

botany bay

canterbury

city of sydney

hurstville

kogarah

marrickville

randwick

rockdale

sutherland shire

waverley

woollahra



SSROC

southern sydney regional
organisation of councils

29th January 2008

Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Mr. Buckley,

Re: Comments on AER Position Paper: Matters relevant to Distribution Determinations for ACT and NSW DNSPs for 2009-2014

Thank you for the opportunity to comment on the AER Position Paper: *Matters relevant to distribution determinations for ACT and NSW DNSPs for 2009-2014 (Nov 2007)*.

I am writing as a follow-up to Street Lighting Improvement (SLI) Program submission of 10 December 2007 in response to the Issues Paper which preceded this Position Paper. This submission should be read as an addition to that submission.

In summary, there are two key points councils wish to make in response to the AER Position Paper:

WIDESPREAD LACK OF CONFIDENCE IN EXISTING PRICING REGIME UNDERSCORES NEED FOR CHANGE

As evidenced by the large number of council submissions to previous IPART street lighting price reviews and the nature of concerns raised by councils, there is a widespread lack of confidence amongst councils in the robustness of the current street lighting pricing regime.

Put simply, the Position Paper's assertion of the "robust nature" of the current pricing regime is simply not supported by the evidence available to councils nor is the assertion that the regime provides councils "...with clear assurance of underlying costs and prices".

Key contributors to this lack of confidence in the current pricing regime include the significant information asymmetry in the price review process (discussed in previous submission), the lack of clear cost benchmarking, the failure to thoroughly test utility CAPEX and OPEX cost claims and the lack of meaningful financial consequences for widespread non-performance and mis-investment.

It is therefore with concern that councils note that the form of control outlined in 3.5.1 of the Position Paper will determine a multi-year price path without:

- a robust review of claimed asset bases which may have been set at current levels for other policy reasons;
- a detailed building block analysis of underlying costs; or
- a commitment to independent verification of cost assertions made by DNSPs.

In short, without further changes to the current regime, there would appear to be a significant risk of locking in an inappropriate pricing decision for many years to

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come as well as the risk of breeding widespread scepticism about the proposed new pricing regulation approach.

CLARIFICATION OF STREET LIGHTING CONTESTABILITY

The second issue requiring clarification is that the prospects for contestability, let alone development of meaningful competition, are far more limited than the AER suggests in its Position Paper (3.5.4). The SLI Program notes that the relevant NSW policy documents do not appear to establish contestability of O&M for DNSP-owned public lighting. Rather, the policy appears to be clearly limited to connection services for new lights. In the case of EnergyAustralia, current contestability appears unrelated to 99.5% of EnergyAustralia's street lighting network assets as additions total less than 0.5% of the total inventory each year.

In particular, councils note the following:

a) **Electricity Supply Act 1995**

Division 4 Part 3 of the Electricity Supply Act 1995 outlines the "Requirements relating to customer connection services" where customer connection services means any of the following:

(a) the connection of any premises to a distribution network service provider's distribution system,

(b) an increase in the maximum capacity of any premises' existing connection to a distribution network service provider's distribution system,

(c) the maintenance of the capability for electricity to be supplied to any premises from a distribution network service provider's distribution system

None of these provisions appear relevant to O&M on DNSP-owned public lighting.

b) **Electricity Supply (General) Amendment (Customer Contracts) Regulation 1996**

This regulation established the schedules and further defined contestability. Consistent with the Electricity Supply Act 1995, the Regulation defined "contestable service" as meaning "any service provide for the purposes of complying with Division 4 of Part 3 of the Act, and any service comprising work relating to an extension of an electricity distributor's distribution system or an increase in the capacity of an electricity distributor's distribution system."

This regulation appears to clearly relate to the any additional public lighting that customers add to the network but **does not appear in any manner to relate to the on-going O&M of DNSP-owned public lighting assets.**

c) **NSW Code of Practice Contestable Works**

The NSW Dept of Water & Energy Code of Practice Contestable Works (April 2007) states that the introduction of contestability for public lighting from 1 February 1997 relates to: "*works that are required to enable new or expanded connection to the electricity network*" and goes on to say that it applies to "*design, construction and/or installation*".

Again, consistent with the Act and the Regulation, the Code appears to clearly relate to additional public lighting that customers add to the network but **does not appear in any manner to relate to the on-going O&M of DNSP-owned public lighting assets.**

In summary, from the above readings of the Act, enabling regulation, Code of Practice Contestable Works it appears clear that only design, construction and maintenance of new public lighting infrastructure is currently contestable.

Put simply, Councils have no recourse to a contestable market for public lighting services with respect to the existing 200,000+ lights owned by EnergyAustralia. Councils have no

choice of supplier with regard to the maintenance, modification or removal of these existing lights constituting some 99.5% of all lights.

Extensive development of a NSW Public Lighting Contestability Framework would be required to achieve meaningful contestability, let alone effective competition. Given that EnergyAustralia owns almost all public lighting assets, there is little in the way of precedent to point to. Key areas requiring attention in any future Contestability Framework include:

- Clarification of ownership issues, responsibilities and liabilities as existing assets are modified or replaced,
- Establishing clear and comprehensive rules by which 3rd parties could operate (eg access to DNSP poles & wires, notice, approvals procedures, information provision, damage clauses etc),
- Establishing pricing for residual monopoly services (eg connection approvals, metering/billing, inventory management),
- Resolution of potential AS3000 issues with non-DNSPs owning assets,
- Resolution of potential ACCC issues under Section 45A of *Trade Practices Act 1974*,
- Lack of council skills or experience in managing electricity assets of this nature,
- Identifying and encouraging prospective competitors.

Public lighting services related to the EnergyAustralia-owned lights remain a monopoly, a situation that will not change unless there is considerable additional policy development by government. It is therefore essential that councils and broader community be provided with clear and strong regulatory protection. Council's recent experience with under-investment, an inability to influence technology choice and an array of maintenance issues makes this abundantly clear.

In view of this, the AER should reconsider both the prospects for contestability suggested in its Position Paper and the appropriate pricing oversight regime for public lighting and, in particular, look at moving away from 'light-handed' regulation.

I would be pleased to meet with the AER again at any point to discuss the future pricing oversight regime for public lighting in NSW.

Yours sincerely,



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Cc: *Bill Gillooly AM, Secretary General – Local Government and Shires Associations*
Leisl Baumgartner, DWE
Dr Dennis Mahoney, IPART

SLI Program Councils:

- *Ashfield*
- *Bankstown*
- *Botany Bay*
- *Burwood*
- *Canada Bay*
- *Canterbury*
- *City of Sydney*
- *Gosford*
- *Hornsby*
- *Hurstville*

- *Kogarah*
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- *Lake Macquarie*
- *Lane Cove*
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