

Submission to the
Australian Energy Regulator

In response to

ETSA Utilities' Revised
Regulatory Proposal

Prepared by



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<i>Submission to: Australian Energy Regulator</i> <i>Submission by: Trans Tasman Energy Group</i>	ETSA Utilities' Revised Regulatory Proposal February 2010
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Foreword

This submission has been prepared by Trans Tasman Energy Group (TTEG) to represent the combined interests of the public lighting customers being the South Australian Department for Transport Energy and Infrastructure (DTEI) and member Councils of the Local Government Association (LGA).

The views expressed are those of the authors and do not necessarily represent the views of any individual council, the LGA or DTEI.

We welcome the opportunity provided by the AER to respond to ETSA's Revised 2010-15 Regulatory Proposal of 1 July 2009 and encourage the AER's efforts to assist Public Lighting Sector development by establishing fair and reasonable public lighting tariffs, based on our submission for the next regulatory period.

Local Government Association of South Australia (LGA)

According to their public mandate and statutory empowerment the LGA's member Councils' obligations are to deliver balanced economic, social and environmental outcomes, in the public interest of their constituents.

This mandate and empowerment includes the responsibility for "installation of road lighting", by virtue of Section 4 (1) (g) (ii) of the Local Government Act 1999.

South Australian Department for Transport Energy and Infrastructure (DTEI)

The DTEI and LGA member Councils are jointly responsible to "install and maintain road lighting" pursuant to Section 2.7 of the Highways Act 1926.

Trans Tasman Energy Group (TTEG)

TTEG Consultants 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.

Timeframe

The Group appreciates the AER extending the closing date of our Submission to February 23rd.

More Information?

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

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Attn: Mr Craig R Marschall, Principal Consultant

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1 Summary

We welcome the opportunity provided by the AER to respond to ETSA Utilities' (ETSA's) Revised 2010-15 Regulatory Proposal of 14 January 2010.

This submission has been prepared by Trans Tasman Energy Group to represent the interests of public lighting customers being the South Australian Department for Transport Energy and Infrastructure (DTEI) and member Councils of the Local Government Association (LGA). Even so, the views expressed are those of the authors and do not necessarily represent those of the public lighting customers.

In providing this Submission we have called on our experience both within Australia (particularly SA, NSW and Victoria) and internationally from New Zealand.

TTEG are also in a unique position to comment having undertaken a protracted negotiation on behalf of the public lighting customers with ETSA in the current period.

In our Submission, where we have not been able to provide a specific comment, we have provided a general comment for consideration / investigation by the AER as part of their approval process.

1.1 AER: ETSA Utilities draft distribution determination 2010–15

The AER correctly identified in its Draft Determination¹ that ETSA Utilities' proposed negotiating framework did not adequately comply with the requirements of Part D of the NER and required² the negotiating framework for the next regulatory control period to be amended as set out in appendix D of its Draft Decision.

1.2 ETSA Utilities' Revised Proposal

We recognise and appreciate that ETSA has attempted to provide a compliant Negotiating Framework in its Revised Proposal.

We submit that there are however anomalies in the Revised Proposal that require investigation and assessment by the AER.

In section 2 of our Submission we have primarily focussed on specific aspects pertaining to ETSA's Revised Negotiating Framework (primarily Parts A and C of Revised Proposal Attachment B.1) with regard to public lighting but propose that the AER can also consider the points raised in our Submission in the broader sense when considering ETSA's Revised Proposal (including Negotiated Services) in general terms.

¹ In accordance with NER clauses 6.12.1(15), clause 6.12.3(g) and clause 6.12.3(h)

2 Revised Proposal

2.1 Attachment B.1 - Negotiating Framework

ETSA has undertaken a significant, and welcome, review of their Negotiating Framework included in their Revised Regulatory Proposal as Attachment B1.

In our Submission we have primarily focussed on specific aspects pertaining to ETSA's Revised Negotiating Framework³ (primarily Parts A and C) with regard to public lighting but propose that the AER can also consider the points identified in our Submission in considering other Negotiated Services.

Where we have not been able to provide a specific comment we have provided a general comment for consideration / investigation by the AER as part of their approval process.

To assist the AER in its assessment of ETSA's Revised Regulatory Proposal, Attachment B.1: Negotiating Framework we submit the following:

Page 1 item D

"Indicative Price List Services" is a new introduction in the Revised Proposal and seems like a reasonable approach for low value, repetitive services.

Our understanding is the types of services provided by ETSA for each of a) and b) need to be clearly identified so that service applicants can assess the offer and establish any requirement for further negotiation.

Page 3, clause 2.4

ETSA is in a privileged position as a provider of services and has been providing various services in this role.

If ETSA intends to cease providing any services then other providers may not exist, or not be able to provide similar services at the same level as currently provided by ETSA.

We recognise that ETSA may need to reassess the services it offers from time to time but submit that if ETSA decides to cease providing any of its current services that an appropriate "sunset" provision be included.

Page 3, clause 3.1 b)

In addition to the price, we believe that for compliance, ETSA must specify what aspects comprise the 'Service' plus also the terms and conditions.

An example may be for "Full SLUOS" is the provision, installation and maintenance of the public lighting assets, including repair of failed lamps and/or PE cells within 48 hours, and bulk replacement of HPS lamps on major roads each 5 years.

³ Attachment B1 to ETSA Utilities' Revised Regulatory Proposal

Page 5, clause 6.1

We submit that for compliance, ETSA should simply include the requirements as stated in NER clause 6.7.5(c)(2) as follows:

“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);”

We are not sure why ETSA has proposed to qualify/alter this NER requirement?

However, in considering ETSA's clause 6.1 as proposed, we submit:

- “Email” should be an acceptable “written request”
- **IMPORTANTLY:** We submit that clause 6.1(b) should have “based on the information that is available to *ETSA Utilities*,” removed.

We are not sure why ETSA has included this requirement as it appears potentially inconsistent with NER clause 6.7.5(c)(2).

- 6.1(e) should allow for any inconsistency which may exist with the NERs then the NERs to prevail.

Page 5, clause 6.3

Service Applicants should be able to provide this information to their professional advisors if the Service Applicant requires their professional advisors to comply with the confidentiality requirements.

Page 9, clause 12

We submit to the AER to assess how this clause fits in with NER requirements as applied to Individually Negotiated Services as we are not sure of its relevance? Perhaps NER clause 6.7.5(3)iii?

Page 10, clause 14.1

We are concerned that ETSA can simply suspend negotiations as this may have the effect of “forcing” Applicants in to accepting ETSA's proposal to meet the Applicant's operational timeframes.

An example may be where an Applicant requires connection yet is in dispute with ETSA regarding the Individually Negotiated Service.

We submit for the AER's consideration that the connection work can be undertaken at the price proposed by ETSA even while a dispute is being undertaken, but with both parties agreeing to comply with the AER's decision.

Page 10, clause 14.1 b)

Suggest "10 days or as otherwise agreed between the parties".

Page 10, clause 16

We have not investigated if a further Application Fee applies for the resumption of a Negotiated Distribution Service following Suspension.

Page 12, clause 18.1

We submit that the following additional clauses should be included by ETSA:

- ETSA to establish prices, services, terms and conditions consistent with the requirements of the NERs or the NDSC ⁴(to be included prior to existing clause (c)), and
- Advise Applicants that these prices are Indicative Prices Only and that Applicants may negotiate separate prices with ETSA as per the Negotiation Framework (to be included prior to existing clause (d))

Page 12, clause 21

Please refer our comments under Page 10, clause 14.1.

Page 13, Table 3

The process Timetable should allow for timelines to be "as otherwise agreed between the parties" and can potentially include similar to clauses 9.2(b) and (c).

Page 13, Table 3, Event A

- ETSA refer to an Application Form yet we could not find a reference to where we could review the form?
- Application Fees must be identified by ETSA
- Services and terms and conditions must to be identified by ETSA
- Not sure of any NER requirement for a particular form but makes sense if it simplifies the process
- Information to be as "reasonably" required by ETSA

Page 13, footnote 5

As applications may be received late in the day, "X" could be the day following.

⁴ Whichever the AER considers more appropriate

Page 13, footnote 6

We are not sure that ETSA has published its methodology. If not then this requires review.

Page 14, clause 25

Consistent with the spirit of the NERs for Negotiated Services (eg clause 6.7.5(c)), ETSA should:

- demonstrate to a *Service Applicant* that the Application Fee reflects ETSA's costs , and
- have appropriate arrangements for assessment and review of Application Fee and the basis on which they are made;

Pages 15, clause 26.1 (a)

A good initiative by ETSA but we submit that the inclusion of the rates would add value.

Pages 19, Schedule 1, B.12

The types of Public Lighting Services require to be identified for both "Repetitive" and "Non-repetitive".

Pages 19 and 20, Schedule 1

ETSA's Revised Proposal in Schedule 1 refers three times to Attachment B2 – yet Attachment B2 "Classification of Services" was not included in ETSA's Revised Proposal.

We submit that the "Classification of Services" as contained in Attachment B2 is critical in enabling stakeholders to effectively assess ETSA's revised Proposal, otherwise stakeholders are not able to assess which Classifications apply to which services.

Page 23, Schedule 3a)

Aligned with our comment regarding Page 3, clause 3.1 b), we submit that somewhere ETSA needs to clearly identify what aspects comprise the Service being offered, plus the terms and conditions of providing that service.

Page 23, Schedule 3c)

We submit item c) requires rewording, as although compliance may be ETSA's intention, we do not support ETSA's automatically claiming that their charges are compliant with the Negotiating Distribution Service Criteria.

Further, we submit that a new clause should be included advising Applicants that:

"The rates, terms and conditions for the Indicative Pricelist Services" offered may be accepted by the Applicant, or alternatively the Applicant may negotiate rates, terms and conditions for the services in accordance with the Negotiating Framework."

2.2 General

Disputes

In relation to the determination of disputes, ETSA often simply referred to Part 10 of the National Electricity Law (NEL) as applicable (eg Page 1 item E), yet at other times (eg clause 24) both Part 10 of the National Electricity Law (NEL) and Part L of the National Electricity Rules (NERs) were both included.

We submit that the AER should require ETSA to include the appropriate references throughout.

"In Writing"

ETSA has introduced a requirement for notification "in writing" eg Part A, clause 2.1(a).

Whilst this appears reasonable in terms of process, we submit that electronic transmission (eg email) be recognised (as per clause 27.2) as meeting this process requirement.

2.3 Editorial Issues

We propose that the following editorial issues should be addressed by ETSA:

- Page 1, point G – "referencing error".
- Page 4, clause 3.4: Refers to clause 19 but should be clause 20?
- Page 9, Table 2, Event C: References to clauses 12 and 15 should be clauses 13 and 16 respectively?
- Page 12, clause 18.1 d): Refers to clause 21 but should be clause 24?
- Page 13, Table 3, Event C: References to clauses 12 and 15 should be clauses 13 and 16 respectively?