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## 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  
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Private and confidential

Dear Mr Madden

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

I refer to the letter of HWL Ebsworth dated 6 July 2017 in response to the AER's letter of 22 June 2017, which set out the Australian Energy Regulator's (AER) proposed process for the access dispute.

We thought it might be of assistance to the AER for us to indicate the position of SA Power Networks (SAPN) on the procedural steps addressed in the HWL Ebsworth letter.

## Oral hearing

SAPN does not object to the request of the Public Lighting Customers (PLC) for an oral hearing, with no more than half a day for oral presentation. However, SAPN does not agree to the hearing being conducted in public. SAPN notes that under s 137 of the NEL, subject to the parties agreeing to a public hearing, the hearing is to be in private.

SAPN otherwise maintains the position set out in our letter of 6 July 2017 as to the need for an oral hearing following the AER's draft determination. That is, that the AER should confer with the parties once it has issued the draft determination as to the process to be followed through to the issuing of a final determination, including as to whether an oral hearing is required after the draft determination stage.

## Non-disclosure regime

SAPN also does not generally object to the request of the PLC for orders under section 141 of the National Electricity Law (NEL) to be made with respect to particular information. However, SAPN notes that the PLC's request will lead to additional time and cost being incurred in connection with the access dispute and it is therefore important that the non-disclosure regime is practical. To this end, the regime SAPN would propose to deal with information in respect of which a non-disclosure order is sought is as follows:

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- the AER to make a written order that the parties to the access dispute (and their advisors) not divulge or communicate to anyone information obtained by them during the course of the access dispute in respect of which a claim for non-disclosure has been made unless the AER otherwise gives permission;
- a party to the access dispute or the AER may challenge a claim for non-disclosure;
- in the event the AER is inclined to give permission to a party to disclose the information that is the subject of a claim for non-disclosure, the party who has made the claim for non-disclosure may withdraw that information from the dispute process and that information cannot then be disclosed.

The above process will enable the parties to exchange information and submissions freely and, in the event such materials contain sensitive information, without having to take the prior step of providing the information to the AER only and seeking a non-disclosure order before giving the information to the other parties. SAPN does not necessarily anticipate at this stage that it will seek non-disclosure orders in respect of significant amounts of information. However, the provision of public lighting services is subject to competitive service provision and an appropriate and workable regime is necessary in order to protect both SAPN's commercial interests and competitive processes generally.

#### **SAPN further reply submissions**

The PLC have objected to the AER's proposal that SAPN reply to the reply submissions of the PLC. SAPN considers that the proposed step is an appropriate one given:

- the primary matter that has been raised by the PLC, being the appropriate value of the opening regulatory asset base to be used in light of earlier regulatory determinations, is one that has not been previously raised by the PLC (as distinct from earlier matters raised by the PLC in connection with the regulatory asset base, including that accounting values should be used in determining the value of the asset base); and
- SAPN is not yet apprised of the substantive legal and policy submissions that the PLC will make in support of their position.

It would typically be the case that the substantive legal and policy submissions would be contained in the primary submissions of the party notifying the dispute, which is not the case here. While SAPN (and the PLC) are content for the HWL Ebsworth letter and its attachments, including the HoustonKemp report to constitute the written submissions of the PLC, presumably it will be in the PLC submissions in reply that SAPN will see for the first time the substantive submissions of the PLC on legal and policy matters. In these circumstances it is only appropriate that SAPN is provided with the opportunity to address these matters prior to the AER issuing a draft decision.

Yours sincerely

*Gilbert + Tobin*

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