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5 March 2010

The Review Manager
NSW Public Lighting Code Review 2010
Energy Supply and Networks, Minerals and Energy Division, Sydney
Department of Industry and Investment NSW

public.lighting@dwe.nsw.gov.au.

Dear Review Manager

**Re: NSROC Submission to NSW Public Lighting Code Review 2010**

The Northern Sydney Regional Organisation of Councils (NSROC) represents seven member Councils in northern Sydney: Hornsby; Hunter's Hill; Ku-ring-gai; Lane Cove; North Sydney; Ryde and Willoughby.

Our councils have been concerned about the governance, regulatory and structural arrangements between councils and street lighting providers for some time.

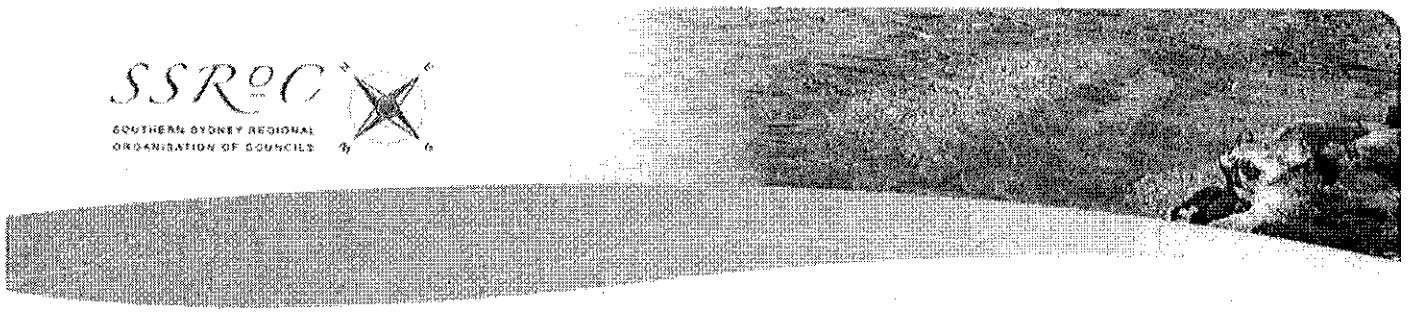
NSROC member councils support the submission made to this Review by Southern Sydney Regional Organisation of Councils (SSROC). This submission identifies our common concerns on these matters.

Yours sincerely

Carolynne James
Executive Director
NSROC

Attachment : SSROC Submission to NSW Public Lighting Code Review

SSROC
SOUTHERN SYDNEY REGIONAL ORGANISATION OF COUNCILS



12 February 2010

Mr Mark Duffy
Deputy Director-General
NSW Department of Industry & Investment
Minerals and Energy Division
public.lighting@dwe.nsw.gov.au

Mr Duffy,

**Re: SSROC Submission on the NSW Public Lighting Code Review**

Thank you for the opportunity to comment on the NSW Public Lighting Code Review and related issues of governance. For Councils, this is an issue that has been of very considerable concern for many years, and despite continuing representation, there is still no resolution. Councils will be hopeful that this current process will finally produce tangible result.

The Southern Sydney Regional Organisation of Councils (SSROC) makes this submission on behalf of 34 Councils participating in the SSROC Street Lighting Improvement Program and constituting approximately 94% of all the street lights on EnergyAustralia's network.

There is a fundamental issue underpinning the challenges with this particular issue, that is the split between ownership of assets, legal responsibilities and payments for services. SSROC contends that for effective management these must be aligned. Currently, Councils are responsible for safety of the community and for the payment of charges, DNSPs are the owners of assets, with no responsibilities. Unless there is a single line of accountability from liability to service provision to asset ownership there will continue to be major problems. Whilst effectively ignored, shifting either the ownership of assets (possibly to Councils) or shifting responsibilities from Councils to DNSPs should be rigorously debated.

***Governance of Street Lighting in NSW***

At the outset, I wish to re-iterate the on-going challenges for all parties in the absence of a robust governance regime for public lighting in NSW. Indeed, nearly $80,000,000 is changing hands each year between NSW Councils and the utilities without there being any clear basis for the services provided.

It is Councils in NSW that are responsible for providing public lighting to the community and for all of its consequences, yet they are in the difficult position of

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having no meaningful control over the service. There are currently no contracts covering the provision of this monopoly service, no binding service regulation in NSW and only a voluntary NSW Public Lighting Code.

The lack of a robust governance framework and the mis-alignment of interests since the end of the County Councils have resulted in persistent problems across a wide range of lighting technology, service and pricing issues.

Unfortunately, the Discussion Paper does not appear to give adequate consideration to this key question of governance, dismissing both a range of alternatives and any near term possibility of substantive reform.

Recent internal restructuring at EnergyAustralia (the 4th restructure in 6 years) and enhanced Code reporting requirements advocated for in the Discussion Paper are both welcomed by Councils but inadequate to address the core governance issues that exist at present.

SSROC strongly urges the Department to give further consideration to this issue and would welcome the opportunity to work with the Department on a detailed review of the alternatives prior to the preparation of a Position Paper.

***Code Considerations***

With regards to the specific points in the Discussion Paper about the Code, SSROC makes the following comments:

1) **Support for Enhanced Reporting** – Councils will strongly welcome the Discussion Paper's recommendation that there be enhanced reporting and support the suggestion that the reporting be to a standard template. Councils will also support the Paper's proposal that there be basic quarterly reporting as per Victoria (Section 5.1.1) and more comprehensive annual reporting to meet the AER's and Councils' needs (Section 5.2).

2) **Need to Make Code Mandatory** – In view of the vital role that public lighting plays in public safety and security, there is an overwhelming case to make the NSW Public Lighting Code a mandatory instrument. At present, there are:
    - no contracts or no Service Level Agreements;
    - no binding regulation governing service provision;
    - an acknowledged lack of compliance with the current Code - this despite written assurances "...to adhere to the Code in its entirety[1]" given to the then Department of Energy, Utilities and Sustainability in December 2005;
    - an acknowledged lack of incentive for the utilities to comply with the Code; and
    - an acknowledged shortage of resources within the utilities where public lighting issues have to compete for limited resources that <u>are</u> subject to mandatory license conditions and other mandatory requirements.

    That the NSW Public Lighting Code be a mandatory instrument was the basis of all consultations with Councils during the 2004/05 drafting of the Code and is the case in Victoria where the Victorian Public Lighting Code is a license condition for the utilities and has been since inception.

    The difficulty with current NSW arrangements was recognised by the AER in its Final Decision of April 2009 where it concluded in part 17.4.6 that *"...given the prolonged*

[1] As per email to LGSA and other council representatives from Deputy Director General, DEUS, 14 Dec 2005

*outages experienced by public lighting customers, the AER considers that more robust service level arrangements need to be implemented."*

3) **Need for Meaningful Penalties** - In the absence of other documentation between the parties or regulations governing the provision of public lighting in NSW (see item 2 above), the NSW Public Lighting Code is essentially a *de facto* services contract. However, unlike a typical services contract, councils do not have meaningful recourse for non-compliance under the Code in its current form. Indeed, even when things go badly wrong, as in the case of a protracted outage, there is no recourse for Councils who are expected to keep paying the bills for a service that is not being provided.

   As the Department's Discussion Paper acknowledges, there has been non-compliance with key aspects of the NSW Public Lighting Code. Further, the Discussion Paper acknowledges that there is no clear near-term incentive to comply with the requirements of the current Code. It is for these reasons that introducing meaningful penalties for Code non-compliance is essential

   The serious consequences of Code non-compliance for the community must be considered in assessing the level of penalties under the Code. Street lighting is a vital service for the community that can:

   - reduce night-time accidents by about 30%[2]
   - reduce certain types of night-time crime by up to 20%[3] and reduce the fear of crime, particularly for women and the elderly[4]
   - encourage night-time use of public space, with important socio-economic benefits

   Section 5.1.1 of the Discussion Paper indicates that a broader compensation regime for Councils is under consideration but no specific proposals have been provided at this stage.

   Meaningful penalties must be included as a core element of the NSW Public Lighting Code for instances of non-compliance with each of the basic maintenance, reporting and other requirements of the Code. Reflecting the public safety risks involved and to provide a clear incentive for compliance, Code penalties should be automatic and be set at a multiple of the revenue that would otherwise be received for the lights involved. Non-compliance and any penalties paid as a result should be publicly reported on as a further incentive to comply.

   While the AER can approve prices based on an assumed service standard it has no powers to levy penalties after any failure to meet the basic service standard that were implicitly or explicitly assumed in pricing reviews. The AER can take non-compliance into account at the next pricing review but this can be up to 5 years away. This clearly provides insufficient near-term feedback on Code non-compliance and suggests that, under the current framework, penalties can only be dealt with in the Code itself.

4) **New Technology Adoption Process** – A key area of concern for Councils in recent years has been the difficulties in getting timely adoption of energy efficient lighting. While welcoming enhanced reporting on new technology and proposals requiring greater disclosure of analysis (Discussion Paper Section 5.4), this is insufficient to address the current challenge.

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[2] AS1158.1.3 Appendix C

[3] UK Home Office Research Study 251 – Effects of improved street lighting on crime: a systematic review, Farrington & Walsh

[4] e.g. as per NSW Police Service Safer By Design Program, CPTED Programs and other crime prevention initiatives

At a minimum, the Code should require public disclosure of the minimum criteria that new technologies need to meet for adoption as a Standard Luminaire and there must be a clear process, involving the Councils, for the timely evaluation and adoption of new technology.

Properly facilitating the introduction of new public lighting technologies will be vital to effectively responding to greenhouse gas issues over the coming years.

5) **Need for Enhancements to Public Lighting Code** - Many of the specific issues raised by Councils in 2007 submissions to the Department of Water & Energy and raised by the Australian Energy Regulator's Final Decision of April 2009 do not appear to have been addressed in the Discussion Paper. At a minimum, the items that must be addressed include the need for:

   A. **A maximum repair time for underground faults** - Outages involving underground supply faults frequently involve multiple lights and often involve main roads in areas with a large number of pedestrians and high volumes of vehicles at higher speeds. As such, they raise considerable public safety issues. It is main roads where the greatest risk of a vehicle-related injuries or death lies. And, the human eye can simply not adapt quickly enough in going from the high lighting levels typically found on a main road to the low lighting levels found on a stretch of road where multiple lights are out.

   At present, even the basic Code requirements in Section 11.2b to report to Councils and the RTA on the timeframe for repairs does not appear to be met by EnergyAustralia.

   As identified in the SLI Program review of the Public Lighting Code in 2007 and as foreshadowed by councils at the time of Code formulation, the lack of specific Code provisions for completion of repairs involving underground supply faults is leading to lengthy delays in repairs. Specific maximum repair times are needed under the Code. Acknowledging the technical complexity of repairing some underground supply faults, the SLI Program suggests an absolute maximum of 15 days for such repairs.

   B. **Equitable tariff access for Council-owned lighting** - Over more than a decade, Councils have been encouraged to install and maintain lighting in locations where EnergyAustralia declined to provide a new or improved lighting service (eg parks, reserves, town squares, CBD upgrades, multi-function pole installations). There may now be a few hundred such installations involving perhaps 10-15,000 luminaires.

   These installations are either separately metered or "Special Small Services," and are separately billed. The accounts have typically been placed on a General Supply Tariff, and pay network and retail energy charges as if the bulk of their consumption was during peak periods. This results in considerably higher ongoing network distribution and retail charges for such installations, even if they use lighting technology identical to EnergyAustralia Standard Luminaires.

   Following queries from the SLI Program about these non-cost reflective network and retail charges, and potential competitive neutrality issues,

EnergyAustralia introduced a new network tariff in 2004. The tariff definition is:

***"Public Lighting [401]:*** *Available for metered and unmetered supplies that are deemed to have a similar usage profile to public lighting and have some form of on/off control. The form of on/off control may be photoelectric cell, timer, ripple or other control."*[5]

In practice, however, councils have been unable to switch to this more appropriate network tariff or correspondingly appropriate retail tariffs for such accounts.

In an effort to progress this, a number of "test" accounts were identified by Woollahra and Rockdale Councils in 2004/05 and were checked by council staff to ensure consistency with EnergyAustralia's published tariff definition[6]. Despite various commitments to work through the issues involved, EnergyAustralia has yet to resolve even these "test" accounts.

In part 17.4.6 of the AER's April 2009 Final Decision it concluded that, *"In relation to [EnergyAustralia] tariff 401, the AER agrees that this appears to be a barrier to councils' consideration of developing council-owned lighting and could potentially raise issues of competitive neutrality."*

This long-standing matter should be addressed in the Code.

C. **Equitable connection and metering requirements for Council-owned lighting** - EnergyAustralia is increasingly requiring new council-owned lighting installations to be separately metered and not allowing the lights to be listed on the Public Lighting Inventory (eg Rate 3) or directly connected to the network (eg as a "Special Small Service"). This has been a particular problem for small modifications or additions to non-road lighting installations (eg bus stops, transport interchanges), new decorative lighting installations and where multi-function poles are installed.

In practice, the requirement for metering results in higher installation costs, increased street clutter (eg supply points, metering housings) and increased administrative costs. In one case in a streetscape improvement in Kogarah's CBD, EnergyAustralia's initial requirement to meter the installation was estimated to increase capital costs by more than the net present value of all future energy charges.

In addition to being a highly inefficient use of public funds, metering requirements for Council-owned lighting also raise questions about competitive neutrality as similar EnergyAustralia-owned assets are not required to be metered in this way.

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[5] *www.energy.com.au/energy/ea.nsf/AttachmentsByTitle/Network+Price+List+06_07/$FILE/Network_Price_List_FY07.pdf*

[6] ***Woollahra Accounts:*** *805843340, 910336905, 911351449, 911378528, 911387305, 911435033, 911442321, 911529824, 91175697, 911795833, 916880154, 916880162, 920221005, 920234886, 921040743, 921606498, 829912703, 806180799, 805494482, 821847029;* ***Rockdale Accounts:*** *830886674, 833076814, 830886420, 829837210, 830703581*

D. **Equitable asset removal / acquisition regime in the limited cases where Councils are able to take over lighting** - If councils wish to remove or acquire existing EnergyAustralia street lighting assets that are less than 20 years old, EnergyAustralia levies 'undepreciated asset charges' and asset removal charges on councils. Current and proposed EnergyAustralia 'undepreciated asset charges' are based on straight line depreciation from the current cost of a 'Modern Engineering Equivalent' rather than the actual cost of the original installation. This valuation approach, referred to as ODRC, is used for pricing purposes for a portfolio of assets that EnergyAustralia is responsible for the continued maintenance and replacement of. However, this written up value of the assets:

- Appears to have little relationship to any reasonable valuation of the individual aged assets being removed from the network and for which EnergyAustralia will no longer be responsible;
- Results in inappropriately high 'exit charges'; and
- Is a significant barrier to competitive alternatives, raising questions about competitive neutrality

This matter is currently being considered by the AER in its pricing redetermination but is also relevant in terms of the Public Lighting Code (in particular in the context of items B and C above).

E. **Obligations to service parks & reserves** – The Discussion Paper appears to suggest that the concern involving service to parks and reserves is a definitional issue however, this is not the case. The concern is about the lack of clear obligations to provide a lighting service in parks and reserves.

As per submissions in 2007, there are several thousand EnergyAustralia-owned lights in parks and reserves. At present there are no clear obligations to continue service or a reasonable transitional regime to Council-owned lighting and these issues need to be addressed in the Code.

Bankstown Council in particular has experienced years of problems with the lighting of parks. In a number of instances involving vandalism in parks and reserves in Bankstown, EnergyAustralia has withdrawn maintenance services, leaving lighting inoperable over a sustained period but the utility continues to charge council for these assets. Bankstown Council has noted that these parks are in areas of high risk for sexual assaults and other crimes against the person and that lighting is an essential safety feature. EnergyAustralia may have a reasonable case for compensation for vandalism above an agreed level but withdrawal of service in such situations appears highly inappropriate.

F. **Reform of capital works regime** - A particular concern of Council officers dealing with lighting matters on a day to day basis are current problems with EnergyAustralia's interpretation of the Minor Capital Works regime (Public Lighting Code Section 10).

Council officers report that apparently minor works are now increasingly being judged by EnergyAustralia as being contestable and that the contestability regime is both costly and cumbersome for projects that are often as simple as adding a single light or pole but take on average perhaps nine months to complete. This is having profound adverse consequences on other related capital works and is viewed as being a highly inefficient use of limited public funds and resources.

SSROC made a separate submission on this matter to the Department in August 2009 in connection with its review of the NSW Electricity Network Contestable

Services regime. A review of the Code should give this matter careful consideration.

G. **GIS-based inventories** – In the AER's Final Decision part 17.6.4.3, the AER states that, *"The AER also considers that it is appropriate that Country Energy, Integral Energy and EnergyAustralia provide each of their public lighting customers with geographic based information on the inventory held for each customer before the end of the next regulatory control period."*

   This requirement should be an integral part of Section 8 of the Code covering the Public Lighting Inventory.

H. **A requirement to repair day-burning lights in a timely fashion** - A 'day burner' is not currently covered by the Code as a Fault and this should be addressed by the Code explicitly. Lights on in the day are of concern to the public and wasteful. They also lead to premature failure of lamps and luminaires.

I. **Environmentally Appropriate Lamp & Luminaire Disposal** - Lamps used in street lighting contain mercury and a variety of other toxic compounds. Disposal of lamps to landfill is therefore highly inappropriate.

   Following the introduction of the Code, EnergyAustralia agreed with councils in 2006 and outlined in its Public Lighting Management Plan (Section 3.2) that it would "Implement an environmentally and economically appropriate recycling program for lamps and luminaires that have been replaced or removed."

   Because of conflicting advice given to Councils by EnergyAustralia in recent years and a lack of reporting in this area, it remains unclear whether appropriate lamp recycling arrangements have indeed been put in place. The Code should require appropriate disposal / recycling and require reporting on this matter.

J. **Greater information disclosure on pricing models** - As a vital public good but also a monopoly service that is not in the hands of those responsible for providing the service to the community, there should be absolute transparency of the costing models that public lighting pricing decisions are to be based on.

   Inadequate disclosure by the DNSPs has been a significant source of Council concern in the 2009 AER pricing review and previous IPART reviews. This is particularly the case in the context of the large price increases sought by EnergyAustralia and the large differences in prices between utilities for substantially similar services often involving identical lights from the same manufacturer.

   SSROC would strongly urge that the Code's information disclosure requirements include all key financial and technical assumptions for public lighting. This should include at a minimum requirements to disclose:

   - Component capital costs
   - Assumed component lives, failure rates (supported by maintenance data) and asset replacement assumptions
   - Consumables costs
   - Labour costs
   - Labour assumptions
   - Assumed service standards and related maintenance assumptions
   - Overhead rates
   - A copy of the model in which these assumptions are input, preferably to a standard format

This approach would be consistent with the level of disclosure required in Victoria under pricing reviews by both the ESC and AER.

Notably, the need for greater information disclosure by NSW DNSPs of the underlying basis of pricing was also recognised by the AER in its Final Decision part 17.4.5 where the AER concluded that, *"...NSW DNSPs need to give greater consideration to ensuring that their customers understand the basis on which prices have been developed."*

In preparing this submission, SSROC has, in recent weeks, sought input on the specific issues that participating Councils thought needed to be addressed in the Code and governance review. Councils may however submit their own views.

SSROC welcomes further discussion with the Department about any of these items as well as matters raised in previously submitted documents.

Yours sincerely,

David Lewis
General Manager
Southern Sydney Regional Organisation of Councils