



ENDEAVOUR ENERGY'S NEGOTIATING FRAMEWORK

Prepared by Network Regulation

2 June 2008

1.0 ENDEAVOUR ENERGY'S NEGOTIATING FRAMEWORK

The Transitional Rules recognise that customers may require a service that is a *direct control service* but which has components that are more appropriately negotiated. To facilitate fair negotiation between the DNSP and customers for those components, the Transitional Rules require a DNSP to provide a basis for negotiating in the *negotiating framework*.

This document summarises the key requirements of the Transitional Rules that relate to the *negotiating framework*. It indicates which components of Endeavour Energy's *direct control services* Endeavour Energy proposes to be Negotiable Components for the *2009 regulatory control period* and sets out Endeavour Energy's *negotiating framework*.

1.1 Summary

Endeavour Energy offers *direct control services* to its customers. The Transitional Rules provide the option to provide customers with tailored *direct control services* to take account of their specific needs during the *2009 regulatory control period*. Endeavour Energy believes that customers may wish to take advantage of the opportunity during that period. Therefore, in accordance with the Transitional Rules, Endeavour Energy has set out the Negotiable Components and a *negotiating framework* for those services.

1.2 Regulatory information requirements

The Transitional Rules requirements are summarised in Box 19.1.

Box 19.1: Negotiating framework regulatory information requirements

Part DA of the Transitional Rules deals with Negotiable Components for *direct control services*.

Clause 6.7A of the Transitional Rules allows the AER to determine that some components of *direct control services* are Negotiable Components.

Clause 6.7A.1 of the Transitional Rules sets out the principles relating to access to negotiable components.

Clause 6.7A.5 of the Transitional Rules requires the preparation of the *negotiating framework* that the DNSPs must comply with (clause 6.7A.2). It also stipulates the requirements of the *negotiating framework*.

This document is intended to provide the information to address the Transitional Rules requirements.

1.3 Negotiable Components

For the purposes of the *2009 regulatory control period*, a Negotiable Component is a particular component :

- (a) of a *direct control service* provided by Endeavour Energy;
or
- (b) which relates to the terms or conditions on which a *direct control service* or a component of the *direct control service* is provided by Endeavour,

which the AER has determined to be a negotiable component in a distribution determination pursuant to 6.7A(a) of the Rules but does not include *negotiated distribution services* or unregulated *distribution services*.

Endeavour Energy proposes that the following components of *direct control services* be classified as the Negotiable Components of *direct control services* with respect to the 2009 regulatory control period pursuant to clause 6.8.2(7) of the Transitional Rules:

- (a) a *direct control service* that exceeds the network performance requirements which that *direct control service* is required to meet under any jurisdictional electricity legislation;
- (b) a *direct control service* that, except to the extent that the network performance requirements which that *direct control 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;
- (c) a *direct control service* that is a *connection service* provided to serve a Distribution Network User or group of Distribution Network Users, at a single distribution 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
- (d) the terms and conditions in respect of which any of the above are provided.

1.4 Negotiating framework

Endeavour Energy proposes the following negotiating framework:

1. Application of negotiating framework

- 1.1 This negotiating framework applies to Endeavour Energy and each Service Applicant who has made an application in writing to Endeavour Energy for the provision of a Negotiable Component
- 1.2 Endeavour Energy and any Service Applicant who wishes to receive a Negotiable Component from Endeavour Energy must 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 the Transitional Rules. In the event of any inconsistency between this negotiating framework and any requirements in the Transitional Rules, the requirements of the Transitional Rules will prevail.
- 1.4 Nothing in this negotiating framework or in the Transitional Rules will be taken as imposing an obligation on Endeavour Energy to provide any service to the Service Applicant.

2. Obligation to negotiate in good faith

- 2.1 Endeavour Energy and the Service Applicant must negotiate in good faith the terms and conditions of access for the provision by Endeavour Energy of the Negotiable Component sought by the Service Applicant.

3. Timeframe for commencing, progressing and finalising negotiations

- 3.1 Paragraph 3.4 sets out the timeframe for commencing, progressing and finalising negotiations in relation to applications for Negotiable Components under the Transitional Rules.
- 3.2 The timeframes set out in paragraph 3.4 may be suspended in accordance with paragraph 8.
- 3.3 Endeavour Energy and the Service Applicant must use reasonable endeavours to adhere to the time periods specified in paragraph 3.4 during the negotiation for the supply of the Negotiable Component.
- 3.4 The preliminary program finalised under C 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 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 Negotiable Component for the purposes of 6.7A.5(c)(5) of the Transitional Rules. The requirement in paragraph 3.3 applies to the last amended preliminary program.

Table 1

	Event	Indicative timeframe
A	Receipt of written application for a Negotiable Component.	X
B	Parties meet to discuss a preliminary program with milestones for supply of the Negotiable Component that represent a reasonable period of time for commencing, progressing and finalising negotiations for the provision of the Negotiable Component.	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 NEMMCO and/or any affected Distribution Network Users. 	X + 30 business days
D	Endeavour Energy provides Service Applicant with an offer for the Negotiable Component	X + 120 business days
E	Parties finalise negotiations	X + 160 business days

3.5 Subject to paragraphs 3.2 to 3.4, Endeavour Energy and the Service Applicant must, following a request for a Negotiable Component, use their reasonable endeavours to:

- 3.5.1 hold a meeting within 20 Business Days of receipt of the application, 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 Negotiable Component by Endeavour Energy such that the negotiations may be finalised in accordance with the timetable referred to in 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 Negotiable Component by Endeavour Energy 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 3.2 to 3.4:

- 3.6.1 do not commence until payment of the amount to Endeavour Energy pursuant to paragraph 10;
- 3.6.2 recommence if there is a material change in the Negotiated Distribution Service sought by the Service Applicant, unless Endeavour Energy agrees otherwise.

3.7 At the conclusion of the negotiations between Endeavour Energy and the Service Applicant, whether by way of agreed outcome or termination pursuant to clause 11 of this Negotiating Framework, Endeavour Energy must publish the results of the negotiations on its website.

4. Provision of initial commercial information by Service Applicant

4.1 Endeavour Energy must request the Service Applicant to provide it with the Commercial Information held by the Service Applicant that Endeavour reasonably requires to enable it to engage in effective negotiations with the Service Applicant in relation to the application and to enable Endeavour Energy to submit Commercial Information to the Service Applicant. Endeavour Energy must use its reasonable endeavours to make the request within the period of time agreed by the parties pursuant to clause 3.

4.2 The Service Applicant must provide Endeavour Energy with the Commercial Information held by it which Endeavour Energy reasonably requires to engage in effective negotiations with the Service Applicant in relation to the application. Subject to paragraphs 4.3 and 4.4, the Service Applicant must use its reasonable endeavours to provide Endeavour Energy with the Commercial

Information requested by Endeavour Energy 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 as at the date of notification of a dispute if a dispute under this negotiating framework arises until conclusion of the dispute in accordance with paragraph 9.

Confidentiality requirements – Commercial Information

- 4.4 Commercial Information may be provided by the Service Applicant subject to the condition that Endeavour Energy 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 Endeavour Energy 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 Endeavour Energy.
- 4.5 A consent provided by the Service Applicant in accordance with paragraph 4.4 may be subject to the condition that the person to whom Endeavour Energy 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 Endeavour Energy may give a notice to the Service Applicant requesting the Service Applicant to provide Endeavour Energy with any additional Commercial Information that is reasonably required by Endeavour Energy to enable it to engage in effective negotiations with the Service Applicant in relation to the provision of a Negotiable Component or to clarify any Commercial Information provided pursuant to paragraph 4.
- 5.2 The Service Applicant must use its reasonable endeavours to provide Endeavour Energy with the Commercial Information requested by Endeavour Energy 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.
- 5.3 The provision of additional Commercial Information by the Service Applicant pursuant to clause 5.2 is subject to the provisions in clauses 4.4 and 4.5 above.

6. Provision of Commercial Information by Endeavour Energy

Obligation to provide commercial information

- 6.1 Endeavour Energy must provide the Service Applicant with all Commercial Information held by Endeavour Energy that is reasonably required by a Service Applicant to enable it to engage in effective negotiations with Endeavour Energy for the provision of a Negotiable Component within a timeframe agreed by the parties, including the following information:
- 6.1.1 a description of the nature of the Negotiable Component including what Endeavour Energy would provide to the Service Applicant as part of that service;
 - 6.1.2 the terms and conditions on which Endeavour Energy would provide the Negotiable Component to the Service Applicant;
 - 6.1.3 the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the Negotiable Component to the Service Applicant which demonstrate to the Service Applicant that the charges for providing the Negotiable Component reflect those costs and/or the cost increment or decrement (as appropriate).
- 6.2 For the purpose of paragraph 6.1.3, Endeavour Energy must have appropriate arrangements for the assessment and review of the charges and the basis on which they are made.

Confidentiality requirements

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

7. Determination of impact on other Distribution Network Users and consultation with affected parties

- 7.1 Endeavour Energy must determine the potential impact on Distribution Network Users, other than the Service Applicant, of the provision of the Negotiable Component.
- 7.2 Endeavour Energy must notify and consult with any affected Distribution Network Users and ensure that the provision of the Negotiable Component does not result in non-compliance with obligations in relation to other Distribution Network Users under the Rules.

8. Suspension of timeframe for provision of Negotiable Component

- 8.1 The timeframes for negotiation of provision of a Negotiable Component as contained within this negotiating framework, or as otherwise agreed between the parties, are suspended if:
- 8.1.1 within 15 Business Days of Endeavour Energy providing the Commercial Information to the Service Applicant pursuant to paragraph 6.1, 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;
 - 8.1.2 a dispute in relation to the Negotiable Component has been notified to Endeavour Energy or the Service Applicant (as applicable) in accordance with Chapter 8 of the Rules, from the date of that notification until the date of withdrawal of the dispute or resolution of the dispute under Chapter 8 of the Rules (as applicable);
 - 8.1.3 within 10 Business Days of Endeavour Energy requesting additional Commercial Information from the Service Applicant pursuant to paragraph 5, the Service Applicant has not supplied that Commercial Information;
 - 8.1.4 without limiting paragraphs 8.1.1 to 8.1.3, if either of the parties does not promptly meet any of its obligations as required by this negotiating framework or as otherwise agreed by the parties;
 - 8.1.5 Endeavour Energy has been required to notify and consult with any affected Distribution Network Users under paragraph 7.2, or NEMMCO at any time regarding the provision of the Negotiable Component. In those circumstances, the time frame for the negotiations will be suspended from the date of notification to the affected Distribution Network Users or NEMMCO until:
 - (a) the end of the time limit specified by Endeavour Energy for any affected Distribution Network Users or NEMMCO; or
 - (b) the receipt of information from the affected Distribution Network Users or NEMMCO regarding the provision of the Negotiable Component, whichever is the later.

9. Dispute resolution

- 9.1 All disputes between the parties as to the terms and conditions of access for the provision of a Negotiable Component are to be dealt with in accordance with the NEL and Chapter 8 of the Rules.

10. Payment of Endeavour Energy's Costs

- 10.1 Prior to commencing negotiations, the Service Applicant must pay an application fee to Endeavour Energy. The fee must be no more than Endeavour Energy's reasonable estimate of its costs in dealing with the application. The payment is to be made in accordance with clause 6.7A.5(c)(5) of the Rules.
- 10.2 The application fee lodged pursuant to paragraph 10.1 will be deducted from the reasonable direct Costs incurred in processing the Service Applicant's application to Endeavour Energy for the provision of a Negotiable Component.
- 10.3 From time to time, Endeavour Energy may give the Relevant Service Applicant a notice setting out the reasonable direct Costs incurred by Endeavour Energy and the off-set of any amount applicable under paragraph 10.1.
- 10.4 If the aggregate of the reasonable direct Costs exceed the amount paid by the Service Applicant pursuant to paragraph 10.1, the Service Applicant must, within 20 Business Days of the receipt of a notice in accordance with paragraph 10.3, pay Endeavour Energy the amount stated in the notice. If the aggregate of its actual reasonable direct Costs is less than the amount paid by the Service Applicant pursuant to paragraph 10.1, Endeavour Energy must promptly notify the Service Applicant and must within 20 Business Days of the date of that notice refund to the Service Applicant the amount by which the application fee paid by the Service Applicant under paragraph 10.1 exceeds Endeavour's actual aggregate reasonable direct Costs.
- 10.5 Endeavour Energy 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.

11. Termination of negotiations

- 11.1 The Service Applicant may elect not to continue with its application for a Negotiable Component and may terminate the negotiations by giving Endeavour Energy written notice of its decision to do so.
- 11.2 Endeavour Energy may terminate a negotiation under this framework by giving the Service Applicant written notice of its decision to do so where:
 - 11.2.1 Endeavour Energy believes on reasonable grounds that the Service Applicant is not conducting the negotiation under this negotiating framework in good faith;
 - 11.2.2 Endeavour Energy reasonably believes that the Service Applicant will not acquire any Negotiable Component;
 - 11.2.3 An act of Solvency Default occurs in relation to the Service Applicant.

12. Giving notices

- 12.1 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.

Endeavour Energy

Name: Endeavour Energy
Address: 51 Huntingwood Drive, Huntingwood NSW 2148 or
PO Box 6366, Blacktown NSW 2148

Service Applicant

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

Time notice is given

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

12.2.1 if it is delivered, when it is left at the relevant address;

12.2.2 if it is sent by post, 2 Business Days after it is posted;

12.2.3 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

12.2.4 if sent by email once acknowledged as received by the addressee.

12.3 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.

13. Definitions and interpretation

Definitions

13.1 In this document the following definitions apply:

Business Day means a day on which all banks are open for business generally in Sydney, New South Wales.

Commercial Information includes, but is not limited to, 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 Negotiable Component;
- financial information relevant to the application for a Negotiable Component;
- details of an application's compliance with any law, standard, NER or guideline,

but does not include:

- confidential information provided by another person to either:
 - the Service Applicant; or
 - Endeavour Energy;
- information that the Service Applicant is prohibited, by law, from disclosing to Endeavour Energy; or
- information that Endeavour Energy is prohibited, by law, from disclosing to the Service Applicant.

Costs means any costs or expenses incurred by Endeavour Energy in complying with this negotiating framework or otherwise advancing the Service Applicant's request for the provision of a Negotiable Component.

Endeavour Energy means Endeavour Energy Australia, ABN 59 253 130 878.

Negotiable Component has the meaning given in clause 1.3.

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

13.2 In this document, unless the context otherwise requires:

- 13.2.1 terms defined in the Transitional Rules have the same meaning in this negotiating framework;
- 13.2.2 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;
- 13.2.3 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 13.2.4 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;
- 13.2.5 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency; and
- 13.2.6 a covenant or agreement on the part of two or more persons binds them jointly and severally.