

14 May 2013

Mr Chris Pattas
General Manager - Network Operations and Development
Australian Energy Regulator
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Dear Mr Pattas

Response to the AER Distribution and Transmission Confidentiality Guidelines - Issues Paper

The AER's *Distribution and Transmission Confidentiality Guidelines - Issues Paper* is an important element in the Better Regulation Program and Energex welcomes the opportunity to provide a response to the Issues Paper. Energex understands that the Energy Networks Association (ENA) will be making a submission on behalf of its members and as such, Energex's comments align with the ENA's response.

Energex supports the Confidentiality Guideline's objective of seeking a balance between protecting certain confidential information whilst ensuring open and transparent regulatory decisions are made with adequate stakeholder engagement. The Guidelines should also endeavour to provide a streamlined process for making legitimate confidentiality claims by Network Service Providers (NSPs), with the aim of reducing the administrative burden on both the AER and NSPs.

However, as the Guidelines are binding on both the AER and NSPs, it is important that they are developed and operate within the existing regulatory information disclosure regime outlined in section 28ZB of the National Electricity Law (NEL). As such, Energex supports the ENA's suggested amendments to the AER's template in Attachment 1 of the Issues Paper, which direct the AER's focus of the claim to the nature of the information under consideration rather than on the type of document.

The AER has raised a number of specific questions in its Issues Paper and Energex's responses are outlined below in **Attachment 1**. In the meantime, if you require any further information please do not hesitate to contact Ms Rachel Leaver, Regulatory Determination Project – Regulatory Manager on 07 3664 4115.

Yours sincerely

A handwritten signature in blue ink that reads 'Kevin Kehl'.

Kevin Kehl
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Attachment 1

Question 1 – What are stakeholders' views on requiring NSPs to make confidentiality claims using the template in Attachment 1?

Energex supports a mechanism, such as a template, that streamlines the process for making confidentiality claims and reduces the administrative burden on the AER and NSPs. Energex does not have any major concerns with requiring NSPs to identify the detriment as it is implicit when categorizing the information and will assist the AER in carrying out the public benefit test.

However, Energex is concerned that if the NSP cannot address some of the requirements that are contained in the template, when making a confidentiality claim that it will imply that the claim is unreasonable or non-compliant. The AER must still be required to assess the potential detriment under section 28ZB of the NEL.

Question 2 – Should the confidentiality guidelines specify categories of information by which NSPs must classify any claims of confidentiality?

Energex supports the ENA's response and the position that classifying information according to categories fosters the objective of ensuring a streamlined and administratively efficient process.

Energex agrees with the ENA's suggested categories but notes that the list should not be exhaustive nor limit the ability for an NSP to claim confidentiality. The categories should include as a minimum:

- *Confidential contractual terms* - the disclosure of which would put the NSP in breach of contract or would adversely impact its contractual compliance if the disclosure occurred outside the regulatory disclosure regime. This is most likely to arise where a counterparty has requested that all or parts of the contract be kept confidential. Examples of these types of agreements are access agreements for the National Broadband Network and insurance contracts.
- *Market sensitive cost inputs* - such as supplier's prices and internal labour costs, the disclosure of which may adversely impact upon the NSPs ability to negotiate the most efficient price or rate for goods and service or its ability to compete in a competitive market for distribution services.
- *Information provided by a third party on a confidential basis* - the disclosure of which would adversely affect the interests of a third party or the public interest more generally. For example, proposed major connections and proposed public infrastructure development, not currently in public domain.
- *Proposed strategic property acquisitions* - for the transmission or distribution system, for example easements for lines and purchases for substations, the disclosure of which is likely to adversely impact on the NSP's ability to negotiate a fair market price for the acquisition.
- *Planning for negotiation of industrial agreements* - where disclosure of such information is likely to adversely impact upon the NSP ability to negotiate industrial agreements.
- *Proprietary information of NSP or a third party* e.g. sophisticated models developed at significant expense to NSP either itself or by its consultant. This is the type of confidential information that might be subject to disclosure if suitable undertakings have been given which protect the proprietary or commercially sensitive nature of the model.
- *Information which if made public may jeopardise security of the network or NSPs ability to effectively plan and operate its network.* Network Security Arrangements, Emergency Response plans include Terrorism Response Plans.

- *Information which identifies the personal affairs of customers or individuals e.g. customer pricing, terms and conditions of employment relevant to individual employees.*
- *Other – needs to be specifically defined by the NSP in its proposal (e.g. asset failure information particularly if provided at a granular level)*

Question 5 – What are stakeholders' views on requiring NSPs to use the template in Attachment 2 to determine the proportion of information over which they have claimed confidentiality?

Energex does not support the AER's proposal for NSPs to complete the template contained in Attachment 2, as this is a specific Rule requirement imposed on the AER (clause 6.9.2A)

Question 6 – What are stakeholders' views on our proposed measures for dealing with blanket confidentiality claims in the confidentiality guidelines?

Energex generally supports the AER's position on blanket confidentiality claims. However, the AER should acknowledge that certain documents may contain a large proportion of legitimate confidential information, to the extent that a public version of the document may be meaningless and present information that is out of context. In this case it may not be appropriate to provide a public version of the document.

Question 7 – What are stakeholders' views on our position that NSPs should verify all third party confidentiality claims that are included in their submission?

The AER's key consideration should be the nature of the information in respect of which confidentiality is claimed, i.e. the information should be treated the same in terms of confidentiality, regardless of who prepared or provided it.

Question 8 – Should we apply the confidentiality guidelines, as a policy, to all information we receive from NSPs and gas service providers? If not, what information handling procedures should we use to deal with this information?

Energex does have concerns with the Confidentiality Guidelines applying a blanket approach to any information provided to the AER, particularly as the Guidelines will be binding. For example, NSPs may provide sensitive information to the AER / AER's consultants as part of the regulatory determination process (after regulatory proposal is submitted) as well as part of business as usual (e.g. annual Regulatory Information Notices, benchmarking data, compliance audits and informal, ad hoc communication).

Should the AER wish to apply the Confidentiality Guidelines to all information provided by NSPs, then it should be made clear that the Guidelines are only binding on NSPs in relation to Regulatory Proposals (as per clause 6.14A(b)). Furthermore, it is even more important that the template in Attachment 1 currently proposed by the AER is revised to ensure procedural and administrative efficiency.

Question 9 – What are stakeholders' views on ensuring appropriate disclosure of information whilst minimising administrative costs?

Energex considers that the AER's proposed approach should be revised to facilitate disclosure of information whilst minimising administrative costs. As discussed above, identifying categories of information which are likely to be considered confidential will reduce the administrative burden on NSPs and will also increase certainty for businesses and consumers over the AER's views on 'appropriate disclosure of information'.