

Submission to the
Australian Energy Regulator
In response to
ETSA Utilities' Regulatory Proposal

Prepared by



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August 2009

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| <i>Submission by:</i> <i>Trans Tasman Energy Group</i> | ETSA Utilities Regulatory Proposal August 2009 |
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Foreword

This submission has been prepared by Trans Tasman Energy Group (TTEG).

We welcome the opportunity provided by the AER to respond to ETSA's 2010-15 Regulatory Proposal of 1 July 2009 and encourage the AER's efforts to assist Public Lighting Sector development by establishing fair and reasonable public lighting tariffs, based on our submission for the next regulatory period.

Submission Objective

Our objective is to provide insights to assist the assist the AER in establishing fair and reasonable public lighting and other charges for the 2010-15 period and trust our Submission and the issues we have raised will positively contribute to the AER's process.

Timing / Focus

We trust the AER appreciates that the changed regulations required a significant amount of research in preparing our submission.

Due to the available time we have focussed on issues with a major impact on establishing fair tariffs, particularly public lighting.

About Trans Tasman Energy Group (TTEG)

TTEG Consultants provide specialist energy sector advice including commercial, environmental and regulatory aspects pertaining to Public Lighting. In Australia TTEG currently act as public lighting consultants to over one hundred council municipalities and road authorities in Victoria, South Australia and New South Wales.

More Information?

The AER is invited to seek further comments on any points in this Submission from:

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1 Summary

We welcome the opportunity provided by the AER to respond to ETSA's 2010-15 Regulatory Proposal of 1 July 2009.

In our Submission we have primarily focussed on specific aspects pertaining to public lighting but propose that the AER can also consider these specifics in the broader sense when considering ETSA's Proposal (including Negotiated Services) in general terms.

In our Submission we seek the AER's engagement to assist effective Public Lighting Sector development for the next regulatory period including the retention of existing public lighting pricing principles which were not included in ETSA's Proposal.

Public lighting charges can be complex to establish. We trust our Submission and the assessments we have provided will assist the AER in their process this process, including the of establishing fair and reasonable public lighting (negotiated) charges in SA for the 2010-15 period.

In providing this Submission we have called on our experience both within Australia (particularly SA and Victoria) and internationally from New Zealand.

We are also in a unique position to comment having undertaken negotiation processes on behalf of the public lighting customers with ETSA and distributors in other jurisdictions.

Key assessments from our submission include:

1) Public Lighting Charges

In considering public lighting SLUoS (negotiated) charges in the 2010-15 regulatory period we advise the AER that ETSA's proposed Pricing Principles for Negotiated Services in Schedule 2 of Attachment B1 are not acceptable when considering public lighting.

The EDPD and Guideline 14 have specific regulations and pricing principles critical to enabling public lighting customers to negotiate fair and reasonable charges for public lighting services. These requirements have been developed over the prior regulatory periods and as a minimum must be retained "as they stand". In our view, anything less will be a significant retrograde step and potentially significant cost impost on public lighting customers.

ETSA's Proposal introduces a number of uncertainties in to the current process whereas for a negotiation process to be effective there must be clarity and certainty in process.

We are critically alarmed that discretion appears to be left to ETSA to 'consider' cost aspects rather than the current regulatory requirement that public lighting services must be based on ETSA's recovery of prudent cost plus a fair and reasonable profit¹, and negotiated with the customer.

Furthermore, based on the knowledge acquired via negotiation processes in which we have participated, we have proposed a number of additional requirements for public lighting charges for the 2010-15 regulatory period.

¹ Guideline 14 cl 2.3.2

These requirements will assist in providing transparency in how public lighting prices are determined and also provide for price certainty on a year by year basis for all parties, including ETSA.

2) Negotiation and Dispute Resolution

Although the current regulations include a dispute resolution process, from our experience the process is not effective in enabling resolution in a timely manner.

We propose for consideration that an independent body be available to expedite the negotiation / dispute resolution process. This may be a body like the Ombudsman that exists for retail electricity disputes.

ETSA's dispute resolution process should be readily available and approved by the AER in and interested customer groups or the independent body.

3) Overheads

We submit to the AER the anomalies we have identified require investigation and consideration in establishing public lighting SLUoS charges in the next regulatory period.

Furthermore, we propose that a fixed amount (to be negotiated and agreed) for overhead is allocated by ETSA as a component in public lighting SLUoS price build up and that this amount represents no more than the % allocated to Negotiated Services.

The corporate overhead for public lighting should be no more than 5% as identified in the SAIIR 2000 report.

4) P-Factor

We propose the P-factor is retained in the next period but that all components of public lighting charges are excluded from its application.

5) Network Assets

The SAIIR established the opening public lighting asset base for 2000/01 to be \$36.94M. Subsequent year's asset bases have been established via a 'roll forward' process and included in ETSA's audited accounts.

6) Network Charges

TTEG has unique insights to these characteristics and propose to the AER that it requires ETSA to consider these favourable characteristics in establishing tariffs in the next period.

7) Provisions Applicable

We propose that ETSA be required to undertake certain services including the provision of public lighting services and that these services are identified by the AER and required to be published by ETSA.

8) Price Lists

We propose the AER includes prices for ETSA's negotiated "Price List Services" in its Draft Determination so that public lighting and other customers are provided visibility regarding potential prices prior to the commencement of the next regulatory period.

9) Attachment B

The 'elevation' charge of public lighting to be removed or set close to \$0.

2 Public Lighting Charges

We fully support the determination of Public Lighting as a Negotiated distribution service.

Whilst ETSA's proposal incorporates some aspects of the Electricity Distribution Code, and ESCoSA Guidelines 13 and 14, its proposal ignores the specific requirements of the current EDPD and also Guideline 14 that have been developed over prior regulatory periods and directly pertain to public lighting.

2.1 Current Regulation

CRITICALLY: Specific Pricing Principles have been established for public lighting in Guideline 14:

2.3 Prices for public lighting

2.3.1 *ETSA Utilities* is required to negotiate a fair and reasonable price for *public lighting* with its *customers*. As a general rule, the *Commission* will consider a fair and reasonable *public lighting* price to be one which has been negotiated between *ETSA Utilities* and its *customers* (or a representative of a group of *customers*).

2.3.2 A fair and reasonable *public lighting* price will allow *ETSA Utilities* to recover prudent expenditure on *public lighting*, including a fair and reasonable profit margin.

2.5.1 *ETSA Utilities* must ensure that an annual rise in any price for:

- (a) *excluded services* (excluding *public lighting*) is no more than the *CPI* + 10%; and
- (b) *public lighting* is to be no more than the *CPI* (unless otherwise approved by the *Commission*).

The current regulations contain specific public lighting regulations (Attachment A) which in summary require ETSA to establish SLUoS charges that are:

- 'fair and reasonable',
- negotiated with the customers, and
- allow ETSA to recover prudent expenditures including a fair and reasonable profit.

These regulations are the result of the development of the sector over the prior regulatory periods, understood by both ETSA and Public Lighting Customers, and are being used to establish public lighting charges via the ESCOSA in the current period.

2.2 ETSA's Proposal

In its Proposal ETSA claims to provide for a Negotiating Framework based upon Chapter 3 of the current Electricity Distribution Code, and ESCoSA Guidelines 13 and 14.

ETSA has proposed its Pricing Principles for Negotiated Services in Schedule 2 of Attachment B1 to its Regulatory Proposal.

Schedule 2. Pricing Principles

ETSA Utilities will use reasonable endeavors to comply with the following *Pricing Principles*:

- a) *Prices* are to signal the economic costs of service provision, being in-between incremental *costs* and stand alone *costs*;
- b) Such *prices* will consider prudent *costs*, a fair and reasonable profit margin, and have regard to the particular market circumstances faced by *ETSA Utilities*; and
- c) Consideration will be given to market rates and/or external benchmarks when establishing *prices* for services where such market rates or benchmarks are reasonably available. Such consideration will take into account the specific environment and circumstances to which those market rates or benchmarks apply.

In addition, it must be noted that:

- d) Although pricing for each particular *Negotiated Distribution Service* will be reflective of the economic cost for provision of that service on average, this *price* may not necessarily be reflective of the *cost* of a specific individual service.

2.3 Current Regulation v's ETSA's Proposal

General

Although our assessment has been contained to public lighting negotiated services, we expect many of our comments can also be applied to negotiated services in general.

ETSA's Proposal, although appearing to encompass many of the current regulatory requirements, unfortunately falls well short of retaining the specific aspects pertaining to public lighting requirements.

ETSA's proposed approach introduces a number of uncertainties in to the current process whereas for a negotiation process to be effective there must be clarity and certainty in process.

For example, ETSA's Proposal (refer 2.2 above) introduces other forms of establishing fair charges for public lighting negotiated services eg

- ⇒ ETSA to use 'best endeavours' – falls short of requiring ETSA to undertake the process
- ⇒ benchmarking - an inexact process, difficult to compare 'apples with apple's and open to interpretations. Often reliant on information being provided by others via a protracted process, and
- ⇒ leaves much of the process for ETSA to "consider" various aspects of pricing inputs in establishing its negotiated charges (Schedule 2 b) and c) above)

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ETSA's approach falls well short of the current regulatory requirements and the very specific public lighting pricing principles in Guideline 14 cl 2.3.2 and cannot be supported as providing an effective basis for establishing public lighting prices in the next period.

The current process can also be improved – refer section 2.4 of this submission.

NERs

The high level NER pricing principle of charges being in-between incremental *costs* and stand alone *costs* has merit, particularly when applied to access to the distribution service.

In the provision of public lighting services we are however not requiring 'access' as it is simply ETSA attaching its own lights to its own poles, the latter which is fully paid for via the DUOS charges paid by public lighting customers. The charges for the lights are the negotiated SLUOS charge paid as a separate charge by the public lighting customers.

We have considered arguments pertaining to the NERs in detail in Attachment B, but some key considerations include NER clause 6.7.1 (1) which state:

"the price for a negotiated distribution service should be based on the costs incurred in providing that service, ..."

Furthermore NER clause 6.7.5 (c) (3) (ii) requires the provider:

"(ii) to demonstrate to a Service Applicant that the charges for providing the negotiated distribution service reflect those costs and/or the cost increment or decrement (as appropriate);"

In summary, it is clear from the NERs that the price for a *negotiated distribution service* must be based on the costs incurred in providing that service. This approach is consistent with the EDPD's public lighting pricing principles which require charge to be based on 'recovery of prudent expenditure, including a fair and reasonable profit' and is required to be maintained.

Public Lighting

IMPORTANT: Under ETSA proposed "Pricing Principles" (Schedule 2), we are critically alarmed that this discretion appears to be left to ETSA to 'consider' rather than the current regulatory requirement that public lighting services must be based on the recovery of prudent cost and negotiated with the customer.

An example of an existing issue pertaining to "Elevation Charges" is shown in Attachment B, where ETSA maintains that receiving \$1.2 million p.a. for a "no cost activity" is fair and reasonable.

This raises the question, 'is it fair and reasonable for ETSA to charge for a costless activity?'

In this example, ETSA internally validates an 'opportunity cost' argument, where in reality, as there is no actual expenditure by ETSA, it is "super" profit.

In considering the SA regulations and the current process it is critical that the AER recognizes the fundamental difference between SA and other jurisdictions when establishing

public lighting regulations. SA has public lighting established as a Negotiated Service while other jurisdictions do not.

Establishing public lighting charges in other jurisdictions (eg NSW) has been problematic, we expect, largely to the service classification adopted for public lighting in those jurisdictions and the lack of pricing transparency.

It is our assessment that SA regulators have always been advanced in their approach to public lighting and we expect this approach to be continued in the next period

By (in our view correctly) adopting a "Negotiated Service" classification for public lighting the AER has provided the appropriate classification for public lighting services and is in a unique position to build on the regulations and knowledge gained from prior periods to establish regulations that can be adopted by other jurisdictions in the next period.

Public lighting (SLUoS) charges represent a significant portion of ETSA's (formerly Excluded Service) revenues and costs. In addition, public lighting has unique aspects of service provision and requires different regulation, a view supported by the ESCOSA in EDPD Part A page 25 where it stated:

"However, given the unique nature of public street lighting, and the experience of the Commission in regulating public street lighting services during the 2000-2005 regulatory period, the form of regulation to apply to this service will be slightly different to that proposed for other excluded services (see section 2.5.7)."

2.4 Public Lighting Proposal

In considering public lighting SLUoS (negotiated) charges in the 2010-15 regulatory period we advise the AER that ETSA's proposed Pricing Principles for Negotiated Services in Schedule 2 of Attachment B1 are not acceptable when considering public lighting.

As a minimum, we submit to the AER that:

- ETSA be required to adopt the pricing principles and the specific regulatory requirements for public lighting (Attachment A) from the current EDPD and Guideline 14 "as they stand". In our view, anything less will be a significant retrograde step.

The EDPD and Guideline 14 have specific regulations and pricing principles critical to enabling public lighting customers to negotiate (later section of our submission) fair and reasonable charges for public lighting services.

Furthermore, based on the knowledge acquired via negotiation processes with distributors, we propose the following additional requirements for public lighting charges for the 2010-15 regulatory period.

These requirements will assist in providing transparency in how public lighting prices are determined and also provide for price certainty for all parties, including ETSA. These requirements include:

- Public lighting charges to be based on the building blocks as determined by the ESCOSA, or as otherwise agreed.

NOTE: The values of the current building blocks are currently being updated from the SAIIR's 2000 Public Lighting Report.

- SLUoS prices to be incremented annually based on an agreed (negotiated) formula (based on building blocks) which recognizes costs based on:
 - the 'regulated' asset base (rolled forward) with WACC and depreciation applied and included in the asset component of the SLUoS charge
 - operational costs to increase by CPI unless otherwise agreed
 - The impact on fixed costs and corporate overheads decreasing (on a \$/light basis) due to increases in public lighting inventories. NOTE: We have also commented on corporate overhead allocation as a separate part to this submission
 - Any other charges as agreed between the parties.
- The building block component values to be reviewed "negotiated" periodically (say a maximum of once per regulatory period) to recognise any changes in practices.
- So ETSA's "prudent expenditure and fair profit" may be assessed, ETSA to provide details of the cost components in the building blocks and the other factors in the formula used to establish the annual increase in public lighting SLUoS charges.
- ETSA must agree with public lighting customers which Public lighting services are Non-repetitive and Repetitive (Schedule 1, B.12)
- ETSA and public lighting customers to agree any price by December 31 of the prior year for prices to be effective 1 July of the following year. NOTE: This allows for effective budgeting by public lighting customers

3 Negotiation and Dispute Resolution

As the Negotiated Service classification is a new, and welcome, introduction to the regulations, to assist the AER in considering ETSA's Proposal we have provided the AER with some insights to potential issues surrounding the negotiation process.

Based on our first hand experience, the significant imbalance of market power between customers and Distribution Network Service Providers can prevent negotiation in good faith and the effective resolution of a dispute occurring in a timely manner. This is why we have proposed that the regulations and process (previous section of our submission) including pricing principles to establish public lighting prices are specific.

In seeking prices for negotiated services customers are often significantly time constrained and generally have little, if any, understanding of the regulations.

Although the current regulations include a dispute resolution process, from our experience ETSA's dispute resolution process is inadequate, including:

- ETSA's "Customer Relations Department Enquiries & Complaint Management Procedures" does not effectively establish a negotiation process to meet customer needs or a timely progression / resolution of the dispute. NOTE: Protracting negotiations favour ETSA as customers are typically working to timelines and may therefore simply 'run out of time' to continue negotiations
- It is not readily available eg we could not find it on their website.
- It is difficult for customers to engage in the process because of their lack of knowledge of the regulations. In addition, ETSA typically has the data that customers require to progress the resolution of the dispute.

We have however found that intervention by the regulator hastens the process and also introduces some balance to the negotiation process.

3.1 Negotiation Proposal

Although the current regulations include a dispute resolution process, from our experience the process is not effective in enabling resolution in a timely manner.

We propose for consideration that an independent body be available to expedite the negotiation / dispute resolution process. This may be a body like the Ombudsman that exists for retail electricity disputes.

ETSA's dispute resolution process should be readily available and approved by the AER in and interested customer groups or the independent body (above).

4 Overheads

ETSA's proposal considers overhead allocations.

In the current EDPD ETSA's overheads were allocated to Prescribed and Excluded Services and Unregulated business based on the revenues for each service (refer Table 112 below).

We have identified important anomalies that impact on public lighting and the general allocation and management of overheads, being:

- 1) Overheads were allocated to prescribed and excluded services in the EDPD based on revenues, but ETSA allocated based on costs, and
- 2) ETSA's overheads have increased significantly beyond the EDPD's levels
- 3) The Excluded Service revenues included a significant portion representing "customer contributions" and "gifted" assets ie there is revenue to ETSA yet no cost - therefore ETSA's allocation of overhead the public lighting (which does have cost aspects) is in excess of is significantly and unfairly and unreasonably skewed.²

² TTEG can provide an in depth analysis if required by the AER

Table 112 – PKF Corporate cost allocation recommendation

| Prescribed business | Excluded business | Unregulated business |
|---------------------|-------------------|----------------------|
| 84.4% | 6.2% | 9.4% |

The application of the PKF corporate cost allocations results in an additional 5.1% of corporate overheads allocated to the excluded and unregulated businesses. The recommended allocation of corporate costs, after adjustment, to the prescribed business is given in Table 113.

We have also observed that:

- ETSA's overheads in \$ terms have been significantly increasing, and that
- the (%) allocation of overheads to Excluded Services and Unregulated business has continued to (in our view unfairly) increase in each regulatory period

4.1 Proposal – Public Lighting Overheads

We propose to the AER that our observations (above) require investigation and consideration in establishing and allocating overhead charges to all services in the next regulatory period.

Furthermore, we propose that a fixed amount (to be negotiated and agreed) for overhead is allocated by ETSA as a component in public lighting SLUoS price build up and that this amount represents no more than the % allocated to Negotiated Services.

The corporate overhead for public lighting should be no more than 5% as identified in the SAIIR 2000 report.

5 P-factor

The current EDPD contains a "P-factor" requirement for ETSA to share profits obtained from services ETSA provides utilising prescribed services ie the distribution network, as the network is paid for via DUOS charges. Any revenues received by ETSA are therefore "super profit".

Examples of the application of the P-factor are included in the current EDPD eg for attachment of telco cabling etc.

Although public lighting 'elevation' is currently mentioned as a possible application for applying P-factor, this has been a significant point of contention in negotiations as 'elevation' cannot be charged under the same section as other services attracting P-factor.

We advise the AER that we did not identify any mention of the P-factor in ETSA's proposal.

5.1 Proposal – P-factor

We propose the P-factor is retained in the next period but that all components of public lighting charges are excluded from its application.

NOTE: TTEG has supporting arguments which can be provided to the AER to support this request.

6 ETSA Proposal 15.5.1 Network Assets

ETSA discusses in its Proposal an estimate of public lighting assets additions between 1 July 1991 and 10 October 1999.

We advise the AER that the value of the public lighting asset base through the SAIIR's public lighting process in 2000 established the opening asset base for 2000/01 to be \$36.94M, with subsequent years asset bases established via a 'roll forward' process and included in ETSA's audited accounts.

7 Network Charges

We are uncertain if we should be commenting on public lighting network charges at this stage of the regulatory process or in response to the Draft Determination?

Consistent with ETSA's intention to introduce tariffs at reduced cost for efficient business, we propose to the AER that traffic signal (24 hour unmetered) loads and particularly public lighting (12 hour unmetered) loads are extremely favourable when compared to all other loads on the network.

Whilst these qualities were recognised by the ESCOSA in the prior period, the final tariffs (in our view) established by ETSA did not effectively recognise the very favourable characteristics of these loads.

TTEG has unique insights to these characteristics and propose to the AER that it requires ETSA to consider these favourable characteristics in establishing tariffs in the next period.

We would welcome the opportunity to provide the AER and/or ETSA with a detailed assessment of these load characteristics thereby enabling tariffs to be established at a reduced cost to recognise the "efficient business" in terms of network use of public lighting and to lesser extent traffic signals.

NOTE: TTEG has supporting arguments which can be provided to the AER for establishing the network (NUOS) tariff for public lighting at a (lower) rate to reflect the positive characteristics of public lighting consumption.

8 Part A, 2.4 Provisions applicable

Clause 2.4 of ETSA's Negotiating Framework states:

"Nothing in this Negotiating Framework or in the Rules will be taken as imposing an obligation on *ETSA Utilities* to provide any service to the *Service Applicant*.

We propose that ETSA be required to undertake certain services including the provision of public lighting services and that these services are identified by the AER and required to be published by ETSA.

9 Price Lists

We propose the AER includes prices for ETSA's negotiated "Price List Services" in its Draft Determination so that public lighting and other customers are provided visibility regarding potential prices prior to the commencement of the next regulatory period.

Attachment A – Public Lighting – Specific Regulations

Specific regulations pertaining to public lighting are included in this Attachment A.

EDPD Part A

1.1 Public Lighting

(a) Public lighting services including:

- (i) operation and maintenance of public lighting; and
- (ii) provision of public lighting assets.

2.5.3 Street lighting services

Public street lighting is currently an excluded distribution service under Schedule 2.B of the EPO. These services are financially the most significant part of excluded distribution services, with the charges receiving much attention during the 2000-2005 regulatory period.

Public street lighting, as discussed here, does not refer to the service of transporting electricity through the distribution network for use in public street lights: this is a prescribed distribution service as part of the distribution use of system (DUOS) charge. The current excluded service of public street lighting refers to the provision, operation and maintenance of street lighting assets.

There are three categories of public street lighting service:

- Where the service relates only to the operation and maintenance of public street lighting, it is referred to as customer lighting equipment rate (CLER) category and is an excluded distribution service.
- Where the service includes the provision of the assets, along with the maintenance and operation of those assets, the service is called street lighting use of system (SLUOS).

The Commission believes that there is minimal scope for effective competition in the provision of SLUOS in the 2005-2010 regulatory period and, therefore, it had initially contemplated making SLUOS a prescribed distribution service. However, two of the major customers of SLUOS services, local Councils (represented by the Local Government Association of SA (LGA)) and Transport SA, have indicated a preference for SLUOS to remain an excluded service. One of the primary reasons for this preference is the view of these customers that they possess significant bargaining power, which they believe can be used to negotiate a competitive outcome for the provision of public lighting services. Based on these assertions, the Commission would support a process of negotiation between the parties.

- A third public street lighting service also exists, called "energy only", where ETSA Utilities does not provide any of the above two services, and the primary service provider is the retailer who supplies the energy to the customer, who owns, operates and maintains its own street lighting assets.

The Commission will retain standard public street lighting services as an excluded service.

However, given the unique nature of public street lighting, and the experience of the Commission in regulating public street lighting services during the 2000-2005 regulatory period, the form of regulation to apply to this service will be slightly different to that proposed

2.5.7 Form of regulation for excluded services

The pricing principles for SLUOS, an excluded service, will be as follows:

- Prices for SLUOS are to be fair and reasonable. The price that will be considered by the Commission to be fair and reasonable during the 2005-2010 regulatory period will be:
 - any price that has been negotiated between ETSA Utilities and a customer (or a representative of a group of customers); or
 - in the event that agreement is not reached and there is a dispute, the price that is determined by the Commission.
- The annual price movement for any particular SLUOS service should be restricted to no more than CPI (unless otherwise approved by the Commission); and
- ETSA Utilities will be required to publish its list of prices for SLUOS annually.

EDPD Part B

1.1 Public Lighting

(a) Public lighting services including:

- (i) operation and maintenance of public lighting; and
- (ii) provision of public lighting assets.

Guideline 14

2.3 Prices for public lighting

2.3.1 **ETSA Utilities** is required to negotiate a fair and reasonable price for **public lighting** with its **customers**. As a general rule, the **Commission** will consider a fair and reasonable **public lighting** price to be one which has been negotiated between **ETSA Utilities** and its **customers** (or a representative of a group of **customers**).

2.3.2 A fair and reasonable **public lighting** price will allow **ETSA Utilities** to recover prudent expenditure on **public lighting**, including a fair and reasonable profit margin.

2.5.1 **ETSA Utilities** must ensure that an annual rise in any price for:

- (a) **excluded services** (excluding **public lighting**) is no more than the **CPI + 10%**; and
- (b) **public lighting** is to be no more than the **CPI** (unless otherwise approved by the **Commission**).

Attachment B – “Considering” Elevation Charges

The National Electricity Rules (NER) details how distribution businesses should charge for access to the distribution system. The objective of the charging regime is to ensure distribution businesses charge economically efficient prices to customers.

There is currently an “Elevation Charge” component in the public lighting SLUOS charge of ~ \$1.2M p.a.

Although there is no material cost to ETSA in providing Elevation, ETSA may “consider” other aspects in establishing its charges eg benchmarks, opportunity costs etc

In considering the Elevation Charge in terms of the NERs, ETSA’s proposal to the AER requires it to “consider” aspects in establishing charges.

Possible ETSA view

ETSA could therefore take a view the NERs require distribution businesses to charge between marginal and standalone cost for the provision of a service. In the case of public lighting the only service provided by the distribution system is access to ETSA Utilities’ poles.

ETSA could therefore “consider” NER clause 6.7.1(2) applied for the Elevation charge:

(2) subject to subparagraphs (3) and (4), the price for a negotiated distribution service should be at least equal to the cost that would be avoided by not providing the service but no more than the cost of providing that service on a standalone basis.”

ETSA Utilities’ could therefore “consider” and accept that the standalone costs was appropriate for providing Elevation, and on this basis their charge would be in accordance with the NERs.

“Other Considerations”

However, in “considering” and accepting the above view, ETSA would have been required to “consider” (and ignored) numerous other requirements for negotiated distribution services including NER clauses: 6.7.1(1), 6.7.1(8)(A), 6.7.1(9), 6.7.1(10), 6.7.2 (various), 6.7.4(b), 6.7.5(3)(ii), 5.5(f)(4)(i), 5.5(g) and more.

NER clause 6.7.1(2) sets the range that a charge for a negotiated distribution service must sit within but importantly, it does not set the charge rate. A charge close to \$0 will enable ETSA to comply with 6.7.1(2).

In considering the rate, NER clause 6.7.1 (1) states”

“the price for a negotiated distribution service should be based on the costs incurred in providing that service, determined in accordance with the principles and policies set out in the Cost Allocation Method for the relevant Distribution Network Service Provider”.

In considering the rate, NER clause 6.7.5 (c) (3) (ii) requires the provider:

“(ii) to demonstrate to a Service Applicant that the charges for providing the negotiated distribution service reflect those costs and/or the cost increment or decrement (as appropriate);”

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In summary, it is clear from the NER that the price for a *negotiated distribution service* should be based on the costs incurred in providing that service.

This is consistent with the current regulations (Guideline 14 cl 2.3) for public lighting.

Observations and Learnings

The difference between the two approaches ("considerations by ETSA") provides ETSA with around \$1.2 million of revenue.

As there is no cost to ETSA in providing Elevation, these revenues represent "super" profit and (we believe) an unfair and unreasonable cost impost on the public lighting customers.

This raises the question, 'is it fair and reasonable for ETSA to charge for a costless activity?'

Under ETSA's proposed "Pricing Principles" (Schedule 2), we are alarmed that this discretion appears to be left to ETSA to "consider" aspects rather than the current regulatory pricing principles for public lighting services (Guideline 14 cl 2.3) which allow ETSA to recover its prudent expenditure including a fair and reasonable profit.

Outcome

The current public lighting pricing principles must be retained in the next period.