



10 May 2013

Chris Pattas  
General Manager–Network Operations and Development  
Australian Energy Regulator  
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Melbourne  
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Dear Chris

### **Submission on Confidentiality Guidelines Issues Paper**

This letter is the Energy Users' Association of Australia's response to the AER's Confidentiality Guidelines Issues Paper. We thank the AER for the opportunity to provide our views on this Issues Paper.

Our understanding of the AER's proposals is that the AER intends placing more stringent and precise obligations on network service providers' (NSPs) to justify their confidentiality claims, and that this will make it more difficult for NSPs to claim confidentiality. By adding administrative burden to confidentiality claims, it is intended that NSPs would be dissuaded from such claims unless absolutely necessary. The more precise justification will also help the AER to assess the merits of such confidentiality claims.

In principle we are sympathetic to this approach, but nonetheless have reservations about it. We are sympathetic in the sense that such administrative burdens may be effective in helping to dissuade unsubstantiated ("strategic") confidentiality claims. Our reservation is that increasing administrative burden will provoke more bureaucracy and NSPs have greater resources (and incentive) to grapple with administrative procedure, than the AER or energy user advocates. If an NSP really wants to keep information confidential (as part of a strategic approach to regulatory determinations) it is not clear that the AER's proposed templates will necessarily be an effective deterrent. As such, inviting yet more administrative friction could play into NSPs' hands, and make it even more difficult for the AER to ensure information is in the public domain.

On balance, we support the AER's proposed approach but would also like to suggest, in addition, a slightly more proactive approach that the AER might consider. In particular, the

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EUAA would find it very helpful if the AER – being privy to all the NSPs information - were to inform stakeholders not just on the number of pages and tables of information that NSPs have claimed to be confidential, but more importantly on the relative significance of those confidentiality claims.

This can be done through one (or more if needed) concise documents (to be written by the AER not the NSP) summarising the NSP's confidentiality claims and pointing energy user advocates (and other stakeholders) to the most significant claims. This will help to focus the involvement of energy users in agitating for the most valuable information to be in the public domain, unless a clear case can be made that it should not be.

The merits of this proposal can be seen in the events of the AER's first regulatory determination for the New South Wales distributors (and also concurrently the second determination for the Tasmanian transmission service providers). The event we are referring to was the determination of the averaging period for the risk free rate. The evidence provided to the Australian Competition Tribunal (ACT) in their appeal against the AER's decision, showed confidential correspondence between the New South Wales NSPs and the AER, on the choice of the averaging period for the risk free rate. This correspondence was not in the public domain and the EUAA was not even aware of its existence.

As we know, the ACT sided with the NSPs in their preferred averaging period, as a result of which the relevant NSPs will collect around \$1.9bn more from energy users during the current regulatory period, than the AER had allowed. This has been the most significant (in terms of dollars) decision that the ACT has ever made.

The EUAA's strong disagreement with the ACT's decision is on the public record at the time and again through the evidence provided to the Limited Merits Review. Had the EUAA been aware of this confidential correspondence, it would almost certainly have sought to raise its concerns about the NSPs' proposed averaging period. While this might not have changed the outcome, at the very least it would have ensured that energy users' views would have been part of the consideration of this issue by the AER, and subsequently as it turned out in this case, the ACT.

This particular issue is relevant now too, since we have noticed that SP Ausnet has claimed confidentiality for its proposed averaging period for the risk free rate to apply in its forthcoming revenue control determination for its transmission services in Victoria.

Therefore we propose that as part of its Confidentiality Guideline, the AER undertakes to inform stakeholders of the most important confidentiality claims that the NSPs are making as a way to focus stakeholder attention on the main issues, and secure their involvement to help to ensure information is in the public domain unless clearly contrary to the public interest.

Yours sincerely



Phil Barresi  
**CHIEF EXECUTIVE OFFICER**