

20 September 2013

Mr Chris Pattas
General Manager – Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Dear Mr Pattas

RE: AER's Draft Confidentiality Guideline

The NSW Distribution Network Service Providers, Ausgrid, Endeavour Energy and Essential Energy (the NSW DNSPs) welcome the opportunity to provide comments on the Australian Energy Regulator's (AER's) draft confidentiality guideline (the draft guideline).

The NSW DNSPs are largely supportive of the draft guideline. Specifically, we support:

- **The use of categories of confidential information** - The NSW DNSPs strongly support the AER's decision to revise its policy approach regarding the use of categories of information. As noted in our previous submission, we consider the establishment of categories of confidential information will streamline the process for making confidentiality claims, alleviate administrative burden and will provide guidance to network service providers (NSPs) on the nature of information that should be protected.
- **Clarification on the focus of the guideline** – The NSW DNSPs support the AER's clarification that whether information should be disclosed or protected will depend on the nature of information (i.e. document content) rather than the type of document and further that confidentiality claims are to be assessed on a case by case basis.
- **The collaborative approach enshrined by the guideline** – The NSW DNSPs support the AER's proposed two-stage approach towards handling confidential information. Particularly, we support the AER's aim to identify and resolve as many confidentiality issues as possible collaboratively with NSPs prior to making a formal claim.
- **The AER's proposal to make greater use of limited disclosure** – The NSW DNSPs support the AER's proposal to publish completed confidentiality templates on its website as a means of facilitating greater use of limited disclosure. As noted in our previous submission, greater use of limited disclosure will enable the AER to strike an appropriate balance between protecting information and disclosing it to enable effective stakeholder engagement.

The draft guideline appropriately aligns with the statutory framework for the protection of confidential information under the National Electricity Law (NEL). Overall, we consider that the draft guideline strikes an appropriate balance between protecting information and disclosing it to provide transparency over regulatory decisions and to allow stakeholders to engage effectively in the regulatory determination process. The guideline also reflects the extensive work undertaken by the AER to work collaboratively with stakeholders and NSPs to understand the issues surrounding claims of confidentiality.

The NSW DNSPs do however have several concerns with the AER's proposed approach set out in the Explanatory Statement supporting the draft guideline which we would like to raise for further consideration by the AER.

The NSW DNSPs note that Appendix 3 to the Explanatory Statement set out an indicative list of documents which the AER considers should be publicly disclosed. The NSW DNSPs do not have concerns with the list as such, but reiterate our previous submission that the focus should be on the nature of the information rather than the type of document. Each document must be considered separately and if it contains confidential information, the disclosure of which could be detrimental to the business or a third party or would be against the public interest then that information should be appropriately protected.

For example, the AER has noted that business cases for proposed projects are a type of document that should generally be in the public domain. However, certain information in a business case document may relate to a category of confidential information identified by the AER. For instance, the document may identify the land or easement we would strategically acquire as part of the scope of the project. Business case documents are also likely to include estimates of supplier prices, which if disclosed would affect the NSP's ability to obtain competitive prices through tender processes.

Our other concern is the expectation that the NSW DNSPs will be in a position to engage with the AER and relevant stakeholders and as far as possible resolve confidentiality matters prior to submitting our proposal or lodging a confidentiality claim. Whilst we would be very willing to work with the AER and stakeholders on confidentiality issues during the development of future Framework and Approach papers, it should be acknowledged that there will be limited opportunity for this in the lead up to the finalisation of the Phase 2 Framework and Approach paper for NSW DNSPs. This is a result of the contracted timelines for the proposal as a result of the application of Transitional Rules.

However in relation to public lighting customers we consider there should be some scope for engagement with these customers in the lead up to the submission of the regulatory proposals in May 2014. For other customer groups and stakeholders a more realistic expectation for the 2014 regulatory proposals may be for the NSW DNSPs to engage with stakeholders more generally on the type of information that is likely to be the subject of confidentiality claims and that which could be released under confidentiality undertakings.

The NSW DNSPs have worked with the Energy Networks Association (ENA) in the preparation of its response to the draft guideline and we support that submission. In particular we support the comments regarding the workability and enforceability of the Confidentiality Undertakings that the AER has proposed be signed by consumer advocacy groups. The NSW DNSPs urge the AER to give further consideration to these issues and if necessary work further with the ENA to ensure that the confidentiality undertaking will operate effectively to protect information provided to the AER on a confidential basis.



If you have any further queries or would like to arrange a meeting please contact Mike Martinson, Group Manager Regulation at Networks NSW on (02) 9249 3120 or michael.martinson@endeavourenergy.com.au or alternatively Ms Jane Smith, Manager Network Regulation at Ausgrid on (02) 9269 2023 or jane.smith@ausgrid.com.au.

Yours sincerely,

Vince Graham
Chief Executive Officer
Ausgrid, Endeavour and Essential Energy