



**Proposed Negotiated Distribution Service Criteria
for the Victorian Electricity Distributors – Regulatory
Control Period Commencing 1st January 2016**

24th June 2015



CITE: CITY OR
TOWN

LUM: LUMEN
BASIC
MEASUREMENT
OF LIGHT



Date: 24th June 2015

Mr Chris Pattas
General Manager - Network Investment and Pricing
Australian Energy Regulator
GPO Box 520 Melbourne VIC 3001
Sent: VICelectricity2016@aer.gov.au

Dear Mr Pattas

Citelum Australia welcomes the opportunity to make a submission in relation to the Proposed negotiated distribution service criteria for the Victorian Electricity Distributors – regulatory control period commencing January 2016.

We commend the Australian Energy Regulator (AER) for going some way in reforming and progressing the classification of public lighting services with the introduction of negotiated services however our position is that all public lighting services should be made negotiated or contestable. We will detail that there is a legislative imperative to do so to ensure that the National Electricity Law (NEL) and Rules (NER) remain consistent with other pieces of legislation.

This was the intent of the Public Lighting Code since 2001. In our previous submissionⁱ to the AER we detailed that intent that all public lighting services should be made contestable. It should also be noted that one of Citelum's largest competitors from Europe are in Victoria and have started to advertise within the Municipal Association of Victoria's latest Civic Magazine June 2015 Issueⁱⁱ, offering councils new business delivery models. Competitive service provision awaits the necessary full realisation of contestability facilitated by an appropriate classification by the AER.

This submission will detail legislation contained within the Road Management Act (RM) Victoria 2004 that needs to be considered before further classifications are considered. Anecdotal concerns of stakeholders concerned with change need to be considered strongly in context of the power afforded to all public lighting customers within the RM Act. This piece of legislation places considerable negotiation power, should the public lighting customer wish to avail itself regardless of whether that public lighting customer is a small rural council or a large urban council or city council.

The relationship hierarchy between the customer and the Distribution Network Service Provider (DNSP) is radically reset when considered in context with the RM Act. Even the legislation of the NEL and the NER are subject to conditions and precedence of the RM Act.

Continued→

The DNSP's may be afforded certain provisions under the Electrical Safety Act to use lesser standards than Australian Standards such as VESI standards, but those allowances should not be used by DNSP's by which to raise safety or technical issues that would prevent or hinder competition in public lighting services sought by public lighting customers. In fact DNSP's do not have the legislative right or power to do so.

Energy Safe Victoria is appropriately legislated and authorised by which to make those assessments of electrical safety and DNSP's should not be afforded any position that would impede their ability to act conscientiously in accordance with the rule of law.

We welcome any further discussion in relation to this submission and can be contacted on either +61 428 079 317 or apcarey@citelum.com.au

Regards

A handwritten signature in black ink that reads "Adam Carey". The signature is written in a cursive, flowing style.

Adam Carey
Managing Director Australia NZ



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Definitions

AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider or Infrastructure Manager under Road Management Act
ESV	Energy Safe Victoria
LG Act	Local Government Act 1989
LED	Light Emitting Diode
NEL	National Electricity Law
NER	National Electricity Rules
RM Act	Road Management Act 2004
SIR	Service and Installation Rules
VESI	Victorian Electricity Supply Industry

National Electricity Law and Rules

The National Electricity Laws and Rules are legislated through the National Electricity Act of Victoria 2005 and therefore any determination for Victoria needs to be read in context of other Acts, especially where inconsistencies may arise by making a public lighting determination without the consideration of other overarching legislation.

The Road Management Act Victoria 2004 contains within it one clause that needs to be strongly considered.

ROAD MANAGEMENT ACT 2004 - SECT 5

Interpretation and application of Act

(1) Subject to this section, if there is an inconsistency between this Act and any other Act in relation to the performance of a road management function, the provisions of this Act prevail.

Definition of Streetlighting as Road Infrastructure

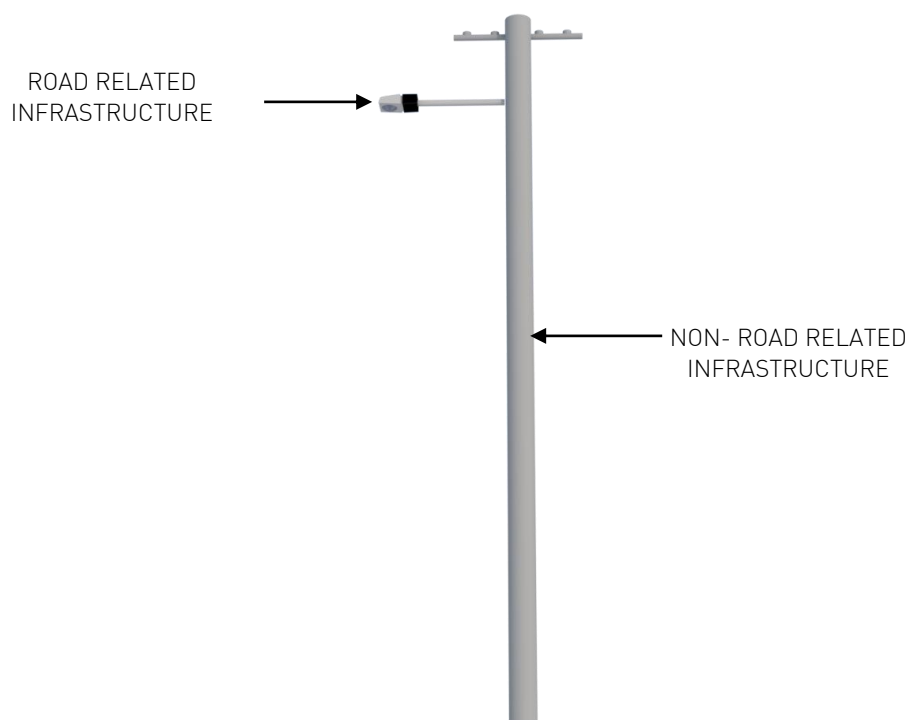
Non-road related infrastructure is by definition not "road infrastructure".

Non-road related infrastructure expressly includes electricity poles and wires.

- **Streetlight: Road Infrastructure**
- **Powerpole: Non-Road Infrastructure**

The purpose of Road Related infrastructure is for the benefit of the road reserve to either facilitate the operation and use of the road or pathway or support or protect the use of the roadway.

Streetlighting is expressly defined within the RM Act as Road Related Infrastructure.



Purpose of the Road Management Act

The purpose for enacting the *Road Management Act 2004* (Vic) (**RM Act**) was to reform the law relating to road management in Victoria. Relevantly the Act provides for:

a new statutory framework for the management of the road network which facilitates the coordination of the various uses of road reserves for roadways, pathways, infrastructure and other similar purposes;

- establishes the general principles which apply to road management;
- provides for the role, functions and powers of the road authority (such as a council);
- provides for the making of Codes of Practice to provide practical guidance in relation to road management;
- sets out the road management functions of road authorities;
- sets out the road management functions of infrastructure managers (such as electricity companies) and works managers in providing infrastructure or conducting works; and
- provides for issues relating to civil liability arising out of road management

The RM Act is expressed to prevail to the extent that there is any inconsistency between the RM Act and any other Act in relation to the performance of road management function.

The term 'road management function' is defined to mean a function, power or duty conferred or imposed on a road authority by or under the RM Act, and other listed legislation (which includes the *Local Government Act 1989* (Vic) (**LG Act**)) and road management functions of utilities (including an electricity company). A council's functions with respect to road infrastructure (including street lighting) is a 'road management function'.

Where the road authority is a municipal council the provisions of section 3E, Division 2 of Part 9 and Schedules 10 and 11 of the LG Act apply and are to be construed for the purposes of the RM Act as if those provisions formed part of the RM Act.

The provisions:

- set out the functions of a council (section 3E, LG Act);
- make specific provision as to councils' functions, powers and restrictions in relation to transport (Division 2, Part 9, LG Act);
- set out councils' powers over roads (Schedule 10, LG Act); and
- set out councils' power over traffic (Schedule 11, LG Act).

Section 5(4) of the RM Act indicates that the Act applies to infrastructure managers and works managers in relation to the installation of non-road infrastructure on roads despite the provisions of any other Act or law to the contrary.

This means that the RM Act will prevail over other legislation such as the *Electricity Industry Act 2000* (Vic) (**EI Act**). In addition section 93 of the EI Act specifically qualifies the powers of an electricity corporation to enter upon public or private land or roads for the purposes of

constructing any works or placing any structure or equipment on the land or roads or bringing upon such land to repair, alter or remove any such structure or equipment or any works under its control by making these powers subject to the RM Act.

Therefore the determination approach that the AER considers must ensure that it supports the legislative position of the public lighting customer as the road authority.

Coincidentally at the same period of the RM Act being legislated, the Essential Services Commission published the Public Lighting Information Sheet No ⁱⁱⁱ1. Within this information sheet it states the following:

“The rationale for disaggregating the public lighting OMR charges from DUoS charges was to facilitate competition for these services. From 1 January 2001, public lighting customers have been able to source OMR services from competitive service providers.”

As indicated, provisions of the LG Act are imported into the RM Act. These provisions set out some of the responsibilities of councils in respect of road management (including in respect of street lighting). The functions of Council set out in section 3E of the LG Act relevantly include:

- planning for and providing services and facilities for the local community;
- providing and maintaining community infrastructure in the municipal district; and
- exercising, performing and discharging the duties, functions and powers of councils under the LG Act and other legislation.

Local Government Act

The objectives of councils are set out in section 3C of the LG Act. Section 3C(1) indicates that the primary objective of a council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effect of decisions. Subsection 3E(2) indicates that for the purposes of achieving its objectives, a council may perform its functions inside and outside its municipal district.

The AER must consider whether regulation will allow councils to meet the objectives of the LG Act and their overarching responsibilities as an authority under the RM Act.

In order to achieve its primary objective, a council may have regard to the facilitating objectives which are set out in section 3C(2) of the LG Act. These facilitating objectives relevantly include to:

- promote the social, economic and environmental viability and sustainability of the municipal district;
- ensure that resources are used efficiently and effectively and the services are provided in accordance with the best value principles to best meet the needs of the local community; and
- ensure transparency and accountability in council decision making.

The best value principles are set out in Division 3, Part 9 of the LG Act. Of particular note, the principles which are listed in section 208B of the LG Act are:

- all services provided by a council must meet the quality and cost standards required by section 208D; and
- a council must achieve continuous improvement in the provision of services for its community.

Section 208C of the LG Act sets out factors that a council may take into account in applying the best value principles. These include:

- the need to review services against the best on offer in both the public and private sectors;
- an assessment of value for money and service delivery;
- community expectations and values; and
- potential environmental advantages for the Council's municipal district.

Section 208D of the LG Act requires a council to develop quality and cost standards for the provision of any service it provides to its community. The standards must set out the performance outcomes determined by the council in relation to each service.

Under section 205 of the LG Act a council has the care and management of:

- all public highways vested in the Council;
- all roads that are the subject of a declaration under section 204(2) of the LG Act (being a declaration by the Council by resolution that a road is reasonably required for public use to be open to public traffic);
- all public highways on Crown land and roads vested in a Minister (other than freeways and arterial roads within the meaning of the RM Act and public highways and roads vested in a public authority); and
- all roads that the Council has agreed to have the care and management of.

The requirements of the LG Act 1989 and RM Act 2004 and the intent by the Essential Services Commission for full competition is consistent with the ability of a Road Authority to ensure that all services it provides to the community can be adequately managed. The inclusion of competition and the full realisation of contestability combined with a public lighting customer operating under the authority of the RM Act will ensure that the service of public lighting can be delivered to the community at the least cost.

Ownership of Infrastructure

We note that there is no legislative requirement contained within the NER and the NEL by which to vest assets to the ownership and benefit of the DNSP, therefore an approach by the AER that supports a pricing mechanism that retains ownership consistent with General Law; where whoever has purchased an asset, owns the asset should be considered.

There is no legislation which displaces the ownership of a council in public lighting assets which the council has purchased. Common law rights of ownership will only be displaced by legislation which unambiguously has this effect.

The Road Management Act deals with ownership of infrastructure and this is contained within Clause 10 of Schedule 5 to the RM Act provides:

Infrastructure not part of land

(1) Infrastructure on, in, under or over any road reserve –

(a) is not part of the land or road reserve on, in, under or over which it is located; and

(b) is personal property of the relevant road authority or infrastructure manager.

(2) This clause has effect despite any provision in this Act or any other Act or law relating to the vesting of roads.

This clause **(along with the definition of road infrastructure)** clearly provides for street lighting to be the personal property of a Council where it is the relevant road authority and has purchased the infrastructure or received it as part of vesting of the road by a property developer.

Setting of Electrical Standards

Section 41 of the RM Act indicates that the road authority may determine the standard to which the relevant road authority will construct, inspect, maintain and repair road infrastructure. Without limiting the general power in the road authority, section 41(2) indicates relevantly that the relevant road authority may determine:

- in relation to construction, the nature of the construction of road related infrastructure;
- in relation to inspection, the inspection of specified matters at specified intervals;
- in relation to maintenance, the maintenance programs, the maintenance work to be performed in the course of regular maintenance and the standard to which the maintenance is to be performed;
- in relation to the repair of defects reported or found on inspection the action to be taken

Therefore while Victorian DNSP's are afforded certain rights to operate and demonstrate to Victoria's Energy Safety Regulator to use VESI standards, those rights cannot be imposed upon an Road Authority by which they would rise above beyond their legislative authority. The DNSP's simply use a lesser standard by which to demonstrate electrical safety.

In the same way, in a fully contestable public lighting market, an alternative qualified and licensed electrical public lighting contractor can use similar mechanisms afforded to them under AS3000 or the Electrical Safety Act to meet the requirements of electrical safety set and regulated by Energy Safe Victoria.

Thus the relationship and hierarchy of a DNSP to the Road Management Act and to the public lighting customer is described in Fig 2.

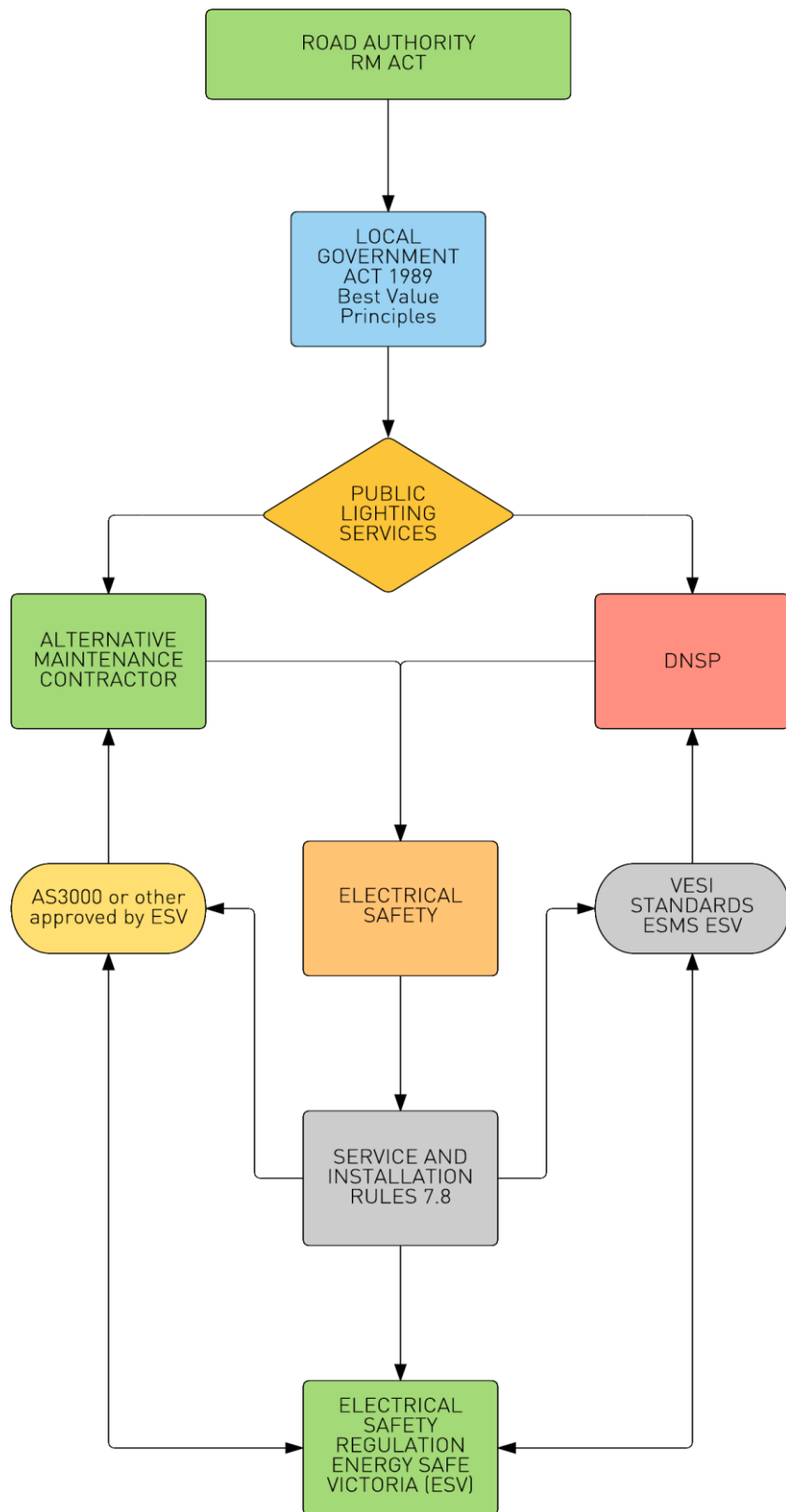


Fig 2. Legislative Authority of Customer setting Standards as a Road Authority

Impositions placed on public lighting customers by DNSP's to only allow VESI standards confuses the legislative authority of the RM Act and allows operational behaviour to perpetuate that would be inconsistent with the intent of a service provider operating under the NER or the NEL.

In addition to how public lighting customers can negotiate better, more training needs to be given to the operational management of DNSP's to ensure they behave consistently with the requirements of a service provider.

Price History of OMR Prices

Current regulatory frameworks and classifications have seen price rises at least 70% since 2006. Reform is needed to ensure that public lighting prices do not rise and place an unnecessary burden on the community.

A regulatory mechanism for full negotiated services should be considered and research should be undertaken in jurisdictions like South Australia to compare the impact of the negotiated classification over the same period with Victoria.

In addition, an incentive for innovation, customer service and efficiency can be fully realised through greater competition in public lighting services by alternative public lighting maintenance operators or DNSP's if they so choose.

Public Lighting Maintenance Prices have risen in some cases 117% since 2006

Revenues	2006	2007	2008	2009	2010	2011	2012	2013	Increase since 2006	
									Dollars \$000	Increase
Victorian OMR PA	\$ 16,664.56	\$ 16,964.88	\$ 20,130.35	\$ 20,866.75	\$ 22,689.53	\$ 28,890.97	\$ 31,472.68	\$ 32,766.04	\$ 16,101.48	97%
Lighting Points	466,939.00	475,041.00	486,060.00	496,911.00	509,227.00	519,511.00	527,326.00	533,124.00	66,185.00	14%
Powercor	\$ 4,606.33	\$ 4,744.21	\$ 5,817.86	\$ 5,799.70	\$ 6,301.09	\$ 7,513.09	\$ 8,317.03	\$ 9,332.74	\$ 4,726.41	103%
Number of LP	129,849	133,496	137,114	141,703	146,191	150,242	153,626	156,685	26,836	21%
Number of Poles	40,724	43,826	46,640	49,458	51,987	53,961	54,871	59,881	19,157	47%
Citipower	\$ 2,337.27	\$ 2,363.32	\$ 3,069.06	\$ 3,126.70	\$ 3,399.82	\$ 4,563.15	\$ 4,850.30	\$ 4,405.08	\$ 2,067.81	88%
Number of LP	51,860	51,876	51,899	52,170	52,290	52,414	52,308	52,164	304	1%
Number of Poles	7,049	7,189	7,370	7,700	8,028	8,168	8,333	9,428	2,379	34%
United Energy	\$ 3,794.76	\$ 3,833.09	\$ 4,511.62	\$ 4,718.17	\$ 5,014.80	\$ 6,533.97	\$ 7,190.86	\$ 7,244.94	\$ 3,450.17	91%
Number of LP	114,446	114,966	115,342	115,835	117,061	118,015	118,407	118,780	4,334	4%
Number of Poles	30,871	31,511	32,101	32,622	33,480	34,462	34,870	35,364	4,494	15%
Jemena	\$ 2,301.01	\$ 2,326.48	\$ 2,484.93	\$ 2,763.48	\$ 3,054.07	\$ 3,656.12	\$ 3,660.35	\$ 3,915.35	\$ 1,614.34	70%
Number of LP	64012	64403	64763	64875	67367	67508	68939	69058	5046	8%
Number of Poles	16968	17834	18335	18821	19665	19849	21180	21849	4881	29%
SP Ausnet	\$ 3,625.19	\$ 3,697.78	\$ 4,246.88	\$ 4,458.71	\$ 4,919.75	\$ 6,624.66	\$ 7,454.15	\$ 7,867.93	\$ 4,242.74	117%
Number of LP	106,772	110,300	116,942	122,328	126,318	131,332	134,046	136,437	29,665	28%
Number of Poles	52,871	56,014	61,784	67,256	69,945	74,271	76,691	78,782	25,912	49%

Source: Australian Energy Regulator Network
<http://www.aer.gov.au/node/26287>

Fig 3 – Analysis of OMR price rises since 2006.

DNISP's Input Cost proposals

LED Failure Rates

It should be noted and highlighted within the cost build-up models proposed by the DNISP's for the LED 18 that they appear to have over-estimated the failure rate in accordance with AER's latest determination for Ausgrid and with other world standard LED projects.

DNISP	% of failure
Jemena	10%
Citipower	11.4%
Powercor	10%
Ausnet	n/a
United Energy	n/a
Ausgrid ^{iv}	1%
Los Angeles ^v	0.3%

Table 1: Comparison of assumed failures rates of LED Street Lights

The DNISP's should clarify whether the assumed failure rate is for the D2 Photo-electric cell as the model doesn't appear to distinguish the failure rate on components but the assumed LED failure appears unusually high and customers should not have to compensate faulty LED streetlights.

Dispute Resolution

An adequate dispute resolution process is dealt with under the RM Act. Consistently the Australian Energy Regulator has stipulated that it only has powers relating to the economic regulation of the public lighting service. The AER needs to ensure that any economic regulatory mechanism enables clarity in the practical application of this dispute resolution process under the RM Act.

The dispute resolution process is set out in section 125 of the RM Act. This process involves the dispute being resolved by the relevant road Minister and the relevant utility Minister or their joint nominees having regard to the works and infrastructure management principles. Clause 72 of the Infrastructure Code, however, sets out a process which it encourages utilities and road authorities to adopt prior to referring the matter to the relevant Ministers. This process involves the escalation of the dispute through employees 'as close to the workplace as possible', line managers and chief executives before referral to the relevant Ministers.

The application and consideration of dispute resolution process through the RM Act 2004 by the AER can ensure that the nuances or technical electrical safety positions can be adequately dealt with by the appropriate agencies legislated to do so such as Energy Safe Victoria.

This way the AER can then focus on its economic regulatory requirements without being bound by technicalities and opinions of which it cannot legislatively enforce.

References

i

http://www.aer.gov.au/sites/default/files/Citelum%20submission%20to%20AER%27s%20preliminary%20positions%20on%20a%20replacement%20F%26A%20-%201%20July%202014_2.pdf

ii CIVIC Magazine Publisher Puffafish Issue 10 June 2015 page 23

iii <http://www.esc.vic.gov.au/getattachment/60778513-34e6-4912-8df0-0f4347dc3c4b/Public-Lighting-Information-Sheet-2004.pdf>

iv AER Final Decision Ausgrid Distribution Determination – Public Lighting PTRM.xls April 2015

v IPWEA – Institute Public Works Engineering (IPWEA) and Australian Centre for Local Government Excellence Streetlighting Practice Note 11 - Ed Ebrahimian, Director City of Los Angeles Bureau of Street Lighting, Sydney presentations March 2014