

# Released under FOI

Partner Simon Muys  
 Contact Geoff Petersen  
 T +61 2 9263 4388  
 gpetersen@gtlaw.com.au  
 Our ref SJM:GCP:  
 Your ref D17/83958



101 Collins Street  
 Melbourne VIC 3000 AUS  
 GPO Box 90 Melbourne VIC 3001  
 T +61 3 8656 3300 F +61 3 8656 3400  
 www.gtlaw.com.au

**6 July 2017**

**By email**

Craig Madden  
 Director, Network Pricing, Policy and Compliance  
 Australian Energy Regulator  
 Email Craig.Madden@aer.gov.au

Copy:  
 Mr Michael Durrant  
 Partner, HWL Ebsworth Lawyers  
 Email: mdurrant@hwle.com.au

Private and confidential

Dear Mr Madden

**Access dispute re public lighting services 2010-15: Public lighting customers and SA Power Networks**

We refer to your letter dated 22 June 2017 concerning the access dispute notified by the Local Government Association of South Australia and the Department of Planning, Transport and Infrastructure (together, the Public Lighting Customers, or **PLC**) concerning public lighting services provided by SA Power Networks during the period 2010-15 (the **Dispute**).

I confirm that we act for SA Power Networks in respect of the Dispute.

The AER has sought a response from the parties to various matters raised in your letter. Our response to those matters is set out below.

**Scope of the access dispute**

The AER's letter states that it will treat the PLCs' 3 May 2017 letter and the attached Houston Kemp report as their submission in chief in the arbitration and will require SA Power Networks to respond to that report. We understand the reference to the 3 May 2017 letter to be a reference to the letter from HWL Ebsworth dated 2 May 2017.

We confirm that SA Power Networks does not object to the AER's proposed approach to defining the matters in dispute.

SA Power Networks will therefore proceed on the basis that the Dispute relates to the following inputs to the post-tax revenue model (**PTRM**) that SA Power Networks provided to PLC and which forms the basis of the Houston Kemp analysis:

- 1 the appropriate opening regulatory asset base for the 2010 to 2015 period;
- 2 the appropriate tax asset base for the 2010 to 2015 period;

# Released under FOI



- 3 whether elevation charges should be included in the PTRM for the 2010 to 2015 period; and
- 4 any consequential reduction in corporate overheads as a result of the reduction in any of the above cost components.

SA Power Networks is preparing its response and submissions on the basis that this defines the scope of the Dispute.

### **Process for the arbitration of the dispute**

SA Power Networks is content with the process the AER proposes to follow as set out in Table 1 of the AER's letter, up to the point at which the AER issues a draft determination.

SA Power Networks submits that the procedure to be adopted following the draft determination would be most appropriately settled once the draft determination has been issued and the parties have had an opportunity to consider it. While we acknowledge the desire of the AER for a speedy resolution of the dispute, depending on the content of any draft determination it may be that further expert input or modelling will be required in order for the parties to be able to fairly address the issues raised by the AER and therefore additional steps or further time may be required. This would require a change to the currently envisaged single step of 15 business days for the parties to provide further submissions on the draft determination.

At this stage, we share the view of the AER that a decision is likely to be able to be made on the papers. However, for the reasons above, we consider that it would be preferable for the AER to withhold expressing any final or concluded view at this stage on the need for an oral hearing and address this issue following the issuance of its draft determination.

We submit that the AER should therefore limit its determination of the process and timetable for the Dispute, at this point, up to the issuing of a draft determination and indicate that it will confer with the parties at that point regarding the process to be followed through to the issuing of a final determination. This would also mean that any final decision as to whether an oral hearing is required is left until that later stage.

### **Provision of documents**

The AER has indicated that it requires the Evaluation Review Panel (**ERP**) report and correspondence between either of the parties and Ms Kirschner in order to inform itself of the merits and fair settlement of the Dispute. We understand this request for "correspondence" to be directed at the substantive submissions made by SA Power Networks and PLC to the ERP, and requests from the ERP to the parties. We note that the correspondence between the parties and Ms Kirschner was limited to preliminary and administrative matters.

SA Power Networks has no objection to the parties voluntarily providing the AER with the materials in Books 1, 2 and 3 of the bundle of materials provided to the ERP for the purposes of the ERP round table, as well as a copy of the ERP report. An index of the bundle materials is set out in the Attachment to this letter. We would be happy to work with PLC to arrange provision of these materials to the AER, subject to PLC also consenting to this.

If the AER wishes to obtain information other than the ERP report and the material in Books 1, 2 and 3 of the bundle of materials provided to the ERP, please let us know.

# Released under FOI



We would be grateful if you would direct future correspondence in relation to this Dispute to us.

Yours sincerely

*Gilbert + Tobin*

**Simon Muys**

Partner

T +61 3 8656 3312

smuys@gtlaw.com.au

**Geoff Petersen**

Special Counsel

T +61 2 9263 4388

gpetersen@gtlaw.com.au

# Released under FOI



## Attachment: Documents provided to the Evaluation Review Panel (Books 1, 2 and 3)

Documents provided to the Evaluation Review Panel (Books 1, 2 and 3)	
<b>Book 1</b>	
National Electricity Rules: Chapter 6	
National Electricity Rules: Chapter 8	
National Electricity Rules: Chapter 10	
<b>Book 2</b>	
<i>Submissions</i>	
SAPN briefing paper (with PLC annotations)	6 May 2015
PLC reply submissions	6 May 2015
PLC submissions	24 April 2015
PLC submissions	16 March 2015
PLC case appraisal position paper	20 November 2014
SA Power Networks reply submissions	7 May 2015
SA Power Networks submission appendices A–F	28 April 2015
SA Power Networks briefing paper to ERP	24 April 2015
SA Power Networks submissions	24 April 2015
SA Power Networks statement of issues	21 November 2014
<i>Correspondence</i>	
ERP request for briefing paper and submissions	2 April 2015
AER letter to LGA re agreement	19 September 2014
AER letter to SA Power Networks re agreement	19 September 2014
AER letter to LGA	1 July 2013

# Released under FOI



Documents provided to the Evaluation Review Panel (Books 1, 2 and 3)	
<i>Documents</i>	
ETSA Utilities negotiating framework	July 2010
ESC ETSA Utilities – fair and reasonable determination	December 2009
ETSA Utilities cost allocation method	September 2008
SAIR public street lighting tariffs final report	November 2000
<i>Correspondence</i>	
ERP Agreement – Signed ERP Luke Woodward	
ERP Agreement – Signed DTPI Paul Gelston	
ERP Agreement – Signed SAPN Damien Harby	
ERP Agreement – Signature page G Swier, S Dennison, S Kirschner	
ERP Agreement – Signed D Hitchcock	
Book 3	
ESCOSA fair and reasonable determination: statement of issues	December 2008
Letter from Charwoods re public lighting asset depreciation costs	21 January 2014
SAIR streetlighting benchmarking study SKM report	August 2000
Email from C Marschall (Trans Tasman Energy Group) to ESCOSA, and ECOSA reply	18 and 19 October 2011
SA distribution regulatory accounts reporting template: ETSA Utilities	Various
PLC support slides	27 July 2015