

Negotiating Framework

For Provision of Negotiated
Transmission Service

1 July 2013 – 30 June 2018

As approved by the
Australian Energy Regulator on 30 April 2013



Proposed Negotiating Framework for Provision of Negotiated Transmission Service

1 July 2013 – 30 June 2018



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BACKGROUND

- A. Clause 6A.9.5 of the National Electricity Rules (“NER”) provides that:
- (a) Transmission Network Service Providers must prepare a document setting out the procedure to be followed during negotiations between that provider and any person who wishes to receive a Negotiated Transmission Service as to the terms and conditions of access for the provision of the service;
 - (b) the negotiating framework must comply with and be consistent with the applicable requirements of a transmission determination applying to the provider; and
 - (c) the negotiating framework must comply with and be consistent with the applicable requirements of clause 6A.9.5(c) which sets out the minimum requirements for a negotiating framework.
- B. ElectraNet is registered with AEMO as a Transmission Network Service Provider.
- C. This document has been prepared in fulfilment of ElectraNet’s obligations under clause 6A.9.5 of the NER to establish a negotiating framework.
- D. This document applies to ElectraNet and any Service Applicant who applies to receive a Negotiated Transmission Service.
- E. According to the terms of the NER, a Negotiated Transmission Service is any of the following services:
- (a) a shared transmission service that:
 - (1) 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
 - (2) 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;
 - (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.

ELECTRANET'S NEGOTIATING FRAMEWORK

1. Application of negotiating framework

- 1.1 This negotiating framework applies to ElectraNet and each Service Applicant who has made an application in writing to ElectraNet for the provision of a Negotiated Transmission Service.
- 1.2 ElectraNet and any Service Applicant who wishes to receive a Negotiated Transmission Service from ElectraNet should comply with the requirements of this negotiating framework.
- 1.3 The requirements set out in this negotiating framework are additional to any requirements or obligations contained in Chapters 4, 5 and 6A of the NER. In the event of any inconsistency between this negotiating framework and any other requirements in the NER, the requirements of the NER will prevail.
- 1.4 Nothing in this negotiating framework or in the NER will be taken as imposing an obligation on ElectraNet to provide any service to the Service Applicant.

2. Obligation to negotiate in good faith

- 2.1 ElectraNet and the Service Applicant should negotiate in good faith the terms and conditions of access for the provision by ElectraNet of the Negotiated Transmission Service sought by the Service Applicant.

3. Timeframe for commencing, progressing and finalising negotiations

- 3.1 Paragraphs 3.3 and 3.4 set out the timeframe for commencing, progressing and finalising negotiations in relation to:
 - 3.1.1 applications for Negotiated Transmission Services under Chapter 5 of the NER, and
 - 3.1.2 applications for Negotiated Transmission Services other than under Chapter 5 of the NER respectively.
- 3.2 The timeframes set out in paragraphs 3.3 and 3.4 may be suspended in accordance with paragraph 9.
- 3.3 Applications for Negotiated Transmission Services under Chapter 5 of the NER:
 - 3.3.1 Where the Negotiated Transmission Service is a service sought under Chapter 5, the specified time for commencing, progressing and finalising negotiations with a Service Applicant for the purposes of clause 6A.9.5 of the Rules is as set out in Chapter 5 of the NER.

- 3.3.2 ElectraNet and the Service Applicant shall use reasonable endeavours to adhere to the time periods referred to in paragraph 3.3.1 during the negotiation for the supply of the Negotiated Transmission Service.
- 3.4 Applications for Negotiated Transmission Services other than under Chapter 5 of the NER:
- 3.4.1 Where the application is in respect of a Negotiated Transmission Service other than a service sought under Chapter 5, the specified time for commencing progressing and finalising negotiations with a Service Applicant for the purposes of clause 6A.9.5 of the Rules is as set out in Table 1.
- 3.4.2 ElectraNet and the Service Applicant shall use reasonable endeavours to adhere to the time periods specified in Table 1.
- 3.4.3 The timeframes specified in Table 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 these timeframes 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 Transmission Service for the purposes of 6A.9.5(5) of the NER. The requirement in paragraph 3.4.2 applies to the last amended preliminary program.

Table 1

	Event	Indicative timeframe
A	Receipt of written application for a Negotiated Transmission Service	X
B	Parties meet to discuss a preliminary program with milestones for supply of the Negotiated Transmission Service that represent a reasonable period of time for commencing, progressing and finalising negotiations for the provision of the Negotiated Transmission Service	X + 20 business days
C	Parties finalise preliminary program, which may include, without limitation, milestones relating to: <ul style="list-style-type: none"> • the request and provision of commercial information; and • notification and consultation with AEMO and / or any affected Transmission Network Users. 	X + 30 business days
D	ElectraNet provides Service Applicant with an offer for the Negotiated Transmission Service;	X + 120 business days
E	Parties finalise negotiations	X + 160 business days

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- 3.5 Subject to paragraph 3.3 and 3.4, ElectraNet and the Service Applicant must, following a request by the Service Applicant, use their reasonable endeavours to:
- 3.5.1 hold a meeting within 20 Business Days of receipt of the application from 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;
 - 3.5.2 progress the negotiations for the provision of a Negotiated Transmission Service by ElectraNet such that the negotiations may be finalised in accordance with paragraph 3.5.1;
 - 3.5.3 adhere to any timetable established for the negotiation and to progress the negotiation in an expeditious manner; and
 - 3.5.4 finalise the negotiations for the provision of a Negotiated Transmission Service by ElectraNet within a time period agreed by the parties.
- 3.6 Notwithstanding paragraph 3.1, or any other provision of this negotiating framework, the timeframes set out in paragraphs 3.3 and 3.4:
- 3.6.1 do not commence until payment of the amount to ElectraNet pursuant to paragraph 11; and
 - 3.6.2 recommence if there is a material change in the Negotiated Transmission Network service sought by the Service Applicant, unless ElectraNet agrees otherwise.

4. Provision of Initial Commercial Information by Service Applicant

Obligation to provide Initial Commercial Information

- 4.1 Within a time agreed by the parties ElectraNet 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 ElectraNet to enable it to engage in effective negotiations with the Service Applicant in relation to the application and to enable ElectraNet to submit Commercial Information to the Service Applicant.
- 4.2 Subject to paragraphs 4.3 and 4.4, the Service Applicant must use its reasonable endeavours to provide ElectraNet with the Commercial Information requested by ElectraNet in accordance with paragraph 4.1 within 10 Business Days of that request, or within a time period as agreed by the parties.
- 4.3 Notwithstanding paragraph 4.1, the obligation under paragraph 4.1 is suspended if a dispute under this negotiating framework arises from the date of notification of that dispute until the conclusion of the dispute in accordance with paragraph 10.

Confidentiality Requirements – Commercial Information

- 4.4 For the purposes of this paragraph 4, Commercial Information does not include:
- 4.4.1 confidential information provided to the Service Applicant by another person; or
 - 4.4.2 information that the Service Applicant is prohibited, by law, from disclosing to ElectraNet.
- 4.5 Commercial Information may be provided by the Service Applicant subject to conditions including the condition that ElectraNet must not disclose the Commercial Information to any other person unless the Service Applicant consents in writing to the disclosure. The Service Applicant may require ElectraNet 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 ElectraNet.
- 4.6 A consent provided by the Service Applicant in accordance with paragraph 4.5 may be subject to the condition that the person to whom ElectraNet discloses the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

5. Provision of additional Commercial Information by the Service Applicant

Obligation to provide additional Commercial Information

- 5.1 ElectraNet may give a notice to the Service Applicant requesting the Service Applicant to provide ElectraNet with any additional Commercial Information that is reasonably required by ElectraNet to enable it to engage in effective negotiations with the Service Applicant in relation to the provision of a Negotiated Transmission Service or to clarify any Commercial Information provided pursuant to paragraph 4.
- 5.2 The Service Applicant must use its reasonable endeavours to provide ElectraNet with the Commercial Information requested by ElectraNet in accordance with paragraph 5.1 within 10 Business Days of the date of the request under paragraph 5.1, or such other period as agreed by the parties.

Confidentiality requirements

- 5.3 For the purposes of this paragraph 5, Commercial Information does not include:
- 5.3.1 confidential information provided to the Service Applicant by another person; or
 - 5.3.2 information that the Service Applicant is prohibited, by law, from disclosing to ElectraNet; and

- 5.4 Commercial Information may be provided by the Service Applicant subject to conditions including the condition that ElectraNet must not disclose the Commercial Information to any other person unless the Service Applicant consents in writing to the disclosure. The Service Applicant may require ElectraNet 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 ElectraNet.
- 5.5 A consent provided by the Service Applicant in accordance with paragraph 5.4 may be subject to the condition that the person to whom ElectraNet discloses the Commercial Information must enter into a separate confidentiality agreement with the Service Applicant.

6. Provision of Commercial Information by ElectraNet

Obligation to provide Commercial Information

- 6.1 ElectraNet shall provide the Service Applicant with all Commercial Information held by ElectraNet that is reasonably required by a Service Applicant to enable it to engage in effective negotiations with ElectraNet for the provision of a Negotiated Transmission Service within a timeframe agreed by the parties, including the following information:
- 6.1.1 a description of the nature of the Negotiated Transmission Service including what ElectraNet would provide to the Service Applicant as part of that service;
 - 6.1.2 the terms and conditions on which ElectraNet would provide the Negotiated Transmission Service to the Service Applicant;
 - 6.1.3 (a) the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the Negotiated Transmission Service to the Service Applicant; and
(b) demonstration to the Service Applicant that the charges for providing the Negotiated Transmission Service reflect those costs and/or the increase or decrease (as appropriate).

Confidentiality requirements

- 6.2 For the purposes of paragraph 6.1, Commercial Information does not include:
- 6.2.1 confidential information provided to ElectraNet by another person; or
 - 6.2.2 information that ElectraNet is prohibited, by law, from disclosing to the Service Applicant.

- 6.3 ElectraNet may provide the Commercial Information in accordance with paragraph 6.1 subject to relevant conditions including the condition that the Service Applicant must not disclose the Commercial Information to any other person unless ElectraNet consents in writing to the disclosure. ElectraNet may require the Service Applicant to enter into a confidentiality agreement with ElectraNet, on terms reasonably acceptable to both parties, in respect of Commercial Information provided to the Service Applicant.
- 6.4 A consent provided by ElectraNet in accordance with paragraph 6.3 may be subject to the condition that the person to whom the Service Applicant discloses the Commercial Information must enter into a separate confidentiality agreement with ElectraNet.

7. Provision of additional Commercial Information by ElectraNet

Obligation to provide additional Commercial Information

- 7.1 The Service Applicant may give a notice to ElectraNet requesting ElectraNet to provide the Service Applicant with any additional Commercial Information that is reasonably required by the Service Applicant to enable it to engage in effective negotiations with ElectraNet in relation to the provision of a Negotiated Transmission Service or to clarify any Commercial Information provided pursuant to paragraph 6.
- 7.2 ElectraNet must use its reasonable endeavours to provide the Service Applicant with the Commercial Information requested by the Service Applicant in accordance with paragraph 5.1 within 10 Business Days of the date of the request under paragraph 7.1, or such other period as agreed by the parties.

Confidentiality requirements

- 7.3 For the purposes of this paragraph 7, Commercial Information does not include:
- 7.3.1 confidential information provided to ElectraNet by another person; or
 - 7.3.2 information that ElectraNet is prohibited, by law, from disclosing to the Service Applicant; and
- 7.4 Commercial Information may be provided by ElectraNet subject to conditions including the condition that the Service Applicant must not disclose the Commercial Information to any other person unless ElectraNet consents in writing to the disclosure. ElectraNet may require the Service Applicant to enter into a confidentiality agreement, on terms reasonably acceptable to both parties, with ElectraNet in respect of any Commercial Information provided to the Service Applicant.

- 7.5 A consent provided by ElectraNet in accordance with paragraph 7.4 may be subject to the condition that the person to whom the Service Applicant discloses the Commercial Information must enter into a separate confidentiality agreement with ElectraNet.

8. Determination of impact on other Transmission Network Users and consultation with affected Transmission Network Users

- 8.1 ElectraNet should determine the potential impact on Transmission Network Users, other than the Service Applicant, of the provision of the Negotiated Transmission Service.
- 8.2 ElectraNet should notify and consult with any affected Transmission Network Users and ensure that the provision of the Negotiated Transmission Service does not result in non-compliance with obligations in relation to other Transmission Network Users under the NER.

9. Suspension of Timeframe for Provision of a Negotiated Transmission Service

- 9.1 The timeframes for negotiation of provision of a Negotiated Transmission Service as contained within this negotiating framework, or as otherwise agreed between the parties, are suspended if:
- 9.1.1 (a) within 15 Business Days of ElectraNet providing the Commercial Information to the Service Applicant pursuant to paragraph 6.1 or 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; and
- (b) within 15 Business Days of a Service Applicant providing the Commercial Information to ElectraNet pursuant to paragraph 4.1 or 5.1, ElectraNet does not formally accept that Commercial Information and the parties have agreed a date for the undertaking and conclusion of commercial negotiations.
- 9.1.2 a dispute in relation to the Negotiated Transmission Service has been notified to the AER under clause 6A.30.1, from the date of notification of that dispute to the AER until:
- (a) the withdrawal of the dispute under clause 6A.30.1(c) of the NER;
- (b) the termination of the dispute by the commercial arbitrator in accordance with clause 6A.30.5(d) or (e) of the NER; or

- (c) determination of the dispute by the commercial arbitrator under clause 6A.30.6(b) of the NER;
- 9.1.3 within 10 Business Days of ElectraNet requesting additional Commercial Information from the Service Applicant pursuant to paragraph 5, the Service Applicant has not supplied that Commercial Information;
- 9.1.4 without limiting paragraphs 9.1.1 to 9.1.3, 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;
- 9.1.5 ElectraNet has been required to notify and consult with any affected Transmission Network Users under paragraph 8.2 or AEMO at any time, from the date of notification to the affected Transmission Network Users or AEMO until the end of the time limit specified by ElectraNet for any affected Transmission Network Users or AEMO, or the receipt of such information from the affected Transmission Network Users or AEMO whichever is the later regarding the provision of the Negotiated Transmission Service.

10. Dispute Resolution

- 10.1 All disputes between the parties as to the terms and conditions of access for the provision of a Negotiated Transmission Service are to be dealt with in accordance with Part K of Chapter 6A of the NER.

11. Payment of ElectraNet's Costs

- 11.1 Prior to commencing negotiations, the Service Applicant shall pay an application fee to ElectraNet. Where the application is for a Negotiated Transmission Service under Chapter 5 of the NER, this payment is made in accordance with clause 5.3.3(c)(5) of the NER.
- 11.2 The application fee lodged pursuant to paragraph 11.1 will be deducted from the reasonable Costs incurred in processing the Service Applicant's application to ElectraNet for the provision of a Negotiated Transmission Service.
- 11.3 From time to time, ElectraNet may give the Relevant Service Applicant a notice setting out the reasonable Costs incurred by ElectraNet and the off-set of any amount applicable under paragraph 11.1.
- 11.4 If the aggregate of the Costs exceed the amount paid by the Service Applicant pursuant to paragraph 11.1, the Service Applicant must, within 20 Business Days of the receipt of a notice in accordance with paragraph 11.3, pay ElectraNet the amount stated in the notice.

- 11.5 ElectraNet may require the Service Applicant to enter into a binding agreement addressing conditions, guarantees and other matters in relation to the payment of on-going Costs.

12. Termination of Negotiations

- 12.1 The Service Applicant may elect not to continue with its application for a Negotiated Transmission Service and may terminate the negotiations by giving ElectraNet written notice of its decision to do so.
- 12.2 ElectraNet may terminate a negotiation under this framework by giving the Service Applicant written notice of its decision to do so where:
- 12.2.1 ElectraNet believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;
 - 12.2.2 the Service Applicant consistently fails to comply with the requirements of the negotiating framework;
 - 12.2.3 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 ElectraNet; and
 - 12.2.4 An act of Solvency Default occurs in relation to the Service Applicant.

13. Giving notices

- 13.1 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 5 Business Days' notice of a change of its address, a notice, consent, information, application or request is only given or made by that other party if it is delivered or posted to the latest address.

ElectraNet

Name: ElectraNet Pty Limited
Address: 52-55 East Terrace, Adelaide, SA, 5000

Service Applicant

Name: Service Applicant
Address: The nominated address of the Service Applicant provided in writing to ElectraNet as part of the application

Time notice is given

- 13.2 A notice, consent, information, application or request is to be treated as given or made at the following time:
- 13.2.1 if it is delivered, when it is left at the relevant address;
 - 13.2.2 if it is sent by post, 2 Business Days after it is posted;
 - 13.2.3 if sent by facsimile transmission, on the day the transmission is sent (but only if the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission); or
 - 13.2.4 if sent by email once acknowledged as received by the addressee.
- 13.3 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.

14. Definitions and interpretation

Definitions

- 14.1 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 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 Transmission Service;
- financial information relevant to the application for a Negotiated Transmission Service; and
- details of an application's compliance with any law, standard, NER or guideline.

Costs means any costs or expenses incurred by ElectraNet in complying with this negotiating framework or otherwise advancing the Service Applicant's request for the provision of a Negotiated Transmission Service.

ElectraNet means ElectraNet Pty Limited, ABN 41 094 482 416.

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.

Interpretation

- 14.2 In this document, unless the context otherwise requires:
- 14.2.1 terms defined in the NER have the same meaning in this negotiating framework;
 - 14.2.2 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - 14.2.3 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
 - 14.2.4 a reference to a paragraph, part, schedule or attachment is a reference to a paragraph, part, schedule or attachment of or to this document unless otherwise stated;
 - 14.2.5 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency; and
 - 14.2.6 a covenant or agreement on the part of two or more persons binds them jointly and severally.