



Trans Tasman Energy Group

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**Mr Warwick Anderson
General Manager, Network Regulation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601**

By email: NSWACTelectricity@aer.gov.au

Dear Mr Anderson

RE: Framework and approach paper – Ausgrid, Endeavour Energy and Essential Energy

TTEG welcomes opportunity provided by the AER's paper "Preliminary positions, Framework and approach paper Ausgrid, Endeavour Energy and Essential Energy, Regulatory control period commencing 1 July 2014", (the Paper) of June 2012 and appreciates the AER's efforts to assist Public Lighting Sector development by establishing fair and reasonable public lighting tariff charges for the next regulatory period.

We apologise for the lateness of this submission, but as you are aware TTEG provided technical support for the separate submission from the Endeavour Energy (EE) Councils.

TTEG fully support the views contained in that submission but we are also providing our own submission to assist the AER and other councils to consider the more general nature of the opportunity and benefits of the Negotiated classification for public lighting services.

To provide the AER with insights to TTEG's public lighting credentials we have provided information "About TTEG Consultants and Road Lighting" under separate cover.

Roles

TTEG are actively engaged with councils throughout Australia, particularly SA and Victoria and more recently WSROC and other Endeavour Energy supplied councils in NSW.

Historically councils have simply taken prices and services resulting from various regulatory processes, which (due to councils' lack of expertise) was largely driven by the DNSPs.

Councils' attitudes towards the provision of public lighting services are however changing as councils are increasingly recognising and accepting their role as the "customer" in establishing public lighting services to best meet the needs of their ratepayers, rather than simply a "service and price taker" from a process.

This change has (to some extent) be brought on by the funding provided by various federal and state schemes to assist with the change to low energy lights – a major sector development.

Distributors are also gradually, albeit very reluctantly, recognizing their role as a service provider in this process.

Alternative Classification

The Alternative control classification has proven significantly problematic in prior periods, not only in NSW but also in Victoria where past AER determinations have been appealed following major price “hikes” resulting from the Alternative control process.

We are therefore greatly concerned that some councils want to continue with the Alternative classification which has proven so problematic, particularly when the Negotiated approach empowers councils to engage directly with DNSPs regarding both service and price.

Informed Submissions?

TTEG has been working with councils throughout Australia on public lighting for over 12 years and it is our experience that councils generally know little, if anything, about public lighting charges and even less about regulatory processes.

As TTEG has been working with primarily in NSW with WSROC and EE councils, unfortunately, we have not had time to educate councils outside of the EE region on the Negotiated classification. As a result, most councils (in all states except SA), know little or nothing about this classification, yet alone how it can be successfully applied to the public lighting sector.

We submit to the AER that EE Councils are the only NSW councils that have any insight to the benefits of a Negotiated classification.

All other NSW councils have not therefore been able to effectively consider this classification.

So if councils from outside the EE region provide submissions, they do so without the benefit of having visibility of benefits of the Negotiated process, or of processes adopted in other jurisdictions.

We understand there may have been a number of submissions from NSW councils supporting the Alternative control classification and proposing there are potential issues with the Negotiated classification, including information provision from DNSPs and also lack of competition.

In our view, this simply highlights a lack of understanding of what the Negotiated process is about.

As established in the EE Council submission, the Negotiation process relies on the Negotiation Framework established pursuant to NER 6.7 including the provision of information pursuant to NER 6.7.5(c)(2) and (3):

“(2)a requirement for the provider to provide all such commercial information a *Service Applicant* may reasonably require to enable that applicant to engage in effective negotiation with the provider for the provision of the *negotiated distribution service*, including the cost information described in subparagraph (3);

(3) a requirement for the provider:

(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;”

That is the council is to be provided information it requires to negotiate with the DNSP (the “provider”).

Regarding competition, there is no requirement or need for competition to exist for Negotiation process to be undertaken. The Negotiation process is to be conducted between the parties to establish services and prices for those services.

Further, prices must be “cost reflective” and established in accordance with NER 6.7.1.

Negotiated Process – Significant Benefits - Two stage Process

As per the EE Council submission, the Negotiate process has significant benefits, including a two stage process being 1) establish services, and 2) establish prices.

This is a fundamental difference between the classifications.

Services

As outlined in numerous submissions to the AER, establishing service requirements that meet council’s needs has been problematic for councils, DNSPs and regulators.

The EE council submission identified several public lighting services that require individual consideration.

Critically, a fundamental requirement of the Negotiated process is that it requires customers to establish the services required from the DNSP.

Further, direct consultation between customers and DNSPs is consistent with our understanding of the AER’s objective as described by Mr Reeves.

Alternative control fails to enable this process.

As the AER is an economic regulatory, any process to effectively review/assess/negotiate services cannot be undertaken under the Alternative controlled process.

This step is however **critical** to minimize costs and to enable effective sector development.

The current NSW Public lighting Code has been under review for many years and we have advised the authors it falls well short of what customers require.

An example is the replacement of lights – where customers have no say in the replacement of lights at the end of their economic life.

These shortfalls can be addressed via Negotiation.

The Victorian process has the classification of OMR (NSW SLUOS equivalent) split between Alternative (current approved lights) and negotiated (new light types) for each DNSP. This is problematic as it can see physical changes if light inventories occur (eg new light types introduced) yet these changes are not reflected in revised (ie rebalanced) tariffs as can be done under the Negotiated process.

Any Alternative process cannot effectively allow for the introduction on new light types – the Negotiated does.

Prices

The AER is required to establish prices for services. But as we have described above, the services do not represent those required by public lighting customers and are expected to change (potentially significantly) during the next regulatory period.

Therefore, we do not believe the NEL Objective can be achieved under the Alternative control process, yet can be under the Negotiated classification.

Further, prices can be established under Negotiation to reflect the cost incurred by the DNSP under the criteria established pursuant to NER 6.7.1

Negotiated Process – Ideal for Public Lighting

The public lighting sector has a clearly defined small number of customers per DNSP.

The Alternative control process has proven problematic in prior determinations.

The public lighting sector is undergoing transformation using new light types via green energy funding programs.

Unlike the Alternative control process Customers can effectively establish services with DNSPs under the Negotiated process.

There are numerous service providers and costs are well known. Irrespective, the DNSP must provide all cost information and demonstrate compliance to councils. (NER ch 6 Part D).

Customers can effectively negotiate with the DNSPs and will have access to better information (NER 6.7.5 (c)(2) and 6.7.5 (c)(4)) and be more active in the process.

The Negotiated process enables customers to be actively involved in the services and price process (as preferred by the AER's A Reeves), whereas customers are simply price and service takers under Alternative control process.

Further, by classifying as Negotiated the AER will be providing the opportunity for councils to effectively develop the sector and move the sector forward – something which the Alternative classification effectively prevents.

Negotiated Classification - Sector Development

The public lighting sector has not developed from previous determinations under Alternative controlled classification – and the same problems exist now as existed 10 years ago eg lack of service clarity, services not matching needs, prices not cost reflective, unplanned price changes etc

We see the Negotiated classification as providing potential to develop the sector where Councils and DNSPs can establish their agreed services and prices – a major progression from the current approach.

Whilst the Negotiated classification should be applied to all DNSPs, even if the Negotiated process was undertaken in the Endeavour Energy region for 2014-19, the lessons learned could be applied to all DNSP's for 2019-24. NOTE: Councils grouping together on a process is common, indeed most EE councils are already grouped as WSROC councils.

The Negotiated approach also removes any requirement for the AER to establish prices, other than where required for a dispute resolution.

Negotiated Classification - Demonstrated Success

The Negotiated classification is applied to SA public lighting where it has already delivered successful outcomes for both councils and the DNSP in that:

- SLUOS charges were established for 2011 and 2012
- The SA SLUOS charges were incremented by CPI ie without the significant price hikes as were experienced in NSW (eg Ausgrid SLUOS increased 49% in the first year of the current regulatory period) and Victoria (eg SPA's OMR charges have increased ~ 120% since 2001 yet CPI has increased by ~ 30%)
- The 2011 and 2012 price process each included a rebalancing process at the DNSP's request. This resulted in tariffs that better reflected the cost per light type and is something which cannot be undertaken during a regulatory period under the Alternative control classification.

Why Alternative?

With the benefits of the Negotiated classification for public lighting clearly identified, we believe the AER **must critically (re)consider** why it would propose an Alternative control classification?

If the AER does not follow this route, in our view it will not only fail to enable the NEL Objective to be achieved but also prohibit the successful development of the public lighting sector.

Negotiating Framework

As identified by the AER, the NSW Negotiation Framework requires a major revision.

The ETSA Negotiating Framework¹ can be used to gain insights to what an appropriate Negotiating Framework may represent

Negotiated Classification Requested

The Negotiated classification is ideal for public lighting as both service and price are established between the parties within the NER's Negotiation Framework.

We submit that the arguments contained in the EE Councils submission, and supported by this submission are compelling in requiring the determination of the Negotiated classification for public lighting.

Whilst we support the Negotiated classification for all NSW DNSPs, if the AER believes it cannot apply the Negotiated classification for all NSW DNSPs, then the Negotiated classification must be applied for the Endeavour Energy distribution region where (to date) 90% of the council population (with 100% ultimately expected), request the Negotiated classification.

Further information

We are keen to make sure the AER is fully informed regarding the significant benefits of Negotiated classification versus the Alternative classification for public lighting and would welcome further discussion on any questions you may have.

Yours sincerely,

Craig Marschall
Managing Director

¹ www.sapowernetworks.com.au/public/download.jsp?id=11987