



9th August 2010

**Mr Chris Pattas
General Manager
Network Regulation South
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3000**

Dear Chris,

Re: Aurora Framework and approach paper Submission

This Submission is in response to the Australian Energy Regulator's (AER's) "Preliminary positions, Framework and approach paper, Aurora Energy Pty Ltd, Regulatory control period commencing 1 July 2012", of June 2010 (the Paper) and provided to assist the AER in establishing the Classification of distribution services for the 2012 -17 regulatory period.

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 Aurora Energy for the forthcoming regulatory control period commencing on 1 July 2012, and that in anticipation of its distribution determination, the AER is required to prepare and publish a framework and approach paper.

Our submission only addresses aspects pertaining to the provision of public lighting services, and is provided to assist public lighting customers, recognising the Tasmania market is at a different stage of development to other jurisdictions, and that TTEG has experience from these other jurisdictions that we trust can be considered by the AER as adding value to its process.

TTEG Consultants

TTEG Consultants (www.tteg.com.au), provide specialist energy sector advice including commercial and regulatory aspects pertaining to Public Lighting.

Summary

We recognise the AER is an economic regulator, and establishes charges as required under the regulations according to the classification of those services.

Our specific comments on the Paper are in Attachment A, but a summary of key points follow:

- We have concerns regarding establishing the classification (and in turn the basis as to how any assessment of costs may be made, irrespective of the classification) as the Paper states that "... the AER understands that there are concerns about the lack of transparency regarding the terms on which public lighting services are provided to consumers."

The Paper also considered that public lighting services are distribution services?

We submit to the AER, that without services clearly identified and agreed by stakeholders, any consideration of whether the services should be regulated, and if

regulated, what classification may be appropriate, is at least far from optimal, and (in our view) potentially flawed.

In our view, establishing clarity of historical service provision is fundamental and critical to establishing any requirement to regulate and in turn the classification and approach to cost determination as Capex costs are a critical cost component.

Ownership of assets is also critical as the AER has made assessments in the Paper pertaining to "Aurora's assets" and the consequential impact on competition and Aurora's role in providing services.

- The Alternative Controlled Service approach and the resultant modeling has proven problematic in other jurisdictions. It has also been further complicated in Victoria where public lighting services were classified as Alternative Controlled Services but the AER has now recommended that some public lighting services are to be classified as Negotiated Services.
- The only way customers can have visibility to actual costs, and a service agreement established (that will provide for the effective development of the sector) is via a classification of public lighting services as a Negotiated Distribution Service.
- The current situation in Tasmania is quite different to other states as public lighting customers (councils and DIER) are currently billed by Aurora via a "bundled" tariff which includes energy charges (e.g. the energy rate, distribution and other charges) and the light cost (including asset and maintenance costs).

Whilst not specifically mentioned in the Paper we expect that the tariff will be unbundled prior to the next period to enable contestability of the energy component i.e. consistent with other NEM jurisdictions.

- Whilst not directly pertaining to classification, as identified in our Submission, a tiered pricing structure (eg Full, CLER and Energy Only) for public lighting services must be established to provide options for customers.

Recommended Classification

In its Paper the AER identified public lighting as a special service that is currently not regulated and that the AER understands they are generally subject to negotiation between Aurora and the customer.

As such there is not a prior classification consistent with the previously applicable regulatory approach for the AER to consider and the AER can therefore establish a classification in regard to the factors it is required to consider in the NER.

Although the AER has stated it has a preliminary position to classify public lighting services as alternative control services, as discussed in our Submission, any classification of public lighting services other than as Negotiated Distribution Services is problematic.

This classification would be consistent with the existing arrangement of negotiation as stated above.

We submit to the AER the only way that customers can have visibility to (actual) costs, and establish a service agreement that will provide for the effective development of the sector is via a classification of public lighting services as a Negotiated Distribution Service.

Moving Forward

We would welcome the opportunity to work with the AER and other Stakeholders to progress Tasmanian 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.

Our views have been developed over the past 10 years of specialized service to the sector and we are available to provide supplementary details if required.

We trust the above will assist with your current deliberations and we look forward to continuing the regulatory processes with the AER and to establish an appropriate classification and fair and reasonable alternatives and pricing options for public lighting customers.

Yours sincerely,



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Attachment A

Submission to AER Paper 2.4.3.3 Public lighting services

TTEG comments boxed

Public lighting services are not defined in the NER, however, in previous distribution determinations for other jurisdictions, the AER has classified the following types of public lighting services:

- the operation, maintenance, repair and replacement of public lighting assets
- the alteration and relocation of public lighting assets, and
- the provision of new public lighting.

The AER has been advised by Aurora that in the Tasmanian context, the operation, maintenance, repair and replacement of public lighting assets can be further categorised into the following services:

- the repair, replacement and maintenance of public lighting owned by Aurora, where the streetlight services are provided to third parties the repair, replacement and maintenance of public lighting owned by third parties where Aurora undertakes the service for a fee
- alteration and relocation of existing public lighting assets owned by Aurora at the request of a third party
- alteration and relocation of existing public lighting assets owned by a third party at the request of that third party
- the provision of new public lighting assets by Aurora to customers or third parties, on the request of that customer or third party.

Aurora's services are consistent with the public lighting services required by customers and to the establishment of a tiered pricing structure (Full, CLER and Energy Only).

The AER notes that these categories of public lighting services relate to all types of luminaires currently provided by Aurora. The AER intends to classify the categories of public lighting services identified by Aurora above. The AER does not intend to classify public lighting services for luminaires that are provided on a trial basis, such as LED street lighting.

We support this approach when coupled with a tiered pricing structure.

Public lighting assets, including all street lights in Tasmania are connected to Aurora's electricity distribution network. The conveyance of electricity to public lighting assets is not a defined as a public lighting service, but rather falls within the definition of a network service.

We support this approach.

Current classification

The AER notes that OTTER's 2007 declaration statement of reasons clarifies that OTTER decided not to declare public lighting services for the 2007–08 to 2011–12 regulatory control period.

While public lighting services have not been previously subject to economic regulation, Aurora has other regulatory obligations in relation to public lighting services under the TEC. In particular, Aurora is obliged under section 8.2.3 of the TEC to repair or replace an item of public lighting within 7 business days of being notified that repair or replacement is necessary. In addition, section 109(1) of the ESI Act states that unauthorised persons are prevented from interfering with Aurora's electricity infrastructure or electrical installations.

Further, Aurora's Electricity Distribution Customer charter provides a description of its service standards and outlines the penalties it may be subject to should it fail to meet those standards for all services provided by Aurora, including for public lighting services. This customer charter is a requirement of section 8.3.1 of the TEC.

Issues and AER considerations

In considering the form of regulation factors under section 2F of the NEL, the AER is of the view that with regard to section 2F(a), there are significant barriers to entry for the provision of public lighting services in Tasmania. The AER understands that Aurora does not have a legislative monopoly over the provision of public lighting services. However, as noted above, due to the requirements of the TEC and the ESI Act, only Aurora can provide services on its public lighting assets, which include 75 per cent of all street lights in Tasmania.

If Aurora does not have a legislative monopoly over the provision of public lighting services, and it appears that Aurora could authorize others to provide these services, even on their own assets.

While there is some limited scope for other entities, such as private contractors, to provide some public lighting services, the AER notes that this only relates to a small number public lighting assets that are owned by councils and other customers; this does not extend to the majority of public lighting assets, which are owned by Aurora.

Therefore, the AER considers that there are significant barriers to entry for the provision of public lighting assets in Tasmania.

The potential exists for others to provide these services in a competitive market. As a minimum the tiered pricing structure (Full, CLER and Energy Only) must be established to provide choice to customers of Aurora's services.

It would also be consistent with assisting OTTER in achieving its objectives in administration of the [Electricity Supply Industry Act 1995](#) (ESI Act), the Code and other related regulatory instruments, including:

- promote efficiency and competition in the electricity supply industry;
- protect the interests of consumers of electricity.

With regard to section 2F(b) and 2F(c) of the NEL, the AER considers Aurora would appear to benefit from the economies of scale and scope, derived from the provision of network services, in providing public lighting services. Aurora contends that it is able to use the same assets, labour and materials to provide public lighting services on its own assets as well as those assets owned by third parties.

Public lighting is a minor service provided by distributors. We advise the AER that others can also benefit from economies of scale eg companies can provide tree pruning and public lighting services.

Also refer to our comments above.

The AER also notes that Aurora is also the dominant electricity retail services provider in the Tasmanian retail sector. As is the case for network distribution services, it appears to the AER that Aurora would also benefit from the factors of production that relate to its provision of retail services for the provision of public lighting services, such as staff and customer databases.

Like all other NEM jurisdictions, we expect that the energy and distribution charges will be separated ie unbundled.

As the retail market for energy in Tasmania is contestable, and that the provision of retail energy to public lighting will also be contestable (once unbundled), we do not believe that any synergies with Aurora Retail can fairly be considered as it would not be fair on other retailers and may be seen as anti competitive behavior.

Also refer to our comments above regarding OTTER.

The AER understands that the retail market in Tasmania is somewhat contestable, with third party retailers (for example, ERM Power) able to provide some retail electricity services to Tasmanian councils. However, there is no contestability for the provision of public lighting services by third parties on assets owned by Aurora.

To remove any uncertainty we advise the AER that the retail market for energy in Tasmania is contestable and we expect supply to public lighting will also be contestable once unbundled.

Our view is the provision of public lighting services on Aurora's own assets can, and should, be treated separately by the AER.

Unlike other jurisdictions, the current tariff is unregulated.

The AER has claimed "there is no contestability for the provision of public lighting services by third parties on assets owned by Aurora."

To assist in the development of the sector we would appreciate the AER explaining why these services could not be contestable?

Aurora remains the sole DNSP in Tasmania, and therefore the only party capable of providing distribution services for its public lighting assets. The AER considers that customers of Aurora's public lighting services do not have countervailing market power that would mitigate Aurora's market power in providing public lighting services.

We understand the AER must consider the classification of "poles and wires" distribution separately to the provision of public lighting services.

We submit to the AER that any perceived "market power" has been potentially derived from the historical provision of services by Aurora – an alternative that should be available to public lighting customers is to tender for the public lighting services or to negotiate directly with Aurora.

The AER also needs to consider that by potentially ignoring the competitive option for customers the AER may effectively establish Aurora in a monopoly provider, even though the AER has recognized that Aurora has no legislative monopoly.

With regard to section 2F(e) and (f) of the NEL, the AER considers that demand for public lighting is highly inelastic. There are also limited substitution possibilities for the provision of public lighting services by Aurora. Aurora has advised the AER that there are no real competitive or substitution possibilities for these public lighting services given that the market for the provision of public lighting services in Tasmania is underdeveloped.

Aurora does not have a legislative monopoly over the provision of public lighting services, and competition should be possible through the tiered pricing structure.

Also refer to our comments above regarding sector development and monopoly service provision.

With regard to section 2F(g), it does not appear to the AER that consumers of public lighting services would have sufficient information to negotiate on an informed basis with Aurora. Indeed, from its initial inquiries, the AER understands that there are concerns about the lack of transparency regarding the terms on which public lighting services are provided to consumers. Further, Aurora has only very recently provided the AER with a guideline that describes the basis on which it intends to provide public lighting services to consumers.

Like all other jurisdictions we submit to the AER that Tasmanian public lighting customers will develop this expertise and in the meantime they have access to external commercial expertise to assist in the development of this expertise.

Regarding Service provision, Aurora would be required to agree services with its customers as part of a classification as a Negotiated Service arrangement.

In relation to clause 6.2.1(c)(2) of the NER, the AER notes that public lighting has not been previously declared by OTTER, and as a result, these services have not previously been classified. Accordingly, under OTTER's current and previous regulatory regimes, public lighting services were unregulated.

Clause 6.2.1(c)(3) of the NER requires the AER to have regard to the desirability of consistency in the regulatory approach and the form of regulation within and beyond NEM jurisdictions. Table 2.2 provides the service classifications as approved by the AER for the other jurisdictions in the NEM.

Table 2.2 Classifications of public lighting services in other NEM jurisdictions

State jurisdiction	Negotiated distribution services	Direct control Services - standard control services	Direct control services - alternative control Services
Victoria	New public lighting Alteration and relocation of DNSP public lighting assets		Operation, repair, replacement and maintenance of DNSP public lighting assets
South Australia	Provision of assets, operation and maintenance Operation and maintenance 'Energy only' service		
Queensland			All street lighting services
NSW			All street lighting services
ACT ^(a)	Nil	Nil	Nil

(a) Public lighting is not provided as a network service to customers, and is paid for by the ACT Government

As outlined in Table 2.2, public lighting services in most other NEM jurisdictions are regulated as direct (alternative) control services. While in some jurisdictions public lighting services are regulated as negotiated services, as is the case in South Australia, it is unusual for public lighting to be completely unregulated.

As public lighting has not been previously declared or classified by OTTER, the AER has the opportunity to establish an appropriate classification without having to consider any existing classification – which has led to Alternative controlled services in other jurisdictions.

As the AER is aware, the classification of public lighting services as a Direct Controlled Service has been extremely problematic in NSW, particularly with the (lack of) cost visibility of data included in the distributor's modeling.

The Victorian situation is current still in process but we note that after classifying public lighting services as an Alternative controlled service, has recognized in its Draft Decision (June 2010) that some public lighting services associated with new light technologies (eg CFL 42W) will be classified as Negotiated Services! So in effect, the provision of public lighting services in Victoria will have two classifications!

We have firsthand experience with the South Australia situation and the negotiation process, coupled with the tiered pricing structure (Full, CLER and Energy Only), has established a process that enables customers and the distributor to work together to establish fair public lighting charges.

The classification of public lighting services other than as Negotiated Distribution Services therefore appears problematic.

As noted previously, clause 6.2.1(d)(2) of the NER requires the AER, where there has been no previous classification (as is the case here), to adopt an approach that is consistent with the previous applicable regulatory approach (unregulated), unless a different classification is clearly

more appropriate. The AER's preliminary position is that having regard to the factors in clause 6.2.1(c) of the NER it is clearly more appropriate to classify public lighting services.

We support the AER's intention to classify the services through the adoption of a tiered pricing and service offering.

The AER is inclined to classify public lighting services as direct control services rather than negotiated distribution services as it would appear that charges for public lighting services can be determined upfront in the price determination stage, and this may be superior to the potential for a series of negotiated outcomes during the regulatory control period.

For the reasons contained in this submission, we strongly propose that the AER reconsiders classifying public lighting services as Negotiated Services and not a Direct Controlled Service.

Once a service is classified as a direct control service, the AER must then have regard to the six factors in clause 6.2.2(c) of the NER in deciding whether that service should be further classified as a standard or alternative control service.

Having regard to the factors under clause 6.2.2(c) of the NER, the AER considers that it would be clearly more appropriate to depart from the previous regulatory approach (unregulated) and classify public lighting services as direct control services, and further classify them as alternative control services. This is because the AER considers:

We agree to departing from the current regulatory approach but, as discussed above, do not support the classification of public lighting services as a Direct Control Service.

- For the reasons noted above, unless contestability for these services is introduced during the regulatory control period, there will continue to be little if any potential for the development of competition for the provision of public lighting services using Aurora's assets. Classification of public lighting services as alternative control services would not impede the ability of third parties and new entrants to provide public lighting services on assets not owned by Aurora.

The AER has considered contestability for providing services as if there was a "block" to contestability of services on Aurora's assets.

Unfortunately we have not been able to clearly establish that Aurora actually owns lights or whether the lights belong to customers that have paid Aurora to install and Aurora have recouped these costs through the bundled tariff?

We submit to the AER that ownership clearly needs to be established before an effective classification can be made.

Unfortunately the AER has not explained how it established that Aurora owns the assets and why contestability will not be introduced, or how contestability can be introduced in the regulatory period.

We submit to the AER that a further explanation supporting how the AER has determined that the assets are Aurora's, and its contestability consideration would be useful to assist with stakeholders' understanding on how the classification process and contestability may be impacted by the classification as alternate control services.

If the AER proceeds with the Classification of public lighting services as alternative (direct) control services we can potentially see any approach to contestability and sector development being restricted.

Please also refer to our comments below.

- The classification of public lighting services as alternative control services may encourage the entry of other potential service providers in the long term, as there would be a greater transparency of public lighting tariffs to be charged to customers (as the charges would be determined and published by the AER).

We appreciate the AER's desire to consider the development of the market and competition. But we do not see the AER's claim that publishing tariffs may encourage the entry of other potential service providers. Our view is potential competitors may perceive the market as regulated (monopoly) rather than a negotiated service.

Negotiated Services however provide the opportunity for to achieve competition as services are clearly defined and with costs known, customers can effectively consider their options as, in our view, it is customers that will encourage competition.

- Although there would be some impact on the administrative costs of the AER and Aurora in classifying the public lighting services as alternative control services since these services have not previously been regulated; Aurora has advised that it uses an internally based building block approach for setting its charges for public lighting services. The existence of this model may enable the AER to analyse and refine this model to determine charges for public lighting services, rather than developing a new public lighting model.

The Alternative Controlled Service approach and the modeling has proven significantly problematic in other jurisdictions.

The only way that customers can have visibility to (actual) costs, and establish a service agreement established that will provide for the effective development of the sector is via a classification of public lighting services as a Negotiated Distribution Service.

- Public lighting services are currently regulated in New South Wales, Queensland, Victoria (for operation, maintenance and repair) as alternative control services.

As discussed earlier, the classification of alternative control services for lighting has proven problematic and in Victoria the Negotiated Service classification has now been introduced for new technologies – which is the developing sector of the market.

- The costs of providing public lighting services can be directly attributed to a specific set of customers including local councils, DIER and other state and local government authorities. The AER considers it would therefore be more appropriate for these customers to incur the associated costs, rather than spread the costs across all electricity customers in Tasmania.

We support the AER's approach that costs for providing public lighting services should not be an impost on customers other than those receiving those services.

AER's preliminary position

For the reasons outlined above, the AER considers that it is clearly more appropriate to depart from the current unregulated approach to public lighting services in Tasmania. For the reasons discussed above, the AER's preliminary position is therefore to classify public lighting services as direct control services and further classify them as alternative control services.

The AER seeks comment on its preliminary position to classify public lighting services as alternative control services.

The Alternative Controlled Service approach and the modeling has proven significantly problematic in other jurisdictions.

The only way that customers can have visibility to (actual) costs, and establish a service agreement established that will provide for the effective development of the sector is via a classification of public lighting services as a Negotiated Distribution Service.

END