



18 July 2013

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Re: Queensland and SA electricity distribution businesses — Framework and approach

This submission is in response to the AER's Notice¹ seeking submissions on whether it is necessary or desirable to amend or replace the Framework and Approach (F & A) for the next regulatory control period commencing 1 July 2015 for the above jurisdictions.

The F&A effectively "sets the stage" for the approach to be taken by the AER to determine:

1. Which services the AER will regulate,
2. The (price) control mechanisms to adopt,
3. Application of any incentive schemes, and
4. Treatment of dual function assets.

We were extremely heartened to see in the AER's Notice the AER is seeking submissions on "*which services we should regulate and how much control we have over determining the prices for distribution services*" and "*incentive schemes that will apply to the distribution businesses to encourage efficient investment and performance*"; and in this regard the AER might consider:

- *"Allowing for the possibility of increased competition in the provision of some services traditionally provided only by the distribution business.*
- *Determining the provision of some services on a fee for service basis or perhaps as a service for which there is minimal oversight by us.*
- *Setting out whether incentive schemes will apply."*

In response to the AER's request regarding F And A, we submit our support of the AER's retention of the Negotiated Distribution Service classification in South Australia for the next regulatory control period commencing 1 July 2015 for the services outlined in Attachment A.

We further submit that the AER similarly classifies these services as Negotiated Distribution Service for Queensland.

The balance of our submission primarily addresses points 1 and 2 above, being the service and price aspects.

1 Summary

Unfortunately the AER price determination is not dynamic, has no price or service flexibility for Direct Controlled services, and cannot accommodate changing market conditions and service requirements during a regulatory period.

We submit unless a DNSP's service is a clearly established "natural monopoly" (eg poles and wires), it should not be classified by the AER as a "direct control" service.

¹ <http://www.aer.gov.au/node/20187> of 27 June 2013

To promote sector development, and consistent with the NEO, we submit **all other services** should either be classified by the AER as Negotiated Distribution Services (NDS), or not classified.

We submit, in addition to requiring customer engagement, the NDS classification provides an effective “stepping stone” for transition to contestability of services.

The critical initial step in this process is for the AER to recognise the possibility of these service options. We see that the groups being established by the AER in its Better Regulation reform program as an ideal method to engage with consumers in establishing service requirements.

We submit any services currently contracted out by the DNSP can potentially be seen as an opportunity for competitive service provision, and where natural monopolies do not exist, DNSPs can provide services in other DNSP regions eg small market metering, new connection, public lighting etc.

We submit the NDS classification inherently engages consumers, and provides potential benefit to them through:

- The ability to negotiate both services and prices to meet their needs, noting these needs may vary between customers or groups of customers,
- Dynamic service and price responses from service providers to accommodate changed or new service requirements during a regulatory period, and
- Development of competitive service providers (which may include DNSPs providing service in other regions), ultimately leading to full contestability.

In making this submission we have provided examples pertaining to the public lighting sector – a sector that we promote to the AER as ideal for the NDS classification.

We submit there is nothing in NEL (2F) preventing the AER from expanding the number and type of services classified as NDS.

For any “Alternative controlled” services we encourage the AER to establish services and prices in a manner that provides alternatives for consumers eg tiered pricing.

2 General Considerations

Whilst recognising the AER is an “economic Regulator”, in our view the AER focussed primarily on the economics pertaining to services proposed by the DNSPs under the transitional Rules.

Whilst a price must be established for a service, we fully support the AER’s increased appetite for requiring services to **first** be established to meet customer needs and only then appropriately classifying that service.

In this regard we encourage the AER to first clearly identify services with the view to increased competition or fee for service with minimal oversight as in our view this has significant potential to develop the services sector and also better achieve the NEO.

The AER also has the opportunity when establishing prices to allow for market development. An example is tiered pricing as exists in SA for public lighting where consumers are provided tariff options depending on the service they require from the DNSP being either:

- a. DNSP provides asset funding, maintenance and operation., or
- b. DNSP provides maintenance and operation only, or
- c. DNSP provides operation only.

As evidenced above, simply providing consumers with the option of funding and/or maintaining an asset provides choice – and this is entirely within the AER’s control to establish prices on this basis.

The critical initial step in this process is for the AER to recognise the possibility of these service options. We see that the groups being established by the AER in its Better Regulation reform program as an ideal method to engage with consumers in establishing service requirements.

3 Services

The AER does not “establish” services requirements per se – it identifies and classifies a service, and then determines a price for that service using the appropriate price control mechanism including the application of any incentives.

In consideration of the NEO, it is our view **only natural monopoly services** (eg “poles and wires”) provided by the DNSP should be classified as a Direct Controlled Services and then further classified as either “Standard” or “Alternative” for the purposes of establishing appropriate price controls.

To promote sector development, and consistent with the NEO, we submit **all other services** where the DNSP does not have a clearly established natural monopoly should either be classified by the AER as Negotiated Distribution Services (NDS), or not classified.

We submit whilst also requiring customer engagement, the NDS classification provides an effective “stepping stone” for transition to contestability of services.

The AER’s classification of a distribution service as a negotiated distribution service does not, of itself, make the service contestable and open to supply by providers other than the distributor. Contestability is determined by legislation, or other regulatory instruments, and is beyond the control of the AER. Contestability is, however, relevant to the AER’s consideration of the form of regulation factors that the AER must consider in classifying services under section 2F of the NEL.

We submit how the AER ‘defines’ services is a critical aspect in the AER’s determination process. An example is ‘tiered pricing’ options for services.

We submit that the Framework and Approach for the next regulatory periods provides the AER with the opportunity to critically assess the services being provided to consumers and to define these services in the manner described above, with only natural monopolies classified as “direct control”. This may include clearly defining the DNSP’s services and where appropriate disaggregation of these services to minimize those classified as “direct control”.

We submit the services currently classified as NDS in South Australia (as provided in Attachment A) can be adopted by the AER as the minimum services to be classified as NDS.

We further submit that any service contracted out by the DNSP can potentially be seen as an opportunity for competitive service provision.

We have expertise in public lighting and submit there is no natural monopoly for these services. Even if the DNSP currently owns the lights, the DNSPs and the AER should not assume the DNSP has a contract in perpetuity to provide these services eg the DNSP automatically replacing lights at the end of their economic life. As the consumer “pays the bills” we submit they should establish their ongoing service needs, and in turn prices, directly with the DNSP via the DNSP’s Negotiation Framework.

In response to the AER’s request “*which services we should regulate*”, we submit the services and classifications outlined in Attachment B.

We submit the AER also considers the potential for increased classification of contestable services eg small market metering and connection services and that the AER considers tariff options eg tiered pricing², to provide addition choice to consumers.

4 Consumer Engagement

The AER’s Chairman, Andrew Reeves, recently commented:

“The AEMC published its final rule change determination at the end of November 2012. The changes significantly improve upon the old framework.”

² As per the example in section 2 items a), b) and c)

Taken as a whole, the new rule framework will give better effect to the National Electricity Objective. In short, the National Electricity Objective set out in the Law is to promote efficient investment in and efficient operation of electrical services in the long term interests of consumers with respect to price, reliability, service and safety".³(our underline)

We also note with interest the AER is also actively seeking consumer engagement with DNSP's via its Better Regulation reform program.

We submit careful assessment by the AER of the current services provided by DNSPs, including the disaggregation of current DNSP "services", and tiered pricing options can act as a significant catalyst for customer engagement with DNSPs.

In considering the AER's desire for consumer engagement (an approach which we support), we submit the Negotiated Distribution Services (NDS) classification inherently provides consumers (or groups of consumers) with the ability to engage directly with the DNSP and to establish both services and prices pursuant to NER Chapter 6 Part D, including the Negotiating Framework (NF) and the Cost Allocation Method (CAM.)

Critically, unlike the "Direct control" classifications, **the NDS classification requires "services" to be negotiated** and we submit to the AER this be considered by the AER as a "relevant factor" in the AER's classification of distribution services pursuant to NER 6.2.1.

We submit classifying non natural monopoly services as NDS or contestable inherently engages consumers, and provides potential benefit to consumers through:

- The ability to negotiate both services and price to meet their needs, noting these needs may vary between customers or groups of customers,
- Dynamic service and price responses from service providers to accommodate changed or new service requirements during a regulatory period, and
- Development of competitive service providers (which may include DNSPs providing service in other regions), ultimately leading to full contestability.

5 Classification and Regulatory Considerations

5.1 Form

Regarding the Form of Regulation, clause 6.2.1(c) (1) of the NER, the AER must have regard to section 2F of the NEL.

We submit, there is nothing in NEL 2F that would prevent the AER embracing an approach, consistent with the NEO, that enabled greater competition.

- **NEL 2F (b)** – "Interdependencies with other network services". For most services, in our opinion, there are not compelling efficiencies provided by the DNSP. Please also refer to "2F (e)" below where we propose DNSPs should provide services in other DNSP regions.
- **NEL 2F (c)** – 'interdependencies with other markets'. Contractors already provide services to customers in other markets. e.g. telecommunication network providers (including NBN Co), and councils for vegetation control.
- **NEL 2F (d)** "Countervailing Market power". We expect the "Market power" refers to "purchasing power" and price. There are already large contractors in place that work for multiple DNSPs so services and economies of scale are available. Whilst individual users may not initially have the same economies of scale as the DNSPs, retailers or councils or industry associations could group customers together (as they do for other services) to tender for services.

³ Page 2, Better Regulation | Public forum 18 December 2012 | Andrew Reeves presentation, <http://www.aer.gov.au/better-regulation-reform-program>

“Market power” may also be considered in terms of price paid by the customer. In considering price, other service providers do not have a DNSP’s high overheads (eg 20% to 31%⁴ in Victorian DNSPs for public lighting) and on-costs. Further, as DNSP’s engage subcontractors, consumers currently pay for two ‘profits’ and overheads in current tariffs.

We submit that customers not having to pay multiple profits and overheads and “going direct” will more than offset any perceived DNSP “market power”.

Please also refer to “2F (e)” below where we propose DNSPs can provide services therefore use their “market power” in other DNSP regions.

- **NEL 2F (e)** – ‘presence and extent of substitutes’ –DNSP’s already engage contractors. These contractors can fairly be considered (existing) alternative service providers. Further, where there is no natural monopoly, DNSPs should be able to be engaged by consumers to provide services on a competitive basis in other DNSP regions.

We submit the AER should consider that all DNSPs are capable of providing these services on a competitive basis, and as such a competitive market already exists for these services..

- **NEL 2F (g)** – ‘information available’. If services are classified as an NDS, pursuant to NER clauses 6.7.5 (c)(2) and 6.7.6(a), consumers will have sufficient information to enable informed negotiation with DNSPs. Further, the DNSP is required to post prices for negotiated services – so (if appropriate) these services can simply be accepted by the consumer at that price.

We submit the AER must also give detailed consideration to the classification of distribution services under chapter 6 of the NERs including 6.2.1(c)(2).

- **NER clause 6.2.1 (c)(3)**. -“desirability of consistency in the form of regulation” - Having recognised the potential opportunity to identify services with the view to increased competition or fee for service (with minimal regulatory oversight), we submit the AER (in considering NER 6.2.1(c)(3) in terms of the NEO), accepts there will necessarily be a period of transition while services are (re)classified at different times in different jurisdictions.
- **NER clause 6.2.1 (c)(4)**. - “any other relevant factor” –We submit the AER must consider the development of competition of services, including the ability of DNSPs to provide services outside of their region, as a relevant factor in the achievement of the NEO.

5.2 Service and Price Flexibility

Unfortunately the AER price determination for Direct Controlled services is not dynamic, and has no price or service flexibility. It is simply not designed to accommodate changing market conditions and service requirements during a regulatory period.

An issue arises where the AER has classified a service (typically) as “Direct/Alternative” controlled service, and the consumer requires a different service to those considered by the AER to establish prices via a regulatory determination.

An example is public lighting in Victoria and Tasmania as we have discussed in section 6.4.

Without the service classified as Negotiated, the consumer is effectively held “captive” to the regulated service and tariff.

Even if an NDS can be established, the AER will need to ensure all regulated DNSP services (including NDS) are considered in a DNSP’s cost allocations included in their annual price proposals and effectively reconciled through application of the DNSP’s Cost Allocation Method (CAM).

⁴ AER, Final decision Victorian electricity distribution network service providers, Distribution determination 2011–2015, October 2010, Impaq comment p844

6 Negotiated Distribution Services (NDS)

6.1 Regulatory Approach

The NDS classification has not been subjected to high scrutiny as most DNSP's have few (if any) NDS. The NEL definition of NDS is:

"NEL 2C—Meaning of negotiated network service

A negotiated network service is an electricity network service—

(a) that is not a direct control network service; and

(b) that—

(i) the Rules specify as a negotiated network service; or

(ii) if the Rules do not do so, the AER specifies as a negotiated network service in a distribution determination or transmission determination."

A potential misconception (which we expect is a "hangover" from the regulatory approach prior to the NERs), is a "lighter handed" form of regulation applies to NDS.

We are not aware of any such required regulatory approach towards NDS under the NERs. Pursuant to NER 6.2.7 NDS are regulated in accordance with NER Chapter 6 Part D where specific pricing criteria are required to be established in the determination process.

The critical, and only, aspects for the AER's consideration in the NDS process are the DNSP's CAM and Negotiation Framework (which includes the Pricing Criteria). Indeed, once the AER has accepted the DNSP's Cost Allocation Methodology (CAM) and Negotiation Framework (NF) the AER has no role in NDS pricing, unless it is required to resolve a dispute.

If the AER is looking to expand the number and type of NDS we submit to the AER it may need to consider how it may assist DNSP's pursuant to NER 6.7.3 to demonstrate pursuant to their NF:

- "(i) to identify and inform a Service Applicant of the reasonable costs and/or the increase or decrease in costs (as appropriate) of providing the negotiated distribution service; and*
- (ii) to demonstrate to a Service Applicant that the charges for providing the negotiated distribution service reflect those costs and/or the cost increment or decrement (as appropriate); and*
- (iii) to have appropriate arrangements for assessment and review of the charges and the basis on which they are made,"*

We submit the AER will also need to monitor the DNSP's allocation of costs pursuant to the DNSP's CAM. This may require numeric allocators in the CAM which would assist both the AER and customers, to establish that the DNSP's price offer is compliant particularly with regard to overhead allocation, which may represent 25% or more of the cost of a service. Without any numeric allocators against service aspects contained in a DNSP's CAM, how can consumers assess if prices established pursuant to a DNSP's CAM have been established consistent with the NEO?

This may require additional consideration in the DNSP's annual pricing proposal.

6.2 NDS in operation

The AER in SA requires recognition and commendation as it has best embraced the NDS concept. The current SA NDS has been included in Attachment A.

A concern for consumers is all other jurisdictions, except for minor inclusions in Victoria and Tasmania, have largely ignored the NDS classification.

Whilst we do not expect the SA NDS list to be exhaustive, we submit to the AER the SA NDS can potentially represent a starting point for identifying appropriate NDS for other jurisdictions.

6.3 Consumer Benefits

Apart from SA, the AER has to-date unfortunately demonstrated little appetite to engage the Negotiated Distribution Service (NDS) classification.

The NDS classification however requires engagement between consumers and the DNSP to establish both service and price and provides:

- greater transparency in DNSP costs to consumers - as discussed regarding NEL 2F (g) earlier
- dynamic flexibility in terms and conditions for services and price
- Improved competition (market development) – where there is no natural monopoly.

6.4 Public Lighting (Example)

Trans Tasman Energy Group has been an active participant in public lighting submissions in most jurisdictions.

We have therefore used public lighting as an example to demonstrate some of the issues and benefits we have discussed in this submission.

Whilst the AER is an economic regulator, we trust our public lighting example provides an indication of how the prudent establishment of services and tariffs can be broadly applied by the AER to encourage sector development and contestability in the achievement of the NEO.

In our view a natural monopoly does not exist for public lighting as there are alternative providers, and indeed DNSPs typically engage sub-contractors to perform many of these services. Further, there is no reason why DNSPs should be considered a monopoly service provider because as demonstrated in SA others can provide services. Finally, for services that are not a natural monopoly (eg public lighting, metering, connection etc), we submit there is no reason why DNSPs should not provide these services in other DNSP “regions” – that is, the AER should consider that all DNSPs are capable of providing these services on a competitive basis.

6.4.1 Issue/Benefit Changed Services and Charges

The AER has classified public lighting services in Victoria and Tasmania for existing public light types as a Direct Controlled and then Alternative Controlled service. It however (and in our view appropriately) at least classified “new light types” as an NDS.

A summary of the current public lighting classifications in the NEM is in Attachment C.

The issue becomes where a consumer requires upgrading from existing light types to a new light type. Whilst the consumer can negotiate service and price (as an NDS) with the DNSP for the new light type, it has no “market power” to require the DNSP to alter its existing Alternative controlled tariffs and services to recognise the DNSP’s changed costs and the consumers changed service requirements.

Further, as identified in item 6.4.7 below, in some jurisdictions consumers do not even have access to the AER’s pricing models to know how prices were established.

At best, the changed services and cost may be considered by the AER in its next price determination, which at worst would be 5 years hence.

Current Federal Government funding programs will see dollars in the tens of millions of public funds allocated to new light types over the coming years, and without appropriate flexibility as provided by NDS, consumers (primarily councils) will be held “captive” in the Alternative controlled classification.

6.4.2 Issue/Benefit Cost Reflective Pricing

Cost reflective tariffs are crucial for consumers in assessing the light type to be used or replaced.

Unlike other classifications, NDS provides flexibility for consumers and the DNSP to “rebalance” tariffs via an agreed (negotiated) process within a regulatory period to better reflect “cost incurred” (NER

6.7.1(1)) for the various light types. Further, any agreements can be renegotiated should circumstances change eg new light types.

We advise the AER that there has been three price (tariff) "rebalances" and "annual price reviews" between consumers and the DNSP under the NDS classification in SA.

6.4.3 Issue/Benefit Competition

We submit that DNSP services provided in the current Alternative Controlled classification (in all jurisdictions except SA) is a primary contributing reason preventing competitive market growth for public lighting services and is not providing the appropriate regulatory outcome, including the achievement of the NEO.

Current DNSP practices are also impacting competition. These practices include:

- The "required" vesting of new public lighting to DNSPs. This practice requires further investigation including why this practice exists and is it appropriate market conduct; and
- The DNSPs "automatic right" to replace lights at the end of their economic life.

We trust the AER will recognise in accepting these practices the AER is effectively establishing a regulated monopoly as DNSPs prevent maintenance to be undertaken on "their assets" by others – yet DNSPs typically subcontract this activity with consumers paying profit and overhead to both the subcontractor and the DNSP.

Further, consumers want choice in providers of capital, maintenance and operational aspects of these services. As established in SA, there is no reason why other providers cannot provide these services.

By failing to provide service and price options (eg tiered pricing if Alternative controlled), the AER is denying consumers these service options.

By establishing prices and (by default) "requiring" the DNSP public lighting "service" to include automatic replacement of lights at the end of their economic life, the AER is effectively establishing a contract in perpetuity – or a regulated monopoly.

Public lighting customers incur the financial liability and therefore should fairly and reasonably determine who funds and replaces lights at the end of their economic life.

We submit that simply introducing NDS for public lighting will enable consumers to establish both service and price with the DNSP and break the cycle of required vesting via tiered pricing and automatic light replacement will enable market development.

Unfortunately, despite submissions in numerous determination processes, currently SA is the only jurisdiction with NDS for public lighting.

6.4.4 Issue/Benefit Tiered Pricing Options

Most jurisdictions (except SA) have failed to fully establish tiered pricing for public lighting to provide consumers with choice regarding whether a DNSP provides::

- a. asset funding, maintenance and operation., or
- b. maintenance and operation only, or
- c. operation only.

It is also conceivable that and option (d) could be established, where the DNSP has no involvement with public lighting with all aspects outsourced, including the Type 7 metrology and call centre operation.

Currently it is only in SA where consumers have all three options.

NSW, Queensland and Tasmania have options (a) and (b).

Critically, Victoria only has option (a) and this must be addressed by the AER in the next period.

Whilst our preference is for the NDS classification for all public lighting services, if the AER classifies public lighting as Alternative controlled then we submit at least the tiered pricing service options and appropriate tariffs must be established in its determination.

6.4.5 Issue/Benefit DNSP Competition

The current regulatory process has however (unfortunately) created a situation where a consumer (eg a council) may be paying significantly more for the same light type on one side of a street to the other simply because they are serviced by different DNSPs.

We submit that this situation requires critical review by the AER in terms of the NEO and is a relevant factor pursuant to NER 6.2.1.

We submit unless a natural monopoly exists (eg poles and wires) that consumers should be able to select their service provider of choice which may include the DNSP that is providing and servicing lights (across the road) at a cheaper price.

6.4.6 Issue/Benefit "Gifting" tax Cost Impost

We note an increasing trend for DNSPs to charge tax for gifted assets – yet in normal business transactions councils do not pay tax.

It follows that councils (consumers) would therefore be paying a cost impost when assets are gifted to the DNSP – a situation we do not believe is consistent with the NEO. Please note that it is typically developers that gift these assets to the distributors – not the councils.

We submit establishing public lighting as an NDS will enable the consumer (councils) to "make the call" and determine whether assets should be gifted to councils or the DNSP.

6.4.7 Issue/Benefit Information

Public lighting customers have been frustrated (including the 2009-14 NSW regulatory process) by the lack of information made available from DNSPs, and in turn the AER, due to confidentiality in the Alternative Controlled process.

As a result, there was no price modeling made available to NSW consumers in the determination process and indeed there was no modeling available to consumers to support the AER's final determination.

The AER's classification of public lighting services as a Negotiated service can overcome any issues with confidential information as this can be effectively managed through clause 6.7.6(a) of the NER which will ultimately be incorporated in the DNSP's Negotiating Framework.⁵

Pursuant to NER clauses 6.7.5 (c)(2) and 6.7.6(a), consumers of public lighting services will have sufficient information to enable informed negotiation with NSW DNSPs.

The adoption of the Negotiated services classification for Public lighting services will more than satisfy the requirements of section 2F (g) of the NEL, and indeed overcome the significant issues that have faced the AER and customers regarding the provision of confidential information from DNSPs in prior periods.

6.4.8 Issue/Benefit Type 7 Metrology

Currently each DNSP has a process established pursuant to the Type 7 metrology procedures.

We submit there is no "natural monopoly" for these services and with 13 DNSP's in the NEM each performing this service we submit it cannot reasonably be interpreted as "*efficient operation and use of, electricity services for the long term interests of consumers of electricity*" pursuant to the NEO.

⁵ The Negotiating Framework in South Australia allows exchanges of confidential information (RRM 2)

7 Next steps

We would welcome the opportunity to discuss any points we have raised in our submission, and in providing any further assistance to the AER in the preparation of its Framework and Approach (F & A) for the next regulatory control period commencing 1 July 2015 for the referenced jurisdictions.

Yours sincerely,

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Attachment A⁶

Schedule 1. Classification of Negotiated Distribution Services

The categorisations of *Negotiated Distribution Services* in this table correspond to those defined in more detail in Attachment B.2 of ETSA Utilities Regulatory Proposal.

Negotiated Distribution Service <i>'B.x'</i> references refer to categorisations defined in Attachment B.2 of ETSA Utilities Regulatory Proposal	Classification of Service ⁸	
	Individually Negotiated Service	Indicative Price List Service
B.7 Non-standard network services	All	
B.8 Non-standard connection services	Non-repetitive	Repetitive
B.9 New and upgraded connection point services	Non-repetitive	Repetitive
B.10 Non-standard small customer metering services		All
B.11 Large customer metering services		All
B.12 Public lighting services	Non-repetitive	Repetitive
B.13 Stand-by and temporary supply services	Non-repetitive	Repetitive
B.14 Asset relocation, temporary disconnection and temporary line insulation services	Non-repetitive	Repetitive
B.15 Embedded generation services	All	
B.16 Other services		
(a) services in connection to ETSA Utilities' Distribution licence obligations or the NER;	Non-repetitive	Repetitive
(b) provision of reactive power and energy to a connection point or receipt of reactive power and energy from a distribution connection point;		All
(c) investigation and testing services;	Non-repetitive	Repetitive
(d) asset location and identification services;	Non-repetitive	Repetitive
(e) the transportation of electricity not consumed in the distribution system;	All	
(f) the transportation of electricity to distribution network users connected to the distribution system adjacent to the transmission system;	All	
(g) repair of equipment damaged by a distribution network user or a third party;	All	
(h) provision of high load escorts;	Non-repetitive	Repetitive
(i) provision of protection systems;	All	

⁸ Shading indicates applicability of either the *Individually Negotiated Service* or *Price List Service* frameworks. Both frameworks apply to many services owing to the high variability of the scope and complexity of services within each category.

Negotiated Distribution Service <i>'B.x' references refer to categorisations defined in Attachment B.2 of ETSA Utilities Regulatory Proposal</i>	Classification of Service ⁸	
	<i>Individually Negotiated Service</i>	<i>Indicative Price List Service</i>
(j) Provision of pole or structure attachments, ducts or conduits;	Non-repetitive	Repetitive
(k) Additional costs arising from customer non-compliance with obligations;	Non-repetitive	Repetitive
(l) Customer default resulting in work not being able to be undertaken or completed as planned;	Non-repetitive	Repetitive
(m) TV or radio interference investigation where <i>ETSA Utilities'</i> network is not the cause;	Non-repetitive	Repetitive
(o) Investigation of supply interruption not due to <i>ETSA Utilities'</i> network; and	All	
(p) Provision of information not related to connection enquiries.	Non-repetitive	Repetitive

Attachment B⁷

7.1 In response to the AER's preliminary position on classification and form of control, we submit the following recommendations:

Recommendation 1: The AER proposed service activities regarding asset relocations (including undergrounding) and related support services, conversion to aerial bundled cable requested by a third party, are in general not public lighting services and should not therefore be included as a public lighting service.

Recommendation 2: As a contestable framework already exists, the current barriers to entry in to the public lighting services market can effectively be removed over time through negotiation under chapter 6 Part D of the NERs. This development is consistent with the National Electricity Objective. **Critically**, as outlined in our submission this requires classification of the services by the AER Negotiated distribution services.

Recommendation 3: For the reasons presented in this submission, and in consideration of chapter 6 of the NER and section 2F of the NEL, the Negotiated services classification is "clearly more appropriate" (clause 6.2.1 of NER) for all public lighting services, other than those services that are unclassified (unregulated). Our recommendations for specific public lighting services are summarised in Table A.

Table A – Recommended Public Lighting Services

	Service	Classification	Comments
1	Alteration and relocation of DNSP owned assets	Negotiated	
2	Operation, maintenance and repair of DNSP's public lighting assets (existing technologies) (SLUOS)	Negotiated	Negotiated Addresses both service terms and conditions and charges. Replacement of lights to be at the customer discretion – refer 5 below
3	Operation, maintenance and repair of New Technology Lights	Negotiated	
4	Operation, maintenance and repair of non- DNSP owned public lighting assets (initially funded by others)	Negotiated	Includes replacement lamps, PE cells and other activities as agreed
5	Replacement of existing lights (luminaires, brackets, columns) at the end of their economic life	Negotiated	Replacement of lights to be at the customer discretion i.e. not automatically by the DNSP
6	Written down value of DNSP lights if retired early	Negotiated	current Tariff 5
7	Ancillary services – notification of faults to streetlight owners.	Negotiated	A new service to allow councils to own and maintain its own lights

⁷ Framework and approach paper, Ausgrid, Endeavour Energy & Essential Energy, Regulatory control period commencing 1 July 2014 -Submission to the AER by Endeavour Energy Councils, August 2012, "Conclusion" commencing page 9

8	New Public Lighting installation not funded by the DNSP	Unclassified (unregulated)	with no vesting requirement
9	Alteration and relocation of non DNSP owned assets	Unclassified (unregulated)	
10	Streetlight design	Unclassified (unregulated)	

Recommendation 4: As emerging 'new luminaire types' or 'new technologies' are not necessarily known they cannot be classified as Direct control - Alternative control they must be classified as Negotiated.

Recommendation 5: DNSPs must establish robust and compliant Negotiating Framework including Negotiated Distribution Service Criteria, and Cost Allocation Method for the AER to approve in its NSW distribution determination for 2014-19.

Attachment C – Public Lighting Classifications⁸

Table 2.1 Public lighting regulation across jurisdictions

State	Classification of services	Form of control for alternative control services	Issues
NSW	Alternative control - All public lighting services.	<ul style="list-style-type: none"> ■ Schedule of fixed prices developed using a building block approach for assets before 1 July 2009. ■ Schedule of fixed prices developed using an annuity approach for assets after 30 June 2009. ■ Price path such as CPI for remaining years. 	<p>Insufficient data on the age of public lighting assets.</p> <p>Concerns over price shocks when replacing old assets.</p> <p>Tariffs based on who funded capital for assets.</p>
ACT	Not applicable	Not applicable	ActewAGL does not own any public lighting assets in ACT.
QLD	Alternative control - All public lighting services.	<ul style="list-style-type: none"> ■ Caps on the price of individual services in the first year of the regulatory control period. ■ Price paths for remaining regulatory years. 	<p>Ergon and Energex contend that public lighting services are not distribution services.</p> <p>Application to the Federal Court of Australia seeking judicial review of the AER's decision to classify public lighting services as a distribution service. Decision is pending.</p>
VIC	<p>Alternative control - Operation, repair, replacement and maintenance.</p> <p>Negotiated distribution - New public lighting and alteration and relocation of public lighting assets.</p>	<ul style="list-style-type: none"> ■ Price cap established based on a limited building block approach, where DNSPs will be required to forecast their operating expenditure and capital expenditure for public lighting services over the regulatory control period. 	Public Lighting Code allows a third party to relocate or replace public lighting assets.
SA	Negotiated distribution - All public lighting services.	Not applicable	<p>Contestable and energy only options available.</p> <p>Customers not required to have DNSP provide public lighting services.</p>
TAS	<p>Alternative control - All public lighting services (except new public lighting technologies).</p> <p>Negotiated distribution - New public lighting technologies.</p>	<p>Public lighting services (except for new public lighting technologies and alteration and relocation of public lighting assets):</p> <ul style="list-style-type: none"> ■ Price cap using an annuity approach. <p>Alteration and relocation of public lighting assets:</p> <ul style="list-style-type: none"> ■ Quoted service 	<p>Unregulated under OTTER.</p> <p>Insufficient data to develop a building block approach to determine public lighting prices.</p>

⁸ Discussion paper, Matters relevant to the framework and approach NSW DNSPs 2014—19, Public lighting services April 2012