

13 February 2015

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Mr Warwick Anderson
General Manager
Australian Energy Regulator
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Dear Mr Anderson

Response to Essential Energy's Revised Regulatory Proposal – Public Lighting

I write on behalf of the members of the Riverina Eastern Regional Organisation of Councils (REROC) in response to Essential Energy's Revised Regulatory Proposal as it impacts on Public Lighting Services.

The Riverina Eastern Regional Organisation of Councils (REROC) is a voluntary association of 12 General Purpose councils and two water county councils. The members of REROC are the councils of: Bland, Coolamon, Cootamundra, Greater Hume, Gundagai, Junee, Lockhart, Temora, Tumbarumba, Tumut, Urana, Wagga Wagga and Riverina Water and Goldenfields Water County Councils.

At the outset our members wish to make it clear that we strongly support the recommendations made by the AER in its Draft Determination. We agree that assessments made in relation to the inefficiency of Essential Energy's service delivery were accurate and that AER's analysis accurately reflected accepted industry benchmarks in relation to the provision of public lighting.

As per numerous council submissions to the AER in response to the initial Essential Energy proposal, we re-iterate concerns about Essential Energy's overall failure to manage its street lighting maintenance and technology choices efficiently, its slow rate of new technology adoption, poor information provision to councils and widespread non-compliance with the basic service-level requirements of the NSW Public Lighting Code.

Lack of Transparency in Relation to Pricing

Essential Energy has claimed that its proposed increases (in our region the average increase is 98%) are "...to correct significant long term under recovery of revenues when compared to efficient

councils working together

costs". In our review of the limited available materials we did not find any evidence that substantiates Essential Energy's claims that there has been a substantial under recovery of revenues.

There is no evidence provided by Essential Energy that justifies a need to increase revenues other than a desire to increase profit. We have had the opportunity to review Essential Energy's most recent Annual Report and note that Public Lighting is not listed separately in the Financial Statements. Therefore it would appear we are to accept Essential Energy's assertion that they are losing money without benefit of independent, audited financial statements. However we do note that for the 2013/14 Financial Year, Essential Energy's overall before tax profit was \$350 million dollars; a not inconsequential sum.

We were pleased that the AER accepted that our concerns regarding lack of transparency in relation to public lighting information were valid and that the AER worked to put into place arrangements to provide better access.

The AER's arrangements permitted a limited form of disclosure of public lighting information, whereby documents that the utilities claimed confidentiality over would be provided to public lighting consultants engaged by Regional Organisations of Councils or by councils. The disclosure would only take place with the acceptance of a confidentiality undertaking and conflict of interest declaration.

While we appreciate the work the AER undertook to achieve this outcome the parameters on which the information was to be released were unacceptable. Not only would the ROC have been forced to engage a consultant to receive the information, the information received could not have been shared with our member councils. The consultant would have been the holder of the information and councils would have only been able to take advantage of it if they paid the consultant. Rural and regional councils and their ROCs simply cannot afford to retain expert consultants at each iteration of the pricing review processes.

In addition if the information could not be used to inform the public discussion on the merits of Essential Energy's claims that it is losing money on streetlighting then there was little point in going to the expense of obtaining it.

The Integrity of the Regulatory Process should be Maintained

Our members are concerned that Essential Energy is proposing to hold the AER and its customers to ransom stating that "...if the AER does not allow..." the proposed increases then "...a reduction in service levels well below those set out in the NSW Public Lighting Code will result." Our member councils take strong issue with this type of bullying behaviour, which should be unacceptable in a legislated, regulatory environment.

Essential Energy has taken a similar bullying tactic in writing directly to councils threatening the reduction of service levels and job losses if it does not receive the increases it has demanded. REROC has written to the NSW Treasurer, as Essential Energy's sole shareholder, to complain that such approaches undermine the function of proper regulatory processes.

Our members set great store in the integrity of the regulatory process, particularly because Essential Energy is a monopoly service provider. There is a process in place for Essential Energy to make its case whereby it proposes pricing and costs for its monopoly services and the Regulator examines those costs to ensure that the provider is not taking advantage of its monopoly position.

If the Regulator determines that the cost for those services is too high and the subsequent Determination lowers the prices, Essential Energy should not be permitted to unilaterally withdraw services. The Regulator brings down a determination based on the services that Essential Energy has agreed to provide in its submissions, if the Essential Energy subsequently chooses not to provide those services, the AER must hold them accountable. If there is no accountability and councils are compelled to pay for a sub-standard service, then the process verges on pointless.

The AER should make clear in its final decision that its public lighting pricing approval is with reference to the service levels in the NSW Public Lighting Code and outline clear financial and other consequences for non-delivery of the service to this level.

Consultation

REROC is a member of Essential Energy's Streetlighting Consultative Committee. During these meetings we have requested clarification of Essential Energy's financial position in relation to streetlighting but this has not been provided. In addition we have requested further information on the level of service that is being provided. REROC has previously advised the AER that our members receive very little direct contact from Essential Energy; they rarely consult on when and where services are provided.

Essential Energy regularly refers councils to their information portal as its main avenue for information sharing with local government. Investigations with our councils indicate that only a few were aware of the portal and that those who do access it find the portal difficult to use and lacking in substantive information. For example the portal advises that night patrols occurred but not when or where. The inventory list is lengthy but again provides no advice on when or what assets have been repaired or replaced.

We note with concern that Essential Energy refers in its Revised Proposal to the Streetlighting Consultative Committee achieving "...consensus for a transition for the introduction of increases to public lighting charges" (pg 65). This implies that Committee members agreed to the increases in public lighting charges. As a member of that Committee I can state that no such consensus was achieved.

In addition I note that Essential Energy has stated that the Committee recognised:

"...the need to formulate a more cost effective approach to public lighting service delivery, outside of the requirements of the Public Lighting Code 2006, a code that is potentially outdated and not geared towards assets spread across a very large geographic area"

Again I do not believe that this is an accurate reflection of the Committee's discussions. What was discussed were options for reducing service delivery for individual councils if it would generate cost savings. However, Essential Energy advised that they were not prepared to accommodate individual Service Level Agreements with councils as this would be too costly for them. Essential Energy's proposal was that all councils should accept lower services than the Code provided for, as we believe the Code provides for the bare minimum of service delivery, this approach is not acceptable and councils did not agree to it.

We believe the Streetlighting Consultative Committee is a good start to improving relations and information exchange with Essential Energy. However, if what happens during the meetings is misrepresented in order to validate Essential Energy's proposals for price increases or service reductions, my member councils will question RERO's on-going involvement and whether Essential Energy's engagement is in good faith.

Conclusion

RERO strongly supports the AER's Draft Determination for an average increase of five per cent in 2015–16, with prices for the remaining years adjusted according to the AER's price cap form of control. We disagree with Essential Energy's assertion that it requires an average 98% increase in charges in our region, in order to provide basic Code-compliant services to our member councils.

Essential Energy has not provided any valid justification for the increase and we encourage the AER to remain firm in its resolve that Essential Energy needs to provide more efficient services. Unless Essential Energy can prove that the additional charges are justified then the proposed increases appear to be just a grab for more revenue.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Julie Briggs', with a stylized flourish at the end.

Julie Briggs LLM, MBA
Executive Officer