

29 January 2016

Ms Ty Taylor
Director, Consumer and Pricing
Energy Division
Department of Energy and Water Supply
PO Box 15456
CITY EAST QLD 4002
And by email: 

**Regulatory Impact Statement – On-supply customer access to
energy rebates and the Energy and Water Ombudsman Queensland**

Dear Ms Taylor

1. INTRODUCTION

Thank you for the opportunity to comment on the *Regulatory Impact Statement – On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland (November 2015)* ('the RIS').

Our members, as major shopping centre owners and managers, operate embedded networks and on-supply electricity to their retail tenants across Queensland in both the Energex and Ergon distribution areas. This includes on-selling electricity to tenants who are both small electricity customers (that consume up to 100MWh of electricity per annum) (e.g. clothing, apparel stores) and large electricity customers (that consume more than 100 MWh of electricity per annum) (e.g. bakeries, restaurants, bottle shops, supermarkets).

Embedded networks represent a substantial investment which operate with common investment risks such as regulatory, operational and commercial risks. As income producing assets within a shopping centre, their operation can also impact property valuation.

The operation of our members' embedded networks can be contracted to independent experts to assist with regulatory compliance issues, technical issues, meter reading and billing. In this regard, there is a mature embedded network and electricity on-selling industry.

Our interest in the RIS principally relates to 'Part B' which presents two options in relation to on-supply customer access to the Energy and Water Ombudsman Queensland (EWOQ).

We note that the Department has not identified a preferred option, and that "the Department will consider this set of options further in the context of stakeholder submissions received in response to this Consultation RIS".

It is our view that *Option 2 – Status quo, continued access to QCAT and other dispute resolution mechanisms* is the preferred option.

We respectfully submit that sufficient evidence or a compelling case has not been presented which points to a policy failure in relation to current arrangements. We believe the proposed change to enable access to EWOQ is based on a theoretical and tenuous argument.

Further, we don't believe that the RIS has properly noted or considered the full suite of on-supply customer protections under the Australian Energy Regulator's (AER) ~~retail exemption~~ framework. Rather, the RIS only considers one condition (no. 15) which relates to dispute resolution out of 19 core conditions that are imposed on embedded network operators.

2. BACKGROUND

We have a long-standing involvement in policy issues related to embedded networks and on-supply arrangements.

In Queensland, this includes our involvement and formal submission on the *Electricity On-Supply in Queensland Discussion Paper* in February 2013. We also supported the *National Energy Retail Law (Queensland) Bill 2014* which had the principle objective of the giving effect to the Queensland Government's decision to transition to the National Energy Customer Framework (NECF).

We have also held ongoing discussions on embedded network issues with the Department.

At the Federal level, we are a member of the Australian Energy Market Operator's (AEMO) Embedded Network Working Group, which advised on the embedded network rule change which was recently finalised by the Australian Energy Market Commission (AEMC). We have also been involved in the Australian Energy Regulator's (AER's) initial retail and network exemption guidelines, and the ongoing implementation and review of these guidelines. This includes the recent consultation process on the retail exemption guidelines (draft Version 4).

3. GENERAL COMMENTS

In the context of the above, and our support for a national framework, we are deeply concerned that the Queensland Government may seek to introduce additional separate requirements.

This is also in the context that we do not believe that a compelling case has been provided to justify a proposed transition to provide access for small on-supply customers to the EWOQ scheme.

We respectfully submit that no case or evidence has been presented in relation to a policy failure, and that the proposed change is based on a theoretical and tenuous argument.

It is our view that *Option 2 – Status quo, continued access to QCAT and other dispute resolution mechanisms* is the preferred option.

3.1 Customer protections exist

While the RIS correctly notes that the AER guidelines provide protections that relate to dispute resolution (No. 15) – which provides that embedded network operators must make reasonable endeavours to resolve a dispute – we believe that the RIS does not acknowledge the full suite of core conditions that apply to embedded network owners and operators.

These conditions provide a suite of customer protections and include:

- Obligation to supply energy,
- Information requirement to customers,
- Billing (e.g. timing, tariffs) and payment arrangements,
- Receipts,
- Pricing protections (e.g. relating to the SOP, shadow pricing),
- Disconnection limitations,
- Concessions and rebates,
- Termination of supply arrangements, and
- Maintaining records.

In addition, the AER has actively implemented these requirements and continued to amend their guidelines as necessary.

The AER's latest consultation round which commenced in December 2015 is seeking to introduce additional requirements for individual exemption applications to enable embedded network customers to be better informed and provide 'explicit informed consent'.

3.2 Policy objectives tenuous

In the 'Policy Issues' section in the Executive Summary, it is stated that the "policy issues raised in this RIS are closely related to the key government community objective of 'support for disadvantaged Queenslanders'.

This section principally relates to pensioners and seniors card holders, but then segues to small business customers without any specific rationale or evidence.

For this reason, we respectfully submit that the core rationale for the changes, insofar it relates to small on-supply customers, is theoretical and tenuous.

Similarly, the purported "*Impacts of not taking action*" noted at page 14 fails to outline a clear issue or policy failure.

It is also suggested at page 14 that, in addition, the proposal to extend access to EWOQ to small on-supply customers (including small businesses in on-supply situations) "also aligns with the Government's recognition of small business enterprises as a significant contributor to the State's economic and jobs growth, and as the backbone of regional economies". This introduction of this issue as a policy objective seems selective. Our members have a current Queensland development pipeline of \$4 billion, which includes regional and rural areas, and they should equally be considered as a significant contributor to the State's economy and part of the backbone of regional economies.

3.3 No policy failure or major disputes

At least in terms of what is presented in the RIS, there is no clear policy failure in relation to the current arrangements.

In terms of the analysis provided for small business on-supply customers (who may be within shopping centres), it is noted that "QCAT has only heard around 30 electricity-related matters in its minor civil disputes jurisdiction since its establishment in 2009 (mostly related to large customers)".

This amounts to an average of 6 issues per annum.

It simply doesn't follow that the Government should firstly be suggesting there is a policy failure, particularly in relation to small on-supply customers, let alone a change to the current system.

Similarly, the 63 'assumed' complaints that may arise from small business on-supply customers (noted at page 24) hardly gives rise to the need to introduce such a significant change to the EWOQ scheme in its own right, let alone given the balance of the AER customer protection conditions and the experience of our members cited above.

From our members' perspective, for those that we have consulted with, there are minimal disputes that occur with tenants regarding electricity matters (and rarely are such matters not dealt with as part of broader leasing issues between the parties), and in any event any disputes that do arise are effectively and efficiently resolved under the existing dispute resolution processes such as QCAT mediation. We are not aware of any that have proceeded as far as QCAT proceedings.

Our members' experience may partly be based on the fact that they operate professionally and also engage expert service providers (e.g. for billing).

3.4 QCAT

The RIS' description of QCAT correctly notes that it is an independent tribunal that seeks to resolve disputes in a "fair, just, accessible, quick and inexpensive" manner. We fail to see why this arrangement should change – or what EWOQ would deliver above and beyond QCAT. Our members that we have consulted on this issue have confirmed that they consider the existing dispute resolution processes to be effective in resolving tenant / customer disputes on a broad range of issues, including issues related to the on-supply of electricity by our members.

3.5 Shopping centres: different to residential

Our members are long-term investors and generally have long-term relationships with their retailers, which is principally based on a retail lease and with a minimum lease term of around 5-7 years. The nature of a retail lease relationship means there is little incentive to be in a dispute.

Even on the 'complaints' evidence cited at page 12, we are not aware of any cases whereby (for instance) a retail tenant in a shopping centre who is an on-supply customer has been threatened with disconnection due to a non-payment. Our members are reluctant to close a retailer's doors without making every attempt to resolve the issue in dispute by all available means.

Also, if a tenant fails to pay electricity charges, or is otherwise in breach of its obligations as an on-supply customer, resulting in a potential disconnection of electricity supply, our member's experience is that the tenant would also typically be in breach of its other lease obligations, such as its obligation to pay rent which would usually be resolved using existing dispute resolution processes available to retail tenants and landlords (such as QCAT).

It has also been our experience that 'issues' with embedded networks often relate to residential circumstances; not commercial properties with business tenants such as shopping centres. Indeed, the evidence cited at page 14 regarding the submissions to the 2013 Discussion Paper (which we also submitted to) notes residential related issues.

3.6 Additional costs spread on a low base

In relation to *Option 1 – Extend access to EWOQ to small on-supply customers*, the RIS notes possible additional costs. We understand that the potential additional costs for an embedded network operator could relate to both an annual participation fee (\$5,000) and user-pays fees (ranging from \$300 for a refer back to provider case and \$4,000 for a final order). In addition, there could be the need to response to EWOQ investigations.

In addition to these costs and processes being additional to the current arrangements, these costs would be need to be passed on to on-supply customers through their bills or other fees. In the case of embedded networks, these costs would be spread across a relatively smaller customer base than the broader Queensland customer base.

The RIS then notes, however, that benefits could arise.

In our view, the benefits cited, such as reduced workload and the avoidance or drawn out processes, are theoretical and would not materialise.

Our members don't experience an 'increased workload' or 'drawn out' processes under the current arrangements.

Further, the QCAT process only incurs costs when a dispute arises (which our members seek to avoid), rather than the transition to EWOQ which would require at the very least, ongoing participation fees.

3.7 Forum shopping

In the event that a new approach is introduced and implemented, there is a need to prevent and avoid duplicative provisions (e.g. between AER and Queensland-specific requirements) and 'forum shopping', whereby an on-supply customer could go to either QCAT or EWOQ.

4. CONCLUSION

We do not believe that a compelling case has been presented in relation a policy failure or the need to change the current arrangements.

It is our view that *Option 2 – Status quo, continued access to QCAT and other dispute resolution mechanisms* is the preferred option.

We would welcome an opportunity to discuss this issue with the Department, including possible alternate options.

Please do not hesitate to contact me on [REDACTED] [REDACTED] [REDACTED] to discuss this submission.

Yours sincerely



Angus Nardi
Executive Director