

17 May 2013

Mr Chris Pattas
General Manager, Network Operations and Development
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

By email: costallocations@aer.gov.au

Dear Mr Pattas

Issues Paper on Shared Asset Guidelines, March 2013

NBN Co welcomes the opportunity to comment on the Australian Energy Regulator's (AER's) Issues Paper on shared asset guidelines for electricity distribution and transmission (Shared Asset Guidelines).

In the following sections, NBN Co addresses the background relevant to its interest in this issue and sets out its key concerns of relevance to the Shared Asset Guidelines.

Background

NBN Co's interest in this issue relates to its use of facilities access to electricity distribution poles for the purposes of building and operating the National Broadband Network (NBN). NBN Co's Corporate Plan 2012-15 assumes that when the rollout of its fibre access network is complete in 2021, a portion of the 12.2 million premises passed (by the fibre access network) around Australia will be served by aerial infrastructure.

NBN Co's approach to the use of facilities access to electricity distribution poles can be summarised as follows.

- NBN Co values its relationships with electricity distribution businesses, and has reflected this in a number of approaches, such as agreeing commercial terms for facilities access.
- NBN Co is only seeking to use electricity distribution poles in deploying its fibre access network in locations where existing underground telecommunication ducts are unavailable.
- Building new ducts in these locations (including building underground lead-in ducts to premises currently served via aerial lead-ins) would, in general, be disruptive to the local community and prohibitively expensive (consistent with why these locations are currently served via aerial rather than underground infrastructure).
- Ongoing facilities access to electricity distribution poles is typically provided on a contingent basis, such that it is subordinate to the needs of electricity supply.
- NBN Co fibre cables are non-conductive, significantly lighter than electricity cables and, generally, can be readily accommodated on existing electricity distribution poles without modification.

PHONE: (02) 9926 1900 FAX: (02) 9926 1901
EMAIL: info@nbnco.com.au WEB: www.nbnco.com.au

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2000

© NBN CO 2013

- NBN Co's Corporate Plan 2012-15 includes facilities access costs associated with the use of electricity distribution poles on the assumption that NBN Co will pay a reasonable amount (on both upfront and ongoing bases) to the electricity distribution businesses for such access.
- The market value of facilities access to electricity distribution poles is a function of the commercial context in which such access is sought. As noted above, NBN Co's Corporate Plan assumes that it will meet all of the reasonable costs incurred by an electricity distribution business as a direct result of providing NBN Co with facilities access to electricity distribution poles. The extent of the contribution to overheads/profit is reflective of the market value of access as determined via a process of negotiation that provides an appropriate degree of commercial tension.

Key NBN Co concerns of relevance to Shared Assets Guidelines

Based on its recent and ongoing experience in developing commercial facilities access arrangements with electricity distribution businesses, NBN Co would like to highlight to the AER a number of concerns that are of relevance to the Shared Asset Guidelines.

- Incentives for electricity distribution businesses to seek to enter into and maintain current or planned commercial arrangements:
 - NBN Co's development of good commercial relationships with electricity distribution businesses has enabled NBN Co to gain more timely access than may otherwise have been achieved (for example, if NBN Co had had to rely on its rights under the Telecommunications Act 1997), and has opened up the opportunity for arrangements that are of mutual benefit to NBN Co, telecommunications end-users, the electricity distribution businesses and electricity consumers.
 - In view of this experience, NBN Co is concerned about the potential impact of the eventual Shared Asset Guidelines on the incentives for electricity distribution businesses to enter into and maintain commercial arrangements with NBN Co. In this regard, it is important to recognise that any commercial relationships will only work as intended if the access provider faces an *ongoing* financial incentive to perform. If at some point regulatory arrangements were to be such as to make the access provider indifferent as between the continuation and cessation of commercial arrangements, then this is likely to prove problematic.
- Degree of prescription in the Shared Asset Guidelines:
 - Although it would be beneficial for all concerned to have more certainty about how the Shared Assets provisions in clause 6.4.4 of the Rules will be applied by the AER, NBN Co is concerned that a high degree of prescription may fail to properly account for all the relevant circumstances of each existing and future commercial arrangement with electricity distribution businesses. For example:
 - Payments made by NBN Co (in cash or in kind) in regard to make-ready works are presumably of benefit to electricity consumers, in terms of lowering pole maintenance or replacement costs – it is not clear how these payments should be accounted for as they are once off rather than recurrent in nature (like the annual pole rental);
 - There may be incremental costs associated with an electricity distribution business providing facilities access to electricity distribution poles – these should be considered in concert with the incremental revenues.
 - Arrangements that NBN Co has finalised with electricity distribution businesses are not take-or-pay in nature – the relevant electricity distribution business is not guaranteed a particular revenue stream over a particular period except, as a practical matter, in respect of the poles on which NBN Co has already installed fibre cable; and

PHONE: (02) 9926 1900 FAX: (02) 9926 1901
 EMAIL: info@nbnco.com.au WEB: www.nbnco.com.au

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2000

© NBN CO 2013

- NBN Co needs to ensure it is paying a reasonable, commercially viable amount for facilities access, which underscores a general need for the Shared Asset Guidelines to reflect commercial reality – essentially, the guidelines need to recognise that the market value of facilities access may be considerably less (as in the case with NBN Co) than may be indicated by some arbitrary method of allocating Shared Asset costs (based, for example, on the number of electricity and telecommunications cables installed on each pole).
- Avoiding materiality traps:
 - The Shared Asset Guidelines could potentially result in some form of materiality “trap” in which an electricity distribution business is faced with a significant financial incentive for seeking out unregulated revenue from Shared Assets up to some materiality threshold, but then faces a significant financial disincentive to seek out any further unregulated revenue. This could be prevented if the treatment of unregulated revenue up to the materiality threshold is always the same, with any differential treatment once unregulated revenue exceeds the threshold only applying to that incremental revenue (in the same manner as progressive income taxation).
 - NBN Co is concerned that if the Shared Asset Guidelines are not designed so as to avoid a materiality “trap” then electricity distribution businesses may not have appropriate incentives to provide facilities access to NBN Co both now and over time. In this regard, NBN Co notes that it is unlikely to be the only source of unregulated revenue from shared assets for electricity distribution businesses.
- Confidentiality:
 - In order to apply clause 6.4.4 of the Rules, the AER may at times need to access confidential information relating to an electricity network business’s commercial arrangements with NBN Co. In this regard, NBN Co is concerned that the Shared Asset Guidelines recognise that facilities access arrangements are confidential. If this confidentiality is breached, it may do significant harm to NBN Co’s legitimate business interests, and also be contrary to the long-term interests of end-users of telecommunications services, by jeopardising NBN Co’s ability to negotiate effectively with electricity network businesses in regard to both new and existing arrangements.

If it would assist the AER, we would be pleased to meet and discuss any aspect of this submission. To arrange for this, or if you have any questions about our submission, please contact Matthew Cole on 03 9601 5231 or matthewcole@nbnco.com.au.

Yours sincerely,



Caroline Lovell
Head of Regulatory Affairs & Industry Analysis

PHONE: (02) 9926 1900 FAX: (02) 9926 1901
EMAIL: info@nbnco.com.au WEB: www.nbnco.com.au

LEVEL 11, 100 ARTHUR STREET, NORTH SYDNEY NSW 2000

© NBN CO 2013