissions on the proposed NDSC for Energex and Ergon Energy are due by close of business **28 August 2009**.

The AER prefers that all written 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 are asked to provide both confidential and non-confidential versions of their submission. All non-confidential submissions will be placed on the AER's website [www.aer.gov.au](http://www.aer.gov.au).

The AER will treat all information and documents provided to it as part of this process in accordance with the ACCC/AER's Information Policy dated October 2008, which is available on the AER's website.

Submissions can be sent electronically to [aer inquiry@ aer.gov.au](mailto:aer inquiry@ aer.gov.au). Alternatively, they can be sent to:

Mr Mike Buckley  
General Manager  
Network Regulation North Branch  
Australian Energy Regulator  
GPO BOX 3131  
Canberra ACT 2601

Enquiries on this matter should be directed to the Network Regulation North Branch (Canberra office) on (02) 6243 1233.

# Proposed Negotiated Distribution Service Criteria

## 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.
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 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.
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 DNSP has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the DNSP's Cost Allocation Method.
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 DNSP'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 DNSP 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 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**

12. 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).
13. 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).