

Proposed Negotiating Framework

FINAL

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CONTACT

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Please contact Transend's Manager Connections with any queries or suggestions.

REVIEW DATE

This document is due for review not later than June 2011

RESPONSIBILITIES

Implementation

All Transend staff.

Audit

Periodic audits to establish conformance with this document will be conducted by Transend's Connections Department.

Compliance

All Transend staff

Document Management

Pricing Officer

MINIMUM REQUIREMENTS

The requirements set out in Transend's documents are minimum requirements that must be complied with by Transend staff and contractors, including designers and other consultants. The user is expected to implement any practices which may not be stated but which can reasonably be regarded as good practices relevant to the objective of this document without non-compliance with the specific requirement of this document. Transend expects the users to improve upon these minimum requirements where possible and to integrate these improvements into their procedures and quality assurance plans.

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1 GENERAL

1.1 PURPOSE

Clause 6A.9.5 of the National Electricity Rules (the *Rules*) requires each *Transmission Network Service Provider (TNSP)* to prepare a document (the *negotiating framework*) setting out the procedure to be followed during negotiations between that provider and any person (the *Service Applicant*) who wishes to receive a *negotiated transmission service* from the provider, as to the *terms and conditions of access* for provision of the service.

The *negotiating framework* for a *TNSP* must comply with and be consistent with:

- (a) the applicable requirements of a *transmission determination* applying to the provider; and
- (b) paragraph 6A.9.5(c) of the *Rules*, which sets out the minimum requirements for a *negotiating framework*.

This document sets out *Transend's negotiating framework* and has been prepared by *Transend* in accordance with its obligations under clause 6A.9.5 of the *Rules*.

All negotiations regarding *negotiated transmission services* provided by *Transend* to *Service Applicants* will be undertaken in accordance with this *negotiating framework*.

1.2 SCOPE

Negotiations referred to in this *negotiating framework* are limited to those in relation to *negotiated transmission services* during the *regulatory control period* from 1 July 2009 to 30 June 2014. *Transend* may, from time to time, enter into negotiations which do not relate to *negotiated transmission services*, in which case this *negotiating framework* does not apply.

1.3 OBJECTIVES

This *negotiating framework* sets out the procedure to be followed during negotiations between *Transend* and any person (the *Service Applicant*) who wishes to receive a *negotiated transmission service* from *Transend*, as to the *terms and conditions of access* for provision of the service.

1.4 DEFINITIONS

In this *negotiating framework* the words in italics have the meaning given to them in:

- (a) this definitions section; or
- (b) if not defined in this definitions section, the *Rules*.

1.4.1 Definition of a negotiated transmission service

According to the *Rules*, a *negotiated transmission service* is any of the following services:

- (a) a *shared transmission service* that:
 - (i) exceeds the *network performance requirements* (whether as to quality or quantity) (if any) as that *shared transmission service* is required to meet under any *jurisdictional electricity legislation*; or
 - (ii) except to the extent that the *network performance requirements* which that *shared transmission service* is required to meet are prescribed under any *jurisdictional electricity legislation*, exceeds or does not meet the *network performance requirements* (whether as to quality or quantity) as are set out in schedule 5.1a or 5.1 of the *Rules*;
- (b) *connection services* that are provided to serve a *Transmission Network User*, or group of *Transmission Network Users*, at a single *transmission network connection point*, other than *connection services* that are provided by one *Network Service Provider* to another *Network*

Service Provider to connect their networks where neither of the *Network Service Providers* is a *Market Network Service Provider*; or

- (c) *use of system services* provided to a *Transmission Network User* and referred to in rule 5.4A(f)(3) in relation to *augmentations* or *extensions* required to be undertaken on a *transmission network* as described in rule 5.4A,

but does not include an *above-standard system shared transmission service* or a market network service.

1.4.2 Existing prescribed transmission services

Clause 11.6.11 of the *Rules* outlines transition arrangements applying to Chapter 6A in relation to existing *prescribed transmission services* as follows:

- (d) References to *prescribed transmission services* in the new Chapter 6A include a service provided by an asset used in connection with, or committed to be constructed for use in connection with, a *transmission system* as at 9 February 2006:
- (i) to the extent that the value of the asset is included in the regulatory asset base for that *transmission system* under an existing revenue determination in force at that time; or
 - (ii) if the price for that service has not been negotiated under a negotiating framework established pursuant to old clause 6.5.9,
- and, but for this clause, that service would not otherwise be a *prescribed transmission service*.
- (e) Where a service is a *prescribed transmission service* by virtue of the operation of this clause, that service is taken not to be a *negotiated transmission service*.
- (f) For the purposes of this clause 11.6.11, an asset is, and is only, to be taken to be committed to be constructed if it satisfies the criteria which a project needs to satisfy to be a “committed project” for the purposes of the *regulatory test*.

1.4.3 Other definitions

- *GST* means a goods and services tax imposed under the *GST Act* and related legislation.
- *GST Act* means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- *Transend* means Transend Networks Pty Ltd (ABN 57 082 586 892).

1.5 REFERENCES

This *negotiating framework* should be read in conjunction with the following documents:

- *Transend's* Cost Allocation Methodology; and
- Chapters 5, 6A, 10 and 11 of the *Rules*.

2 AUTHORITY

A *Service Applicant* that initiates a negotiation under this framework must nominate a person that has authority to represent the *Service Applicant* in the negotiations and must provide *Transend* with contact details for that person. If the *Service Applicant* comprises more than one entity (for example, it is a partnership or joint venture), the nominated person must have authority to represent all of the relevant entities.

Transend will, in respect of each negotiation initiated under this framework, nominate a person or persons with authority to represent *Transend* in the negotiations and will provide the *Service Applicant* with contact details for that person or persons.

3 REQUIREMENT TO NEGOTIATE IN GOOD FAITH

Transend and the *Service Applicant* must negotiate in good faith the *terms and conditions of access* for provision of the *negotiated transmission service*.

4 CONSISTENCY WITH THE RULES

In the event of any inconsistency between this *negotiating framework* and any requirements of Chapters 4, 5 or 6A of the *Rules*, the requirements in the *Rules* will prevail.

5 COMPLIANCE WITH THE NEGOTIATING FRAMEWORK

Transend and any *Service Applicant* who is negotiating for the provision of a *negotiated transmission service* must comply with the requirements of this *negotiating framework* in accordance with its terms.

6 PERIOD COVERED BY NEGOTIATING FRAMEWORK

This proposed *negotiating framework* is to apply for the *regulatory control period* commencing on 1 July 2009 and ending on 30 June 2014.

7 PROVISION OF COMMERCIAL INFORMATION TO THE SERVICE APPLICANT

Transend must provide all such commercial information as a *Service Applicant* may reasonably require to enable that *Service Applicant* to engage in effective negotiation with *Transend* for the provision of the *negotiated transmission service*, including:

- (a) the cost information described in section 8 of this *negotiating framework*;
- (b) a description of the nature of the *negotiated transmission service* that is the subject of negotiation, including details of what *Transend* would provide to the *Service Applicant* as part of that service; and
- (c) the terms and conditions on which *Transend* would provide the *negotiated transmission service* to the *Service Applicant*.

For the avoidance of doubt, the commercial information referred to in this section which is required to be provided to a *Service Applicant*:

- (d) does not include confidential information provided to *Transend* by another person; and
- (e) may be provided subject to a condition that a *Service Applicant* must not provide any part of that commercial information to any other person without the consent of *Transend*.

8 COSTS OF PROVIDING NEGOTIABLE SERVICES

- (a) *Transend* will base the price for each *negotiated transmission service* on the costs incurred in providing that service, which will be determined according to *Transend's* approved *cost allocation methodology*.
- (b) As part of the negotiations for the provision of a *negotiated transmission service*, *Transend* must provide the *Service Applicant* with a written statement:
 - (i) identifying and informing the *Service Applicant* of the reasonable costs, and/or the increase or decrease in costs (as appropriate), of providing the *negotiated transmission service*; and
 - (ii) demonstrating to the *Service Applicant* that *Transend's* charges for providing the *negotiated transmission service* reflect those costs, and/or cost increment or decrement (as appropriate).

- (c) If *Transend's* costs of providing the *negotiated transmission service* change during the negotiation process, *Transend* must disclose the increase or decrease in costs to the *Service Applicant* and demonstrate that its charges have been amended accordingly.

9 PROVISION OF COMMERCIAL INFORMATION TO TRANSEND

The *Service Applicant* must provide all such commercial information as *Transend* may reasonably require to enable *Transend* to engage in effective negotiation with that *Service Applicant* for the provision of the *negotiated transmission service*.

For the avoidance of doubt, the commercial information referred to in this section which is required to be provided to *Transend*:

- (a) does not include confidential information provided to a *Service Applicant* by another person; and
- (b) may be provided subject to a condition that *Transend* must not provide any part of that commercial information to any other person without the consent of the *Service Applicant* which provided the information to *Transend*.

10 TIMEFRAME FOR NEGOTIATION

As noted in section 1.4.1 of this *negotiating framework*, *negotiated transmission services* comprise three types of services. Some of the *negotiated transmission services* are considered in Chapter 5 of the *Rules*; for example, section 5.3 of the *Rules* outlines the obligations of *TNSPs* and *Service Applicants* in relation to *negotiated connection services*.

The timeframe for negotiations relating to applications for *negotiated transmission services* under Chapter 5 of the *Rules* is addressed in section 10.1 and for other applications in section 10.2. However, the following points apply to all applications for *negotiated transmission services*:

- (a) any timeframes referred to in this section 10 will be suspended for the duration of any dispute.
- (b) *Transend* and the *Service Applicant* must use their reasonable endeavours to adhere to the timeframes referred to in this section 10.

10.1 APPLICATIONS FOR NEGOTIATED TRANSMISSION SERVICES UNDER CHAPTER 5 OF THE RULES

Where a *Service Applicant* applies for a *negotiated transmission service* under Chapter 5 of the *Rules*, the timeframes for commencing, progressing and finalising negotiations between *Transend* and the *Service Applicant* for provision of the service will be as set out in Chapter 5 of the *Rules*.

10.2 APPLICATIONS FOR NEGOTIATED TRANSMISSION SERVICES NOT UNDER CHAPTER 5 OF THE RULES

- (a) *Transend* and the *Service Applicant* must use their reasonable endeavours to commence negotiations within 15 *business days* of *Transend* receiving an appropriately defined written request for a *negotiated transmission service*.
- (b) If a request for a *negotiated transmission service* is not appropriately defined, *Transend* must notify the *Service Applicant* within 10 *business days* of receiving the request and advise the *Service Applicant* of the further information required.
- (c) *Transend* will use its reasonable endeavours to provide the *Service Applicant* with a written estimate of the anticipated reasonable direct expenses of processing the application and a tax invoice for this amount by the commencement of negotiations.
- (i) *Transend* may suspend negotiations if the *Service Applicant* fails to pay by the due date an invoice issued by *Transend* for its anticipated reasonable direct expenses of processing the application.

- (ii) Such a suspension of negotiations would cease once the *Service Applicant* has paid the outstanding tax invoice.
- (d) All parties to the negotiation must use their reasonable endeavours to:
 - (i) progress the negotiations in a manner which would enable completion; and
 - (ii) finalise the negotiations,
within 120 *business days* of *Transend's* receipt of an appropriately defined request for a *negotiated transmission service*, or such other period as agreed between the parties for a particular negotiation.
- (e) If *Transend* is required to consult with other *Transmission Network Users* in accordance with section 14(a) of this framework, *Transend* will use its reasonable endeavours to progress and complete the consultation process at the earliest practicable date. In these circumstances *Transend* will use its reasonable endeavours to ensure any consultation process with affected *Transmission Network Users* will be completed within the timeframe set out in section 10(d).

11 DISPUTE RESOLUTION

All disputes as to the *terms and conditions of access* for provision of *negotiated transmission services* are to be dealt with in accordance with Part K of Chapter 6A of the *Rules*.

12 GST

- (a) The costs, expenses and other amounts described in this *negotiating framework* are exclusive of *GST*.
- (b) Subject to *Transend's* invoice being in a form which satisfies the requirements of the *GST Act* for a valid tax invoice, a *Service Applicant* in receipt of a tax invoice must pay to *Transend* at the same time and in the same manner as specified in the invoice an additional amount on account of the amount of *Transend's* *GST* liability in respect of the services covered by the invoice.

13 PAYMENT OF TRANSEND'S EXPENSES

- (a) The *Service Applicant* is responsible for the payment of *Transend's* reasonable direct expenses incurred in processing the application to provide the *negotiated transmission service*.
- (b) *Transend* will use its reasonable endeavours to provide the *Service Applicant* with a written estimate of *Transend's* anticipated reasonable direct expenses of processing the application and a tax invoice for that amount by the timeframe outlined in section 10.1 or section 10.2 of this *negotiating framework*, as appropriate. During the negotiation process, *Transend* will also use its reasonable endeavours to keep the *Service Applicant* informed of any significant changes to the estimate of reasonable direct expenses.
- (c) All payments by the *Service Applicant* must be:
 - (i) for the amount of the tax invoice including *GST*;
 - (ii) electronically transferred into an account or accounts nominated by *Transend*;
 - (iii) transferred to the nominated account or accounts by 4.00 pm on the tenth *business day* after the date of the tax invoice or 3 *business days* after receipt of the tax invoice, whichever is the later;
 - (iv) without set-off or counterclaim; and
 - (v) without any deduction or withholding.
- (d) Following the end of each calendar month during the negotiation process, *Transend* will prepare a statement of the reasonable direct expenses incurred in processing the application

for the preceding calendar month. *Transend* will use its reasonable endeavours to issue the statement to the *Service Applicant* within 10 *business days* of the end of each calendar month.

- (e) When the aggregate value of the statements prepared under section 13(d) approaches 95 per cent of the aggregate value of invoices issued under section 13(b) and this section 13(e), *Transend* will review the anticipated remaining direct expenses to be incurred. If the sum of the anticipated remaining direct expenses to be incurred and the aggregate value of statements prepared exceeds the amount of payments received from the *Service Applicant* in relation to this negotiation, *Transend* will issue an invoice for the additional amount to the *Service Applicant*¹.
- (f) As soon as reasonably practical after the negotiations have concluded, *Transend* must determine what reasonable direct expenses it has incurred in the processing of the application.
 - (i) If the reasonable direct expenses incurred exceed the aggregate value of invoices previously issued then *Transend* will issue a tax invoice for the additional amount to the *Service Applicant*.
 - (ii) If the reasonable direct expenses incurred are less than the aggregate value of invoices previously issued then *Transend* will refund the difference to the *Service Applicant* within 10 *business days* of *Transend* determining that a refund is due.
- (g) Without derogation from any other remedy available, if the *Service Applicant* does not pay a tax invoice in the time prescribed by section 13(c)(iii) of this *negotiating framework*, the *Service Applicant* must pay interest calculated at the *bank bill rate* plus 2 percentage points per annum on the amount unpaid on a daily compounding basis until payment is received².

14 IMPACT ON THIRD PARTIES

- (a) *Transend* must determine the potential impact on other *Transmission Network Users* of the provision of the *negotiated transmission service*; and
- (b) *Transend* must notify and consult with any affected *Transmission Network Users* and ensure that the provision of the *negotiated transmission services* does not result in non-compliance with obligations in relation to other *Transmission Network Users* under the *Rules*.

15 MULTI-PARTY NEGOTIATIONS

- (a) This *negotiating framework* explicitly accommodates multi-party negotiations.
- (b) If necessary, negotiations can involve an agent authorised to represent a coalition of users.

16 TERMINATION OF NEGOTIATIONS

- (a) The *Service Applicant* that has initiated a negotiation for *negotiated transmission services* under this *negotiating framework* may, at any time, elect to terminate the negotiation by giving *Transend* written notice of its decision to do so.
- (b) *Transend* may terminate a negotiation under this framework by giving the *Service Applicant* written notice of its decision to do so where:

¹ As noted in section 13(b) of this *negotiating framework*, *Transend* will use its reasonable endeavours to keep the *Service Applicant* informed of any significant changes to the estimate of reasonable direct expenses.

² In cases of late payment, interest is determined by applying a 2 percentage point premium to the *bank bill rate* as this more closely replicates the actual cost of funds for both *Transend* and the *Service Applicant*. *Transend's* reasonable direct expenses to process an application include the cost of borrowing funds in the event that the *Service Applicant* fails to pay an invoice on time.

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- (i) *Transend* believes, on reasonable grounds, that the *Service Applicant* is not conducting the negotiation under this *negotiating framework* in good faith;
 - (ii) the *Service Applicant* consistently fails to comply with the requirements of this *negotiating framework*; or
 - (iii) 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 *Transend*.