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HWL  
EBSWORTH  
LAWYERS

Our Ref: MD:611613

Your Ref: D17/83958

6 July 2017

Mr Chris Pattas  
General Manager (Networks)  
Australian Energy Regulator

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Dear Sir

**Arbitration Procedure - Public lighting dispute between local councils - Department of Planning and SAPN in 2010-15 period**

We refer to your letter dated 22 June 2017 and set out below the response of the PLCs.

The PLCs have limited their comments to matters of clarification, concern or opposition. If not specifically mentioned, the PLCs are otherwise content with what has been proposed.

The PLCs note that you have described the determination process as an arbitration. The PLCs do not have any objection to that as a general description, but consider that the access dispute process and determination:

- are not subject to the *Commercial Arbitration Act 2011 (SA)* or any of its interstate equivalents; and
- are subject to the provisions of the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*.

Please let us know if the AER has a different understanding of the position.

The PLCs' letter attaching the Houston Kemp report is dated 2 May 2017 (incorrectly stated to be 3 May 2017).

The PLCs object to SAPN having the opportunity to respond to the PLCs' reply (effectively a rejoinder), particularly in circumstances where the directions appropriately specify that the PLCs shall not raise any new matters in their reply. There is no reason to depart from the ordinary course whereby the applicant files and serves its written submission, the respondent

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then files and serves its written submission and the applicant then files and serves written submissions in reply thereafter. The PLCs propose:

- the HWL Ebsworth letter dated 2 May 2017 and its attachments, including the Houston Kemp report, constitute the PLCs' written submissions;
- SAPN file and serve its written submissions within 20 days (limited to 60 pages); and
- the PLCs file and serve their written submissions in reply within 20 days (not raising any new issues and limited to 30 pages).

The PLCs consent to the provision of the ERP report and correspondence between either of the parties and Ms Kirschner.

The PLCs adhere to the principles of good government and transparency in the expenditure of public monies. Accordingly, the PLCs:

- wish for the dispute hearing to be conducted in public with one public hearing for no more than half a day for oral presentation;
- request that the order under s141 of the NEL be revoked and if any party is of the opinion that it is appropriate that a person not divulge or communicate to anyone else specified information given in the course of this access dispute that an order under s141 be sought. The PLCs have no objection in principle to the making of an order in respect of any information that SAPN satisfies the AER is commercially confidential, but consider that it is inappropriate – particularly given their status as State and local governments – that an order be made that would prohibit the disclosure of all and any information regarding the access dispute.

In the event that the AER considers a referral of any matter in the access dispute to an independent expert, the PLCs request that procedural fairness be accorded in respect of the identity of the expert, its scope and purpose.

The PLCs otherwise reserve all of their rights.

Yours faithfully



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