Submission

to the Australian Energy Regulator

Regarding

Preliminary positions

Framework and approach paper

Ausgrid, Endeavour Energy & Essential Energy

Regulatory control period commencing 1 July 2014

Submission by

Endeavour Energy Councils

Prepared by

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Foreword

This submission has been prepared by Trans Tasman Energy Group (TTEG), to represent the combined interests of the Endeavour Energy Supplied Council Group ("EE Councils").

The EE Councils fully support this submission.

The EE Councils originally comprised member councils of the Western Sydney Regional Organisation of Councils Ltd (WSROC), and WSROC has continued to lead the process. The expanded group include the following councils at the time of this submission:

Bathurst Regional Council	Liverpool City Council
Blacktown City Council	Parramatta City Council
Blue Mountains City Council	Penrith City Council
Camden Council	Shoalhaven City Council
Campbelltown City Council	The Hills Shire Council
Fairfield City Council	Wingecarribee Shire Council
Hawkesbury City Council	Wollondilly Shire Council
Holroyd City Council	Wollongong City Council

The EE Councils represent ~ 90% of Endeavour Energy's supplied population and we reasonably expect <u>all</u> Endeavour Energy supplied councils to ultimately form part of the EE Councils.

The EE Councils welcomes opportunity provided by the AER's paper "Preliminary positions, Framework and approach paper Ausgrid, Endeavour Energy and Essential Energy, Regulatory control period commencing 1 July 2014", (the Paper) of June 2012 and appreciates the AER's efforts to assist Public Lighting Sector development by establishing fair and reasonable public lighting tariff charges for the next regulatory period.

We trust our Submission and the issues we have raised will assist the AER in establishing its classification of public lighting charges for the 2009-14 regulatory control period.

Recognition

This submission follows the submission in May 2012 to the AER's Public Lighting 2014-19 Framework Discussion Paper prepared by TTEG for the participating WSROC councils

A submission of this nature requires support and collaboration from participants.

We extend thanks to WSROC staff, particularly Mal Ackerman, and WSROC member councils in providing leadership of the EE Councils, the initiation of this submission and for its stewardship in adopting and fostering the EE Councils' approach.

Regulatory Objective

In providing a Negotiated classification for public lighting (or at least for Endeavour Energy supplied councils), the AER's decision would not only meet the needs of EE Councils (ie the DNSP's public lighting customers), but also consistent with the AER's Mr Reeves' views which he expressed in consideration of pending regulatory changes.

> *"The recommended changes require network businesses to actively engage with their customers to determine what services customers want," Mr Reeves said. "Changes to the regulatory process will improve the opportunities for customers to hold businesses to account for the delivery of those services at a reasonable price."*

AER acceptance of Information and References

We have provided to the AER review related material (RRM)[1] referenced in our submission. Any documents issued by the AER, or previous submissions to the AER, plus the NERs and NEL are expected to be with the AER and not provided separately as RRM.

We request the AER to respond to our submission including identifying if any information in our submission was insufficient, or cannot be accepted as reference material to support the submission.

We request any such response from the AER to provide sufficient time for EE Councils to provide any information requested for the AER's inclusion in its current F and A process.

About Trans Tasman Energy Group (TTEG)

Trans Tasman Energy Group Consultants (TTEG) has prepared this Submission for the EE Councils and its member councils.

TTEG Consultants (www.tteg.com.au), provide specialist energy sector advice including commercial, environmental and regulatory aspects pertaining to Public Lighting.

In Australia TTEG currently act as public lighting consultants to over one hundred Council municipalities and road authorities in Victoria, South Australia and New South Wales.

Further Information:

The AER is invited to seek further comments on any points in this Submission from:

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[1] Each RRM has been numbered for ease of reference

Document History and Status

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GLOSSARY

ACT	The Electricity Supply Act 1995 (NSW Legislation)
AER	Australian Energy Regulator
ASL	Ancillary Street Light service (proposed service)
ASP	Accredited Service Provider (NSW Accreditation Scheme)
CAM	Cost Allocation Method
CLER	Customer Lighting Equipment Rate (SA)
DNSP	Distribution Network Service Provider (Electricity Distribution business)
EE Councils	Councils covered by Endeavour Energy's distribution network
ETSA	ETSA Utilities (SA)
IPART	Independent Pricing and Regulatory Tribunal of New South Wales
Luminaire	Lamp and housing
NDSC	Negotiated Distribution Service Criteria
NEL	National Electricity Law
NER	National Electricity Rules
NUOS	Network Use Of System
PLC	NSW Public Lighting Code
RAB	Regulatory Asset Base
RRM	Review Related Material
SLUOS	Streetlight Use of System (charges, tariffs)
TTEG	Trans Tasman Energy Group (Consultants)
WSROC	Western Sydney Regional Organisation of Councils

IMPORTANT NOTE:

Except where otherwise advised, all references in this submission to the NERs refer to NER Version 51.

1 SUMMARY

Public lighting customers spend around $80 million p.a. of public funds on SLUOS charges, representing around $400 million over any 5 year regulatory period. The Endeavour Energy Councils (the "EE Councils") that are participants in this submission represent around $24 million p.a. or 33% of total SLUOS charges in NSW.

In its 2014-19 Preliminary Positions Framework and Approach Paper (the "Paper"), the AER has proposed to classify all public lighting services (except new technologies), under Chapter 6 Part B of the NER, as a Direct control service, and in turn, as Alternative control service.

We do not support the AER's proposed classification of services.

For the reasons outlined in our submission, we encourage the AER to take every opportunity provided by its 2014-19 review to address the fundament issues in the public lighting sector via the relevant requirements of the NER and NEL.

In establishing its proposed classification as Direct control services, the AER may not have been fully informed in concluding that a legislative framework for delivery of competitive services, and the availability of a substantial number of substitute service providers (contestability), is not available to public lighting customers in NSW. (see our comments regarding NEL 2F(e) below).

Our concerns also extend to the AER's view that electricity network service users will not have sufficient information for meaningful negation with DNSPs. (see comments on NEL 2F (g) below).

1.1 Classification of Distribution Services

Our full consideration of these matters is contained in section 4 of this submission.

Regarding the Form of Regulation, clause 6.2.1(c) (1) of the NER, the AER <u>must</u> have regard to section 2F of the NEL. We submit the following in support of our request for the classification of public lighting services as Negotiated distribution services

We submit the following in consideration of NEL 2F (a) – 'barriers to entry in a market'

Whilst we recognise that ownership currently provides a barrier to entry for lights owned by distributors, current DNSP practices and the current Alternative control classification are propagating the barriers and preventing competition. These practices include:

- The "required" vesting of new public lighting to DNSPs. This practices requires further investigation including "why this practice exists" and is it appropriate market conduct; and the
- DNSPs "automatic right" to replace lights at the end of their economic life.

As a contestable framework already exists, both these barriers can be removed over time through the negotiation of service provision for public lighting as provided for in chapter 6 Part D of the NER. Critically, this requires classification of the services by the AER as a Negotiated distribution service.

We submit the following in consideration of NEL 2F (b) – 'interdependencies with other electricity network services'

Whilst economies of scale and scope should be possible via the provision of both network services and public lighting services, in our experience, DNSPs typically use different contactors to provide each service,[2] thus negating any efficiencies or cost benefits. Further, typical DNSP work scheduling practices are unlikely to prevent network services being competitively provided by an alternative service provider.

We submit the following in consideration of NEL 2F (c) – 'interdependencies with other markets'

Contractors used to provide public lighting services can also provide similar services to customers in other markets. e.g. telecommunication network providers (including NBN Co), and councils for vegetation control.

We submit the following in consideration of NEL 2F (d) – 'countervailing market power'

Individual network service users (councils) may not initially have the same economies of scale in terms of procuring public lighting assets as the existing DNSPs, but councils could group together (as they do for other services) to tender public lighting services in bulk to minimise costs.

On the other hand councils or other service providers do not have the high overheads (eg 20% to 31%[3] in Victorian DNSPs) and on-costs, attributed to public lighting in

[2] AER, Final decision Victorian electricity distribution network service providers, Distribution determination 2011–2015, October 2010, p848.

[3] AER, Final decision Victorian electricity distribution network service providers, Distribution determination 2011–2015, October 2010, Impaq comment p844

previous price determinations. Further, as DNSP's engage subcontractors, there are two 'profits' and overheads that councils for which councils are paying in current charges.

We submit the following in consideration of NEL 2F (e) – 'presence and extent of substitutes'

A contestability framework for the provision of public lighting services by third parties exists in NSW. Contestable Works apply not only to the installation of new public lighting assets, but also to the maintenance or replacement of existing public lighting assets.

A Level 1 Accredited Service Provider (ASP) of which there are in excess of 120 in NSW can work on public lighting assets.

In its final report relating to the Review of contestable services on the New South Wales electricity network, the Better Regulation Office in partnership with Industry & Investment NSW and Department of Fair Trading, stated that,

> "Maintenance of street lighting, including lamp replacement, is a network service that <u>is contestable at a DNSP's discretion</u>".[4] (our underline)

We submit the following in consideration of NEL 2F (g) – 'information available to electricity network service users'

If the AER accepts our proposition that all Public lighting services be classified as Negotiated distribution services for the 2014-19 regulatory period (see section 4.3.6 of this submission), DNSPs must comply with the requirements of chapter 6 Part D - Negotiated distribution services, of the NER.

In accordance with clause 6.7.5 (c)(2) of the NER, the Network Service Provider (the DSNP) is required, to provide all such commercial information a Service Applicant (the customer) may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the negotiated distribution service, including the cost information.

With public lighting classified as Alternative Controlled, the inability of the AER to release DNSP's confidential information has proven problematic in previous regulatory process and will remain so despite this information being required by customers to prepare submissions in response to DNSP pricing proposals

[4] New South Wales Govt., Review of NSW electricity network contestable services: Final report, July 2010, p21. (RRM 1)

Public lighting customers were frustrated in the 2009-14 regulatory process by the lack of information made available from DNSPs due to confidentialities in the Alternative Controlled process.

The AER's classification of public lighting services as a Negotiated service can overcome any issues with confidential information as this can be effectively managed through clause 6.7.6(a) of the NER which will ultimately be incorporated in the DNSP's Negotiating Framework.[5]

Pursuant to NER clauses 6.7.5 (c)(2) and 6.7.6(a), consumers of public lighting services will have sufficient information to enable informed negotiation with NSW DNSPs.

The adoption of the Negotiated services classification for Public lighting services will more than satisfy the requirements of section 2F (g) of the NEL, and indeed overcome the significant issues that have faced the AER and customers regarding the provision of confidential information from DNSPs in prior periods.

We submit the following in consideration of "the form of regulation (if any) previously applicable" (clause 6.2.1 (c)(2) of the NER)

We encourage the AER to adopt a 'clean slate' approach to classifying Public lighting services in its 2014–19 distribution determination and place little emphasis on the current classification for public lighting. Further, the previous classification was not made in accordance with chapter 6 of the NER.

For its 2014–19 distribution determination, the AER is not bound by the transitional provisions and **<u>must</u>** give detailed consideration to the classification of distribution services under chapter 6 of the NERs including 6.2.1(c)(2), with due consideration, that public lighting should eventually be fully contestable, and that providing customers with the ability to negotiate (as per chapter 6 Part D of the NER) will enable progression towards this outcome.

We submit the following in consideration of "the desirability of consistency in the form of regulation" (clause 6.2.1 (c)(3) of the NER)

Previous determinations have been made under the transitional rules. As such, any existing service classifications can fairly be seen as transitional and the AER must therefore consider existing classifications pursuant to NER 6.2.1(c)(3) recognising the transitional nature of existing classifications.

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[5] The Negotiating Framework in South Australia allows exchanges of confidential information (RRM 2)

Classifying all NSW public lighting services as Negotiated Distribution services will provide consistency with South Australia and compliance with clause 6.2.1 (c) (3) of the NER.

We submit the following in consideration of "any other relevant factor" (clause 6.2.1 (c)(4) of the NER)

Pursuant to clause 6.2.1(c)(4) of the NER, the AER must consider the (lack of) development of competition in the NSW market as a relevant factor.

We submit that the current Alternative Controlled classification is a primary contributing reason to the low levels of competition and is not providing the appropriate regulatory outcome as sought.

Current DNSP practices are also impacting competition. These practices include:

- The "required" vesting of new public lighting to DNSPs. This practices requires further investigation including "why this practice exists" and is it appropriate market conduct; and
- The DNSPs automatic "right" to replace lights at the end of their economic life.

Public lighting customers incur the financial liability and therefore should fairly and reasonably determine who funds and replaces lights at the end of their economic life.

The arguments we have provided in our response to the Form of Regulatory Factors in section 4.3.2 of our submission can also fairly be considered in terms of clause 6.2.1(c)(4) of the NER including our considerations pertaining to NEL 2F (as summarised above).

Regarding our recommended services and classifications

For the reasons presented in sections 4.3.2 to 4.3.5 in this submission, and in full consideration of chapter 6 of the NER and section 2F of the NEL, the Negotiated distribution services classification represents the most appropriate classification for public lighting services.

We have established that all public lighting services are currently contestable, and could therefore be an unclassified (unregulated) service, whereby councils could tender for these services. However, the key issue that makes this classification problematic for the 2014-19 regulatory period is DNSPs currently own the majority of installed public lighting assets.

We are not advocating the transfer of existing public lighting assets from the DSNPs to the councils, but if the DNSPs wanted to transfer ownership to councils we would accept.

The first step in the transition process is the classification of those public lighting services that require regulatory control, as Negotiated distribution services for the regulatory period commencing on 1 July 2014, which will also provide customers with the opportunity to establish the services they actually require from the DNSPs.

1.2 Control Mechanisms

We submit the following in response to the AER's request for submissions on its preliminary position on the control mechanism to be applied to public lighting services.

Our full consideration of these matters is contained in section 5 of this submission.

As we are advocating a Negotiated service classification of Public lighting services, we will first address the issues we see with the AER's proposed control mechanism, before discussing the elements of control for Negotiated services.

The AER's proposal to apply a price cap control mechanism to regulate public lighting as Alternative control services for the next regulatory control period is not in the customers' interest. Further, this classification appears inconsistent with views expressed by the Chairman of the AER[6] regarding the AER's current restriction in its ability to set prices based on an objective assessment of the efficiency or the necessity of the expenditure proposed by electricity businesses.

Importantly, the Negotiated distribution service classification presents no such restriction to the AER as services and prices are negotiated between the service provider and the customer.

Specific aspects pertaining to the AER's request for submissions are contained under relevant headings below.

Increased complexity in billing and reconciliation

The AER's proposed addition of a further annuity capital charge to construct prices in the first year for all assets constructed after 1 July 2014, will further exacerbate an already complex approach. This is not recommended or supported by the EE Councils.

We support Ausgrid's view that the AER's proposed control mechanism will further add to the complexity of an already complex set of charges.

[6] referred to in section 5.1.1 of this submission

The introduction of an additional charge is problematic as it introduces additional billing complexities and requires forecasting of both the number of lights and future costs pertaining to these lights.

Increased administrative costs

As identified above, the introduction of an additional charge is problematic as it introduces additional billing complexities and requires forecasting of both the number of lights and future costs pertaining to these lights.

Annuity capital charge for all assets forecast to be constructed after 1 July 2014, will have a material and adverse effect on administrative costs for the AER, the DNSPs and users (councils, road authorities, etc.) and is therefore inconsistent with clause 6.2.2 (C)(2) of the NER – ("the possible effects of the classification on administrative costs of the AER, the DNSP and users or potential users").

Recommended approach to form of control

By adopting the classifications proposed by the EE Councils in Table A (below), the AER need only concern itself with the approval of the key elements of the negotiating process prescribed in chapter 6 Part D of the NER, as part of its 2014-19 Distribution review determination being the DNSP's Negotiation Framework and Cost Allocation Methodology.

Importantly, the Negotiated Distribution Service Criteria (clause 6.7.4 of NER) addresses the terms and conditions of the services to be provided, as well as the price to be charged for providing the service. The customer therefore has the opportunity to be actively involved in determining the level of service provided and ultimately the price paid to the DNSP for providing the agreed service.

The AER is aware, the (lack of) provision of cost information to councils and other interested parties has been problematic in prior regulatory periods. The Negotiated distribution service process can provide for DNSP to share confidential commercial information with the councils[7], and not only with the AER.

1.3 Other Considerations

Our full consideration of these matters is contained in section 6 of this submission.

[7] Appropriate provisions can be made in the DNSP's Negotiation Framework (RRM2)

DNSP Determination

We note the AER's advice regarding the pending reform of the electricity distribution network in NSW and submit that this type of reform is not dissimilar to the arrangement that exists with CitiPower and Powercor in Victoria where these DNSPs share a united corporate structure but operate independent electricity networks with separate distribution licenses.

The AER must make a distribution determination for <u>each</u> Distribution Network Service Provider (clause 6.2.4 (a) of NER). In making a determination there is nothing preventing the AER determining different classifications for each of the three NSW distribution licence holders if it chose to do so.

Several EE Councils are already dealing with two distributors and have no issue if they have two classifications for public lighting services if the AER so decides.

Irrespective of what classification the AER may consider appropriate for other DNSPs, the EE Councils requests the AER to classify public lighting services for Endeavour Energy as a Negotiated Distribution Service.

A further consideration is by the EE Councils' championing of the Negotiated services approach in the 2014-19 period, the sector will have visibility (for future determinations) regarding the effectiveness of the Negotiated service classification is for establishing future SLUOS services and charges as Negotiated..

CAM

We support the AER's proposed requirement for DNSP CAMs to be consistent with the AER's cost allocation guidelines including clause 3.2(a)(3)A and 3.2(a)(7).

We support the AER's view the CAM has a significant impact on regulatory proposals. We submit that DNSP CAM must include a process that provides sufficient detailed information to enable an effective review of the charges and the basis on which they are made. (NER 6.7.5 (c)(3) (iii))

1.4 Conclusion

In response to the AER's preliminary position on classification and form of control, we submit the following recommendations:

Recommendation 1: The AER proposed service activities regarding asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party, are in general not public lighting services and should not therefore be included as a public lighting service.

Recommendation 2: As a contestable framework already exists, the current barriers to entry in to the public lighting services market can effectively be removed over time through negotiation under chapter 6 Part D of the NERs. This development is consistent with the National Electricity Objective. **Critically,** as outlined in our submission this requires classification of the services by the AER Negotiated distribution services.

Recommendation 3: For the reasons presented in sections 4.3.2 to 4.3.5 in this submission, and in consideration of chapter 6 of the NER and section 2F of the NEL, the Negotiated services classification is "clearly more appropriate" (clause 6.2.1 of NER) for all public lighting services, other than those services that are unclassified (unregulated). Our recommendations for specific public lighting services are summarised in Table A.

Table A – Recommended Public Lighting Services

	Service	Classification	Comments
1	Alteration and relocation of DNSP owned assets	Negotiated	
2	Operation, maintenance and repair of DNSP's public lighting assets (existing technologies) (SLUOS)	Negotiated	Negotiated Addresses both service terms and conditions and charges. Replacement of lights to be at the customer discretion – refer 5 below
3	Operation, maintenance and repair of New Technology Lights	Negotiated	
4	Operation, maintenance and repair of non- DNSP owned public lighting assets (initially funded by others)	Negotiated	Includes replacement lamps, PE cells and other activities as agreed
5	Replacement of existing lights (luminaires, brackets, columns) at the end of their economic life	Negotiated	Replacement of lights to be at the customer discretion i.e. not automatically by the DNSP
6	Written down value of DNSP lights if retired early	Negotiated	current Tariff 5
7	Ancillary services – notification of faults to streetlight owners.	Negotiated	A new service to allow councils to own and maintain its own lights
8	New Public Lighting installation not funded by the DNSP	Unclassified (unregulated)	with no vesting requirement
9	Alteration and relocation of non DNSP owned assets	Unclassified (unregulated)	
10	Streetlight design	Unclassified (unregulated)	

Recommendation 4: As emerging 'new luminaire types' or 'new technologies' are not necessarily known they cannot be classified as Direct control - Alternative control they must be classified as Negotiated.

Recommendation 5: DNSPs must establish robust and compliant Negotiating Framework including Negotiated Distribution Service Criteria, and Cost Allocation Method for the AER to approve in its NSW distribution determination for 2014-19.

Detailed arguments supporting these recommendations are provided in the subsequent sections of this submission.

Next steps

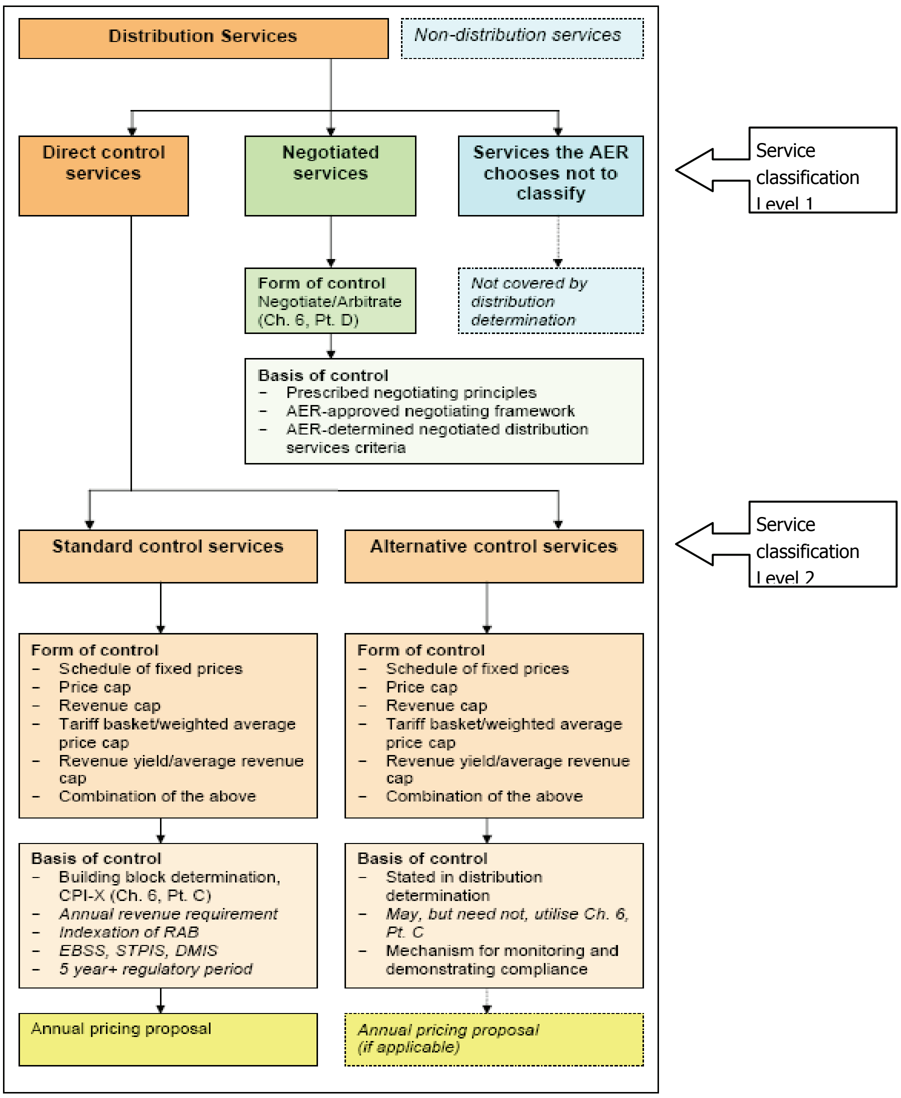
We would welcome the opportunity to discuss any points we have raised and to providing any further assistance to the AER in the preparation of its Framework and Approach paper.

2 INTRODUCTION

The regulatory control period commencing on 1 July 2014 is the first opportunity for the AER to conduct a complete review of the NSW DNSPs under chapter 6 of the NER, rather than pursuant to transitional provisions which forced the AER to adopt certain aspects of IPART's 2004-09 distribution determination. We encourage the AER to take this 'clean sheet' opportunity to consider all relevant issues, without the restriction of the transitional provisions, that are of concern to the customers we represent.

Under chapter 6 of the NER, the AER may classify distribution services to be provided by a DNSP as either 'Direct control services' or 'Negotiated distribution services'. If a service does not fall within the NER's terms, the AER may not classify it. Once the AER classifies a service, the NER sets out how it must be regulated. This process is illustrated in figure1.1.

Figure 1.1: Service classification and control mechanism



We acknowledge the judgment that was made on 19 April 2010 in the Federal Court of Australia (Ergon Energy Corporation Ltd v Australian Energy Regulator),[8] which determined that street lights do not form part of the 'distribution system', but they are a service that is provided "in conjunction with" the 'distribution system' and therefore fall within the definition of a "distribution service". As such, Public lighting devices must be classified by the AER under the classification and control framework.

This submission to the AER seeks to address only the distribution service of 'public lighting', specifically referred to in sub-section 2.4.8 of the Classification of distribution services, and sub-section 3.4.2 pertaining to Control mechanism for alternative control services, contained in the AER's Preliminary positions-Framework and approach paper, June 2012.

[8] Ergon Energy Corporation Ltd v Australian Energy Regulator [2012] FCA 393 (19 April 2012)[8] (RRM 3)

3 SUBMISSION OUTLINE

A brief outline of the contents of our submission is stated below:

SECTION 2 Introduction to the Classification of distribution services

SECTION 4 Classification of distribution services – In this section we provide detailed comments on how we believe the AER should classify various services which are a subset of Public lighting services. We conclude with Table A, summarising our recommended classifications for each service.

SECTION 5 Control mechanisms – In this section we discuss the major issues we see with the AER's proposed price cap control mechanism that would be applied to all public lighting services, excluding new public lighting technologies. We conclude with our recommended approach for Negotiated services.

SECTION 6 Other Considerations – Including other submissions, the Negotiating Framework and the Cost Allocation Method.

4 CLASSIFICATION OF DISTRIBUTION SERVICES

In this section we have provided responses to specific issues raised in section 2.4.8-Public Lighting of the AER's Preliminary position paper, (commencing Page 38).

4.1 AER Preliminary Position

"The AER's preliminary position is that public lighting services should be classified in a manner consistent with the previous regulatory determination, as no other classification is clearly more appropriate. This is supported by the AER's assessment against the factors in clauses 6.2.1 and 6.2.2 of the NER".

The AER seeks comments from interested parties on the proposed classification of public lighting services as direct control services and further, as alternative control services.

AER's preliminary view

Commencing on page 42 of its paper the AER advises: (our underlining)

> "In considering the form of regulation factors under section 2F of the NEL, the AER is of the preliminary view that there are significant barriers to entry to the provision of public lighting services in NSW by other public lighting service providers. While the NSW DNSPs do not have a legislative monopoly over the provision of public lighting services, because ownership of public lighting assets largely rest with the NSW DNSPs, effectively this is the case for existing assets.
>
> While there is some limited scope for other entities to provide some public lighting services, the NSW DNSPs appear to benefit from the economies of scale and scope, derived from the provision of network services, in providing public lighting services.[9]
>
> Additionally, there is no contestability framework for the provision of public lighting services by third parties on assets owned by the NSW DNSPs. Consequently, competition in public lighting has been limited.[10]

[9] NEL, ss 2F(b) and (c).

[10] Ausgrid, *Response to the AER on the approach to the regulation of public lighting*, May 2012, p. 3; (RRM 4) Bankstown City Council, *Submission on public lighting services in NSW*, 10 May 2012, p. 5; SSROC, *Submission on public lighting services in NSW*, 11 May 2012, p. 4; (RRM 6) NSROC, *Submission on public lighting services in NSW*, 11 May 2012, p1; Centroc, *Submission on public lighting services in NSW*, 9 May 2012, p. 4; SEROC, *Submission on public lighting services in NSW*, 10 May 2012, p. 5. (RRM 5)

> In relation to section 2F(e) of the NEL, while some substitutes for providing public lighting services are available, it is unlikely to be a viable commercial option for customers to move away from the DNSP, who own almost all of the existing public lighting assets. (Some) councils and Ausgrid submitted that the current complex regulatory (Technical or Economic?) regime would make it difficult to negotiate rules by which third parties could repair, modify, replace or add lighting assets to the DNSPs' existing wooden distribution poles.[11]
>
> With regard to section 2F (g) of the NEL, <u>it does not appear to the AER that consumers of public lighting services would have sufficient information to negotiate on an informed basis with the NSW DNSPs</u>. As outlined above, there are concerns around the lack of transparency regarding the terms on which public lighting services are provided to consumers.
>
> These factors support the (AER's) view that the NSW DNSPs possess significant market power in the provision of services for existing public lighting assets.
>
> The AER has specifically considered clauses 6.2.1(c)(2) and 6.2.1(c)(3) of the NER and notes that public lighting services are currently subject to a form of control in all NEM jurisdictions except the Australian Capital Territory, where public lighting is not owned by the DNSP but rather the Territory Government. The AER notes that South Australia and Victoria (for new public lighting assets only) have a more 'light handed' regulatory approach. However, there is greater contestability to facilitate negotiation between customers and DNSPs in these jurisdictions.[12] " (our underlining)

The AER then concludes on page 43 of its paper:

> "Having regard to the requirements of clause 6.2.1 of the NER, the AER considers that all public lighting services should be classified as direct control services for the 2014—19 regulatory control period".

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[11] SSROC, *Submission on public lighting services in NSW*, 11 May 2012, p. 4; SEROC, *Submission on public lighting services in NSW*, 10 May 2012, p. 5. Citelum Australia, *Submission on public lighting services in NSW, May 2012*, at p. 35 submit 'there is merit in classifying public lighting services as negotiated distribution services on the provision that customers understand their rights and obligations'. (RRM 5,6,7)

[12] AER, *Final framework and approach paper ETSA Utilities 2010–15*, 2008, pp. 26–28; AER, *Preliminary positions, Framework and approach paper – Citipower, Powercor, Jemena, SP Ausnet and United Energy for the regulatory control period commencing 1 July 2012*, December 2008, p. 45.

4.2 Requirements of the NEL and NER

The AER has made its "assessment against the factors in clauses 6.2.1 and 6.2.2 of the NER".

4.2.1 Classification of distribution services (cl. 6.2.1 of NER)

(a) The *AER* may classify a *distribution service* to be provided by a *Distribution Network Service Provider* as:

(1) a *direct control service*; or

(2) a *negotiated distribution service*.

(b) The *AER* may group *distribution services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.

(c) The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:

(1) the form of regulation factors; and

(2) the form of regulation (if any) previously applicable to the relevant service or services and, in particular, any previous classification under the present system of classification or under the previous regulatory system (as the case requires); and

(3) the desirability of consistency in the form of regulation for similar services (both within and beyond the relevant jurisdiction); and

(4) any other relevant factor.

(d) In classifying *distribution services* that have previously been subject to regulation under the present or earlier legislation, the *AER* must act on the basis that, unless a different classification is clearly more appropriate:

(1) there should be no departure from a previous classification (if the services have been previously classified); and

(2) if there has been no previous classification – the classification should be consistent with the previously applicable regulatory approach.

(e) If the *Rules*, however, require that a particular classification be assigned to a *distribution service* of a specified kind, a *distribution service* of the relevant kind is to be classified in accordance with that requirement.

4.2.2 Classification of direct control services as standard control services or alternative control services (cl. 6.2.2 of NER)

(a) *Direct control services* are to be further divided into 2 subclasses:

(1) *standard control services*; and

(2) *alternative control services*.

(b) The *AER* may group *direct control services* together for the purpose of classification and, if it does so, a single classification made for the group applies to each service comprised in the group as if it had been separately classified.

(c) The *AER* must, in classifying a *direct control service* as a *standard control service* or an *alternative control service*, have regard to:

(1) the potential for development of competition in the relevant market and how the classification might influence that potential; and

(2) the possible effects of the classification on administrative costs of the *AER*, the *Distribution Network Service Provider* and users or potential users; and

(3) the regulatory approach (if any) applicable to the relevant service immediately before the commencement of the distribution determination for which the classification is made; and

(4) the desirability of a consistent regulatory approach to similar services (both within and beyond the relevant jurisdiction); and

(5) the extent the costs of providing the relevant service are directly attributable to the person to whom the service is provided; and

Example:

In circumstances where a service is provided to a small number of identifiable customers on a discretionary or infrequent basis, and costs can be directly attributed to those customers, it may be more appropriate to classify the service as an alternative control service than as a standard control service.

(6) any other relevant factor.

(d) In classifying *direct control services* that have previously been subject to regulation under the present or earlier legislation, the *AER* must act on the basis that, unless a different classification is clearly more appropriate:

(1) there should be no departure from a previous classification (if the services have been previously classified); and

(2) if there has been no previous classification – the classification should be consistent with the previously applicable regulatory approach.

(e) If the *Rules*, however, require that a *direct control service* of a specified kind be classified either as a *standard control service* or as an *alternative control service*, a *direct control service* of the relevant kind is to be classified in accordance with that requirement.

To consider the service classification and control process outlined in the Introduction, (section 2, of this submission), the AER must have regard to clause 6.2.1(c) of the NER (as shown earlier).

Pursuant to clause 6.2.1(c)(1), the AER must have regard to the form of regulation factors that are listed in section 2F of the NEL. The form of regulation factors are:

(a) the presence and extent of any barriers to entry in a market for electricity network services;

(b) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other electricity network service provided by the network service provider;

(c) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other service provided by the network service provider in any other market;

(d) the extent to which any market power possessed by a network service provider is, or is likely to be, mitigated by any countervailing market power possessed by a network service user or prospective network service user;

(e) the presence and extent of any substitute, and the elasticity of demand, in a market for an electricity network service in which a network service provider provides that service;

(f) the presence and extent of any substitute for, and the elasticity of demand in a market for, electricity or gas (as the case may be);

(g) the extent to which there is information available to a prospective network service user or network service user, and whether that information is adequate, to enable the prospective network service user or network service user to negotiate on an informed basis with a network service provider for the provision of an electricity network service to them by the network service provider.

4.3 Response to AER's preliminary view

In proposing a classification for public lighting as direct control services, we believe the AER has not been fully informed regarding aspects of services available within the public lighting sector, and as a result has not effectively considered aspects under the NERs.

4.3.1 Services

Before a service can be classified, the AER must first identify which services it must consider for classification.

4.3.1.1 AER proposed Services

In Appendix A of the AER's Preliminary F&A paper, the services description for public lighting services differs between the DNSP as shown in the following table.

DNSP	Services description
Ausgrid	Construction, repairs and maintenance of street lighting assets
Endeavour Energy	Construction, repairs and maintenance of street lighting assets. Asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party
Essential Energy	Construction, repairs and maintenance of street lighting assets. Asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party

Both Endeavour Energy and Essential Energy include, "Asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party", as Public lighting services. Asset relocations (including undergrounding) and related support services are also included as one of Ausgrid's Quoted services, and conversion to aerial bundled cable is listed as a Quoted service for all three DSNPs.

Clearly, asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party, are not Public lighting services. Public lighting assets reside downstream of a fused connection point to the distribution network; typically in the base of a free standing column or in an adjacent service pit. However, there may be occasions when these additional services are required 'in conjunction with' Public lighting services and could be provided by the same service provider.

Recommendation 1: The AER proposed service activities regarding asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party, are in general, not public lighting services and should not therefore be included as a public lighting service.

4.3.1.2 Proposed Services

We recognise the AER may group services before classifying a group of services.

We submit to the AER that the following individual public lighting services require consideration and these services may be grouped or remain as individual services for the purpose of classification:

1. Alteration and relocation of DNSP owned assets;
2. Operation, maintenance and repair of DNSP's public lighting assets (existing technologies);
3. Operation, maintenance and repair of 'new technology lights';
4. Operation, maintenance and repair of non-DNSP owned public lighting assets (funded by others);
5. Replacement of existing lights (luminaires, brackets, columns) at the end of their economic life;
6. Written down value of DNSP lights if retired early (currently Tariff 5); and
7. Provision of Ancillary Street Light (ASL) services - maintenance of a database relating to street lights, and recording and informing customers who own streetlights of streetlight faults reported to the DNSPs;

We also submit the following public lighting services are currently contestable, do not utilise DNSP assets, and as such should remain unregulated:

8. New public lighting installations not funded by the DNSP;
9. Alteration and relocation of non-DNSP owned assets; and

10. Streetlight design.

In considering services 1 to 7 above, the following services have been identified and agreed by the AER for ETSA in South Australia. [13] (our headings, comments and bolding)

- **SLUOS** - "the provision of public lighting assets, along with the operation and maintenance of those assets – DNSPs retains ownership of the assets."

Comment: This is an existing service and currently referred to as 'street lighting use of system' (SLUOS) services in NSW.

- **CLER –** "the replacement of failed lamps in customer owned streetlights – customers provide installation capital (road authority, local councils) and retain ownership of the assets and are responsible for all other maintenance."

Comment: In NSW this service is currently referred to as Maintenance Only Rates – Unregulated Tariff Class. In South Australia these services are referred to as 'customer lighting equipment rate' (CLER) services.

- **ENERGY ONLY** – "maintenance of a database relating to street lights, and recording and informing customers of streetlight faults reported to the DNSPs – customers retain ownership of the assets and are responsible for all maintenance (including replacement of failed lamps)."

Comment: This would be a newly defined service in NSW that we propose calling - Ancillary Street Light (ASL) services. In South Australia these services are referred to as 'energy only' services.

Essential Energy Tariff Type 6,[14] is not dissimilar but includes network use of system (NUOS) charges which, we submit should be included in the bill the customer receives from the energy retailer.

Note: "The charges associated with the services described above, relate only to the provision of public lighting services, and not to charges associated with the shared network. For example, in addition to paying for public lighting services, a local council would also need to pay for network services (for the conveyance of electricity through the distribution network up to the point of connection of the public lighting asset)."[15]

[13] AER, Final Framework and approach paper ETSA Utilities 2010-15, November 2008, p26
[14] Essential Energy, Public Lighting Management Plan 2010, March 2011, Issue 4, p14. (RRM 8)
[15] AER, Final Framework and approach paper ETSA Utilities 2010-15, November 2008, p26

4.3.2 The form of regulation factors - clause 6.2.1(c)(1)

Clause 6.2.1(c) of the NER requires:

"The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:

(1) the form of regulation factors; "

The "form of regulation factors" are listed in section 2F of the NEL and shown in section 4.2.2 of our submission.

In this section we have provided our views regarding several "form of regulation factors" (shown in bold) for consideration by the AER.

(a) the presence and extent of any barriers to entry in a market for electricity network services;

We agree with the AER's preliminary view that,

> "there are significant barriers to entry to the provision of public lighting services in NSW by other public lighting service providers. While the NSW DNSPs do not have a legislative monopoly over the provision of public lighting services, because ownership of public lighting assets largely rest with the NSW DNSPs, effectively this is the case for existing assets". (our underline)

We submit that whilst we recognise that DNSP ownership currently provides a barrier to entry for lights owned by distributors, as we have established in section 4.3.5 of this submission, current DNSP practices and the current Alternative control classification are perpetuating the barriers and preventing competition.

These practices include:

- The "required" vesting of new public lighting to DNSPs. This practices requires further investigation including "why this practice exists" and is it appropriate market conduct; and
- The DNSPs automatic "right" to replace lights at the end of their economic life.

We submit, that as a contestable framework exists, both these barriers can be removed over time by classifying public lighting as a Negotiated distribution service.

(b) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other electricity network service provided by the network service provider;

Whilst economies of scale and scope should be possible via the provision of both network services and public lighting services, in our experience, DNSPs typically use different contactors to provide each service,[16] thus negating any efficiencies or cost benefits.

We submit, typical DNSP work scheduling practices are unlikely to prevent network services being competitively provided by an alternative service provider.

(c) the presence and extent of any network externalities (that is, interdependencies) between an electricity network service provided by a network service provider and any other service provided by the network service provider in any other market;

We submit, contractors used to provide public lighting services can also provide similar services to customers in other markets. e.g. telecommunication network providers (including NBN Co), and councils for vegetation control.

(d) the extent to which any market power possessed by a network service provider is, or is likely to be, mitigated by any countervailing market power possessed by a network service user or prospective network service user;

We submit individual network service users (councils) may not initially have the same economies of scale in terms of procuring public lighting assets as the existing DNSPs, but councils could group together to tender public lighting services in bulk to minimise costs.

Further, councils or other service providers do not have the high overheads (eg 20% to 31%[17] in Victorian DNSPs) and on-costs, which we have seen attributed to public lighting in previous price determinations.

(e) the presence and extent of any substitute, and the elasticity of demand, in a market for an electricity network service in which a network service provider provides that service;

In considering contestability we note the following quotes from the AER's Preliminary F&A paper:

> "the absence of a contestability framework for existing public lighting assets",[18] and,

[16] AER, Final decision Victorian electricity distribution network service providers, Distribution determination 2011–2015, October 2010, p848.

[17] AER, Final decision Victorian electricity distribution network service providers, Distribution determination 2011–2015, October 2010, Impaq comment p844

[18] AER, Preliminary positions, Framework and approach paper, Ausgrid, Endeavour Energy and Essential Energy Regulatory control period commencing 1 July 2014, June 2012, p41.

> "The Electricity Supply Act 1995 (NSW) and the NSW Code of Practice Contestable Works apply only to the installation of new public lighting assets, but not to the maintenance or replacement of existing public lighting assets"[19].

We submit, there is a contestability framework for the provision of public lighting services by third parties in NSW, and that, Contestable Works apply not only to the installation of new public lighting assets, but also to the maintenance or replacement of existing public lighting assets.

We are aware there are well in excess of 120 service providers[20] accredited to provide contestable services under the Electricity Supply Act 1995 (the Act), and that the Accreditation Scheme has been recognised by the Minister for Resources and Energy under clause 88 of the Electricity Supply (General) Regulation 2001. The Act establishes the framework for competition in the design, construction and installation of electricity works that comprise, or are connected to the electricity distribution networks in NSW[21].

A customer can choose a service provider to provide contestable services, but the service provider must be an Accredited Service Provider (ASP). The Regulation sets out the types of services that are contestable and includes, for a Level 1 ASP:

- "Overhead (O/H) - Includes pole erection, tower construction, conductor stringing and tensioning, *street lighting works comprising pole erection, stringing of conductors and luminaire erection and pole substation construction;*
- Underground (U/G)- Includes cable trench excavation, duct laying, cable pit construction, pillar installation, cable laying and jointing, *street lighting works comprising pole erection, cable laying and luminaire erection and substation construction*; and,

Importantly, other network services may also be carried out under the auspices of contestable services at the discretion of the local electricity distributor[22]." (our underline)

We submit that a Level 1 Accredited Service Provider can perform all of the services required on public lighting.

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[19] AER, Preliminary positions, Framework and approach paper, Ausgrid, Endeavour Energy and Essential Energy Regulatory control period commencing 1 July 2014, June 2012, p40.

[20] NSW Govt, Trade & Investment, List of Level 1 Accredited Service Providers (as at 24 August 2012)(RRM 11)

[21] NSW Govt., Trade & Investment, Accreditation of service providers to undertake contestable services, Level1, Cl. 88 (RRM 13) Electricity Supply (General) Regulation 2001, Sept. 2011, p3. . (RRM 12)

[22] NSW Govt., Trade & Investment, Accreditation of service providers to undertake contestable services, Level 1, Cl. 88 (RRM 13) Electricity Supply (General) Regulation 2001, Sept. 2011, p12. (RRM 12)

Also, in its final report relating to the Review of contestable services on the New South Wales electricity network, the Better Regulation Office in partnership with Industry & Investment NSW and Department of Fair Trading, state that,

> "Maintenance of street lighting, including lamp replacement, is a network service that <u>is contestable at a DNSP's discretion</u>".[23] (our underline)

The matter of contestability is further highlighted in Essential Energy's Public Lighting Management Plan where it states,

> "Maintenance of customer owned lighting infrastructure is contestable. This includes new lighting built by customers and existing lighting under a tariff structure which recognises that the customer owns the lighting infrastructure".[24]

Finally, DSNPs in various NEM jurisdictions around Australia use such accredited external contractors to undertake services on the public lighting assets they own. An example includes Victorian DNSP United Energy Distribution that use Zinfra Group and Tenix as accredited service providers.

(f) Not considered applicable

(g) the extent to which there is information available to a prospective network service user or network service user, and whether that information is adequate, to enable the prospective network service user or network service user to negotiate on an informed basis with a network service provider for the provision of an electricity network service to them by the network service provider.

In its Preliminary F& A Paper the AER raises concerns regarding information available to customers:

> "With regard to section 2F (g) of the NEL, <u>it does not appear to the AER that consumers of public lighting services would have sufficient information to negotiate on an informed basis with the NSW DNSPs</u>. As outlined above, there are concerns around the lack of transparency regarding the terms on which public lighting services are provided to consumers. " (our underline)

We submit in consideration of section 2F (g) of the NEL, that all Public lighting services be classified as Negotiated distribution services for the 2014-19 regulatory period (see section 4.3.6 of this submission), and therefore must comply with the requirements of chapter 6 Part D - Negotiated distribution services, of the NER.

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[23] New South Wales Govt., Review of NSW electricity network contestable services: Final report, July 2010, p21.(RRM 14)

[24] Essential Energy, Public Lighting: Management Plan 2010,March 2011, Issue 4, p17. (RRM 8)

In accordance with clause 6.7.5 (c)(2) of the NER, the Network Service Provider (the DSNP) is required, to provide all such commercial information a Service Applicant (the Council) may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the negotiated distribution service, including the cost information.

With public lighting classified as Direct control - Alternative Control, the inability of the AER to release DNSP's confidential information has proven problematic in the past and remains so. This information is however required by customers to prepare consultation submissions in response to DNSP pricing proposals.

Public lighting customers were frustrated by the process at the last review in NSW and are most concerned that the AER's proposed classification of Direct control – Alternative control will perpetuate this frustration.

We submit to the AER that classification of public lighting services as Negotiated services will overcome any issues with confidential information, as this can be effectively managed through clause 6.7.6(a) of the NER which will ultimately be incorporated in the DNSP's approved Negotiating framework.

We submit that pursuant to clause 6.7.5 (c)(2) and 6.7.6(a) of the NER, consumers of public lighting services will have sufficient information to negotiate on an informed basis with the NSW DNSPs.

We submit that in light of the information provisions in NER 6.7.5 (c)(2) the AER reassess its stated view, "it does not appear to the AER that consumers of public lighting services would have sufficient information to negotiate on an informed basis with the NSW DNSPs", when the services are classified as Negotiated services.

We submit that the adoption of the Negotiated services classification for Public lighting services will more than satisfy the requirements of section 2F (g) of the NEL, and indeed overcome the significant issues that have faced the AER and customers regarding the provision of confidential information from the DNSP.

Recommendation 2: As a contestable framework already exists, the current barriers to entry in to the public lighting services market can effectively be removed over time through negotiation under chapter 6 Part D of the NERs. This development is consistent with the National Electricity Objective. **Critically,** as outlined in our submission this requires classification of the services by the AER Negotiated

4.3.3 Previous form of regulation - clause 6.2.1(c)(2)

Clause 6.2.1(c)(2) of the NER requires:

> "The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:
>
> > (2) the form of regulation (if any) previously applicable to the relevant service or services and, in particular, any previous classification under the present system of classification or under the previous regulatory system (as the case requires); "

The current classification of all public lighting services in NSW as a Direct control service, and further as an Alternative control service, was deemed under the transitional provisions for the 2009-14 regulatory control period. Under these transitional arrangements, the AER was required to adopt certain aspects of earlier determinations made by the previous regulator, such as the classification of public lighting.

For the 2014–19 distribution determination the AER is not bound by the transitional provisions and must give detailed consideration to the classification of distribution services under chapter 6 of the NER. In this regard and with specific reference to clauses 6.2.1(c)(2), we believe that for this review, the AER should place little emphasis on the current classification for public lighting, as it was not made in accordance with clause 6 of the NER.

We submit, that the AER adopt a 'clean slate' approach to classifying public lighting services.

Such an approach would be consistent with the views expressed by Mr Andrew Reeves (Chairman of AER) at the AER Stakeholder Forum held in Sydney on 9 August. Our interpretation of Mr Reeves address is that the AER is looking to adopt a long term approach to establishing a series of services and prices that are consistent with the National Electricity Objective, and support customers' needs when providing such services.

The National Electricity Objective, as stated in the National Electricity Law is:

> "To promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to –
>
> (a) price, quality, safety, reliability, and security of supply of electricity; and
> (b) the reliability, safety and security of the national electricity system"

Further, in an article published in the Sydney Morning Herald on 9 August[25], (and we quote),

> “The chairman of the Australian Energy Regulator, Andrew Reeves, told the *Herald* yesterday that unless the regulations which govern its decision-making process were overhauled, network operators, including state governments, will continue to overinvest in infrastructure, forcing consumers to cover the costs which the operators receive back as dividends”.
>
> ''We consider consumers are paying more than necessary for a reliable supply,'' Mr Reeves said.
>
> “Mr Reeves first complained in September last year, when the regulator submitted a proposal to the Australian Energy Market Commission proposing a change to the price setting rules”.
>
> “It argued the original regulations, written by the states and signed off by the Commonwealth, were designed originally to encourage investment in ageing and ailing poles and wires. Now, ''it is time to focus on the efficiency of that investment expenditure to prevent consumers paying more than they should'', the original proposal said”
>
> “It argued the regulator was ''currently restricted in its ability to set prices based on an objective assessment of the efficiency or the necessity of the expenditure proposed by electricity businesses''

We strongly agree with the views expressed by Mr Reeves in this article.

We submit and encourage the AER to adopt a ‘clean slate’ approach to regulating Public lighting services for the 2014–19 distribution determination and place little emphasis on the current classification for public lighting, as it was not made in accordance with Clause 6 of the NER and further, did not consider the National Electricity Objective.

[25] Coorey Phillip, Sydney Morning Herald, “Regulator agrees power prices too high”, 9 August 2012. (RRM 10)

We submit the AER is not bound by the transitional provisions and must give detailed consideration to the classification of distribution services under chapter 6 of the NERs including 6.2.1(c)(2), with due consideration that:

- public lighting should eventually be fully contestable, and that providing customers with the ability to negotiate (chapter 6 Part D of the NER) will enable progression towards this outcome; and
- leaving public lighting services as a Direct control - Alternative control distribution service is therefore not progressing towards the achievement of the National Electricity Objective for this service.

4.3.4 Consistency in the form of regulation - clause 6.2.1 (c)(3)

Clause 6.2.1(c)(3) of the NER requires:

> "The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:
>
> > (3) the desirability of consistency in the form of regulation for similar services (both within and beyond the relevant jurisdiction)".

In considering this clause, we point to the fact that there is currently little consistency in the form of regulation either within or between other NEM jurisdictions. For example;

- South Australia - where all public lighting services have been classified as Negotiated services[26];
- Victoria - where new public lighting (including new technologies), and the alteration and relocation of DNSP public lighting assets are Negotiated services, whilst the operation, repair, replacement and maintenance of DNSP public lighting assets are Direct control-Alternative control services[27];
- Tasmania where new luminaire types or new technologies are a Negotiated service, and other public lighting services are classified as Direct control-Alternative control ; and,
- Australian Capital Territory, where the public lighting is not owned by the DNSP but rather the Territory Government,[28] and is unclassified.

We submit that previous determinations have been made under the transitional rules. As such, any existing service classifications can fairly be seen as transitional, and the AER

[26] AER, Final decision South Australia distribution determination 2010–11 to 2014–15, May 2010,p283

[27] AER, Final decision Victorian electricity distribution network service providers, Distribution determination 2011–2015, October 2010, Appendix B.

[28] AER, Preliminary positions, Framework and approach paper, Ausgrid, Endeavour Energy and Essential Energy Regulatory control period commencing 1 July 2014, June 2012, p43.

must therefore, when considering existing classifications pursuant to NER 6.2.1(c)(3), recognise the transitional nature of these classifications.

The 2014-19 NSW determination will be the first non-transitional determination made.

The Australian public lighting market is developing rapidly, and needs to evolve towards full contestability. We reasonably expect other states to embrace the Negotiated services classification for public lighting as a stepping stone towards establishing services from the DNSP that will enable an effective transition to contestability.

A further consideration is the effectiveness of the classification and the resultant control mechanism. In NSW and Victoria the classification of public lighting as Direct control - Alternative control services has proven extremely problematic for customers, the AER and DNSPs to the extent that the public lighting determinations in these States were ultimately appealed.

Further, public lighting customers were frustrated by the process during the last distribution determination in NSW. Particularly in terms of 'lack of information' made available by DNSPs due to 'commercial confidentiality'. Customers in the Ausgrid region ultimately incurring a major price increase of around 49%.

There has been no such appeal in South Australia where public lighting is currently a Negotiated distribution service.

We submit that classifying public lighting services in NSW as Negotiated distribution services will provide consistency with South Australia and compliance with clause 6.2.1 (c) (3) of the NER.

4.3.5 Other Relevant Factors - clause 6.2.1 (c)(4)

Clause 6.2.1(c)(4) of the NER requires:

> "The *AER* must, in classifying a *distribution service* or *distribution services*, have regard to:
>
> (4) any other relevant factor. "

4.3.5.1 Competition

As noted in the AER's Preliminary F&A paper, TTEG, (some) councils and DNSPs submitted that the current regulatory approach has not changed the level of competition or the prospect for competition in public lighting services in NSW.[29]

Yet, as the AER is aware, DSNPs tender for ASPs to perform public lighting services on their behalf (refer section 4.3.2 (e) regarding ASPs). Does that mean therefore, that the opportunities afforded to the ASP's are so few or infrequent as to provide a perception in the market place that the level of competition or the prospect for competition has not changed under the current classification?

The contestability of new lighting, replacement public lighting, and potentially the ongoing maintenance of all lights should be seen as an additional profit opportunity for DNSPs as they could undertake work in other electricity distribution regions.

Individual ASP's may not have the same economies of scale in terms of procuring public lighting assets as the existing DNSPs, but councils could group together to tender public lighting services in bulk to minimise costs.

In terms of the electricity industry, public lighting can reasonably be seen to be similar to high demand metering services (Types 1-4), which are currently unregulated in all NEM jurisdictions.

We submit that the current classification is a primary contributing reason to the low levels of competition and is not providing the appropriate regulatory outcome as sought.

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[29] Bankstown City Council, Submission on public lighting services in NSW, 10 May 2012, p. 5; SSROC, Submission on public lighting services in NSW, 11 May 2012, p. 4; NSROC, Submission on public lighting services in NSW, 11 May 2012, p. 1; Centroc, Submission on public lighting services in NSW, 9 May 2012, p. 2; SEROC, Submission on public lighting services in NSW, 10 May 2012, p. 5; TTEG, Submission on public lighting services in NSW on behalf of WSROC, May 2012, p. 13; Ausgrid, Response to the AER on the approach to the regulation of public lighting, May 2012, p. 3; Essential Energy Submission on public lighting services in NSW, 21 May 2012, p. 2.

We submit that current DNSP practices are also impacting on competition. These practices include:

- The “required” vesting of new public lighting to DNSPs. This practices requires further investigation including “why this practice exists” and is it appropriate market conduct; and
- The DNSPs automatic “right” to replace lights at the end of their economic life.

We submit that as they incur the financial liability, that customers should determine who replaces lights at the end of their economic life.

We submit that pursuant to NER 6.2.1(c)(4) the AER must consider the (lack of) development of competition in the NSW market as a relevant factor in its determination of service classification for public lighting.

4.3.6 Recommended services and classifications

We submit for the reasons presented in sections 4.3.2 to 4.3.5 in this submission, and in consideration of chapter 6 of the NER and section 2F of the NEL, the most appropriate classification for public lighting services is that of a Negotiated distribution service.

In our view, all public lighting services are currently contestable and could be an unclassified (unregulated) service, whereby councils could issue a tender for these services in the same way as they currently do for the many services they purchase, including the supply of electricity, road maintenance, waste collection services and the like.

However, the key issue that makes this classification problematic for the 2014-19 regulatory period, is that DNSPs currently own the majority of the installed public lighting assets.

Councils have had a long history of providing Public lighting services for the population of New South Wales. In fact, Sydney Municipal Council was first made responsible for “lighting the streets” back in 1842 following a Bill being passed by the Legislative Council.[30] There is no reason why councils couldn’t own a significant number of public lighting assets in the future and provide street lighting services in parallel with, or in lieu of, the DNSPs.

We are not advocating the transfer of existing public lighting assets from the DSNPs to the councils, but if the DNSPs wanted to transfer ownership to councils we would accept.

[30] Sydney County Council, History of Electricity,2007, p2. (RRM 15)

We submit the mandatory requirement for public lighting developers to vest (gift) assets (either new or replacement) to the DSNP, has significantly contributed to the monopoly position that DSNPs currently enjoy today.

We submit any mandatory vesting of assets to the DNSPs by developers must be abolished, with any vesting to be by agreement with councils as they would incur the ongoing financial liability.

We submit the proposed non-vesting arrangements would include the construction, installation and replacement of public lighting assets that are fully funded by customers (eg councils, road authorities, land developers, etc.). This would enable councils and other customers to eventually own significant number of public lighting assets over time, and therefore provide competition to the DSNPs for provision of "lighting the streets" as originally envisaged by our forefathers.

We submit, the first step in the transition process is the classification of those public lighting services that require regulatory control, as **Negotiated distribution services** for the regulatory period commencing on 1 July 2014.

Associated with this classification will be the definition of specific public lighting services (which we have provided in more detail in section 4.3.1.2) to be provided by the NSW DSNPs.

We recognize these services may be grouped or remain as individual for classification:

1. Alteration and relocation of DNSP owned assets;
2. Operation, maintenance and repair of DNSP's public lighting assets (existing technologies);
3. Operation, maintenance and repair of new technology lights;
4. Operation, maintenance and repair of non-DNSP owned public lighting assets (funded by others);
5. Replacement of existing lights (luminaires, brackets, columns) at the end of their economic life;
6. Written down value of DNSP lights if retired early (current Tariff 5);
7. Provision of Ancillary Street Light (ASL) services - maintenance of a database relating to street lights, and recording and informing customers who own streetlights of streetlight faults reported to the DNSPs;

We also submit to the AER that the following public lighting services are contestable, do not utilize DNSP assets and as such should remain unregulated.

8. New Public Lighting installation not funded by the DNSP;

9. Alteration and relocation of non-DNSP owned assets;

10. Streetlight design.

Our proposed approach to defining more specific service specifications will in itself potentially aid the development of the sector, and we also note Essential Energy's submission to the AER's Discussion paper, May 2012:

> "Essential Energy no longer promotes its streetlight design or construction services. Customers are actively encouraged to seek the services of a suitably qualified Accredited Service Provider. This approach appears to be performing satisfactorily to date".[31]

And that

> "current regulation of public lighting services as an alternative control service places caps on prices that can be charged for these services and will restrict the likelihood of new competition entering the market where these caps are set below cost reflective levels"[32].

And finally

> "Essential Energy also promotes the self-funding of replacement public lighting infrastructure by its customers. For example, the new hardware required for the current bulk luminaire replacement program is being directly funded by customers". And, finally that "Classification of public lighting services as negotiated or unregulated may provide a better opportunity for competition to develop for these services".

Recommendation 3: For the reasons presented in sections 4.3.2 to 4.3.5 in this submission, and in consideration of chapter 6 of the NER and section 2F of the NEL, the Negotiated services classification is "clearly more appropriate" (clause 6.2.1 of NER) for all public lighting services, other than those services that are unclassified (unregulated). Our recommendations for specific public lighting services are summarised in Table A.

[31] Essential Energy - submission on public lighting services in NSW - 21 May 2012, p 3. (RRM 9)

[32] Essential Energy - submission on public lighting services in NSW - 21 May 2012, p2. (RRM 9)

Table A – Recommended Public Lighting Services

	Service	Classification	Comments
1	Alteration and relocation of DNSP owned assets	Negotiated	
2	Operation, maintenance and repair of DNSP's public lighting assets (existing technologies) (SLUOS)	Negotiated	Negotiated Addresses both service terms and conditions and charges. Replacement of lights to be at the customer discretion – refer 5 below
3	Operation, maintenance and repair of New Technology Lights	Negotiated	
4	Operation, maintenance and repair of non- DNSP owned public lighting assets (initially funded by others)	Negotiated	Includes replacement lamps, PE cells and other activities as agreed
5	Replacement of existing lights (luminaires, brackets, columns) at the end of their economic life	Negotiated	Replacement of lights to be at the customer discretion i.e. not automatically by the DNSP
6	Written down value of DNSP lights if retired early	Negotiated	current Tariff 5
7	Ancillary services – notification of faults to streetlight owners.	Negotiated	A new service to allow councils to own and maintain its own lights
8	New Public Lighting installation not funded by the DNSP	Unclassified (unregulated)	with no vesting requirement
9	Alteration and relocation of non DNSP owned assets	Unclassified (unregulated)	
10	Streetlight design	Unclassified (unregulated)	

4.4 Emerging technologies in public lighting

"The AER considers that there is scope for new luminaire types or new technologies to be treated as a negotiated service. The AER seeks further submissions on the treatment of new luminaire types. It should be noted that the AER has classified 'new public lighting technologies' in Tasmania as negotiated services".

The AER seeks submissions on the treatment of new luminaire types or new technologies in the provision of public lighting services.

New public lighting technologies, particularly more energy efficient lights, are increasingly being introduced to the market.

If the AER classifies all public lighting services as Negotiated distribution services then these new lighting technologies can effectively be included in the Negotiation process that will under this classification and in accordance with chapter 6 Part D of the NER.

However, if the AER classifies Public lighting services as Alternative Controlled distribution services, then the process becomes problematic as these new light types (which may not even be known at the time) cannot effectively be included in any DNSP regulatory proposal and therefore also not included in the AER's Determination.

As mentioned by the AER in its Preliminary F&A paper, we acknowledge that these services are classified as Negotiated distribution services in Tasmania[33].

In addition to Tasmania 'new public lighting technologies' are also classified by the AER as Negotiated distribution services in both South Australia and Victoria. We have not reviewed other jurisdictions.

In recognition that the Operation, Maintenance and Repair of distributor owned assets had been classified as Alternative Controlled Distribution services, in section 19.8.1.1 of its Victorian Final Determination[34], with reference to its Draft Determination the AER advised:

> "New technology public lighting assets constructed from 1 January 2011 which are not regulated as public lighting alternative control services under the AER's distribution determination, are considered by the AER to be 'new assets' and therefore subject to the AER's negotiating criteria and the relevant DNSP's negotiating framework.
>
> Accordingly, councils and Victorian DNSPs can negotiate a charge for new lighting technology that did not exist at the time of the relevant DNSP's regulatory proposal or the AER's final distribution determination.[35]
>
> The AER notes that it is not empowered under the NER to consider or request ad-hoc proposals for public lighting charges where a distribution determination is already in force. The introduction of any new lighting technology during the 2011–15 regulatory control period will therefore be on a negotiated basis.

[33] AER, Final framework and approach paper, Aurora Energy Pty Ltd for the regulatory control period commencing 1 July 2012, November 2010, p. 61.
[34] AER, Final decision - Victorian electricity distribution network service providers Distribution determination 2011–2015, October 2010, p 885
[35] Footnote 168 AER, *Draft decision*, June 2010, p. 819.

Chapter 3 of this final decision sets out the approach to negotiated distribution services. [36]"

The AER then concluded in section 19.8.1.4 of its Victorian Determination[37]:

"….. the AER maintains that new technology public lighting assets which are constructed from 1 January 2011 and not regulated as public lighting alternative control services are considered by the AER to be 'new assets'.

As noted earlier, such assets are subject to the AER's negotiating criteria and the relevant DNSP's negotiating framework. Correspondingly, councils and Victorian DNSPs can negotiate a charge for a new lighting technology that did not exist at the time of the relevant DNSP's regulatory proposal or the AER's final determination.

Moreover, the AER notes that councils are able to approach third party service providers to negotiate the installation of new CFL lights."

The 1 January 2011 date is important only in that this was the date the new regulatory period commenced.

In making its Victorian decision the AER therefore split public lighting services in to two classifications being new light technologies (Negotiated service) and existing lighting technologies (Alternative Control distribution services).

Recommendation 4: As emerging 'new luminaire types' or 'new technologies' are not necessarily known they cannot be classified as Direct control - Alternative control and hence must be classified as Negotiated distribution services.

5 CONTROL MECHANISMS

In this section we have provided a response to specific issues raised in Section 3.4.2 Issues and AER's considerations – alternative control services – Public lighting services (P66).

"The AER's preliminary position on the basis of the control mechanism to apply to public lighting services is to apply:

- ***a continuation of the building block approach for all assets constructed before 1 July 2009***

[36] Footnote 168 AER, *Draft decision*, June 2010, p. 819.

[37] AER, Final decision - Victorian electricity distribution network service providers Distribution determination 2011–2015, October 2010, p 885

- ***a continuation of the annuity capital charges for all assets constructed after 1 July 2009 until 30 June 2014***
- ***an annuity capital charge approach to construct prices in the first year for all assets constructed after 1 July 2014***
- ***a price path, such as CPI, for the remaining years of the regulatory control period.***

Maintenance charges will be calculated separately depending on the type of luminaire in use and respective lamp replacement rates".

The AER seeks submissions on its preliminary position on the control mechanism to be applied to public lighting services.

We submit the following in response to the AER's request for submissions on its preliminary position on the control mechanism to be applied to public lighting services.

5.1 Issues with the AER proposal

The AER's proposal to apply a price cap control mechanism to regulate public lighting services as an alternative control services for the next regulatory control period is not in the customers' interest. Further, this classification appears inconsistent with views expressed by the Chairman of the AER regarding the AER's current restriction in its ability to set prices based on an objective assessment of the efficiency or the necessity of the expenditure proposed by electricity businesses[38].

Importantly, the Negotiated distribution services classification presents no such restriction to the AER as services and prices are negotiated between the service provider and the customer.

As we are advocating a Negotiated service classification of Public lighting services, we will first address the issues we see with the AER's proposed control, before discussing the elements of control for Negotiated services.

[38] See section 4.3.3 of this submission

5.1.1 Increased complexity in billing and reconciliation

We note that,

> "the AER acknowledges the complexity of the current approach, which results in multiple billable elements for public lighting services. The current approach was determined by the AER with an aim to ensure that older depreciated (and less costly) assets did not adversely interfere with the efficient pricing of newer public lighting assets.[39]

We submit adding a further annuity capital charge to construct prices in the first year for all assets constructed after 1 July 2014, as proposed, will further exacerbate an already complex approach, and is not recommended.

We also notes Ausgrid's response to the AER's Discussion paper,

> *"If the current approach continues at future regulatory resets, an additional partition of the asset base would be required at each reset, until such time as the pre-2009 assets are fully depreciated. The pre-2009 assets in the roll-forward model will have a residual life of 11 years as at 2014. They will thus not be fully depreciated until 2025, so there will be a decreasing residual asset value associated with the pre-2009 assets until the 2024 regulatory reset. This implies that there will be an additional set of pricing components introduced for the 2014-19 and 2019-24 regulatory control periods, giving 5 partitions of the asset base, in total. This would involve approximately 600 pricing components, in total.*
>
> *The AER's proposed approach is therefore clearly unsustainable, as it would lead to enormously complex pricing, billing and asset recording arrangements. The ensuing street light charges would also be nigh impossible to explain to, and be understood, by their customers.*
>
> *It is appropriate in 2014 to set up a regime where at the next regulatory determination, unless there had been a fundamental change, the process may be readily replicated without the need for further fundamental change and dislocation".*[40]

We support Ausgrid's analysis and view of the AER's proposed control mechanism that it will add to the complexity of an already complex set of charges and is unsustainable as a form of price control.

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[39] AER, Final decision, EnergyAustralia distribution determination 2009-10 to 2013-14, Alternative control (public lighting) services, 2010, p. vi.

[40] Ausgrid - submission on public lighting services in NSW - May 2012, p6.(RRM 4)

Further, in response to the AER's discussion paper on public lighting services in April 2012, the overwhelming view from councils was that continuing the current approach would be overly complex and difficult to administer while providing minimal, if any, benefits to customers.

WE note SEROC expressed the view that, due to the current pricing complexity, the bills they receive from the DNSP's are confusing, to the extent that:

> "Councils cannot readily answer questions such as how much does this light cost per year? How much does it cost to light this road per year? How much would Council save by moving to this new type of lighting?[41]

These are fundamental questions that every ratepayer would expect its council to be able to answer quickly and accurately.

We have been advised from several EE Councils member councils (Endeavour Energy region) that transparency in pricing and provision of data to enable monthly reconciliation of bills are both problematic for them. After reviewing Endeavour Energy's Public Lighting (Street Light Use of System Charges) Effective 1 July 2011, we understand why reconciliation is problematic.

This view regarding complexity was also supported by Essential Energy, who advised:

> "Essential Energy's two current pricelists include a significant number of individual prices, and it would be unwieldy to have additional price lists determined every 5 years".[42]

By adopting a continuation of the building block approach for all assets constructed before 1 July 2009 and rolling forward the RAB that was established during the 2009 review, we are concerned that this approach will lead to further uncertainty around the 'fair value' of the RAB, that was not open to 'interested party' scrutiny during the last determination.

5.1.2 Increased administrative costs

The introduction of an additional annuity charge is problematic as it not only introduces additional billing complexities, but it adds the vagaries of forecasting both the number of lights and future costs pertaining to these lights that will be installed after 1 July 2014.

[41] SEROC, Submission on public lighting services in NSW, 10 May 2012, p 3. (RRM 5)

[42] Essential Energy, Submission on public lighting services in NSW, 21 May 2012, p2. (RRM 9)

In its Preliminary F&A paper the AER demonstrated how DNSP's can end up making 'windfall gains' through favourable variations from forecast volumes and prices.[43] Whilst the example sighted relates to the variations in overall revenue recovery by Victorian DNSP's, the same fundamental principles apply to the calculation of an annuity to be applied to public lighting assets, and hence problematic.

We submit the introduction of an additional annuity capital charge for all assets forecast to be constructed after 1 July 2014, will have a material and adverse effect on administrative costs for the AER, the DNSPs and users (councils, road authorities, etc.) and is therefore inconsistent with clause 6.2.2 (C)(2) of the NER – "the possible effects of the classification on administrative costs of the AER, the DNSP and users or potential users".

5.1.3 Recommended approach to form of control

We submit by adopting the classifications proposed by the EE Councils in Table A (section 3.1.2), the AER need only concern itself with the approval of the key elements of the negotiating process prescribed in chapter Part D of the NER, as part of its 2014-19 Distribution review determination.

Clause 6.7.5 of the NER requires the DNSP to prepare a Negotiating framework, setting out the procedure to be followed during negotiations between the provider and any the service applicant (in this case the councils) who wishes to receive a negotiated distribution service from the provider, as to the terms and conditions of access for the provision of the service.

Importantly, the Negotiated Distribution Service Criteria (clause 6.7.4) addresses the terms and conditions of the services to be provided, as well as the price to be charged for providing the service. The customer of the service has the opportunity to be actively involved in determining the level of service provided and ultimately the price paid to the DNSP for providing the agreed service.

With reference to the price to be paid for the service, clause 6.7.1 of the NER provides the principles relating to access to negotiated distribution services, with subclause (1) stating that,

> *"the price for a negotiated distribution service should be based on the costs incurred in providing that service, determined in accordance with the principles*

[43] AER, Preliminary positions, Framework and approach paper, Ausgrid, Endeavour Energy and Essential Energy Regulatory control period commencing 1 July 2014, June 2012, p128.

> *and policies set out in the Cost Allocation Method for the relevant Distribution Network Service Provider;"*

By way of example, in South Australia, this principal has translated into ETSA's approved Negotiated Distribution Service Criteria stating:

> "The price for a negotiated distribution service must reflect the costs that a DNSP has incurred or incurs in providing that service, and must be determined in accordance with the principles and policies set out in the DNSP's Cost Allocation Method."[44] (Our underlining)

Further, clause 6.7.5 (c)(2) requires the Negotiating framework to specify;

> "a requirement for the provider to provide all such commercial information a Service Applicant may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the negotiated distribution service, including the cost information described in subparagraph (3); and
> (3) a requirement for the provider:
> (i) to identify and inform a Service Applicant of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the negotiated distribution service; and
> (ii) to demonstrate to a Service Applicant that the charges for providing the negotiated distribution service reflect those costs and/or the cost increment or decrement (as appropriate); and
> (iii) to have appropriate arrangements for assessment and review of the charges and the basis on which they are made".

We submit that the process requirements specified above will ensure the Service Applicant (in this case the council) has the opportunity to be involved in a transparent negotiation involving the actual costs incurred by DNSP in providing public lighting services.

This is significantly different to what currently happens under a Direct control – Alternative control mechanism, where service customers (councils) have no idea of what a DNSP may or may not have has included in their RAB, or the basis of their volume forecasts for the annuity calculations.

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[44] ETSA Utilities Negotiating Framework, Schedule 2-Negotiated distribution service criteria, item 5, p22. (RRM 2)

We submit the AER is aware, that the (lack of) provision of cost information to councils and other interested parties has been problematic in prior regulatory periods. The Negotiated distribution service process provides for the DNSP to share confidential commercial information with the councils, not only the AER, and should address past concerns.

> **Recommendation 5:** DNSPs must establish robust and compliant Negotiating Framework including Negotiated Distribution Service Criteria, and Cost Allocation Method for the AER to approve in its NSW distribution determination for 2014-19.

6 Other Considerations

6.1 Other submissions to the AER's Paper

We recognise and accept that SSROC councils and other councils in the Ausgrid region have proposed a classification of Direct control - Alternative control distribution service for public lighting services in the Ausgrid distribution region.

Our proposal for Negotiated distribution services is directed at the classification of public lighting services in the Endeavour Energy Region.

6.2 Distribution Network Reform

We also note in section 2.4.8 of the AER's Paper:

> "The AER considers that it would be impracticable to have public lighting classified differently across DNSP distribution districts, given the merger of the NSW DNSPs. Even without the proposed merger, the AER would find it impracticable to have public lighting classified differently with some councils operating in two distributor districts."

Regarding the pending reform of the electricity distribution network in NSW, we are advised by the NSW Department of Trade and Investment[45]:

> "Industry and The NSW Government has announced a There are currently three electricity networks – more commonly known as the 'poles and wires' - responsible for the distribution of electricity to homes and businesses.
>
> To help contain the rising costs of delivering electricity, the NSW Government will merge the three distribution networks into a single corporate structure to reduce waste and duplication and generate savings from economies of scale.

[45] http://www.trade.nsw.gov.au/energy/electricity/networks/reforms

> A new State owned corporation (SOC) will be created to own and operate the electricity distribution network. Three subsidiary businesses – Ausgrid, Endeavour Energy and Essential Energy – will provide operational services to the SOC under the current brands."

We submit that this type of reform is not dissimilar to the arrangement that exists with CitiPower and Powercor in Victoria where they share a united corporate structure and vision but operate independent electricity networks with separate distribution licenses.

We submit that as the AER must make a distribution determination for <u>each</u> Distribution Network Service Provider (clause 6.2.4 (a) of the NER). Whilst clause 6.2.1 (c)(3) of the NERs is a consideration for the AER, we are not aware that the NEL or NER prevents the AER in any manner to determining different classifications for each of the three distribution licence holders, if appropriate.

The perceived issue raised by the AER regarding separate classifications for councils operating in two distributor districts has been considered by EE Councils and we have accepted that

Irrespective of what classification the AER may consider appropriate for other DNSPs, the EE Councils request the AER to classify public lighting services for Endeavour Energy as a Negotiated Distribution Service.

We submit (as mentioned previously in our submission) there is a range of classification of services across NEM jurisdictions, and also between different services provided by the same DNSP within the same jurisdiction. Rather than being "impractical" (AER Preliminary F&A Paper cl 2.4.8) EE Councils on the fringe of Endeavour Energy's distribution would look forward to dealing with different approaches to determining service terms and conditions and charges from a competition and efficiency outcome perspective. EE Councils consider it no more problematic than being billed by two distributors as already occurs.

We submit a way of overhauling the current regulatory process, as advocated by the Chairman of the AER, having different approaches in neighbouring distribution areas is likely to produce healthy competitive tension and be of benefit to customers.

We totally reject the suggestion that councils will not be in a position to negotiate with a monopoly service provider, as the provisions of chapter 6 Part D, have been established to ensure this doesn't happen.

Finally **we submit,** by the EE Councils championing the Negotiated service approach for the 2014-19 period, the public lighting sector overall will have visibility (for future determinations) regarding how effective the Negotiated service classification is for establishing SLUOS services and charges.

6.3 Cost Allocation Method

In the Summary in its Paper the AER considers the CAM.

> "In its 2009 final determination, the AER approved that NSW DNSPs to apply cost allocation methods (CAM) based on the IPART Accounting Separation Code consistent with Part J of chapter 6A of the NER. Given that the transitional rules will expire at the conclusion of the 2009–14 regulatory control period, the AER requires the NSW DNSPs to propose CAMs that are consistent with the AER's cost allocation guidelines."

We support the AER's proposed requirement for DNSP CAMs to be consistent with the AER's cost allocation guidelines including clause 3.2(a)(3)A and 3.2(a)(7).

In section 8 of its Paper the AER further considers the CAM.

> "The revised CAMs of the NSW DNSPs will have a significant impact on the regulatory proposals for the 2014–19 regulatory control period. The CAMs will ideally be determined prior to the submission of the NSW DNSPs' regulatory proposals for the 2014–19 regulatory control period."

We submit that not only does the CAM have "a significant impact on the regulatory proposals", but that DNSPs must include in their CAM a process that provide sufficient detailed information to enable the DNSP "to demonstrate to a *Service Applicant* that the charges for providing the *negotiated distribution service* reflect those costs and/or the cost increment or decrement (as appropriate)" (NER 6.7.5 (c)(3) (ii)) and that the "Service Applicant" (as defined in NER Ch 6) can effectively undertake a "review of the charges and the basis on which they are made". (NER 6.7.5 (c)(3) (iii))

Recognising that the Negotiation Framework (including the principles in NER 6.7.1, and in particular NER 6.7.1.1 which references the "Cost Allocation Method") places a requirement on DNSP's to establish prices that reflect "costs incurred", **we submit** that the AER requires DNSP's to specify in their CAM precisely how these costs will be identified and recorded both for both capital costs and operating expense to a level that would enable the requirements of NER Ch 6 Part 6 to be met. This identification and recording extends to both "directly attributed" costs and also allocated overhead costs.

We submit that where discretion is provided within the Guidelines for a "numeric quantity or percentage of the allocator, or allocators" (eg under clause 2.2.1(b)(2)E), the AER requires that DNSP to provide both the numeric quantity and the percentage, or if the percentage only, then to clearly identify which category the percentage applied to and the numeric quantity for that category.

We submit, that as “category” has not been defined in the Guidelines, it is critical that the services contained in each category are clearly defined, and that “directly attributed” and also allocated overhead costs attributable to that category are clearly established including the numeric quantity for that category and percentages for services within that category.

The AER not identified in its Paper if it will be undertaking a submission process from interested parties regarding the DNSP’s proposed CAMs.

We submit that the AER considers how stakeholders can effectively provide input to the CAM process and we register our interest to participate in any such process.