

## ETSA Utilities Negotiating Framework



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**July 2010**

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## Preamble

- A. Chapter 6 of the National Electricity Rules (the Rules) requires that:
- a) a Distribution Network Service Provider prepare a document setting out the procedure to be followed during negotiations between it and any person (a *Service Applicant*) who wishes to receive a *Negotiated Distribution Service*, as to the terms and conditions of access for the provision of the service (clause 6.7.5(a));
  - b) The negotiating framework comply with and be consistent with the applicable requirements of the Distribution Network Service Provider's distribution determination (clause 6.7.5(b)); and
  - c) The negotiating framework comply with and be consistent with the applicable requirements of clause 6.7.5(c), which sets out the minimum requirements for a negotiating framework.
- B. This document has been prepared in fulfilment of *ETSA Utilities'* obligations under clause 6.7.5(a) of the Rules to establish a negotiating framework.
- C. This document applies to *ETSA Utilities* and any *Service Applicant* who applies to receive a *Negotiated Distribution Service*.
- D. *ETSA Utilities* provides a number of *Negotiated Distribution Services* which fall into one of two classifications:
- a) ***Individually Negotiated Services***, which are services for which an individual quotation, terms and conditions of supply and *charges* will be prepared and for which no indicative price is published by *ETSA Utilities* in its *Indicative Price List*; and
  - b) ***Indicative Price List Services***, which are services for which an indicative price is given in the *Indicative Price List* published annually by *ETSA Utilities*.
- E. This document specifies the *Negotiated Distribution Service Criteria*, information disclosure process, and timetable which will apply to each classification of *Negotiated Distribution Services*, noting that, in relation to the determination of access disputes, Part 10 of the National Electricity Law (NEL) and Part L of the National Electricity Rules (NER) are applicable.
- F. This document also specifies the process for the annual publication of the indicative prices and what information is disclosed for *Indicative Price List Services*.
- G. The structure of *ETSA Utilities'* Negotiating Framework is illustrated in Figure 1.
- H. Various provisions of the NEL and the Rules are relevant to the provision of negotiated distribution services by *ETSA Utilities*. This negotiating framework is subject to the provisions of the NEL and the Rules, which may include provisions that are specific to South Australia in Chapter 9 of the Rules.

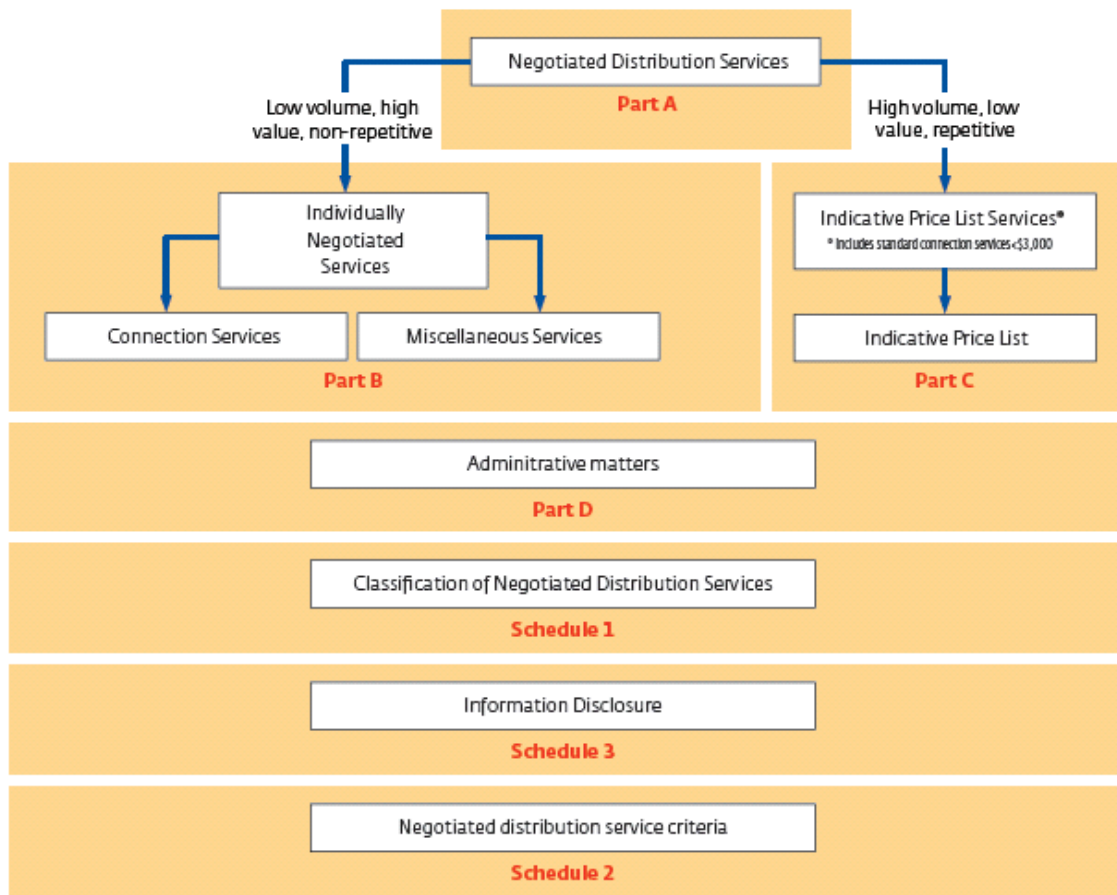


Figure 1 - Structure of ETSA Utilities' Negotiating Framework

# ETSA Utilities' Negotiating Framework

## 1. Structure of Negotiating Framework

- 1.1 Part A of this Negotiating Framework sets out arrangements for the classification of *Negotiated Distribution Services* and the commercial obligations applicable to *ETSA Utilities* and *Service Applicants*.
- 1.2 Part B contains the provisions for *Individually Negotiated Services*.
- 1.3 Part C contains the provisions for *Indicative Price List Services*.
- 1.4 Part D contains administrative provisions which apply to both classifications of *Negotiated Distribution Services*.

## Part A Provisions applicable to all Negotiated Distribution Services

### 2. Application of Negotiating Framework

- 2.1 This Negotiating Framework applies to *ETSA Utilities* and:
  - a) each *Service Applicant* who has made an application in writing to *ETSA Utilities* for the provision of a *Negotiated Distribution Service*; and
  - b) each *Service Applicant* or prospective *Service Applicant* participating in consultation on the provision of a *Negotiated Distribution Service*.
- 2.2 *ETSA Utilities* and any *Service Applicant* who wishes to receive a *Negotiated Distribution Service* from *ETSA Utilities* must comply with the requirements of this Negotiating Framework.
- 2.3 The requirements set out in this Negotiating Framework are additional to any requirements or obligations contained in Rules 5.3 and 5.5. In the event of any inconsistency between this Negotiating Framework and any other requirements in the Rules, the requirements of the Rules will prevail.
- 2.4 Nothing in this Negotiating Framework or in the Rules will be taken as imposing an obligation on *ETSA Utilities* to provide any service to the *Service Applicant*.

### 3. Classification of Negotiated Distribution Services

- 3.1 The *Negotiated Distribution Services* provided by *ETSA Utilities* are divided into two classifications:
  - a) ***Individually Negotiated Services*** which are services for which an individual quotation, terms and conditions of supply and *charges* will be prepared and for which no indicative price is published by *ETSA Utilities* in its *Indicative Price List*. Part B of this Negotiating Framework contains the provisions for *Individually Negotiated Services*; and
  - b) ***Indicative Price List Services***, which are services for which an indicative price is given in the *Indicative Price List* published annually by *ETSA Utilities*. Part C of this Negotiating Framework contains the provisions for *Indicative Price List Services*.
- 3.2 *ETSA Utilities* will determine the classification of each of its *Negotiated Distribution Services*.

- 3.3 Schedule 1 of this Negotiating Framework indicates the initial classifications applying to each of the *Negotiated Distribution Services* provided by *ETSA Utilities*. For a number of services, the service may be either a *Individually Negotiated Service* or a *Indicative Price List Service* depending on whether the service is repetitive or non-repetitive. Generally, services that are repetitive in nature and occur in relatively high volumes will be detailed in the *Indicative Price List*, whereas services that are non-repetitive will not appear in the *Indicative Price List*.
- 3.4 *ETSA Utilities* may re-classify its *Negotiated Distribution Services* on an annual basis. Any such re-classification, and the basis for the re-classification, will be explained in *ETSA Utilities'* annual *Indicative Price List* publication as referred to in clause 20 and Schedule 3.

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

- 4.1 *ETSA Utilities* and the *Service Applicant* must negotiate in good faith the terms and conditions for the provision by *ETSA Utilities* of the *Negotiated Distribution Service* sought by the *Service Applicant*.

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

- 5.1 *ETSA Utilities* may give notice to the *Service Applicant* requesting *Commercial Information* held by the *Service Applicant* that is reasonably required by *ETSA Utilities* to enable it to engage in effective negotiations with the *Service Applicant* in relation to the application

#### **Confidentiality Requirements**

- 5.2 For the purposes of this clause 5, *Commercial Information* does not include:
- a) confidential information provided to the *Service Applicant* by another person; or
  - b) information that the *Service Applicant* is prohibited, by law, from disclosing to *ETSA Utilities*.
- 5.3 *Commercial Information* may be provided by the *Service Applicant* subject to reasonable conditions, which may include a condition that *ETSA Utilities* not disclose the *Commercial Information* to any other person unless the *Service Applicant* consents in writing to the disclosure or it is otherwise compelled to do so by law.
- 5.4 In respect of any confidential information that may be provided by the *Service Applicant* to *ETSA Utilities*, the *Service Applicant* may require *ETSA Utilities* to enter into a confidentiality agreement in respect of this information, on terms reasonably acceptable to both parties, with the *Service Applicant*.
- 5.5 A consent to disclose information provided by the *Service Applicant* in accordance with clause 5.3 may be subject to the condition that the person to whom *ETSA Utilities* discloses the *Commercial Information* is also subject to a condition that the person does not provide any part of that commercial information to any other person without the consent of the *Service Applicant*.



## 6. Provision of Commercial Information by ETSA Utilities

- 6.1 *ETSA Utilities* must provide the following *Commercial Information* to the *Service Applicant*, upon written request, where such information is reasonably required by the *Service Applicant* to enable them to engage in effective negotiations with *ETSA Utilities* for the provision of a *Negotiated Distribution Service*<sup>1</sup>:
- a) a description of the nature of the *Negotiated Distribution Service* including what *ETSA Utilities* would provide to the *Service Applicant* as part of that service;
  - b) the *charges* applicable for providing the service based on the information that is available to *ETSA Utilities*;
  - c) the terms and conditions upon which *ETSA Utilities* would provide the *Negotiated Distribution Service* to the *Service Applicant*;
  - d) the reasonable *costs* and/or the increase or decrease in *costs* (as appropriate) in providing the *Negotiated Distribution Service* to the *Service Applicant*;
  - e) a demonstration to the *Service Applicant* that the *charges* for providing the *Negotiated Distribution Service* are in compliance with *ETSA Utilities' Negotiating Distribution Service Criteria (NDSC) and CAM (Cost Allocation Methodology)*;
  - f) information referred to under Clause 12 in relation to the assessment and review of the basis of *charges*; and
  - g) any other information that the *Service Applicant* reasonably requires to enable effective negotiation on the price and the terms and conditions associated with the provision of the *Negotiated Distribution Service*.

### Confidentiality Requirements

- 6.2 For the purposes of clause 6.1, *Commercial Information* does not include:
- a) confidential information provided to *ETSA Utilities* by another person; or
  - b) information that *ETSA Utilities* is prohibited, by law, from disclosing to the *Service Applicant*.
- 6.3 *ETSA Utilities* may provide the *Commercial Information* in accordance with clause 6.1 subject to relevant conditions including the condition that the *Service Applicant* must not disclose the *Commercial Information* to any other person unless *ETSA Utilities* consents in writing to the disclosure. *ETSA Utilities* may require the *Service Applicant* to enter into a confidentiality agreement with *ETSA Utilities*, on terms reasonably acceptable to both parties, in respect of *Commercial Information* provided to the *Service Applicant*.

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<sup>1</sup> Noting that in the case of *Indicative Price List Services*, in the first instance a *Service Applicant* should refer to the information provided in the annual *Indicative Price List* publication, as required under clause 20.

6.4 A consent provided to a *Service Applicant* in accordance with clause 6.3 may be subject to the condition that a person to whom the *Service Applicant* discloses the *Commercial Information* must enter into a separate confidentiality agreement with *ETSA Utilities*.

## **7. Negotiating Distribution Service Criteria**

7.1 In developing its *prices* for *Negotiated Distribution Services*, *ETSA Utilities* will comply with:

7.1.1 the *AER* approved *Negotiating Distribution Service Criteria* which are reproduced in Schedule 2; and

7.1.2 any local jurisdictional requirements.

## Part B Provisions applicable to Individually Negotiated Services

### 8. Types of Individually Negotiated Services

- 8.1 Two different types of *Individually Negotiated Services* are provided by *ETSA Utilities*:
- a) **Connection Services**, which are services associated with the establishment of a new connection to the network, or the modification of an existing connection, and include any associated extension or augmentation of the network<sup>2</sup>; and
  - b) **Miscellaneous Services**, which are all other *Individually Negotiated Services*.

### 9. Process and Timeframe for providing Connection Services

9.1 Clause 9.2 and Table 1 set out the timeframe for commencing, progressing and finalising negotiations in relation to applications for Connection Services. The timeframe set out in clause 9.2 may be suspended in accordance with clause 13.

#### 9.2 Timeframes:

- a) The specified time for commencing, progressing and finalising negotiations with a *Service Applicant* is as set out in Table 2.
- b) *ETSA Utilities* and the *Service Applicant* will use reasonable endeavours to adhere to the time periods specified in Table 2 and may, by agreement, extend any such time period.
- c) The preliminary program finalised under event "C" in Table 2 may be modified from time to time by agreement between 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*.

### 10. Contestability of parts of Connection Services

10.1 The *Service Applicant* can request that *ETSA Utilities* prepare specifications for *connection assets* and the *extension* associated with the supply of the connection services. Once the customer has provided the required information and has paid the specification preparation fee, then *ETSA Utilities* will provide the specification within:

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<sup>2</sup> Noting that, as required under Chapter 1 of the Electricity Distribution Code, standard connections and alterations will continue to be provided free of charge. In addition, certain low value, repetitive *Connection Services* may attract a charge, but are provided as *Indicative Price List Services*.

- a) a reasonable time as agreed with the customer where the specifications are complex, such time to be no more than 20 *Business Days*; and
- b) 10 *Business Days* in all other cases.

10.2 The *Service Applicant* can call for tenders for the design and construction of the connection assets and the extension, based on the specifications prepared under 10.1;

10.3 If the *Service Applicant* advises ETSA Utilities that they have selected a successful tenderer then ETSA Utilities will liaise with the *Service Applicant* and the successful tenderer to have the *connection assets* and extension assets connected to the distribution network once these assets have been completed to the satisfaction of ETSA Utilities.

10.4 Nothing in this clause 10 obliges *ETSA Utilities* to accept the design and construction of the *connection assets* or the *extension* by a successful tenderer if *ETSA Utilities*, acting reasonably, forms the view that:

- a) the successful tenderer does not have the requisite skill and competence to undertake the design and construction of the works in accordance with the specifications; and
- b) the proposed design and construction do not meet the specification prepared under clause 10.1.

**Table 1 - Timetable for *Connection Services***

Event		Indicative timeframe <sup>3</sup>	
		Normal	Complex
A.	Receipt of an application for a <i>Negotiated Distribution Service</i> . The application must be made by completing an Application Form in accordance with <i>ETSA Utilities'</i> publications or as otherwise agreed with <i>ETSA Utilities</i> . The application must include all information required by ETSA Utilities to make an offer and the <i>Service Applicant</i> must pay the application fee where requested.	X	X
B.	Parties discuss a preliminary negotiation programme with milestones that represent a reasonable period of time for commencing, progressing and finalising negotiations.	X + 5 <i>Business Days</i>	X + 10 <i>Business Days</i>
C.	Parties finalise negotiation programme, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> <li>the request and provision of <i>Commercial Information</i> by <i>ETSA Utilities</i> and the <i>Service Applicant</i> in relation to clauses 5 and 6; and</li> <li>notification and consultation with any affected distribution network users in relation to clause 12.</li> </ul>	X + 15 <i>Business Days</i>	X + 25 <i>Business Days</i>
D.	<i>ETSA Utilities</i> provides the <i>Service Applicant</i> with an offer for the <i>Negotiated Distribution Service</i> .	X + 20 <i>Business Days</i>	X + 35 <i>Business Days</i>
E.	Parties finalise negotiations.	X + 35 <i>Business</i>	X + 60 <i>Business</i>

<sup>3</sup> 'X' being the date that the service application is received.

		Days	Days
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## 11. Timeframe for progressing and finalising negotiations for Miscellaneous Services

11.1 Clause 11.2 and Table 2 set out the timeframe for commencing, progressing and finalising negotiations in relation to applications for *Miscellaneous Services*. The timeframe set out in clause 11.2 may be suspended in accordance with clause 14.

### 11.2 Timeframes:

- a) The specified time for commencing, progressing and finalising negotiations with a *Service Applicant* is as set out in Table 2.
- b) *ETSA Utilities* and the *Service Applicant* will use reasonable endeavours to adhere to the time periods specified in Table 2 and may, by agreement, extend any such time period.
- c) The preliminary program finalised under event "C" in Table 2 may be modified from time to time by agreement between 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*.

**Table 2 – Timetable for *Miscellaneous Services***

Event		Indicative timeframe <sup>4</sup>
A.	Receipt of an application for a <i>Negotiated Distribution Service</i> . The application must be made by completing an Application Form in accordance with <i>ETSA Utilities'</i> publications or as otherwise agreed with <i>ETSA Utilities</i> . The application must include all information required by <i>ETSA Utilities</i> to make an offer and the <i>Service Applicant</i> must pay the application fee where requested.	X
B.	Parties discuss a preliminary negotiation programme with milestones that represent a reasonable period of time for commencing, progressing and finalising negotiations.	X + 15 <i>Business Days</i>
C.	Parties finalise negotiation programme, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> <li>• the request and provision of <i>Commercial Information</i> by <i>ETSA Utilities</i> and the <i>Service Applicant</i> in relation to clauses 5 and 6;</li> <li>• notification and consultation with any affected distribution network users in relation to clause 13;</li> <li>• the <i>Miscellaneous Distribution Service</i> being specified by the <i>Service Applicant</i>; and</li> <li>• the notification by <i>ETSA Utilities</i> of its <i>charges</i> related to processing the application and the payment of those <i>charges</i> by the <i>Service Applicant</i> as per clause 16.</li> </ul>	X + 30 <i>Business Days</i>
D.	Parties progress negotiations and the <i>Service Applicant</i> specifies to <i>ETSA Utilities</i> the exact <i>Miscellaneous Distribution</i>	X + 40 <i>Business Days</i>

<sup>4</sup> 'X' being the date that the service application is received.

	<i>Service</i> which is required to be provided.	
E.	Parties finalise negotiations.	X + 60 <i>Business Days</i>

## 12. Assessment and Review of Charges and Basis of Charges

12.1 *ETSA Utilities* will annually assess and review proposed *charges* for the *Connection Services* and *Miscellaneous Service* and the basis upon which those *charges* are made.

12.2 *ETSA Utilities* must make information on the assessment and review available to the *Service Applicant* in accordance with clause 6.

## 13. Determination of impact on other distribution network users and consultation with affected distribution network users

13.1 *ETSA Utilities* will determine the potential impact on distribution network users, other than the *Service Applicant*, of the provision of each *Negotiated Distribution Service*.

13.2 *ETSA Utilities* must notify and consult with any affected distribution network users and take reasonable steps to ensure that the provision of the *Negotiated Distribution Service* does not result in non-compliance with obligations to other distribution network users under the Rules.

## 14. Suspension of Timeframe for Provision of a Negotiated Distribution Service

14.1 The timeframes for negotiation of provision of an *Individually Negotiated Service* in Table 1 and Table 2, or the timeframes that have been otherwise agreed between the parties, are suspended if:

- a) a dispute in relation to the *Individually Negotiated Service* has been notified to the AER under Part 10 of the NEL, such suspension being from the date of notification of that dispute to the AER until the earlier of:
  - (i) the withdrawal of the dispute under section 126 of the NEL;
  - (ii) the termination of the dispute by the AER under section 131 or 132 of the NEL; or
  - (iii) determination of the dispute by the AER under section 128 of the NEL;
- b) within 10 *Business Days* or as otherwise agreed between the parties<sup>5</sup> of *ETSA Utilities* requesting additional *Commercial Information* from the *Service Applicant* pursuant to clause 5, the *Service Applicant* has not supplied that *Commercial Information*;
- c) without limiting clauses 14.1 a) or 14.1 b), the *Service Applicant* does not promptly conform with any of its obligations as required by this Negotiating Framework or as otherwise agreed between the parties;
- d) *ETSA Utilities* has been required to notify and consult with any affected distribution network users under clause 13. Under these circumstances, the timeframes will be suspended from the date of

<sup>5</sup> If no agreement then 10 business days is the time period.

notification to the affected distribution network users until the end of the time limit specified by *ETSA Utilities* 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*;

- e) The Service Applicant has not paid the application fee by the due date, with the suspension ceasing once the application fee is paid.

14.2 Each party will notify the other party if it considers that the timeframe has been suspended, within 5 *Business Days* of the relevant suspension event occurring.

**Note:** an application is not terminated by a suspension, unless a termination notice is issued under clause 17.

## 15. Dispute Resolution

15.1 Where negotiations with the *Service Applicant* fail to agree on the price and/or the terms and conditions of the service, it will be referred to the AER's dispute resolution processes in accordance with Part 10 of the NEL and Part L of the Rules, as applicable.

## 16. Payment of ETSA Utilities' application fee

16.1 *ETSA Utilities* may request from the *Service Applicant* an application fee relating to ETSA Utilities' reasonable direct expenses associated with processing the *Service Applicant's* application for the service.

16.2 The *Service Applicant* must pay the application fee within 10 business of receipt of the request, for *ETSA Utilities* to process the application and commence negotiations.

## 17. Termination of Negotiations

17.1 The *Service Applicant* may elect not to continue with its application for a *Negotiated Distribution Service* and may terminate the negotiations by giving *ETSA Utilities* written notice of its decision to do so.

17.2 *ETSA Utilities* may terminate a negotiation under this framework by giving the *Service Applicant* written notice of its decision to do so where:

- a) *ETSA Utilities* believes on reasonable grounds that the *Service Applicant* is not conducting the negotiation under this Negotiating Framework in good faith;
- b) the *Service Applicant* consistently fails to comply with the requirements of the Negotiating Framework;
- c) the *Service Applicant* fails to comply with an obligation in this 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 *ETSA Utilities*;
- d) the *Service Applicant* fails to make required payments in relation to the negotiation or provision of the service; or
- e) an act of *Solvency Default* occurs in relation to the *Service Applicant*.

## Part C Provisions applicable to Indicative Price List Services

### 18. Process to establish the Indicative Price List and Information Disclosure requirements for Indicative Price List Services

- 18.1 *ETSA Utilities* will utilise the following process to establish the indicative pricing and *Information Disclosure* for its *Indicative Price List Services*:
- a) *ETSA Utilities* will submit this Negotiating Framework incorporating the *Information Disclosure* requirements to the AER with its Regulatory Proposal, for the approval of the AER;
  - b) *ETSA Utilities* will publish the approved Negotiating Framework, incorporating the *Negotiating Distribution Service Criteria* and *Information Disclosure* requirements;
  - c) *ETSA Utilities* will publish its *Indicative Price List* in accordance with clause 20; and
  - d) the dispute provisions which apply to *ETSA Utilities* and *Service Applicants* or prospective *Service Applicants* are set out in clause 24.

### 19. Information Disclosure

- 19.1 *ETSA Utilities* will comply with the *Information Disclosure* requirements detailed in Schedule 3.

### 20. Publication of Indicative Price List and information concerning Indicative Price List Services

- 20.1 *ETSA Utilities* will publish the *Indicative Price List* for its *Indicative Price List Services* to apply from 1<sup>st</sup> July of each year by 1<sup>st</sup> June of that year.
- 20.2 Such publication will incorporate the *Commercial information* concerning *ETSA Utilities' Indicative Price List Services* as described in the *Information Disclosure* requirements detailed in Schedule 3.

### 21. Timeframe for progressing and finalising negotiations for Indicative Price List Services

- 21.1 Clause 21.2 and Table 3 set out the timeframe for commencing, progressing and finalising negotiations in relation to applications for *Indicative Price List Services*. The timeframe set out in clause 21.2 may be suspended in accordance with clause 14.

#### 21.2 Timeframes:

- a) The specified time for commencing, progressing and finalising negotiations with a *Service Applicant* is as set out in Table 3.
- b) *ETSA Utilities* and the *Service Applicant* will use reasonable endeavours to adhere to the time periods specified in Table 3 and may, by agreement, extend any such time period.



**Table 3 - Timetable for Indicative Price List Services**

Event	Indicative timeframe <sup>6</sup>
A. Receipt of an application for a <i>Negotiated Distribution Service</i> . The application must be made by completing an Application Form in accordance with <i>ETSA Utilities'</i> publications or as otherwise agreed with <i>ETSA Utilities</i> . The application must include all information reasonably required by <i>ETSA Utilities</i> to make an offer and the <i>Service Applicant</i> must pay the application fee where requested..	X
B. <i>ETSA Utilities</i> provides offer <sup>7</sup> for the <i>Negotiated Distribution Service</i> , including the terms and conditions	X + 5 <i>Business Days</i>
C. <i>Service Applicant</i> advises that they wish to negotiate on the price and/or terms & conditions of the offer. Parties finalise negotiation programme, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> <li>• the request and provision of <i>Commercial Information</i> by <i>ETSA Utilities</i> and the <i>Service Applicant</i> in relation to clauses 5 and 6;</li> <li>• notification and consultation with any affected distribution network users in relation to clause 12; and</li> <li>• The notification by <i>ETSA Utilities</i> of its <i>charges</i> related to processing the application and the payment of those <i>charges</i> by the <i>Service Applicant</i> as per clause 15.</li> </ul>	X + 20 <i>Business Days</i>
D. <i>ETSA Utilities</i> provides the <i>Service Applicant</i> with an offer based on the negotiations for the <i>Negotiated Distribution Service</i>	X + 25 <i>Business Days</i>
E. Parties finalise negotiations.	X + 30 <i>Business Days</i>

**22. Assessment and Review of Charges and Basis of Charges**

22.1 *ETSA Utilities* will annually assess and review proposed *charges* for *Indicative Price List Services* and the basis upon which those *charges* are made.

22.2 *ETSA Utilities* must make information on the assessment and review available to the *Service Applicant* in accordance with clause 6.

**23. Determination of impact on other distribution network users and consultation with affected distribution network users**

23.1 *ETSA Utilities* will determine the potential impact on distribution network users, other than the *Service Applicant*, of the provision of each *Negotiated Distribution Service*.

<sup>6</sup> 'X' being the date that the service application is received.

<sup>7</sup> *ETSA Utilities* will provide the price for the *Negotiated Distribution Services* using the indicative price or methodology published in the *Indicative Price List*.

23.2 *ETSA Utilities* must notify and consult with any affected distribution network users and take reasonable steps to ensure that the provision of the *Negotiated Distribution Service* does not result in non-compliance with obligations to other distribution network users under the Rules.

#### **24. Dispute Resolution**

24.1 Where negotiations with the *Service Applicant* fail to agree on the price and/or the terms and conditions of the service, the dispute may be referred to the AER's dispute resolution processes in accordance with Part 10 of the NEL and Part L of the Rules, as applicable.

#### **25. Payment of ETSA Utilities' application fee**

25.1 *ETSA Utilities* may request from the *Service Applicant* an application fee relating to *ETSA Utilities'* reasonable direct expenses associated with processing the *Service Applicant's* application for the service.

25.2 The *Service Applicant* must pay the application fee within 10 business of receipt of the request, for *ETSA Utilities* to process the application and commence negotiations.

## Part D Administrative Provisions

### 26. Publication of Results of negotiations on website

26.1 *ETSA Utilities* will publish the following matters on its website:

- a) a quarterly summary of the *Individually negotiated services* provided to *Service Applicants* and the total value of those services; and
- b) a quarterly summary of the types and numbers of *Indicative Price List Services* provided to *Service Applicants*.

### 27. Giving notices

27.1 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.

#### Parties to agreement

27.2 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, posted or electronically transmitted to the latest address.

#### *ETSA Utilities*

1 Anzac Highway, Keswick, South Australia 5035

Postal address: GPO Box 77, Adelaide, South Australia 5001

e-mail: [customerrelations@etsautilities.com.au](mailto:customerrelations@etsautilities.com.au)

#### *Service Applicant*

Name: *Service Applicant*

Address: The nominated address of the *Service Applicant* provided in writing to *ETSA Utilities* as part of the application.

#### Time notice is given

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

- a) if it is handed to the *Service Applicant*, on the day that this occurs;
- b) if it is delivered, when it is left at the relevant address;
- c) if it is sent by post, 2 *Business Days* after it is posted;
- d) 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
- e) if sent by e-mail, on the day the e-mail is sent, provided that a confirmation that the e-mail was received by the recipient is received by the sender.

27.4 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*.

## 28. Miscellaneous

### Governing law and jurisdiction

28.1 This document is governed by the law of the State of South Australia.

28.2 The parties submit to the non-exclusive jurisdiction of the courts of the State of South Australia.

28.3 The parties will not object to the exercise of judgment by the courts of the State of South Australia on any basis.

### Severability

28.4 If a clause or part of a clause of this Negotiating Framework can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

28.5 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Negotiating Framework, but the rest of this Negotiating Framework is not affected.

### Time for Action

28.6 If the day on or by which something is required to be done is not a *Business Day*, that thing must be done on or by the next *Business Day*.

## 29. Definitions and interpretation

### 29.1 Definitions

In this document the following definitions apply:

***Business Day*** means a day on which all banks are open for business generally in Adelaide, South Australia.

***Commercial Information*** will include at a minimum, the following classes of information in relation to a *Service Applicant*, where applicable:

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

***Connection Services*** are those services defined in accordance with clause 8.1.

***Connection assets*** means those assets which are used to provide *connection services* to a customer at a *connection point*.

**Charges** means the amount payable by a *Service Applicant* to *ETSA Utilities* in relation to the provision of a *Negotiated Distribution Service*.

**Costs** means any costs or expenses incurred by *ETSA Utilities* in complying with this Negotiating Framework or otherwise advancing the *Service Applicant's* request for the provision of a *Negotiated Distribution Service* or such other costs or expenses required to provide *Negotiated Distribution Services* to a *Service Applicant*, consistent with the Rules, and in compliance with *ETSA Utilities' Cost Allocation Methodology* and any relevant part of a distribution determination applying to *ETSA Utilities*.

**extension** means works required for the connection of a customer's supply address outside the boundaries of *ETSA Utilities' distribution network* that existed at the time that the *Service Applicant's* application was made.

**Indicative Price List** means the indicative list of *prices* for *Indicative Price List Services* published under clause 20.

**Indicative Price List Services** are a classification of *Negotiated Distribution Services* in accordance with clause 3.1.

**Individually Negotiated Services** are a classification of *Negotiated Distribution Services* in accordance with clause 3.1.

**Information Disclosure** means the information that must be disclosed to *Service Applicants* for *Indicative Price List Services* as defined in Schedule 3.

**ETSA Utilities** means ETSA Utilities ABN 13 332 330 749.

**Miscellaneous Services** are a classification of *Individually Negotiated Services* in accordance with clause 8.1.

**Negotiated Distribution Service(s)** means those services defined as *Negotiated Distribution Services* in Attachment B.1 to *ETSA Utilities' Regulatory Proposal*.

**Price(s)** means the amount (*Charge*) payable by a *Service Applicant* to *ETSA Utilities* in relation to the provision of a *Negotiated Distribution Service*.

**Service Applicant** means the customer requesting the provision of a *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*;
- 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*.

## 29.2 Interpretation

In this document, unless the context otherwise requires:

- a) terms defined in the NEL and the Rules have the same meaning in this Negotiating Framework;
- b) 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;
- c) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- d) 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;
- e) an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency; and

- f) a covenant or agreement on the part of two or more persons binds them jointly and severally.

## Schedule 1. Classification of Negotiated Distribution Services

The categorisations of *Negotiated Distribution Services* in this table correspond to those defined in more detail in Attachment B.2 of ETSA Utilities Regulatory Proposal.

Negotiated Distribution Service <i>'B.x'</i> references refer to categorisations defined in Attachment B.2 of ETSA Utilities Regulatory Proposal	Classification of Service <sup>8</sup>	
	Individually Negotiated Service	Indicative Price List Service
B.7 Non-standard network services	All	
B.8 Non-standard <i>connection services</i>	Non-repetitive	Repetitive
B.9 New and upgraded connection point services	Non-repetitive	Repetitive
B.10 Non-standard small customer metering services		All
B.11 Large customer metering services		All
B.12 Public lighting services	Non-repetitive	Repetitive
B.13 Stand-by and temporary supply services	Non-repetitive	Repetitive
B.14 Asset relocation, temporary disconnection and temporary line insulation services	Non-repetitive	Repetitive
B.15 Embedded generation services	All	
B.16 Other services		
(a) services in connection to <i>ETSA Utilities'</i> Distribution licence obligations or the NER;	Non-repetitive	Repetitive
(b) provision of reactive power and energy to a connection point or receipt of reactive power and energy from a distribution connection point;		All
(c) investigation and testing services;	Non-repetitive	Repetitive
(d) asset location and identification services;	Non-repetitive	Repetitive
(e) the transportation of electricity not consumed in the distribution system;	All	
(f) the transportation of electricity to distribution network users connected to the distribution system adjacent to the transmission system;	All	
(g) repair of equipment damaged by a distribution network user or a third party;	All	
(h) provision of high load escorts;	Non-repetitive	Repetitive
(i) provision of protection systems;	All	

<sup>8</sup> Shading indicates applicability of either the *Individually Negotiated Service* or *Price List Service* frameworks. Both frameworks apply to many services owing to the high variability of the scope and complexity of services within each category.



Negotiated Distribution Service <i>'B.x'</i> references refer to categorisations defined in Attachment B.2 of ETSA Utilities Regulatory Proposal	Classification of Service <sup>8</sup>	
	Individually Negotiated Service	Indicative Price List Service
(j) Provision of pole or structure attachments, ducts or conduits;	Non-repetitive	Repetitive
(k) Additional costs arising from customer non-compliance with obligations;	Non-repetitive	Repetitive
(l) Customer default resulting in work not being able to be undertaken or completed as planned;	Non-repetitive	Repetitive
(m) TV or radio interference investigation where <i>ETSA Utilities'</i> network is not the cause;	Non-repetitive	Repetitive
(o) Investigation of supply interruption not due to <i>ETSA Utilities'</i> network; and	All	
(p) Provision of information not related to connection enquiries.	Non-repetitive	Repetitive

## Schedule 2. 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 forgone 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).

### Schedule 3. Information Disclosure for Indicative Price List Services

*ETSA Utilities* will make available, to any person to whom *Indicative Price List Services* are provided, and on its website, information describing:

- a) The services for which an indicative *Price* is provided;
- b) The indicative *prices* and rates for each *Indicative Price List Service*, or where it is not reasonably practicable to determine indicative *prices* or rates, the methodology by which the *prices* or rates will be determined;
- c) The basis on which it has been determined that such *charges* are in compliance with the *Negotiating Distribution Service Criteria*; and
- d) The terms and conditions on which each *Indicative Price List Service* is to be provided by *ETSA Utilities*.

In addition, *ETSA Utilities* will publish annually, a revised *Indicative Price List* detailing:

- e) Any additions, removals or other modifications to the list of *Indicative Price List Services* from those previously published, and the basis of such changes; and
- f) Reasonable changes to the pricing of *Indicative Price List Services* from those previously published and the basis of such changes.

