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Dear Mr Skinner

I am writing in response to your 'initial disclosure notice' of 15 July 2014, in which the AER has proposed to publicly disclose some of our confidential information submitted as part of our Regulatory Proposals on 30 May 2014.

We would like to note that part of the AER's initial disclosure notice identifies the disclosure of information that was submitted by Endeavour Energy and Essential Energy. We presume this was included in the notice to Ausgrid for the AER's administrative convenience and that Ausgrid is not expected to reply to the notice for Endeavour Energy and/or Essential Energy. Therefore, this submission relates to the relevant confidential information submitted by Ausgrid.

We understand that the AER is of the view publicly disclosing our confidential information will create benefits that outweigh the detriment to Ausgrid and its suppliers caused by the disclosure under section 28ZB(1)(b) of the National Electricity Law. For one piece of confidential information, customer bills, the AER has not identified any detriment under section 28ZB(1)(a).

Ausgrid's view is that it has an obligation to ensure confidential information is adequately protected, particularly on behalf of our suppliers who would be adversely affected by the disclosure of certain information. We make this view clear in our procurement policy, which assures suppliers that we will deal with them according to the principles of probity:

Maintaining confidentiality of information - Sensitive information such as proposals and proponent's pricing structures are kept confidential in order to protect the integrity of the procurement process.¹

As a result of our obligation to suppliers we note that this submission provides an opposing view to the AER's view. That is, our submission outlines the reasons why the benefits from disclosure are not substantial and do not outweigh the detriment caused to Ausgrid and its suppliers by disclosure. We also note that public lighting charges are not sensitive to the materials prices the AER proposes to disclose and that the proposed disclosure is not required to achieve the AER's stated objectives.

If you have any enquiries about this please contact Matthew McQuarrie on (02) 9269 4353.

Regards,


Joe Pizzinga
General Manager – Finance & Compliance

¹ Ausgrid, Procurement Policy Version 1.5, February 2014, page 6

Attachment – submission on initial disclosure notice

AER's stated objectives

The initial disclosure notices provide two reasons for the proposed disclosure:

Disclosure of the information will increase stakeholder confidence in the quality of the information the AER relies on in making decisions. Disclosure will also allow stakeholders to comment on the efficiency of the inputs and assumptions used and improve their understanding of how their charges have been calculated.

The first reason stated is to increase stakeholder's confidence in the quality of information the AER relies on in making decisions. We do not believe the quality of information has been called into question and that the quality of information can be measured by the AER and taken into account in the AER's draft determination and final determination without disclosing the confidential information.

During the last determination process, the AER measured the reliability very effectively by requesting invoices and contracts that identified the amounts we paid for these items. In our current regulatory proposal, we have also included tender documents to show how we procure the particular items and the AER can review our process and determine that it was undertaken in a competitive manner. The AER could, without disclosing confidential information, undertake more rigorous review by seeking an independent audit of the information in a similar way the AER has required an audit of information provided as part of our responses to the various regulatory information notices issued.

If the AER undertook these review processes and provided a written account of the outcomes, stakeholders would be more confident about the quality of the information.

The second reason was to allow stakeholders to comment on the efficiency of the inputs and assumptions and improve their understanding of how prices are calculated. Our regulatory proposal provides documentation about our tender processes and procurement activity, which was provided to demonstrate to the AER that the input prices represented the outcomes of competitive tenders. The above independent audit could, in addition to comment on the quality of the information, provide assurance that the procurement processes have resulted in efficient prices, which the AER could include in its determinations and its stakeholder engagement activities.

Our Regulatory Proposal includes non-confidential versions with all calculations working in Microsoft excel formats. We have used dummy numbers in place of confidential information so that all stakeholders can understand how public lighting charges are calculated. We do not think any additional information is required to be disclosed so the calculations can be understood. The main issue in understanding the calculation relates to the complicated nature of the models that are a product of continuing the control mechanism that was established under the last determination.

In relation to our assumptions, we cannot identify which assumptions have been submitted on a confidential basis. We would like to understand the assumptions that the AER is concerned about as we believe our non-confidential documents describe all assumptions used to develop the public lighting prices.

We also note that the AER refers to 'stakeholders', which could be a range of parties from public lighting customers (local Councils and other smaller public lighting customers), suppliers, the general public or other parties. We do not think the general public or suppliers are the intended stakeholders as they would be unlikely to be interested in how public lighting prices are calculated beyond what the AER will include in its determination. This seems to be confirmed in the initial disclosure notice which attributes benefits of disclosure to public lighting customers not stakeholders. We strongly believe that the 'publish everything on the website' approach is not reasonable.

As the AER objective relates to targeted stakeholders we believe the proposed public disclosure of information on the AER's website is not appropriate. If the AER proceeds with its proposed disclosure, it should ensure the nature of the disclosure is appropriate.

Benefits of the proposed disclosure

The initial disclosure notice identifies two issues where it is of the view that benefits outweigh the costs and one issue where the AER is of the view that there is no detriment from disclosure:

The AER acknowledges that the disclosure of the information could affect suppliers, but considers the public benefit to outweigh that detriment. Such benefits include greater transparency in regulatory decision-making, increased scope for stakeholders to meaningfully engage with the AER and Ausgrid. With more information, public lighting customers will also be able to make better decisions about services.

Where information relates to customer charges, the AER does not see any detriment from disclosure.

For information on poor performing luminaires, any detriment associated with disclosure would be outweighed by the public benefit. Among other things, disclosing information on call out rates would allow customers to make better decisions about replacement luminaires.

The initial disclosure notice appears to provide general examples about the 'public benefits', rather than providing an exhaustive list. This submission addresses the examples provided in the notice but we would welcome further opportunity to comment on other benefits that the AER may have identified but did not specify in the notice.

The increased transparency in regulatory decision-making could be achieved, as outlined above, with more rigorous review by the AER than has been undertaken in past determinations. Further, Ausgrid has structured its Regulatory Proposal, to the extent possible, to provide as much information on a non-confidential basis. We have published the working models and other documentation to allow customers to make meaningful submissions. For example, a customer can use these models and apply input prices that they think are efficient to calculate the public lighting charges to increase their engagement and ability to make effective submissions to the AER. This could even provide an effective method to test or verify the input prices we have applied in the model.

As the current models were developed at the AER's direction during the 2009 to 2014 determination, the AER could hold customer engagement forums to educate consumers on the workings of the models and the rationale for their application. This would also help customers understand how the prices were calculated without the detriment caused by disclosure.

Such engagement activities would help customers have more confidence in the AER's decisions. In a similar forum Ausgrid held with its customers about the modelling options for our Regulatory Proposal, we found that specific individuals had an innate curiosity about the underlying calculations but all customers were concerned with knowing what we intended to bill them for public lighting services in the future.

If the AER disclosed the input prices to customers, the AER contends that they would be able to make better decisions about replacement luminaires. However, this does not seem logical. When the public lighting prices are set by the AER, public lighting customers will have the choice to have Ausgrid to replace luminaires based on the default luminaire and regulated price or to undertake the service themselves or using another service provider. The customers' decisions are not based on the materials prices for a luminaire; rather they are based on the total cost of the service.

Further, the pricing of individual components is only part of the overall total cost to customers. In fact, if all materials prices were reduced by 10%, Ausgrid's customer charges would only fall by 2%. The biggest impact of materials costs can be found in the post 2009 capital charges, where a 10% reduction in materials costs would result in a 7% decrease in annuity charges. However,

this reduction would apply to the price of assets installed between 2009 and 2014 which customers would not have a chance to influence.

It should also be noted that in the post 2009 capital charges, Ausgrid's proposal includes input prices for the same 284 different components that were included in the AER's 2010 determination. On average, the input prices have risen by 0.4% since the 2010 prices were established in the AER's last determination. This is because the majority of prices we have used are lower than the 2010 input price set in the AER's determination.

The issue of disclosing public lighting customer charges has been a long standing issue and Ausgrid has maintained the view that if Councils provided written consent then disclosure of that customer's bills would be possible. However, no such consent has been forthcoming. Ausgrid has, however, published the proposed customer charges in its models but without identifying the individual customers, which should be adequate for a meaningful debate on the efficiency of the charges and there would be no cherry picking where individual customers did not like their estimated bill.

Further, it is worth noting that Ausgrid has about 100 public lighting customers, with local Councils being about 40 of them. The 60 other customers are small community associations who have not been consulted in this process.

In relation to the call out rates, we believe that our non-confidential information contains the relevant information.

Detriment of the proposed disclosure

The initial disclosure notice did not identify what the AER considers the detriment is and as such we are unsure of the reasons as to why the AER considers that the benefits outweigh the costs of disclosure. The notice only states the following in relation to the detriment:

The AER acknowledges that the disclosure of the information could affect suppliers, but considers the public benefit to outweigh that detriment.

In coming to the view that the public benefits outweigh those detriments, we presume that the AER has identified some detriment to Ausgrid or its suppliers. In our confidentiality templates submitted to the AER with our Regulatory Proposal on 30 May 2014 we identified:

There is no specific detriment to Ausgrid arising from the disclosure of the information. Any potential detriment from the disclosure would arise for contractors and suppliers.

Any detriment to Ausgrid that may arise would be indirect and would occur as a result of detriment caused to suppliers and to competition in the supply of public lighting inputs. For example, if the AER discloses the materials prices, then all suppliers would be able to access the prices of other suppliers which undermines competition in supply and would impact the price that Ausgrid would pay for public lighting components.

The anti-competitive detriment would be broader than the NSW market and would affect competition and suppliers in other geographic markets, particularly in Australia. As the AER is trying to ensure public lighting customers have confidence in its decisions, the disclosure of this information will result in suppliers not having confidence in the NSW market. This may discourage suppliers from doing business with Ausgrid for fear of having commercially sensitive information released in future. This may make it difficult to purchase lighting components at the best possible price and quality in NSW. This impact is likely to be passed on to public lighting customers in future determinations. So while this has an indirect impact on Ausgrid, the anti competitive detriment to suppliers would not be in the long term interests of the consumers of these lights.

Nature of disclosure

It is not necessary to disclose any information for the AER to achieve its objective. However, if the AER is unable to achieve its objectives without disclosure, then it should consider to whom

to disclose the information, what specific information should be disclosed, how to undertake the disclosure and can the information be protected?

Who will receive the information?

The initial disclosure notice proposes to publicly disclose the confidential information on its website for anyone with internet access. As mentioned above, this type of disclosure is not appropriate. It would mean that all suppliers in the market would have access to the current prices Ausgrid is currently paying and prices Ausgrid expects to pay in the future.

Not only would suppliers have information about the price of their competitors, buyers of public lights would have access to the prices Ausgrid is paying and expects to pay. This seems to create a conflict of interest as we understand that public lighting customers such as local Councils directly procure public lights in parks, public spaces and roads.

Ausgrid is required to manage a database of privately owned non-metered public lights to enable retailers to bill the customer for the energy charges. As a result we are aware of 5,300 lights that are currently privately owned. We do not have records regarding private lights that are metered but we are aware such lights exist.

If pricing information is freely provided to buyers then they will have a distinct advantage in negotiating with suppliers for the purchase of new components, which would undermine the competitive process and be inequitable for suppliers.

When the AER is considering disclosure it should exclude parties that already have an interest in the supply of public lighting whether it is as a buyer or seller. This should focus on all suppliers and buyers who already have their own public lighting assets.

What information will be disclosed?

Ausgrid's public lighting pricing models rely on input prices of 284 components. Many of these are input prices for lights that are old technology and are no longer installed in Ausgrid's network. The older technologies are less important, with the new technologies such as LED and other energy efficient lighting being critical to competition. We believe the AER should consider whether it could disclose some materials prices but protect others such as the prices of the newer technologies.

How will the information be disclosed and can it be protected?

Finally, if the AER does not agree that our confidential information should not be disclosed, then we believe the AER has a duty to provide reasonable protection of the confidential information when it makes the disclosure. This could be undertaken by, first, targeting the disclosure (not public disclosure) to only recipients that do not have an actual or potential conflict of interest. Secondly, the AER could make the disclosure conditional on the recipient making formal undertakings to protect the information with requirements such as the organisation must ensure that:

1. Individuals must be made aware that they are not allowed to disclose this information any further even internally in their organisation;
2. The internal record keeping is secure and only accessible by identified individuals;
3. Individuals can only use the information in submissions to the AER and any confidential information used should be clearly marked so the AER can continue to protect that information;
4. Individuals that are involved in the purchase of public lighting components can not have access to the information;
5. The organisation provides a statement of conflicts of interests, perceived or real.