

**SUBMISSIONS IN RESPONSE TO AER INITIAL DISCLOSURE NOTICE DATED
15 JULY 2014 AND VARIED ON 5 AUGUST 2014**

Information Gerard Professional Solutions Pty Ltd (GPS) (formally Pierlite Australia Pty Ltd) objects to the AER disclosing

The attached table identifies the confidential information listed in Appendix C to the initial disclosure notice that GPS objects to being published on the AER website and the basis for the objection.

By way of overview, GPS's objections are made on the following grounds:

- 1 Publication of any confidential unit prices, costs, warranty conditions or other terms on which public lighting components are supplied or quoted to the Distributors will necessarily identify GPS's prices and terms. This is the case even if the supplier name is not identified.
- 2 Publication of GPS's prices and other terms of supply will cause material commercial detriment to GPS, including providing an unfair advantage to competitors of GPS, damaging the ability of GPS to negotiate competitively with customers in the future and damaging existing relationships with customers, including Councils and customers in other market segments.
- 3 There is no clearly identifiable public benefit of disclosure. To the extent a public benefit exists, it is clearly outweighed by the material commercial detriment to GPS arising from publication.
- 4 It is not necessary to disclose the confidential information identified in Appendix C in order to achieve the AER's objectives of increasing stakeholder confidence, understanding of charges and engagement by stakeholders.

These issues are addressed in more detail below.

Impact of disclosure on GPS

GPS is a major supplier of street lighting luminaires and related components. It supplies its products in all jurisdictions in Australia, across a number of market segments including utilities, Councils, wholesalers, contractors and developers. GPS's sales to utilities and Councils in particular reflects a very significant part of GPS's street lighting business.

Disclosure of confidential street lighting component pricing and supply terms will necessarily identify GPS as the supplier. This is because of its known involvement in supplying utilities as well as being the default supplier of certain components.

Even if the identity of GPS or its related entities is not disclosed in the confidential information the AER wishes to publish, it will necessarily disclose the terms on which GPS has supplied or quoted to supply street lighting luminaires and components to the Distributors. Publication of that confidential information is highly detrimental to GPS because:

- 1 It will give competitors of GPS an unfair advantage in being able to identify the pricing and terms offered by GPS to its customers in competitive tender processes or other contractual arrangements.
- 2 It will be detrimental to the relationships and dealings between GPS and its customers. Each customer across each different segment has different needs. The pricing terms are dependent on non-pricing terms, volumes, warranties, etc.

Disclosure of pricing and supply terms which can clearly be linked to GPS will be detrimental to its ongoing contractual arrangements with its customers.

- 3 It will be detrimental to GPS's ability to engage in competitive tender processes in the future or negotiate with customers, in circumstances where pricing and terms it may have provided to Distributors will be identifiable by any member of the public. By way of example, GPS is aware that Networks New South Wales (a joint venture between Ausgrid, Endeavour Energy and Essential Energy) is conducting a review of its public street lighting equipment and has recently issued a request for information to the industry in respect of the supply and delivery of street lighting luminaires, lamps and ancillary equipment. Disclosure of GPS's pricing by the AER would be highly detrimental to GPS's participation in that process and any subsequent tender process that may be conducted.
- 4 The pricing provided to the Distributors in this market segment does not necessarily translate to the pricing provided to customers in other segments. Publication of the pricing would be detrimental to GPS's broader business in other market segments.

Public disclosure of any street lighting component pricing or supply terms will be linked to GPS and will have very serious and significant impacts on GPS as identified above. The material commercial detriment to GPS far outweighs any public benefit, to the extent one can even be identified.

The AER is also proposing to publish confidential information on luminaire failure rates. For the reasons identified, any such information can be linked to GPS. Publication of such confidential information would be detrimental to GPS and could provide an unfair advantage to GPS's competitors. Failure rates will be assumed to be due to a luminaire fault, even though failure rates are influenced by various factors. This point is reinforced by Ausgrid in Attachment 8.11¹. Ausgrid note that care should be taken in referencing failure rates as they are not necessarily a reflection of the lamp or luminaire technology, but no mechanism is used to determine the actual cause of failure.

For these reasons GPS strongly objects to the publication of the confidential information identified in the table attached.

Why the AER wishes to disclose the confidential information

In Appendix C of the initial disclosure notice the reasons why the AER wishes to disclose the confidential information is stated to be:

“Disclosure of the information will increase stakeholder confidence in the quality of the information the AER relies on in making decisions. Disclosure will also allow stakeholders to comment on the efficiency of the inputs and assumptions used and improve their understanding of how their charges have been calculated.”

Increasing stakeholder confidence in the quality of the information relied upon by the AER could not be a reason to disclose what is otherwise very commercially sensitive confidential information to the prejudice of suppliers such as GPS. That purpose could be achieved in many other ways, including by the AER itself being able to give comfort to stakeholders of the process it has undertaken to test the quality of information provided to it. Disclosure of the underlying confidential information would not itself increase the confidence in the quality of the information.

¹ Page 5, second to last and last paragraphs

This is particularly the case where the confidential information the subject of the initial disclosure notice largely relates to competitively tendered prices. Ausgrid has indicated that it has provided tender documents to the AER to show its procurement process, and invited the AER to review that process in more detail.² If the AER were satisfied with the tender process, it is hard to imagine that any greater confidence in the quality of the information could be obtained by disclosing the underlying confidential information.

In relation to the ability of stakeholders to comment on efficiency of the inputs or improve understanding, GPS notes Ausgrid's comment that its public lighting charges are not sensitive to the material prices the AER wishes to publish and listed in Appendix C³ and the pricing of individual components is only part of the overall total cost to customers.⁴

Ausgrid invites the AER to undertake an independent audit in order to satisfy itself of the efficiency of the prices and has identified information provided to ensure calculations can be understood by customers.⁵ The same process could be undertaken in respect of the other Distributors.

Publishing component pricing and contract terms provided to Distributors is not necessary for the customers understanding or ability to comment on efficiency of public lighting prices, particularly where the pricing results from a competitively tendered process.

Why the AER considers no detriment or public benefit outweighs detriment

The reasons given in Appendix C for the AER's view that there is no detriment or that the public benefit outweighs the detriment can be summarised as follows:

- 1 The AER acknowledges that disclosure could affect suppliers, but that the public benefit outweighs that detriment, including benefits such as greater transparency in regulatory decision making, increased scope for stakeholders to meaningfully engage with the AER and distributors and with more information public lighting customers will be able to make better decisions about services.
- 2 In relation to poor performing luminaires, publication is said to allow customers to make better decisions about replacement luminaries.

No attempt is made to identify with any precision the detriment to the suppliers, or the specific public benefits. For the reasons set out above, the detriment to GPS is serious and material and cannot be outweighed by any public benefit, even if one does exist.

Disclosure of contract tendered component pricing and terms will not result in greater transparency in decision making or increased scope for engagement in any event. The reasons for this are set out above.

Further, the AER is an economic regulator, and its economic regulatory functions and powers are set out in the National Electricity Law. Its function in the present context is the economic regulation of the regulated services provided by the Distributors, and the making of pricing determinations, including in relation to efficient pricing, applying the *National Electricity Rules* and the *Law*. It is not a function of the AER to enable customers to make better decisions about services consumed. It would be beyond power for the AER to disclose commercially sensitive confidential supplier information for the purpose of furthering the ability of a customer to make decisions about services consumed. This submission applies

² Ausgrid response to the Initial Disclosure Notice, 12 August 2014, page 2.

³ Ausgrid response to Initial Disclosure Notice, 12 August 2014, page 1.

⁴ Ibid, page 3.

⁵ Ibid, page 2

equally to the AER's position that providing confidential information on poor performing luminaires and call out rates will enable customers to make better decisions about replacement luminaires. That is not the AER's role.

In any event, the AER does not identify any meaningful public benefit. Even if a public benefit does exist, it could not outweigh the material commercial detriment to GPS as a result of disclosure of the confidential information identified in Appendix C.

Proposals

For the reasons set out, GPS objects to any publication of the confidential information identified in the attached table on the AER website.

In any event GPS does not consider any disclosure of the confidential information in Appendix C is necessary to meet the AER's stated objectives. However, GPS is prepared to continue discussions with the AER to seek a resolution of this issue such that further steps are not required.

GPS would be willing to consider a mechanism whereby confidential information can be provided to, for example, a small number of representatives or consultants of Councils under a strict confidentiality regime.

Having said that, if a resolution cannot be reached, GPS is prepared to seek a review by the Australian Competition Tribunal of any decision by the AER to disclose its confidential information.