

BY EMAIL: NSWACTelectricity@aer.gov.au

15 August 2014

Mr J Skinner
Director
AER Networks
Australian Energy Regulator
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Skinner

Response to Initial Disclosure Notice (section 28ZB of the National Electricity Law)

I refer to the Initial Disclosure Notice issued under section 28ZB of the National Electricity Law relating to the disclosure by Australian Energy Regulator (**AER**) of certain information provided by CABAC Cable Accessories (Australia) (**CABAC**) to Ausgrid and included in Attachment 8.13 (A, B, C and D) – Public Lighting Pricing Models of the Regulatory Proposal submitted by Ausgrid to AER in May 2014.

The specific confidential information of CABAC which AER is proposing to disclose is set out in Appendix B of the AER's letter dated 5 August 2014 to CABAC. The confidential information (hereafter referred to in this letter as 'Confidential Information') is information relating to the tender price of two components to be supplied by CABAC to Ausgrid.

CABAC advises AER that it believes disclosure by AER of the Confidential Information will or will be likely to cause significant detriment to CABAC and submits that AER ought to adopt either of the following courses of action:

- AER makes a final determination not to make disclosure of the Confidential Information; or
- AER modifies its proposed form and/or method of disclosure to minimise the detrimental impact that disclosure of the Confidential Information will have on the business of CABAC.

In support of the above request, CABAC makes the following submissions:

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- **The Confidential Information which CABAC objects to AER disclosing**

CABAC objects to the disclosure by AER of all information relating to the price payable by Ausgrid for components supplied to it by CABAC and or CABAC's associated supply channels including Legend Power Systems.

- **The detriment disclosing the information is likely to cause to CABAC**

CABAC objects to the disclosure by AER of the Confidential Information for the following reasons:

- (a) All pricing information is commercially sensitive to CABAC. Customer pricing information is not disclosed to any third parties and, in particular, it is not disclosed in circumstances where its disclosure may offer a third party a competitive advantage. In that context, the third party can equally be:
 - another supplier of the particular component (for whom the pricing information provides a benchmark for that supplier to compete against CABAC and to compete in circumstances where CABAC does not have the corresponding pricing information of that supplier); or
 - another customer of CABAC, which can use the information to its advantage in any commercial discussion with CABAC or other supplier.

In CABAC's opinion, disclosure of the Confidential Information can only be to CABAC's disadvantage.

- (b) The three electricity distributors in New South Wales (Ausgrid, Essential Energy and Endeavour Energy) are not the only customers of CABAC for the relevant products. CABAC supplies to both other Australian power utilities and to non-utility / commercial customers.

In CABAC's opinion, disclosure of the Confidential Information may damage existing contractual relationships of CABAC. For example, an existing customer, with knowledge of the price offered to Ausgrid, may seek to terminate or renegotiate its contract of supply because the price offered to it is higher than the Ausgrid supply price.

Even if it is assumed that 'disclosure will increase stakeholder confidence in the quality of the information that AER relies on in making decisions', which CABAC does not accept is correct in respect of the products it supplies to Ausgrid, the relatively minor benefit that

disclosure may offer to stakeholders does not warrant the disclosure of information which is likely to materially disadvantage the owner of that information in both its existing commercial relationships and in developing new business. This is particularly the case if there are potentially other means by which AER's objectives might be achieved that do not involve publication of the Confidential Information or publication of it in a more limited manner than is currently proposed by AER.

- **Comment on any public benefit that might support disclosure**

CABAC appreciates that, at first glance, disclosure of the Confidential Information may be of public benefit in that it details the pricing of input supplies for all stakeholders to see and, if need be, verify. In CABAC's view, the initial attraction that disclosure may offer is flawed for two primary reasons:

- (a) Disclosure of the Confidential Information, which is product pricing information only, in isolation is potentially both misleading and meaningless to stakeholders. Price is simply one factor in a commercial agreement and, in the absence of the disclosure of the other relevant terms and conditions of supply, it is not possible for any stakeholder to make a reasonably informed assessment of the appropriateness of the overall arrangements entered into by Ausgrid for the supply of the relevant products. In other words, price is part only of the 'story', and while CABAC's competitors may well benefit from that disclosure, it does not (and cannot) tell stakeholders the 'full story'. To that extent, disclosure does not actually achieve AER's objective.
- (b) Disclosure of the price information may be a relevant factor for certain aspects of the Ausgrid Regulatory Proposal – for example, where material cost inputs are not readily capable of competitive tender. However, CABAC disputes its relevance in the context of the supply of any product that is able to be supplied by multiple other suppliers. For a product supplied following a competitive tender, stakeholders will assume (and, in CABAC's view, there is no reason for them not to do) that the price and terms offered by the successful supplier are, when taken as a whole, the best available. If that is the case, publication of the price information (i.e. the Confidential Information) adds nothing to their 'confidence in the quality or integrity of the information which AER relies on in making decisions.

Further, if stakeholders do not make the above assumption (that the terms of supply of a product by the successful supplier are the 'best available'), the difficulty faced by AER is that no stakeholder could have

any level of 'increased confidence' in the quality of the information relied on by AER in the absence of:

- disclosure of the price offered by all other tenderers for the supply of the relevant products (without that information, the stakeholders do not even know if the price offered by CABAC was the 'best price'); and
- as price is simply one term on which a supplier is willing to deal, disclosure of the other critical terms of the supply arrangements will be necessary to give stakeholders comfort that the price is appropriate in light of all of the other terms of supply.

I look forward to favourable consideration by AER of the above submissions.

If any further comment or clarification in relation to the above submission is required, please do not hesitate to contact me (by telephone: +61 418656500 or by email: bdowe@legendcorporate.com).

If, despite the above submission, AER determines that it still wishes to disclose the Confidential Information, CABAC would certainly welcome the opportunity to discuss with AER the form and/or method of that disclosure in order to minimise the detrimental impact that disclosure will undoubtedly have on CABAC.

Yours faithfully

CABAC Cable Accessories (Australia)



Brad Dowe
CEO and Director
Legend Corporation (Incorporating CABAC)