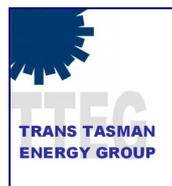


Framework and approach paper: Preliminary Positions

Submission by

Streetlight Group of Councils

Prepared by



Trans Tasman Energy Group
Level 2, 200 Alexandra Pde., Fitzroy, VIC 3065
Ph: 9418 3907 email: info@tteg.com.au

March 2009

Foreword

The Street Lighting Group of Councils (the Group, SGC) welcomes the AER's Framework and approach paper (the Paper) and the opportunity to participate in the regulatory process for Regulatory control period commencing 1 January 2011.

The Group trusts our Submission and the issues we have raised will assist the AER in establishing a framework in Victoria that will enable public lighting users to pay fair and reasonable charges for public lighting services for the period.

Whilst the ESC established a process for determining OMR charges in 2004, the fundamental issues pertaining to the establishment of fair and reasonable public lighting charges in Victoria have (unfortunately) never been addressed.

We submit that without a review of key aspects of the framework surrounding these charges, that any process for developing charges will be critically flawed. Through its current process the AER has the opportunity to address these issues.

This Submission has been prepared by Trans Tasman Energy Group (TTEG), to represent the combined interests of Streetlight Group member Councils (Attachment A – List of Streetlight Group Councils). The views expressed are those of the authors and do not necessarily represent the views of any individual council.

The Streetlight Group

The Streetlight Group of Councils represents Victorian rural and metropolitan Municipalities, responsible for managing approximately 50% of the public lights in the State.

The Group was formed in December 2002 in the founding member Councils' recognition that their unresolved issues regarding Public Lighting OMR with DNSPs would best be resolved by a unified approach. Imbalances of market power between individual Councils and Distribution Network Service Providers (DNSPs) were preventing negotiation in good faith.

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

In working in the Victorian Public Lighting sector for that past decade the Streetlight Group member Councils are the most knowledgeable in the Local Government Sector in terms of commercial and regulatory aspects pertaining to Public Lighting.

TTEG Consultants

Trans Tasman Energy Group Consultants (TTEG) has prepared this Submission for the Streetlight Group of Councils. TTEG Consultants (www.tteg.com.au), provide specialist energy sector advice including commercial and regulatory aspects pertaining to Public Lighting.

Timeframe

The Group appreciates the ESC extending the closing date of Submissions to March 16th.

Further Assistance

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

Trans Tasman Energy Group Consultants

200 Alexandra Parade, Fitzroy Vic 3065

Ph: 9418 3907

Fax: 9418 3940

Email: info@tteg.com.au

Attn: Mr Craig R Marschall, Principal Consultant

Table of Contents

1	SUMMARY and RECOMENDATIONS	1
1.1	Framework Issues	1
1.2	Classification Considerations	2
1.3	SGC Recommendations	3
1.4	Stakeholder Opinion	4
1.5	Metering Services – Type 7 Public Lighting Installations	4
1.6	GSL Payments	5
1.7	Controls	5
1.8	Moving Forward	5
2	SUBMISSION OUTLINE	6
3	PAPER RESPONSE	7
3.1	AER Paper 2.5.3.4 Public Lighting Services	7
3.2	AER Paper 2.5.3.4 “Current Classifications”	8
3.3	AER Paper 2.5.3.4 – “Issues and AER’s considerations”	10
3.4	Alteration and Relocation of Existing Public Lighting Assets	15
3.5	New public lighting assets	16
3.6	AER Paper 2.5.3.3 Metering Services	16
3.7	AER Paper 4.4.2 and 4.5 GSL Component	16
3.8	Controls	17
4	KEY FRAMEWORK ISSUES	18
4.1	Action	19

Attachments

	Attachment A – List of Streetlight Group Councils	20
--	---	-----------

GLOSSARY

ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
CAPEX	Capital expenditure
Code	Public Lighting Code, Victoria
DNSP	Distribution Network Service Provider
DSE	Department of Sustainability and Environment
DUOS	Distribution Use of System Charges
EDPD	Electricity Distribution Price Determination
EDPR	Electricity Distribution Price Review
EIA	Electricity Industry Act 2000
EIRPA	Electricity Industry Residual Provisions Act 1993 (Vic)
ESCV	Essential Services Commission, Victoria
ESCOSA	Essential Services Commission of South Australia
EUCV	Energy Users Coalition Victoria
EWOV	Energy and Water Ombudsman (Victoria)
GSL	Guaranteed Service Level
M	Public Lighting Maintenance
MDA	Meter Data Agent
MUT	Maximum Uniform Tariff
NER	National Electricity Rules
O	Public Lighting Operation
O&M	Public Lighting Operation and Maintenance
OMR	Operation, Maintenance, Repair and Replacement (of Public Lights)
OCEI	Office of Chief Electrical Inspector
ODRC	Optimised Depreciated Replacement Cost
ORG	Office of the Regulator-General
Paper	Framework and approach paper – preliminary positions, March 2009
PLC	Public Lighting Code, Victoria
R	Public Lighting Replacement
RAB	Regulatory Asset Base
SECV	State Electricity Commission Victoria
SGC	Streetlight Group of Councils
SPA	SP - Ausnet
TTEG	Trans Tasman Energy Group Consultants

1 SUMMARY and RECOMENDATIONS

This Submission to the Australian Energy Regulator's (AER's) Framework and approach paper, December 2008, (the Paper), is lodged by the Streetlight Group of Councils (the Group, SGC). Formed in 2002 to adopt a unified approach to establishing fair and reasonable public lighting operation, with DNSPs, the Group comprises metropolitan and rural Victorian Municipalities (Attachment A – List of Streetlight Group Councils) responsible for managing approximately 50% the State's Public Lights.

In providing our Submission we recognise that the AER, under chapter 6 of the National Electricity Rules (NER), must classify the distribution services to be provided by, and make a distribution determination for, the Victorian DNSPs for the forthcoming regulatory control period commencing on 1 January 2011. And that in anticipation of its distribution determination, the AER is required to prepare and publish a framework and approach paper by 30 May 2009.

The views contained in this Submission are provided to assist the AER in making its decisions for the 20011 -15 regulatory period.

1.1 Framework Issues

As the AER has recently taken over the regulatory role, it may not be aware of the numerous and significant issues pertaining to the public lighting sector framework that firstly require understanding and acceptance, and secondly require remedy by the AER to enable the AER to enable DNSPs to meet their Chapter 6 obligations.

We trust the issues we have identified in section 4 will provide the AER with insights to the "customers' perspective" to both the opportunities and the shortcomings within current public lighting framework and alert the AER that the service delivery requirements and charging regime based on the current framework (including the Public Lighting Code) are all sadly in need of critical review.

The AER's current undertaking is therefore timely and welcomed by the SGC.

Some of the key issues/opportunities include:

- The Victorian public lighting sector has unique aspects that require critical consideration including: "vesting", 100% customer financing, single tariff structure.
- Potential to develop a competitive marketplace for all public lighting services. In addition to the 5 DNSPs, some DNSPs engage sub-contractors to undertake perform public lighting services on their behalf.
- Recognition that public light capital works have been 100% customer financed since 1993.
- DNSPs claim only the DNSP can perform maintenance and replacement services on "their" lights which they have acquired ownership by "requiring" customers to vest to the DNSP – thereby holding the customer "captive".

This process and conduct requires urgent and critical review in terms of the practice and the DNSP's monopoly position. There is no physical reason why any vesting should occur as ownership is irrelevant to the physical supply.

- The ESC's 2004 pricing model contains incorrect data plus allows 10% "super profit" to DNSPs and is currently costing the public sector around \$2.3 million p.a (~ 20%) and the impact of the "Annual Review Process" may see estimated OMR charges increase by around \$25 million p.a. (i.e. trebling) in future years for no additional services.
- Unlike all other jurisdictions, a tiered pricing structure has not been introduced in Victoria
- Public lighting assets prior to 1993 are included in the RAB and charged via DUoS.
- Charges for existing lighting types cannot equitably be compared to new energy efficient types – resulting in critically flawed comparisons.

1.2 Classification Considerations

In section 3 we have considered the AER's Paper.

Although we have had limited time to consider the new regulations, there does not appear to be a direct equivalent classification to the current "Excluded Services" classification. The options appear to be "Alternative Control Services" or "Negotiated Distribution Services". We agree with the AER that they are not "Standard Control Services".

In assessing the appropriateness of the 'alternative control services' classification we noted that NER Part C adopts the building block approach based heavily on contributions from asset costs.

As established in our Submission, Victorian DNSPs are not funding public lighting as they are 100% customer financed¹ so the asset aspect of the building block approach would not apply. The approach also includes allowance for future capex and incentives for bettering standards. The standards for public lighting are not well defined so this approach would be problematic.

We also importantly noted that there is no cost transparency or customer involvement other than provided through the EDPR process. This approach has been problematic in NSW as customers require cost data to make decisions in this changing market.

This type of approach appears more suited to a sector which has a large number of customers (public lighting has less than 100), and where the capital expenditures by the DNSP are large and the 'service provision' component is relatively small but well defined and stable.

The above scenario does not have a 'good fit' Victorian public lighting and is also not conducive to establishing a competitive market.

In assessing the appropriateness of the 'negotiated distribution services' classification we noted that NER Part D is effectively a cost recovery model focusing on typical network access arrangements and considerations.

In our view the cost recovery approach has a similar focus to the existing Excluded Expenditure approach where DNSPs receive a fair and reasonable profit based on prudent expenditure

¹ 1993 Agreement

<i>Submission:</i> <i>Streetlight Group of Councils</i>	Framework and approach paper – preliminary positions March 2009
--	--

The better transparency provided by the cost recovery approach is what customers are looking for and is similar to South Australia where public lighting SLUoS (ie OMR in Victoria) are negotiated.

It also appears more dynamic as costs can reflect various changes to service standards, lighting types etc

We also believe that this type of 'cost recovery' approach would also assist DNSPs ready themselves for contestability and provide an appropriate process for successful resolution of the numerous framework issues as we have identified in section 4.

The AER would however need to give some thought as to how the current wording in the regulations could be applied.

Clause 6.7.1 would require some interpretation (eg removing "access" references and the 'stand alone or avoided cost' argument and other network arguments) for public lighting.

Clause 6.7.4 would suit but again without reference to "access".

Clause 6.7.5 is very appealing as it enables clear service requirements to be established and provides for cost transparency².

Clauses 6.7.2, 6.7.3 and 6.7.6 are largely process so would be OK.

The negotiated distribution services' scenario appears to have a far better fit for Victorian public lighting and is also conducive to the introduction of a tiered price structure and in establishing a competitive market.

1.3 SGC Recommendations

In considering the AER's preliminary position process regarding the Victorian DNSPs' public lighting services classification in a manner which is consistent with the previously applicable regulatory approach, we propose:

- the operation, repair and maintenance of the existing public lighting assets should be classified as negotiated distribution services.

In addition to the evaluation of options in section 1.2, in proposing this approach:

- we have removed 'replacement' in accordance with PLC clause 4.1
- the DNSP's monopoly position must be considered artificial based on some current practices eg "forced" vesting, "captured" maintenance etc.) that must be redressed.
- As customers are financing assets³, the DNSP's role is simply one of a service provider – similar to a meter reader.
- The cost recovery model will better facilitate the introduction of a tiered price structure can be established as can a pathway to competition

² (Lack of) cost transparency is a significant issue for public lighting customers in the current NSW EDPR process

³ 1993 Agreement between the SECV, the Minister and councils

<i>Submission:</i> <i>Streetlight Group of Councils</i>	Framework and approach paper – preliminary positions March 2009
--	--

- We understand the AER has classified public light services as negotiated distribution services for next regulatory period in South Australia.
- the alteration and relocation (and replacement) of the existing public lighting assets should be classified as negotiated distribution services.

In proposing this approach,

- we have included Replacement in accordance with PLC clause 4.1
- In considering PLC clause 4.4 which states “.....to enable another person to alter, relocate or replace public lighting assets at the request of the public lighting customer...”. In our view the market could/should be contestable. This needs to be resolved with the DNSPs.
- In our view “quoted services” provides the customer with choices would tend to lead to a classification of “negotiated services” under the regulations ie the same classification as ‘new public lighting services’.
- new public lighting assets (standard and non-standard provision) we agree these should be negotiated distribution services.

1.4 Stakeholder Opinion

We do not expect our views regarding the framework issues to be supported by the DNSPs as they do not want competition as they prefer to work under the “protection” of a regulatory regime without having to face any customer scrutiny.

Indeed, where markets have become competitive, DNSPs no longer provide the service.

We also advise the AER that our views may not even be supported by all councils, as not all councils are SGC members so have not been kept informed via the SGC process. The SGC members however represent around 50% of lights in Victoria.

We however submit our views to provide the AER with insights to the substantive issues that if not addressed will not only prevent the successful development of the sector (with contestability as the aim) but it will cost the public at least \$2.3 millions p.a. trending to \$25 million p.a. extra in future years for no additional services.

1.5 Metering Services – Type 7 Public Lighting Installations

There are two basic charges from DNSPs – one per light per annum and the second per NMI per month. Currently each DNSP provides its own service as a “meter data agent” and “meter provider” and maintains their own systems for unmetered public lighting.

The AER notes clause 7.2.3(a)(2) of the NER identifies the DNSP, as the Local Network Service Provider, as the responsible person for all type 5, 6 and 7 metering installations and considers there is a regulatory barrier to any party other than Victorian DNSPs providing these services.

We disagree with the AER’s economies of scale and arguments preventing competition. As there are 5 DNSPs (in Victoria and others interstate), our view is retailers should be able to select the DNSP (or other provider) that provides the best service for unmetered public lighting as is done for other (eg Type 1-4) metering.

<i>Submission:</i> <i>Streetlight Group of Councils</i>	Framework and approach paper – preliminary positions March 2009
--	--

Subject to appropriate changes in the NER, we propose that metering for Type 7 public lighting installations be classified by the AER as contestable for the 2011-15 period.

1.6 GSL Payments

If our interpretation of the Paper is correct, we understand the AER was considering the removal of the GSL for Public Lighting.

GSL for public lighting has been included in the Determinations for the past two regulatory periods and we strongly protest against any proposal to remove the GSL for this service.

Indeed we propose the AER adopts the following for the next regulatory period:

- increase the GSL as endorsed by the SGC, EWOV and EUCV in 2005 and independently proposed by AGL⁴ (Victorian DNSP) to \$25 for all DNSPs which we expect will be in line with South Australia (currently at \$20) in the next regulatory period.
- public lighting customers be entitled to claim the GSL. It makes no sense to us that those that are paying for the service should not receive some form of recompense from the DNSP for underperformance, after all, that is what it is there for

1.7 Controls

We have not had time to consider controls for price changes in detail; however, as we are proposing a cost recovery model, and recognising assets are 100% customer financed, we would expect that any changes would reflect changes in prudent expenditures by DNSPs and allow a reasonable profit. These changes need to be transparent.

Annual tariff rate changes are problematic for councils in the current system. They are not consistent either between DNSPs or year by year for any particular DNSP.

An IMPORTANT consideration for councils is the forward notice provided to council identifying the amount and timing of any annual increases. Historically little, if any, notice has been provided. To enable councils to effectively include in their budget process we request a minimum of three months, but preferably six months, notice of any price changes.

1.8 Moving Forward

We trust the opportunities and issues identified in our Submission will add significant value to the Australian Energy Regulator's (AER) Decision process.

Our views have been developed in detail over the past 9 years and we are available to provide supplementary details if required.

The Streetlight Group of Councils would welcome the opportunity to work with the AER and other Stakeholders to progress Victorian public lighting sector development and to establish fair and reasonable public lighting service charges thereby enabling Councils to deliver Best Value Public Lighting to their constituents.

⁴ ALGE proposed \$20 in 2005

2 SUBMISSION OUTLINE

A brief outline of the contents our Submission is stated below.

Section 3: Paper Response. In this section we provide comments regarding the contents of the AER's Paper, particularly section 2.5.3.4 - Public lighting services but also 2.5.3.3 – metering for unmetered supply

Section 4: Key Framework Considerations Impacting on the Paper. In this section we provide details and further arguments to support the opportunities and issues we have identified in Section 3.

3 PAPER RESPONSE

In this section we provide comments regarding the AER Paper's section 2.5.3.3 Metering and 2.5.3.4 Public lighting services.

To enable the AER to easily cross reference the Paper to our Submission we have reproduced the Paper's content (where appropriate) and included our views in boxes.

The views contained in this Submission are provided to assist the AER in establishing the 2011 -15 regulatory framework. As the AER has recently taken over the regulatory role, it may not be aware of the significant issues pertaining to the public lighting sector framework that require remedy.

Unless these service and pricing issues are appropriately addressed then any decisions by the AER will potentially hinder the development of the sector, and what may have a greater impact (considering the current evaluation of energy efficient lights) is that economic comparisons between light types may be critically flawed, potentially costing the public sector many millions of dollars.

Non rectification of ensure public lighting customers will be "captured" by the DNSPs as a monopoly service provider.

An objective of the ORG was to enable competition in the sector, thereby ensuring 'market prices' were achieved and that at the same time removing the regulatory burden on both the regulator and DNSP.

We believe this outcome is achievable but that the framework must be critically reviewed as the regulations developed since 2001 have increasingly been developing a public lighting sector "captured" when combined with current DNSP practices under the regulations.

3.1 AER Paper 2.5.3.4 Public Lighting Services

The ESCV's Public Lighting Code defines public lighting services to mean:

any of the following services provided for the purpose of lighting public places:

- (a) the operation of public lighting assets, including handling enquiries and complaints about public lighting, and dispatching crews to repair public lighting assets;
- (b) the maintenance, repair, alteration, relocation and replacement of public lighting assets;
and
- (c) the installation of new public lighting assets.

- | |
|---|
| 1. Correct. The SGC (and others) have requested a critical review of the PLC but this had not been undertaken by the ESCV before the change to the AER. |
|---|

Public lighting assets are connected to the Victorian DNSPs' distribution systems. The conveyance of electricity to public lighting assets is therefore not considered to be a public lighting service, but rather is a network service, as discussed in section 2.5.3.1 above.

Public lighting in Victoria can be provided by the Victorian DNSPs or by other parties such as VicRoads or local councils.

- | |
|---|
| 2. Correct, however an issue exists in that for lights to be provided on <u>unmetered supply</u> , DNSP's require vesting of the asset to the DNSP. The DNSP then claims exclusive rights to the maintenance and replacement of "their" lights. |
|---|

3. DNSP's deny customers the lower cost unmetered supply option if the customer paid assets are not vested to the DNSP. Although we are discussing the provision of lighting, and not OMR, the vesting 'requirement' appears inconsistent with the Public Lighting Code clause 2.1(c) which requires DNSPs to:

"use best endeavours to develop and implement plans to provide OMR in a way which minimises costs to public lighting customers".

3.2 AER Paper 2.5.3.4 "Current Classifications"

The ESCV currently classifies public lighting services into the following categories:

- ⌚ the operation, repair, replacement and maintenance of public lighting as non-contestable excluded distribution services
- ⌚ the alteration and relocation of existing public lighting assets as non-contestable excluded distribution services, and
- ⌚ the provision of new public lighting as contestable excluded distribution services.

4. *In considering the classification of Alteration and Relocation of Existing Public Lighting Assets we direct the AER to PLC clause 4.4 which states ".....to enable another person to alter, relocate or replace public lighting assets at the request of the public lighting customer...". This clause identifies two important and fundamental considerations when considering classifications:*

.....4.1 Replacement must be treated the same as alteration or relocation services, and

.....4.2 Other persons may provide the service ie the market is contestable.

5. As the customer has a choice based on "quoted services"(ie the same choice as for new public lighting), the alteration and relocation (and replacement)of existing public lighting assets should have the same classification as 'new public lighting services' that being 'contestable excluded distribution services'.

The Victorian DNSPs' electricity distribution licences (as they currently exist) provide that:

- ⌚ the Victorian DNSPs must make an offer to provide public lighting services to a public lighting customer (e.g. VicRoads, local councils and the Docklands Authority) if requested to do so
- ⌚ if a public lighting customer accepts the DNSP's offer then the DNSP must provide public lighting services on the basis of the offer
- ⌚ if the public lighting customer does not request, receive or accept an offer then the DNSP must provide public lighting services at a price, and on terms and conditions, which comply with the EDPR, a statement approved by the ESCV (such as the list of Standard Service Prices) and the Public Lighting Code.

6. The last 'dot point' identifies the instruments critical in establishing the regulatory framework to effectively establish the requirements for service provision and pricing to the sector - except for the installation of new lights.

7. The current requirements in the EDPR, statements approved by the ESCV and the Public Lighting Code all have shortcomings, some extremely significant in establishing the service and price relationship between the DNSP and the customer, including:

- DNSP's deny customers the lower cost unmetered supply option if the assets (paid for by the customer) are not vested to the DNSP
 - Once assets have been vested DNSPs claim only they can perform maintenance and replacement services on "their" lights.
 - In accordance with the (still valid) 1993 Agreement between the SECV, the Minister and councils, customers (not DNSPs) have been financing lights since 1993 yet this has not been recognised in current tariffs.
 - a tiered pricing structure as exists in all other jurisdictions has not been introduced in to Victoria
 - The ESC's 2004 pricing model contains incorrect data plus allows 10% "super profit" to DNSPs above the model pricing outcome, together costing the public sector around \$2.3 million p.a
 - Despite having 5 DNSPs and other subcontractors that can perform the work, contestability has not been considered feasible?
8. We encourage the AER in its 2011-15 EDPD process to undertake careful review and assessment of the issues identified in this Submission.

Because these existing public lighting assets are owned by the DNSP, no other party may undertake works on these assets unless they are authorised to do so by the DNSP.

9. As discussed in our Submission this situation requires urgent regulatory intervention and attention regarding "forced" vesting, as without DNSP authorization customers are "captured" by the DNSP under the current processes.

The connection and augmentation of new public lighting assets are dealt with under:

- ⌚ section 3 of the Public Lighting Code, and
- ⌚ the ESCV's Guideline 14, which applies the same tendering provisions to these services as are discussed in section 2.5.3.2 above.

The Public Lighting Code provides further guidance on the responsibilities of DNSPs. The Public Lighting Code only applies to the Victorian DNSPs and deals with the way in which they are required to provide all (standard and non-standard) public lighting services for assets that are owned by the Victorian DNSPs. It does not apply to assets owned by other parties. Importantly, under the Public Lighting Code, a Victorian DNSP is not required to construct new public lighting assets, or to alter, relocate or replace, existing public lighting assets, until it receives a design brief from a public lighting customer in accordance with the public lighting standards.

10. The AER is correct in that the PLC (as it currently exists) applies only to DNSP owned assets.
11. The SGC (and others) have requested a critical review of the PLC but this had not been undertaken by the ESCV before the change to the AER.

12. The AER is correct in that lights cannot be replaced without a design brief, offer and acceptance – yet the OMR charge (incorrectly) includes a replacement component which is being treated as if the asset was funded by the DNSP and not customer financed⁵?

3.3 AER Paper 2.5.3.4 – “Issues and AER’s considerations”

Operation, repair, replacement and maintenance

This section refers only to the operation, repair, replacement and maintenance of public lighting owned by a DNSP that is providing a public lighting service.

13. The “replacement” of lights needs to be removed from this consideration because replacement, like “alteration and relocation” of assets is considered separately under PLC clause 4.1 which states:

..... “A distributor is not required to alter public lighting assets until a public lighting customer has provided a design brief in accordance with the public lighting standards for any required alteration, relocation or replacement of public lighting assets.”

14. The PLC requires critical review to enable the effective development of a contestable public lighting sector, based on negotiation, as was envisaged by the ORG where in 2001 it advised:

“In its December letter the Office advised that it may ask the businesses to submit for approval amended charges to apply from 1 July 2001. The Office however did not ask the businesses to submit amended charges for approval believing that, with the imminent publication of the Public Lighting Code, the parties would be able to negotiate appropriate terms and charges. Consequently, the Office has not approved any further terms and charges for the operation, maintenance and repair of public lighting.”

NOTE: The 2001 ORG advice which pertaining to OMR services did not include replacement of assets.

As noted above, the AER understands that once public lighting has either been built by a DNSP, or built by a third party and gifted to a DNSP, that only the DNSP can undertake works in relation to that public lighting asset. This means that the key characteristics of these services are that:

- ⌚ they relate to a Victorian DNSP’s own public lighting assets
- ⌚ the public lighting assets already exist, and
- ⌚ public lighting customers cannot choose who operates, repairs, replaces and maintains the DNSP’s existing public lighting assets.

15. As per PLC clause 4.1 customers can choose an authorised provider for replacement lights. Replacement should therefore be considered along with “*Alteration and Relocation of Existing Public Lighting Assets*” and not in this section.

⁵ Customers have financed all public lighting since 1993.

16. Although DNSPs have not financed any lighting assets since 1993⁶, they have typically acquired ownership from customers that require unmetered public lighting via “forced” vesting. We do not however consider it a ‘natural’ right of the DNSP, or a desirable outcome, for customers to be denied choice of provider for other services. Although we are not clear what “operation” services represent, others can (and do) currently undertake repair and maintenance services.

17. The potential for competition certainly exists. In addition to potential for competition between the 5 DNSPs themselves, some DNSPs already engage subcontractors to undertake these services on their behalf. Where subcontractors are engaged, the DNSPs role is simply that of a ‘middle man’ rather than the service provider.

18. For the service to become contestable, all that is required is for the PLC to be revised to include a clause similar to PLC clause 4.4 but attributable to maintenance, repair and replacement. An appropriate clause may therefore be:

.....“A distributor must within 20 business days of a request provide all necessary information including advice of its reasonable requirements and applicable *public lighting technical standards* to enable another person to maintain, repair or replace *public lighting assets* at the request of the *public lighting customer* if the *public lighting customer* has obtained the *distributor’s* approval of the person who will be undertaking the maintenance, repair or replacement. The *distributor* must not unreasonably withhold such approval, subject to any applicable *guideline*. “

We propose this approach to the AER as representing the logical “next step” in the market, consistent with the ORG’s stated aims in 2001 (refer earlier) as it enables the DNSP to continue to provide services but in a negotiated manner in competitive market – thereby removing any requirement for regulation.

Under the current regulatory framework, the ESCV approves a set of prices for the provision of these services although there is the potential for the DNSP and public lighting customers to negotiate on the price and the terms and conditions for the supply of ‘above standard’ services.

19. As for any Excluded Service charge, our understanding is the price established via the regulatory process represents the maximum charge for a service. We encourage the AER to maintain this requirement in future regulations.

On this basis, and having regard to the factors in section 2F of the NEL, the AER considers there is a regulatory barrier to any party other than the Victorian DNSPs providing these services. Furthermore, the economies of scale and scope available to Victorian DNSPs, in particular in relation to its network services, are also likely to prevent these services being competitively provided by an alternative service provider. The AER also considers that there are no real substitutes for this service, once the DNSP’s public lighting assets exist.

Notwithstanding the potential for DNSPs and public lighting customers to negotiate on the price and the terms and conditions for the supply of ‘above standard’ public lighting services under the ESCV’s regulatory framework, the factors outlined above contribute to the view that the Victorian DNSPs possess significant market power in the provision of operation, repair, replacement and maintenance services for their existing public lighting assets.

⁶ The ‘1993’ Agreement

20. In considering the classification of DNSP services for the next regulatory period, the AER assessed there was a regulatory barrier to any party other than the Victorian DNSPs providing these services. As some DNSPs already subcontract these services it establishes there are other service providers in addition to the 5 DNSPs.
21. Any perception of a “regulatory barrier” has been established via the DNSP’s “requirement” for assets to be vested to the DNSP and the PLC only addressing DNSP owned assets. As discussed above both these “requirements” can easily be overcome.
22. The DNSPs’ vesting requirement together with the PLC (in its current form) combines to place DNSPs in a position of nontransitory market power and establish DNSPs as a monopoly service provider.
23. In considering future regulation, we encourage the AER to assess and consider any (in)appropriateness of the DNSPs’ vesting requirement in terms of “exclusive dealing” and potentially “Full line Forcing” or “Third line Forcing”
24. In considering the potential for competition between the 5 DNSPs themselves and existing subcontractors, all have economies of scale.

The AER notes that these public lighting services are currently subject to a control form of regulation in Victoria and understands that this is generally also the case in other NEM jurisdictions.

25. The requirement for Victorian controls is different to all other NEM jurisdictions as in 1993 the Agreement between the SECV, the Minister and councils, saw that “...tariff charges for lanterns on current offer will be reduced to reflect removing the capital component from the tariff”.
26. In our view the ESCV’s 2004 OMR price review did not capture the requirements of the 1993 Agreement as it (incorrectly) attributed capital financing costs to DNSPs. This ‘oversight’ will require rectification by the AER as part of its 2011-15 EDPD, earlier if possible.

Having regard for the requirements of clause 6.2.1 of the NER, the AER considers that these public lighting services should be classified as direct control services.

27. Based on our Submission, we propose that ‘negotiated distribution services’ can be also considered by the AER.

Once a service is classified as a direct control service, the AER must then apply all six factors in clause 6.2.2(c) of the Rules to determine whether it should be classified as a standard or alternative control service.

These public lighting services are currently excluded distribution services, which creates the presumption that they should be classified as alternative control services unless a different classification is clearly more appropriate. The AER considers that there is no basis to move away from this presumption. This is because the AER considers that:

28. We note in the AER Paper that the various Excluded Distribution Services (including various aspects pertaining to public lighting) have been classified as either “alternative control services” or “negotiated distribution services”. We have therefore considered both options:

29. alternative control services’

NER Part C adopts the building block approach based heavily on contributions from asset costs. As established in our Submission, Victorian DNSPs are not funding public lighting they are 100% customer financed⁷ There is no transparency or customer involvement other than through the EDPR process.

30. ‘negotiated distribution services’:

NER Part D is effectively a cost recovery model focusing on typical network access arrangements and considerations. Clause 6.7.1 would require some interpretation (eg removing “access” references and the stand alone or avoided cost argument and other network arguments) for public lighting. Clause 6.7.4 would suit but again without reference to “access”. Clause 6.7.5 is appealing as it enables clear service requirements to be established and provides for cost transparency⁸, Clauses 6.7.2, 6.7.3 and 6.7.6 are largely process so would be OK.

This type of ‘cost recovery’ approach would also assist DNSPs ready themselves for contestability and provide an appropriate process for successful resolution of the numerous framework issues ‘negotiated distribution services’ we have identified in our Submission.

31. Although neither classification has an ‘exact fit’ for OMR services we consider the ‘negotiated distribution services’ the far superior option and is consistent with the ORG’s negotiation objectives as stated in 2001.

32. We do not support the AER’s presumption of “alternative control services”.

33. We submit to the AER that an appropriate classification to easily replace the Excluded service classification does not exist within NER Chapter 6 and could be considered in future NER updates.

⌚ for the reasons noted above, there is little if any potential for the development of competition in the market for these public lighting services. The AER considers that its classification will not influence the potential for competition — rather, the absence of competition is determined by the requirements of the DNSPs’ licences and the Public Lighting Code

34. We do not agree with the AER’s assessment of competition being prohibited by the DNSP’s licenses and the PLC. As discussed in our Submission, there is a definite potential for competition and contestability for OMR.

⁷ 1993 Agreement

⁸ (Lack of) Cost transparency has been a significant issue for public lighting customers in the current NSW EDPR process

35. New assets and replacement, reallocation and alteration to existing lights are already contestable.

- ⌚ there would be no material effect on administrative costs of the AER, DNSP or any other party. This is because classifying these public lighting services as alternative control services would involve a broadly similar regulatory approach to that which has been applied by the ESCV for the current regulatory control period

36. By adopting ‘negotiated distribution services’ there would also not be a material effect on any party. We envisage a negotiations by distribution region, along the manner as outlined in NER Part D. This type of negotiation process is already regulated within the South Australian Jurisdiction where we understand the AER has also classified public lighting services as negotiated distribution services for the next regulatory period.

- ⌚ these public lighting services are currently regulated in Victoria, and in several other NEM jurisdictions, on a fixed fee basis

37. All other NEM jurisdictions have a tiered pricing structure – something which Victoria lacks and requires remedy.

38. A fixed fee is an outcome. It can be established by the regulator, between parties by negotiation (as evidenced in South Australia) or ideally through a market based competitive process.

- ⌚ the nature of these public lighting services is that they do not involve building new assets and the costs of providing these services can be directly attributed to a specific class of customers, and

39. We agree there will not be any new network assets required and that there is a small number of customers in a specific class.

- ⌚ there are no other relevant factors that change the AER’s proposed classification.

40. We have identified numerous issues in our Submission that we trust will assist the AER in consideration of an appropriate classification for public lighting services.

For these reasons, the AER considers that there is no basis to move away from the presumption that these public lighting (operation, repair, replacement and maintenance) services should be classified as alternative control services.

41. We submit that for compliance with the PLC, Replacement must be considered along with Alteration and Relocation and not with Operation, Repair and Maintenance.

42. Although the AER presumed that Operation, Repair and Maintenance (now excluding Replacement) was classified as alternative control service, we submit that whilst neither “alternative control services” or “negotiated distribution services” has an ‘exact fit’ for OMR services, we consider the ‘negotiated distribution services’ the far superior option and is consistent with the ORG’s negotiation objectives as stated in 2001.

This type of ‘cost recovery’ approach would also assist DNSPs ready themselves for contestability and provide an appropriate process for successful resolution of the numerous framework issues ‘negotiated distribution services’ we have identified in our Submission.

43. For the above reasons, we submit that ‘negotiated distribution services’ should be adopted by the AER as a more appropriate current classification and that this classification should be maintained for the 2011-15 EDPR process.

3.4 Alteration and Relocation of Existing Public Lighting Assets

44. This classification should also include ‘replacement’ as per clause 4.1 of the PLC which states:

"A distributor is not required to alter public lighting assets until a public lighting customer has provided a design brief in accordance with the public lighting standards for any required alteration, relocation or replacement of public lighting assets."

As with the operation, repair, replacement and maintenance of public lighting, the key characteristics of these services are that:

- ⌚ they relate to a Victorian DNSP’s own public lighting assets
- ⌚ the public lighting assets already exist, and
- ⌚ customers cannot choose who alters or relocates the DNSP’s existing public lighting assets.

The AER understands that the ESCV has not approved a set of prices for the provision of these services for the current regulatory control period. Rather, under the current regulatory framework, the DNSP and public lighting customers are left to determine the price, terms and conditions, for the supply of these services. On this basis, these services are currently regulated on a ‘light handed’ basis.

Having regard to the factors in section 2F of the NEL, the AER considers that there is a regulatory barrier to any party other than the Victorian DNSPs providing these services by virtue of the DNSPs’ licences and requirements of the Public Lighting Code. This means that only the Victorian DNSPs can effectively undertake works on their own assets. Furthermore, the economies of scale and scope available to Victorian DNSPs, in particular in relation to its network services, are also likely to prevent these services being competitively provided by an alternative service provider. The AER also considers that there are no real substitutes for this service, once the DNSP’s public lighting assets exist.

45. In considering the classification of Alteration and Relocation (and Replacement) of Existing Public Lighting Assets we direct the AER to PLC clause 4.4 which states “.....to enable another person to alter, relocate or replace public lighting assets at the request of the public lighting customer...”. In our view the market is contestable.

These factors contribute to the view that the Victorian DNSPs possess significant market power in the alteration and relocation of existing public lighting assets.

The AER has had regard to clauses 6.2.1(c)(2) and (3) of the NER and notes that these public lighting services are currently regulated on a ‘light handed’ basis in Victoria, with the DNSPs determining a price on the application of a customer, and are regulated as quoted services in several other NEM jurisdictions.

46. In our view “quoted services” would tend to lead to a classification of “negotiated services” under the regulations.

However, on balance, having regard for the requirements of clause 6.2.1 of the NER, the AER considers that these public lighting services should be classified as direct control services given that the regulatory barriers that exist mean that only the Victorian DNSPs can effectively alter or relocate their own existing public lighting assets.

47. As the customer has choices, in our view the alteration and relocation (and replacement) of existing public lighting assets should have the same classification as ‘new public lighting services’ that being ‘negotiated distribution services’.

3.5 New public lighting assets

48. We agree with the AER’s assessment of this classification.

3.6 AER Paper 2.5.3.3 Metering Services

In considering excluded distribution services and prescribed metering services that are unmetered supplies, the AER nominated in its Paper they will be classified as alternative control services.

49. There are two basic charges from DNSPs – one per light per annum and the second per NMI per month. Currently each DNSP provides its own service as a “meter data agent” and “meter provider” and maintains their own systems.

50. The AER notes that clause 7.2.3(a)(2) of the NER provides that the DNSP, as the Local Network Service Provider, is the responsible person for all type 5, 6 and 7 metering installations and considers there is a regulatory barrier to any party other than the Victorian DNSPs providing these services.

51. We disagree with the AER’s economies of scale and arguments preventing competition. As there are 5 DNSPs (in Victoria alone and others interstate), we are of the view that retailers should be able to select the DNSP (or other provider) that provides the best service for unmetered public lighting, as is done for other (eg Type 1-4) metering.

52. Subject to appropriate changes in the NER, we propose that metering for Type 7 public lighting installations be classified by the AER as contestable for the 2011-15 period.

3.7 AER Paper 4.4.2 and 4.5 GSL Component

AER Paper section 4.4.2

On the basis of preliminary advice from the Victorian Department of Primary Industries and the ESCV, the AER understands that the Victorian GSL scheme that is currently provided for

under the EDC and the Public Lighting Code will cease to apply at the end of the current regulatory control period.

AER Paper section 4.5

The AER's preliminary position is that it will apply all parameters under the GSL component of the STPIS to the Victorian DNSPs in the forthcoming regulatory control period. This is on the basis of the AER's understanding that the Victorian GSL scheme that currently applies to the Victorian DNSPs, and which is provided for under the ESCV's EDC and Public Lighting Code, will not apply in the forthcoming regulatory control period.

53. GSL for public lighting has been included in the Determinations for the past two regulatory periods.
54. The SGC strongly protest against any proposal to remove the GSL for this service.
55. Indeed we propose increasing the GSL to \$25 for all DNSPs as endorsed by the SGC, EWOV and EUCV in 2005 and independently proposed by AGLE (Victorian DNSP).
56. A \$20 GSL already exists in South Australia for the past regulatory periods so we would be expecting an increase in the next period to \$25.
57. For the 2011-15 period we propose, like South Australia, that the GSL payment is accessible to all Victorians and not just adjoining properties.
58. As a minimum we propose that public lighting customers being councils, VicRoads and Docklands should be able to claim the GSL as it makes no sense to us that those that are paying for the service should not receive some form of recompense from the DNSP for underperformance.

3.8 Controls

We have not had time to consider controls for price changes in detail; however, as we are proposing a cost recovery model, and recognising assets are 100% customer financed, we would expect that any changes would reflect changes in prudent expenditures by DNSPs and allow a reasonable profit. These changes need to be transparent.

Annual tariff rate changes are problematic for councils in the current system. They are not consistent either between DNSPs or year by year for any particular DNSP.

An IMPORTANT consideration for councils is the forward notice provided to council identifying the amount and timing of any annual increases. Historically little, if any, notice has been provided. To enable councils to effectively include in their budget process we request a minimum of three months, but preferably six months, notice of any price changes.

4 KEY FRAMEWORK ISSUES

In Section 3 we identified a number of key Issues that we submit to the AER and encourage the AER to carefully consider these Key Framework Issues as part of their 2011-15 Review process.

As the AER has recently taken over the regulatory role, it may not be aware of the numerous and significant issues pertaining to the public lighting sector framework that firstly require understanding and acceptance, and secondly require remedy by the AER to enable the AER to effectively conduct the EDPR process.

Recognising that the current AER Paper is focused on classifications, we have only identified the issues below. We however have supporting material for each of these issues and would welcome the opportunity to provide the information to the AER at an appropriate time in their process.

We trust this Submission will assist the AER to understand and accept that the current public lighting framework and the service and charging regime based on that framework are both sadly in need of review.

Whilst there is a number of issues, as they have been clearly identified, and in all cases the remedy is known, rectification should be straight forward and able to be included in the AER's EDPR process.

The current framework issues we have identified include:

- DNSP's deny customers the lower cost unmetered supply option if the assets (paid for by the customer) are not vested to the DNSP.
- The DNSP then claims that only the DNSP can perform maintenance and replacement services on "their" lights – thereby holding the customer "captive".

NOTE: This process requires urgent and critical review in terms of the practice and the DNSP's monopoly position. There is no physical reason why any vesting should occur as ownership is irrelevant to the physical supply.

- In accordance with the (still valid) 1993 Agreement between the SECV, the Minister and councils, customers (not DNSPs) have been financing lights since 1993 yet this has not been recognised in current tariffs.

NOTE: The 1993 letter effectively establishes public lighting customers as providing the capital financing of assets. That is the SECV and subsequently the DNSP's cannot be considered as financing the capital assets.

Therefore any capital component in current OMR charges can only be considered as either pre-payment (annuity) or direct payment (pass through cost)

- The ESC's 2004 pricing model contains incorrect data plus allows 10% "super profit" to DNSPs above the model pricing outcome, together costing the public sector around \$2.3 million p.a
- The Public Lighting Code (PLC) requires a complete and critical review
- Unlike all other jurisdictions, a tiered pricing structure has not been introduced in Victoria

- Despite having 5 DNSPs and other subcontractors that can perform the work, contestability has not been considered feasible for OMR?
- Any “regulatory barriers” identified by the AER require to be clearly delineated and appropriately addressed otherwise public lighting customers will suffer as “regulatory captives” - a position that was never intended by the ORG or the privatisation process.
- The NERs appear to be preventing contestability on metering services for unmetered public lighting and requires changing.
- Replacement of lighting is incorrectly included in OMR charges. It is required to be a separate charge under section 4.1 of the PLC.
- Public lighting assets prior to 1993 are included in the RAB and charged via DUoS.
- The cost built up for existing MV80 lights is not enabling an equitable comparison with energy efficient lights (AER February 2009) as different component costs have been used for the same component eg PE cell, luminaire etc.
- The MV80 charge (like all existing light types) includes a replacement component⁹ yet the energy efficient light has a separate Replacement “R” component. The same should be applied to all lights types.
- DNSP’s are claiming a cost of residual life for any early retirement of MV80 lights – even though DNSPs have not invested in these lights?
- All Victorian DNSP’s (except SP Ausnet at ~ 0.9%) appear to be spending far more on assets than can be considered fair and reasonable on replacement lights – the equivalent of between 2.6% and 9.7% of their inventory p.a.

4.1 Action

It is unfortunate that these issues had not previously been addressed, but having been identified, we look forward to the opportunity provided by the AER 2011-15 process and working with the AER on behalf of the SGC to resolve these issues in a timely manner.

END

⁹ We do not agree that any replacement cost can be attributed to the DNSP pursuant to the 1993 letter.

Attachment A – List of Streetlight Group Councils

ALPINE SHIRE COUNCIL
BASS COAST SHIRE COUNCIL
BAW BAW SHIRE COUNCIL
BAYSIDE CITY COUNCIL
BOROONDARA CITY COUNCIL
BRIMBANK CITY COUNCIL
DAREBIN CITY COUNCIL
EAST GIPPSLAND SHIRE COUNCIL
FRANKSTON CITY COUNCIL
GREATER DANDENONG CITY COUNCIL
HEPBURN SHIRE COUNCIL
HOBSONS BAY CITY COUNCIL
KINGSTON CITY COUNCIL
LATROBE CITY COUNCIL
MANNINGHAM CITY COUNCIL
MAROONDAH CITY COUNCIL
MONASH CITY COUNCIL
MOORABOOL SHIRE COUNCIL
MORNINGTON PENINSULA SHIRE COUNCIL
NILLUMBIK SHIRE COUNCIL
PORT PHILLIP CITY COUNCIL
SOUTH GIPPSLAND SHIRE COUNCIL
STRATHBOGIE SHIRE COUNCIL
WANGARATTA RURAL CITY COUNCIL
WELLINGTON SHIRE COUNCIL
WHITTLESEA CITY COUNCIL
WODONGA RURAL CITY COUNCIL
YARRA RANGES SHIRE COUNCIL