

20 September 2013

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

Dear Chris,

Draft Confidentiality Guideline

SP AusNet welcomes the opportunity to respond to the AER's draft Confidentiality Guideline.

SP AusNet supports the ENA's submission on this topic. Therefore, this submission is not intended to duplicate the submission provided by the ENA but aims to add additional insights.

SP AusNet broadly supports the draft guideline. We consider that the proposed template will facilitate NSPs making confidentiality claims as part of their revenue proposals and is not dissimilar to that used by SP AusNet for recent revenue determinations. The template will also facilitate the AER's assessment of a NSPs' confidentiality claims and provide stakeholders with clear oversight of which components of an NSP's submission have been claimed as confidential and for what reasons.

However, SP AusNet has some concerns with the AER's approach to dealing with confidential information, as set out in the explanatory statement. The AER's proposed two stage process overstates the ability of pre-lodgement discussions to resolve confidentiality issues.

Pre-lodgement discussions with the AER and stakeholders (including consumer groups) may, in some cases, identify information which the NSP intends to claim as confidential but the AER and/or consumer groups do not consider should be. However, it is unrealistic to expect that all confidentiality issues will be identified and resolved pre-lodgement. The revenue proposal will not be finalised until just before it is lodged. This includes identifying confidentiality claims.

In addition, consultation on a revenue proposal is a public process. There may be a large number of stakeholders, and it would be extremely resource intensive, costly (and inefficient) for NSP's to resolve all confidentiality issues with all stakeholders prior to lodgement. Therefore, it is extremely unlikely pre-lodgement confidentiality discussions will be comprehensive.

In addition, it is infeasible to expect (as the AER indicated during discussions) that the NSP would be in a position to provide stakeholders confidential information that will form part of their revenue proposals before the proposal is submitted. The proposal will not be approved by the Board until a couple of days before the proposal is lodged with the AER.

Instead, focused discussions with the AER and consumer groups will be more efficiently carried out post-lodgement, when all parties can refer to the NSP's confidentiality template and revenue proposal. This will provide the context and materiality of each confidentiality claim. After lodgement, the revenue reset process lasts 15 months. Within this timetable, there is sufficient time for stakeholders to seek to obtain access to confidential information where required and, where access is granted, to assess this information.

It is appropriate that after a revenue proposal is lodged, a stakeholder approaches an NSP in the first instance, not the AER, if they wish to access confidential information to assess the NSP's proposal. In SP AusNet's recent transmission determination confidentiality issues with stakeholders were successfully resolved post-lodgement in this way. If no agreement can be reached between the NSP and the stakeholder, at that point the stakeholder should approach the AER.

The explanatory statement implies that after an NSP has lodged its revenue proposal, the AER would move straight to exercising its formal powers to address any unresolved confidentiality issues. We understand from our discussion with the AER that this is not the case; it will raise any outstanding concerns informally with the NSP before exercising its formal powers. This is consistent with current practice and we have found informal discussions very valuable in resolving areas of concern. We encourage this to be explicitly recognised in the explanatory statement.

We note that the AER intends to apply the confidentiality guidelines to RINs. It is not yet clear whether this includes annual RINs. We question the practicalities of using the template contained in the guideline for the annual RIN and encourage the AER to use the template only where it is efficient to do so.

If you have further questions regarding the information provided above, please contact Charlotte Coster, Regulatory Economist on 03 9695 6309.

Yours Sincerely,



Tom Hallam
Manager Economic Regulation