



28 July 2014

Mr John Skinner
Director – Network Regulation
Australian Energy Regulator
Level 20 – 175 Pitt Street
SYDNEY NSW 2000

(via email to NSWACTelectricity@aer.gov.au
cc to John.Skinner@aer.gov.au)

Dear Mr Skinner

RE: NSW Utility Public Lighting Confidentiality Claims

I am making this submission on behalf of 35 councils participating in the SSROC Street Lighting Improvement Program. These councils constitute approximately 95% of all the street lights in Ausgrid's distribution area and about 40% of street lighting in NSW.

Ausgrid has made confidentiality claims over substantial portions of its submissions to the AER on 2014-19 public lighting pricing including documents dealing with its investment plans (Ausgrid – Attachment 8.09, 8.10 & 8.11), its public lighting pricing models (Ausgrid Attachments 8.13A-D) and customer-specific aspects of its public lighting price list (Ausgrid – Attachment 8.14). Essential Energy and Endeavour Energy have withheld similar aspects of their public price proposals.

The AER has indicated that two categories of public lighting information were claimed as confidential by the NSW DNSPs: (1) customer information and (2) contract tender prices for materials (luminaries, brackets, supports) and services (labour). I note a third important related category in the case of Ausgrid: assumed failure rates of public lighting technologies. Our submission addresses these areas.

SUMMARY

Under the proposals made by Ausgrid, Endeavour Energy and Essential Energy, the councils of NSW will pay more than \$430,000,000 in street lighting capital and maintenance charges in the 2014-19 regulatory period. In addition, they will be asked to pay some \$240,000,000 in public lighting network distribution charges to the three utilities over this period. These costs for councils and NSW ratepayers at multiples of CPI over the past decade and, as a significant public expenditure, should be subject to the fullest possible scrutiny.

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NSW DNSP confidentiality claims with respect to public lighting clearly do not meet the guidance provided by the AER's Better Regulation changes, do not fit with recent precedent from other AER pricing decisions and, overall, severely compromise councils' ability to understand the basis of public lighting pricing, public lighting investment proposals and make informed decisions about lighting choice. In the specific context of the AER review of NSW 2014-19 pricing now underway, these confidentiality claims markedly limit the ability of councils to scrutinise DNSP pricing proposals and provide meaningful comment to the AER.

It is councils' view that the public benefit of full disclosure of NSW utility street lighting pricing, financial models and all underlying assumptions (including supplier prices and maintenance assumptions) greatly out-weighs any possible disbenefits for lighting suppliers, particularly as much of the information claimed as confidential is already in the public domain from other AER determinations. Inadequate and unequal levels of disclosure at present are undermining confidence in the pricing review process and may even be contributing to higher prices for public lighting in view of the highly concentrated lighting equipment supply market.

1. COUNCILS' POSITION ON PUBLIC LIGHTING CONFIDENTIALITY

Based on previous council and ROC submissions to the AER about utility confidentiality claims with respect to public lighting, I note the following general points:

- A. Customers, in this case local governments, are at a significant information disadvantage in the AER pricing review process without disclosure of the public lighting pricing models and all associated assumptions. The experience from previous determinations has been that claims of confidentiality by the DNSPs over large amounts of information materially reduced councils' ability to understand, scrutinise and comment effectively on DNSP pricing proposals.
- B. Network service providers are natural monopolies and have significant market power in many services that they provide including street lighting. As a consequence, detailed operational costs, capital costs and all associated assumptions are not as inherently commercially sensitive as they would be in a competitive market.
- C. As acknowledged by the AER, street lighting is currently a non-contestable monopoly of the NSW electricity distributors. In such a monopoly situation, it is only through the fullest possible transparency that confidence can be brought to AER pricing decisions which have been unnecessarily contentious in the past with respect to public lighting partly due to inadequate disclosure and non-transparent pricing.
- D. The more that AER pricing decisions are based on confidential information, the less confidence there will be in those pricing decisions. Therefore, in seeking to increase confidence in the pricing regime, the AER should move towards the greatest degree of disclosure possible.
- E. The increased emphasis on benchmarking by the AER requires far higher levels of disclosure and consistent levels of disclosure across pricing decisions in order for there to be confidence in benchmarking results.
- F. Councils are particularly concerned about the failure to disclose working public lighting financial models in view of the experience from previous pricing determinations. For example, the AER's review of Ausgrid's public lighting proposal in the 2010 pricing redetermination concluded that EnergyAustralia (now Ausgrid) has assumed labour rates and travel times were far too high and

overall, that a number of significant adjustments to pricing assumptions were required to bring EnergyAustralia's public lighting labour productivity to an efficient level. As a result, the AER, with the support of an external consultant, made significant adjustments to Ausgrid's opex model in the final redetermination. Any similar errors in this determination may not be identified without a reasonable opportunity for external scrutiny and benchmarking by councils because financial models and all the underlying assumptions are not being disclosed.

- G. Public lighting is unlike other aspects of AER pricing decisions in that the electricity distributors own the end-user appliance, the luminaire. However, it is NSW councils that have legal responsibility under the NSW Local Government Act and Roads Act to decide whether to provide street lighting and to what level. Councils also bear responsibility for aspects of public lighting for which there are no clear drivers on the utilities to manage. This includes: overall lighting costs (including energy consumption), public safety, public security, public amenity, lighting quality, aspects of standards compliance, energy efficiency and other environmental impacts (e.g., light pollution and safe disposal of hazardous lamps). Many of these issues inextricably linked with equipment choice and therefore have cost implications. It is not possible for councils to make informed decisions about public lighting without full disclosure of the inter-related issues of costs, utility maintenance assumptions and reliability.
- H. Councils' consistent position has been that there should be full public disclosure of NSW utility public lighting pricing, financial models and underlying assumptions in the 2014-19 AER pricing review. This should include, at a minimum, a complete working financial model of public lighting prices for each utility along with all required assumptions such as:
 - i. capital inputs such as street lighting component costs, installation times, labour costs and labour allocation to different street lighting components; and
 - ii. operating cost assumptions including spot repair times, labour costs, bulk replacement costs, spot replacement rates and repair rates by component type.
- I. Councils' position on disclosure of street lighting pricing, financial models and all underlying assumptions accords with the principles of transparency and accountability for the use of public funds. In this case, public lighting services in NSW are provided by one public entity to another and the test of any claims of confidentiality should therefore be considerably higher.
- J. The lack of adequate disclosure to date is extremely disappointing, particularly in view of the Better Regulation consultations that SSROC participated in with the AER. The disclosure situation at the outset of this AER pricing review unfortunately appears no better than that under the previous fraught determination.

2. NSW UTILITIES HAVE NOT FOLLOWED AER BETTER REGULATION GUIDANCE

With reference to the specific public lighting confidentiality claims made by the three NSW DNSPs, by not having published anything resembling a full public lighting pricing model, the DNSPs have not adhered to the AER Better Regulation guidance.

The Australian Energy Market Commission (AEMC) made a number of important changes to the rules governing electricity distribution pricing regulation in November 2012. As a result of this, the Australian Energy Regulator (AER) developed a series of documents about the new regulatory framework. These included a new Better Regulation Confidentiality Guideline and an associated Explanatory Statement which were finalised in November 2013 after extensive consultation with utilities, consumer groups and other stakeholders.

Of specific relevance to each of the documents that the NSW DNSPs have claimed confidentiality over is AER guidance in its *Better Regulation Confidentiality Guideline Explanatory Statement (November 2013)* which makes clear in *Attachment 3 – List of Documents for Public Disclosure* page 41 that financial models (including underlying assumptions) for services such as public lighting should be made public:

“Financial models including underlying assumption – These are the models used to derive the outputs that underlie the regulatory proposal. They include the models:....for alternative control services, such as fee based services, metering and public lighting. An example of this is Aurora Energy’s Public Lighting Annuity Model v.2.”

(see page 41 of <http://www.aer.gov.au/sites/default/files/AER%20Confidentiality%20Guideline%20-%20Explanatory%20Statement%20-%20November%202013.pdf>)

3. PRECEDENT SUPPORTS FAR GREATER DISCLOSURE

As per the section above, the AER cited the *Aurora Energy Public Lighting Annuity Model v.2* as an example of precedent to consider. This model, developed for the Aurora Energy 2012-17 pricing review, is available at <http://www.aer.gov.au/node/182> under ‘Proposal’ and again, after review and amendment, under ‘Revised Proposal’. Notably, Aurora Energy’s model is a complete working financial model that contains public lighting prices and all the required assumptions to see how they are derived including:

- capital inputs such as street lighting component costs, installation times, labour costs and labour allocation to different street lighting components; and
- operating cost assumptions including spot repair times, labour costs, bulk replacement costs, spot replacement rates and repair rates by component type.

As a fully working model, stakeholders can see not only key capital and operating inputs, but also key assumptions and how these are applied (e.g., reliability, overheads, labour productivity assumptions). None of this is possible when models are withheld in their entirety or so heavily redacted that they are non-working models.

Similar levels of disclosure (including items such as luminaire capital costs and key maintenance assumptions) can be found in documents submitted to the AER by Victorian DNSPs for the current regulatory period and made public. Specifically, see:

- United Energy – Revised Public Lighting Model 21 July 2010 (<http://www.aer.gov.au/node/7212>)
- SP AusNet – Revised Public Lighting Model 20 July 2010 (<http://www.aer.gov.au/node/7211>)
- Powercor - Revised Public Lighting Model 21 July 2010 (<http://www.aer.gov.au/node/7210>)
- Jemena - Revised Public Lighting Model 20 July 2010 (<http://www.aer.gov.au/node/7209>)

Nothing comparable to the Aurora Energy public lighting pricing model or Victorian models has been released by Ausgrid and Endeavour Energy while Essential Energy released only the opex portion of its model.

As a proxy, Ausgrid has released a heavily redacted non-working version of its 2009-14 pricing model (eg from the previous regulatory period) but made clear that many of its underlying assumptions for the 2014-19 regulatory period have changed, rendering this model of particularly low value in considering Ausgrid’s current proposal.

Essential Energy, whose public lighting 2014-19 OPEX model has been posted on the AER website and includes component costs, installation times, labour costs and labour allocation assumptions as well as a clear demonstration of how these are used in the model (see http://www.aer.gov.au/sites/default/files/Essential%20Energy%20-%20Attachment%208.2_FY16_19_SLUOS%20OPEX.xlsx). While this limited disclosure is welcomed, it is not sufficient to assess Essential Energy's proposal without further details of their capex model.

I note that the disclosure by Essential Energy of its opex model but no comparable disclosure by Ausgrid and Endeavour Energy highlights the unequal levels of disclosure even within the current NSW determination. This unequal level of disclosure makes benchmarking of public lighting assumptions largely impossible for councils and their advisors.

Unequal and hence inequitable disclosure was an unfortunate aspect of the 2009-2014 NSW pricing determination as well. This is illustrated by the example below from page 36 of the AER Supplementary Draft Decision on Alternative Control Services 6 Mar 2009. EnergyAustralia (now Ausgrid) data on luminaire and bracket costs was withheld from scrutiny while the costs for the other two DNSPs were not.

4.2.2 NSW DNSP revised regulatory proposals

The NSW DNSPs' proposed capital costs for key replacement luminaire types and brackets are presented in table 4.1 and their proposed construction costs for each component are contained in table 4.2.

Table 4.1: NSW DNSPs' proposed uninstalled cost per luminaire and bracket (\$, 2008-09)

Asset	Country Energy	EnergyAustralia	Integral Energy
80W MBF/MV	101.58	N/A*	79.00
2*14W T5	246.00	██████████	208.00
42W CFL	153.60	██████████	145.00
150W SON/HPS	250.74	██████████	196.00
250W SON/HPS	241.58	██████████	198.50
Bracket – minor roads	79.12	████████████████████	80.30
Bracket – major roads	289.64	████████████████████	486.04

Sources: NSW DNSPs, Annuity pricing models.

* Not part of replacement luminaire offerings from July 2009.

Note that the cost for EnergyAustralia's 2*14W T5 and its 42W CFL includes the cost of a replacement electronic control gear.

Overall, precedent cited by the AER from the Aurora Energy determination and the models published from the 2010-2015 Victorian pricing review strongly supports greater disclosure by NSW DNSPs. Further reinforcing current council concerns are the unequal levels of disclosure amongst current NSW DNSP pricing proposals and previous proposals in other jurisdictions. Unequal levels of disclosure are inequitable for councils, leaving some in a much weaker position to scrutinise submissions and leaving all unable to benchmark amongst current submissions and previous determinations.

4. PUBLIC BENEFITS TEST

It is councils' view that the public benefit of full disclosure of NSW utility street lighting pricing, financial models and all underlying assumptions (including supplier prices and maintenance assumptions) greatly out-weighs any possible disbenefits for lighting suppliers, particularly as much of the information claimed as confidential is already in the public domain from other AER determinations.

It is entirely unclear why disclosure of items such as NSW luminaire prices and reliability assumptions would cause material detriment when so much of this type of information is already available from other determinations that the AER has made. Withholding it serves only to limit scrutiny and benchmarking.

It is particularly unclear what detriment there would be when it is largely the same lighting equipment suppliers serving NSW utilities as those serving Victoria and Tasmania where this information has been released.

Indeed, inadequate levels of disclosure at present may even be contributing to higher prices for public lighting in a highly concentrated lighting equipment supply market.

The high degree of market concentration in street lighting equipment supply is of relevance in considering the public benefit of greater disclosure. There are only 14 large utility customers for functional roadway luminaires in Australia and they have been supplied primarily by one lighting supplier, Gerard Professional Solutions (formerly trading as Sylvania Lighting Australia, Pierlite and other brands). This company has had perhaps a 90% market share in supplying the utilities regulated by the AER with road lighting luminaires in recent years.

The higher luminaire prices paid in Australia, as compared to the comparable utility-driven lighting market in the US, suggest that the current lack of price disclosure may actually be contributing to protecting incumbent supply arrangements and keeping prices higher.

With respect to current LED luminaire prices, for example, pricing appears to be generally 100% higher than that publicly reported in the US by parties such as the City of Los Angeles (US\$141 per luminaire in 2013), City of Seattle (US\$152 per luminaire in 2013) and others involved in the US Department of Energy's Municipal Solid State Lighting Consortium which SSROC is a member of. Higher labour and distribution costs in Australia seem inadequate to explain the substantially higher local price premium.

SSROC also notes the increased potential for inappropriate purchasing practices when a market is highly concentrated and less than transparent.

5. MAINTENANCE DATA & OTHER MODELLING ASSUMPTIONS

The AER has indicated that two categories of public lighting information were claimed as confidential by the NSW DNSPs: (1) customer information and (2) contract tender prices for materials (luminaries, brackets, supports) and services (labour). I note a third important related category in the case of Ausgrid: assumed failure rates of public lighting technologies and more broadly, all the other assumptions that go into a robust public lighting model. Knowing key capital and parts costs is important but not sufficient to revealing how they are applied in a pricing model without disclosure of failure rates and other modelling assumptions.

With reference to *Ausgrid Attachment 8.11 - Public investment plan – Replacement of 42W CFL with LED*, Ausgrid has indicated that reliability data for CFLs is commercially sensitive. Ausgrid has also more generally withheld public lighting reliability data from councils in the past regulatory period.

Under the NSW Public Lighting Code Section 9.1, “A Service Provider must provide to each of its Customers a) an annual performance report...; and b) any other reports and documents relevant to that Customer...which the Service Provider’s Customer may reasonably require.”

Street lighting maintenance data (eg failure rates and trend data by luminaire and lamp type) is reasonably required by councils during an AER pricing review and regularly during the regulatory period as they ultimately must choose which luminaires to accept as Standard Luminaires and maintenance is one of the single largest components of total street lighting costs.

Councils have in previous pricing decisions found their ratepayers bearing much of the financial burden for past utility technology choices including the resulting high maintenance costs for poorly performing technologies. This has placed a burden on councils to attempt to keep themselves informed of any problems with particular lighting types and an obligation for utilities to disclose material information such as maintenance data in a timely fashion.

This disclosure obligation is particularly important where a technology, such as CFL lighting, has apparently failed to perform in line with the assumptions used by the utility in submissions to the AER.

6. DISCLOSURE OF CUSTOMER INFORMATION

As confirmed by recent letters from a substantial number of NSW councils and ROCs to the AER, councils do not have any objection to DNSP and AER disclosure of council-specific public lighting costs (ref Ausgrid – Attachment 8.14, Endeavour – Attachment 8.02A1 & Essential – Attachment).

The AER has in recent weeks received letters from individual councils comprising at least 95% of Ausgrid’s public lighting assets and from elsewhere in NSW and confirming that:

- If there are council-specific aspects of any utility pricing model or AER decision, council has no objection to these costs being made public by Ausgrid or the AER; and
- when provided to council, these costs could reasonably be expected to be released under the NSW Government Information (Public Access) Act 2009 in any event.

Given that Ausgrid has noted in its Confidentiality Template with reference to Attachment 8.14 that there is, “*No detriment to Ausgrid in disclosure of these prices*”, that Endeavour Energy has not noted any detriment to itself through this disclosure and that councils have called for disclosure and not cited any potential detriment, there is a solid basis for full disclosure of council-specific aspects of public lighting proposals.

I also note that there is again inconsistency in disclosure on this aspect as Essential Energy has released some customer-specific information in its submission.

7. CHANGE IN DNSP TENDERING APPROACH MAY BE NEEDED

DNSPs have suggested in their Confidentiality Templates that there is no specific detriment to the DNSPs arising from the disclosure of information regarding pricing models, associated assumptions and investment plans. Rather, they say that these items need to be kept confidential to protect the commercial interests of equipment suppliers and contractors. In discussions with councils, they have cited confidentiality undertakings that they have given to suppliers.

In view of the forthcoming Networks NSW street lighting equipment tender on behalf of Ausgrid, Endeavour Energy and Essential Energy, the AER may wish to provide guidance to the DNSPs about changing their general conditions of tendering, contracting, sub-contracting, outsourcing and other commercial arrangements with respect to confidentiality undertakings.

Councils accept that strict confidentiality provisions are required during a tender process but thereafter, the tender results should be made public for a regulated monopoly public service such as public lighting. The DNSPs should not be giving unreasonable confidentiality undertakings to suppliers that are incompatible with reasonable disclosure requirements in current and future AER pricing reviews.

8. LIMITED RELEASE OF CONFIDENTIAL INFORMATION

The AER has suggested that limited release of confidential information, as has happened with telecommunications access agreements, may be an option to address utility confidentiality concerns.

Using confidentiality undertakings to allow disclosure or partial disclosure of confidential information to certain stakeholders or their representatives should always be viewed as a second-best solution to full disclosure. This is particularly the case with public lighting because:

- Limited release does not meet the level of disclosure established in recent AER pricing reviews in Tasmania and Victoria, the guidance in the Better Regulation documents or facilitate benchmarking across jurisdictions.
- Public lighting is not like telecommunications where different companies may be in direct competition in some aspects of their business but use the other's infrastructure in other aspects. Public lighting in NSW is provided by publicly-owned utilities, using utility-owned assets to local governments and paid for using ratepayers funds. Councils are not in competition with utilities and, as such, it is essential that pricing of this monopoly public service is open to the fullest possible scrutiny.
- Confidentiality undertakings can severely constrain any subsequent submissions made by councils to the AER requiring them to be confidential and hence not open to public scrutiny in line with normal local government practice.
- In the case of associations or consultants working on behalf of councils, it may unreasonably restrict them from discussing matters with the very constituent councils that are funding their work. This would be particularly troubling in the context of the public funding that is used to pay for the costs of work by associations or consultants.
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9. TIMING AS IMPORTANT AS CONTENT OF WHAT IS DISCLOSED

The timing of information disclosure is in many cases as important as the content. The AER should recognise that late or staged disclosure of relevant information can, and has in previous determinations, severely compromise the ability of councils to meaningfully participate in the regulatory process.

The lack of disclosure by NSW DNSPs to date has already significantly compromised the ability of councils to assess proposals and make meaningful submissions by the 8 August deadline for submissions on DNSP public lighting proposals.

Should you have any questions about this submission, please contact Helen Sloan on 02 9330 6455 hs@ssroc.nsw.gov.au or Graham Mawer on 02 8966 9444 and gmawer@nextenergy.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alan Northey', with a long horizontal flourish extending to the right.

Alan Northey
General Manager
Southern Sydney Regional Organisation of Councils