

Draft Decision

Murraylink Transmission Determination 2023 to 2028

(1 July 2023 to 30 June 2028)

Attachment 12 Negotiated services

September 2022

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Note

This attachment forms part of the AER’s draft decision on Murraylink’s 2023–28 transmission determination. It should be read with all other parts of the draft decision.

The draft decision includes the following documents:

Overview

Attachment 1 – Maximum allowed revenue

Attachment 2 – Regulatory asset base

Attachment 3 – Rate of return

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 8 – Efficiency benefit sharing scheme

Attachment 9 – Capital expenditure sharing scheme

Attachment 10 – Service target performance incentive scheme

Attachment 11 – Pricing methodology

Attachment 12 – Negotiated services

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12 Negotiated services

Our transmission determination imposes control over revenues that a transmission network service provider (TNSP) can recover from its provision of prescribed transmission services. But we do not determine the terms and conditions of negotiated transmission services. Under the National Electricity Rules (NER), negotiated services are provided under an agreement or as a result of a determination of a commercial arbitrator. In Victoria, these processes are facilitated by:

- a negotiating framework
- negotiated transmission service criteria (NTSC).

Murraylink must prepare a negotiating framework that sets out procedures for negotiating the terms and conditions of access to a negotiated transmission service in Victoria.

The NTSC, which we develop in consultation with stakeholders, set out criteria that a TNSP must apply in negotiating those terms and conditions, including the prices and access charges for negotiated transmission services. They also contain the criteria that a commercial arbitrator must apply to resolve disputes about such terms and conditions and/or charges.

This attachment sets out our considerations and draft decision on Murraylink’s proposed negotiating framework and the NTSC.

These requirements apply only to Victoria due to its unique transmission arrangements. This is because Victoria is the only National Electricity Market (NEM) jurisdiction in which the Australian Energy Market Operator (AEMO) is authorised to exercise declared network functions.¹ Where such arrangements apply, there is a separation of ownership of the declared transmission system from certain aspects of the operation and control of that system. The framework for connections to the transmission network in Victoria is therefore different to the rest of the NEM.

The NER previously required all TNSPs in the NEM to submit negotiating frameworks for AER approval as part of their revenue determination. In 2017, the AEMC removed this requirement from the NER for all NEM jurisdictions, except for Victoria (2017 rule change).² For NEM jurisdictions, including South Australia, the AEMC elevated to the NER the principles that will underpin negotiations between connecting parties and incumbent TNSPs to the NER.³

In Victoria, clause 11.98.8 preserves chapter 6A of version 109 of the NER, which contains the provisions regarding negotiating frameworks and the NTSC.⁴

¹ For more information regarding AEMO’s declared network functions, see National Electricity Law, s. 50C

² NER, clause 11.98.8.

³ AEMC, *Rule Determination: National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2017*, 23 May 2017, pp. 198–203.

⁴ See also AEMC, *Rule Determination: National Electricity Amendment (Transmission Connection and Planning Arrangements) Rule 2017*, 23 May 2017, p. 75

12.1 Draft decision

Our draft decision is to approve Murraylink's proposed negotiating framework (section 12.4 sets out the reasons for our draft decision).⁵

We will also apply the NTSC we published for consultation in February 2022 to Murraylink (section 12.5 includes the NTSC and sets out the reasons for our draft decision).⁶

12.2 Murraylink's proposal

Murraylink's proposed negotiating framework for the 2023–28 regulatory control period is largely identical to the negotiating framework we approved for the 2018–23 period. Differences are minor only (such as updating references to the years of the upcoming regulatory control period) and do not alter the substance of the negotiating framework.

12.3 Assessment approach

In reaching our draft decision, we considered whether:

- Murraylink's proposed negotiating framework specified the minimum requirements in clause 6A.9.5(c) of the NER.⁷
- the NTSC reflect the negotiated transmission service principles in clause 6A.9.1 of the NER.⁸

12.4 Reasons for draft decision—Negotiating framework

We approve Murraylink's proposed negotiating framework because it specifies and meets the minimum NER requirements.⁹ These include, among other things, a requirement for Murraylink (and the service applicant) to negotiate in good faith, and that all disputes between the parties will be dealt with in accordance with the NER.¹⁰

Table 12.1 summarises our assessment of Murraylink's proposed negotiating framework. It shows that each of the requirements under the NER for a negotiating framework is satisfactorily addressed.

Table 12.1 AER's assessment of Murraylink's proposed negotiating framework¹¹

NER requirements	AER assessment
Requirement for Murraylink and the applicant for a negotiated transmission service to negotiate in good faith—clause 6A.9.5(c)(1)	Paragraph 2 of Murraylink's proposed negotiating framework complies with this requirement.

⁵ Murraylink, *Negotiating framework*, January 2022.

⁶ AER, *Negotiated transmission service criteria for Murraylink transmission determination: Regulatory control period 2023–28: Call for submissions*, February 2022.

⁷ NER (version 109), cl. 6A.9.5(b)(2); 6A.14.3(f).

⁸ NER (version 109), cl. 6A.9.4(b).

⁹ NER (version 109), cl. 6A.9.5(c).

¹⁰ NER (version 109), Part K Commercial arbitration for disputes about terms and conditions of access for prescribed and negotiated transmission services, cl. 6A.30 to 6A.30.8.

¹¹ Murraylink, *Negotiating framework*, January 2022.

NER requirements	AER assessment
Requirement for Murraylink to provide all such commercial information reasonably required to enable the applicant of a negotiated transmission service to engage in effective negotiations—clause 6A.9.5(c)(2)	Paragraph 6 of Murraylink’s proposed negotiating framework complies with this requirement.
Requirement for Murraylink to identify and inform the negotiated transmission service applicant of the reasonable costs of providing the negotiated service, and to demonstrate that charges reflect costs—clause 6A.9.5(c)(3)	Paragraphs 6 and 10 of Murraylink’s proposed negotiating framework complies with this requirement.
Requirement for a negotiated transmission service applicant to provide all such commercial information reasonably required to enable Murraylink to engage in effective negotiation—clause 6A.9.5(c)(4)	Paragraphs 4 and 5 of Murraylink’s proposed negotiating framework comply with this requirement.
Requirement to specify a reasonable period of time for commencing, progressing and finalising negotiations; and a requirement for each party to use their reasonable endeavours to adhere to those time periods during the negotiation—clause 6A.9.5(c)(5)	Paragraph 3 of Murraylink’s proposed negotiating framework complies with this requirement.
Requirement to specify a process for disputes to be dealt with in accordance with the relevant provisions for dispute resolution —clause 6A.9.5(c)(6)	Paragraph 9 of Murraylink’s proposed negotiating framework complies with this requirement.
Requirement to specify arrangements for the payment of Murraylink’s reasonable direct expenses incurred in processing the application to provide the negotiated transmission service—clause 6A.9.5(c)(7)	Paragraph 10 of Murraylink’s proposed negotiating framework complies with this requirement.
Requirement for Murraylink to determine the potential impact of the provision of a negotiated transmission service on other network users—clause 6A.9.5(c)(8)	Paragraph 7 of Murraylink’s proposed negotiating framework complies with this requirement.
Requirement for Murraylink to notify and consult with any affected network user and ensure the negotiated transmission service does not result in non-compliance with obligations in relation to other network users under the NER—clause 6A.9.5(c)(9)	Paragraph 7 of Murraylink’s proposed negotiating framework complies with this requirement.

Source: AER analysis.

12.5 Negotiated transmission service criteria

Our draft decision is that the NTSC as reproduced in section 12.5.1 should apply to Murraylink for the 2023–28 regulatory control period. This is because these adopt the negotiated transmission service principles as its criteria.¹²

This NTSC is identical to the NTSC that have applied in Victoria since July 2014 (including for AEMO and AusNet Services).

In February 2022, we published the NTSC in section 12.5.1 for stakeholder consultation.¹³ We received no submissions.

¹² NER (version 109), cl. 6A.9.1 and 6A.9.4(b).

¹³ AER, *Negotiated transmission service criteria for Murraylink transmission determination: Regulatory control period 2023–28: Call for submissions*, February 2022.

12.5.1 The NTSC

National Electricity Objective

1. The terms and conditions of access for a negotiated transmission 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 transmission service must be fair, 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 negotiated transmission services, particularly any exclusions and limitations of liability and indemnities, must not be unreasonably onerous. Relevant considerations include the allocation of risk between the TNSP and the other party, the price for the negotiated transmission service and the cost to the TNSP of providing the negotiated service.
4. The terms and conditions of access for a negotiated transmission 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 of a negotiated transmission service must reflect the cost that the TNSP has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the Cost Allocation Methodology.
6. Subject to criteria 7 and 8, the price for a negotiated transmission service must be at least equal to the avoided cost of providing that service but no more than the cost of providing it on a stand-alone basis.
7. If the negotiated transmission service is a shared transmission service that:
 - a) exceeds any network performance requirements which it is required to meet under any relevant electricity legislation; or
 - b) 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 transmission service which meets network performance requirements must reflect the TNSP's incremental cost of providing that service (as appropriate).

8. For shared transmission services, the difference in price between a negotiated transmission service that does not meet or exceed network performance requirements and a service that meets those requirements should reflect the TNSP's avoided costs. Schedule 5.1a and 5.1 of the NER or any relevant electricity legislation must be considered in determining whether any network service performance requirements have not been met or exceeded.
9. The price for a negotiated transmission service must be the same for all Transmission Network Users. The exception is if there is a material difference in the costs of providing the negotiated transmission service to different Transmission Network Users or classes of Transmission Network Users.
10. The price for a negotiated transmission 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 such cases the 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 transmission service must be such as to enable the TNSP to recover the efficient costs of complying with all regulatory obligations associated with the provision of the negotiated transmission service.

Criteria for access charges

Access charges

12. Any access charges must be based on the costs reasonably incurred by the TNSP in providing Transmission Network User access. This includes the compensation for foregone revenue referred to in clause 5.4A(h) to (j) of the NER and the costs that are likely to be incurred by a person referred to in clause 5.4A(h) to (j) of the NER (as appropriate).

Glossary

Term	Definition
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NTSC	National Transmission Service Criteria
TNSP	Transmission network service provider
