

25 July 2014

Mr John Skinner
Director
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: NSWACTelectricity@aer.gov.au

Dear Mr Skinner

Response to initial disclosure notice: authorised release of public lighting information

On 15 July 2014 the AER notified Endeavour Energy of its intention to disclose certain information that Endeavour Energy claimed confidentiality over in our 2014-19 regulatory proposal. This Initial Disclosure Notice was served to Endeavour Energy under section 28ZB of the NEL.

Specifically, the AER is seeking to disclose the following attachments to Endeavour Energy's regulatory proposal:

- Attachment 8.05 – Public Lighting Model
- Attachment 8.02A5 – Market Testing Outcomes

Reasons for Disclosure

The AER considers that the public benefit in the disclosure of this information would outweigh any detriment to Endeavour Energy or to any person(s) who provided Endeavour Energy with this information:

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 Endeavour Energy. With more information, public lighting customers will also be able to make better decisions about services.

Endeavour Energy notes that the above reasoning is applied uniformly across the three businesses to documents which the AER proposes to disclose. Endeavour Energy is not satisfied that this high-level reasoning is sufficiently targeted to the above two documents to warrant their disclosure in particular. Endeavour Energy considers that any reasons for disclosure need to be specific to the document(s) the subject of interest to the AER, and address why any public benefit in their disclosure outweighs the detriment with particular reference to those documents. While acknowledging that disclosure "could affect suppliers", the AER does not appear to have given adequate, if any, consideration to the detriment to the business of disclosure.

Reasons for confidentiality

Endeavour Energy claimed confidentiality over parts of these attachments as they contained market sensitive and strategic information. Endeavour Energy considers relaxing this position may be appropriate in regards to the public lighting model, subject to representations from the effected suppliers. However, Endeavour Energy strongly objects to the disclosure of the market testing outcomes attachment. The range of relevant factors leading to Endeavour Energy's position is set out in further detail in the following sections.

Public Lighting Model

A confidentiality claim was made over three specific inputs to the public lighting pricing model as it pertained to market sensitive inputs and strategic information. Endeavour Energy's position is that the disclosure of this information could set a market price floor for these inputs (for instance maintenance costs per asset or asset purchase prices). This is because potential or current suppliers would be provided information on Endeavour Energy's perceived willingness to pay for specific goods and services.

Further, there are a limited number of suppliers for the relevant components and services. As a consequence of the disclosure there exists a potential that current competitive tension between suppliers may be diminished with price and service offerings of successful parties being revealed via a process that could be perceived as price signalling.

Therefore, Endeavour Energy maintains that disclosure of this information could result in a detriment to consumers as it may result in sub-optimal outcomes in future procurement activities.

A public version of this model has been provided to the AER which should provide stakeholders with sufficient understanding of the pricing approach. Should the AER consider that the intangible benefits of additional transparency outweigh the potential cost then Endeavour Energy would not object to this decision.

Market Testing Outcomes

This attachment is an internal memorandum and was provided in confidence to the AER. This attachment simply provides the AER evidence that a robust procurement process exists for our public lighting activities. Endeavour Energy maintains its confidentiality claim over this attachment and would strongly object to the disclosure of it for the following reasons:

1. It contains private information by identifying an unsuccessful supplier and their respective bid

Disclosure of this information will impact our ability to conduct market testing in the future. Offers are typically made to Endeavour Energy in confidence and prospective suppliers may be unwilling to submit tenders to Endeavour Energy that may become public information even if they are unsuccessful.

Moreover, it is unclear how the disclosure of bid information that has no bearing on the prices being proposed by Endeavour Energy could assist stakeholders engaging with the regulatory process.

2. It contains information of limited direct relevance to customers

This attachment is merely approval of a trial arrangement of a bulk change replacement program based on estimated savings made at the time and that in due course would be confirmed by a trial review report. This only provides the AER an indication of our procurement process and highlights that this specific component of forecast costs are yet to be confirmed.

The forecast costs, savings and process improvements are subject to change and only form a subset of overall costs. It is unlikely that a customer would be able to correlate the relevance of this attachment and the impact on public lighting prices. It is a document dealing with matters of a detailed operational nature, with cost outcomes being provided at global levels only, and are therefore of limited direct correlation to the asset specific pricing included in the public lighting model.

3. Substantial cost and asset detail is provided in the Reset RIN and the public lighting model

There is a significant amount of public lighting information available in our regulatory proposal and supporting attachments (including the Reset RIN). Endeavour Energy has already provided information that is more relevant, understandable and accessible to customers than can be gleaned from the document in question. The substance and detail of our public lighting costs, prices and service standards are all publicly available.

The information contained in the Reset RIN, our public lighting proposal, pricing model and public lighting code provides customers a meaningful opportunity to engage in the consultation process. Where detailed and useful information is already available (and more so if the confidential pricing model is published) there is no discernable benefit in disclosing an internal procurement memorandum relating to a trial bulk replacement program.

If customers are interested in our operational activities at such a detailed level we would be available to discuss this at our regular meetings with councils (twice a year) or any other time.

4. It contains information related to our procurement activities

Endeavour Energy was legally compelled to provide several attachments which related to procurement activities of a highly confidential nature. Endeavour Energy has obligations to other parties that it must also uphold. Disclosure of this attachment may set a precedent and expectation for other stakeholders that other confidential information be disclosed.

If customers wish to understand our procurement activities this detail is provided in other attachments to our regulatory proposal such as our procurement strategy.

For these reasons Endeavour Energy considers that this attachment should remain confidential.

If you have any questions in relation to this response to your Notice, please contact Mr Michael Ghattas, General Manager Finance and Compliance on (02) 9853 6951.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod Howard', with a long, sweeping flourish extending to the right.

Rod Howard
Chief Operating Officer
Endeavour Energy