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Agriculture, Resources and Environment Committee
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Dear Sirs

Thank you for the opportunity to comment on the Land, Water and Other Legislation Amendment Bill 2013 (**Bill**).

Ergon Energy commends the Queensland Government's development of this Bill and supports the policy objectives which it embodies – in particular, the concerted effort made in the Bill to reduce both green and red tape.

Ergon Energy notes that the Bill seeks to address a number of concerns and issues that Ergon Energy and other stakeholders have raised in the context of various reviews initiated by the Queensland Government over the course of 2012. Ergon Energy therefore wishes to make submissions to express its support for a number of the initiatives outlined in the Bill and to suggest some areas for consideration to further assist in streamlining current processes.

Proposed Amendments to Water Act 2000 (Water Act)

The Water Act requires a permit for destroying vegetation in a watercourse, lake or spring (known as a riverine protection permit). The Bill proposes to remove this requirement on the basis that the requirement is a duplication of other permit requirements under the *Vegetation Management Act 1999 (**VMA**)* and *Sustainable Planning Act 2009* (**SPA**).

This amendment would be beneficial for Ergon Energy. Ergon Energy is required to obtain riverine protection permits for clearing of endangered and of concern vegetation in road reserves (which is where Ergon Energy endeavours to place much of its infrastructure). This requirement for a riverine protection permit is unnecessary, because Ergon Energy is mostly not otherwise required to obtain clearing permits under the VMA and SPA. It squarely can be considered as red or green tape.

The current requirement for a riverine protection permit can cause delays to a customer connection and can increase the costs associated with providing the connection. The removal of the Water Act requirements is supported, particularly because it arises in circumstances where Ergon Energy does not otherwise need any clearing permit.

Proposed amendments to the Acquisition of Land Act 1967 (Qld) ('ALA')

The Bill proposes to introduce a concept of a "multi-parcel purpose". This is defined as:

> *"Land is taken under this Act for a **multi-parcel purpose** if, to carry out the particular purpose for which the land is taken, it is necessary to take, under this Act, more than 1 parcel of land.*

Examples of multi-parcel purposes—
roads and railways for which it is necessary to take, under this Act, more than 1 parcel of land"

By virtue of section 6 of the ALA, this definition captures easement compulsory acquisitions for electricity lines where more than one parcel of land is to be compulsorily acquired.

The Bill proposes simplified processes for taking land by giving some powers to the Minister (or its delegate) and to a network service provider, such as Ergon Energy or Powerlink, to publish a gazette notice taking the land (i.e. not requiring the Governor in Council to do so). These powers arise, effectively, when the acquisition is not objected to.

However, the proposed amendments (as currently drafted) may benefit from further refinement to ensure the proposal to streamline existing processes under the expedited procedure does not unintentionally jeopardise the ability of distribution and transmission network service providers to acquire corridors to further improve the efficient delivery of their services to Queensland.

Ergon Energy understands that the current departmental policy position is that the expedited procedure under the ALA should not apply where objections are raised along the particular corridor that might impact upon the location of the corridor and the Minister's approval of the taking of the relevant land. In practice, therefore, the expedited procedure is unlikely to be readily available to electricity network service providers seeking to make corridor-level acquisitions that span many kilometres and cover a large number of properties as it would be unusual not to receive some objections from owners across a long corridor.

In order to balance the current policy position with the concerns of owners and network service providers, Ergon Energy suggests that consideration be given to refining the current drafting so that the expedited procedure can be available to network service providers for corridor purposes in circumstances where an objection is made and the applicable network service provider has heard and considered all objections in accordance with the ALS but decided that it is still appropriate to take the subject land. Ergon Energy submits that such an approach would give the Minister comfort that a sufficient part of the process has been undertaken and objections have been dealt with under the ALA but allows network service providers to take advantage of the expedited process.

Proposed Changes to Definition of 'Public Utility Service' provider

The Bill intends to amend the *Land Act 1994* and the *Land Title Act 1994* to expand the definition of '*public utility provider*' to provide for two additional categories of public utility provider which are:

- a person authorised under an Act to provide a particular public utility service; and
- an entity approved by the Minister suitable to provide infrastructure for use by another entity in the provision of a particular public utility service.

The summary of the changes proposed provides:

Public utility easement provisions

- *The purpose of this amendment is to expand the definition of public utility provider to include service providers and owners of infrastructure. Similar amendments are being made to the Land Title Act 1994.*
- *This amendment acknowledges that utility services have expanded from government entities to include co-operatives and private/commercial entities. To facilitate operation of*

services provided by commercial entities, these entities need to be accepted legislatively as 'public utility providers'.

- *The amendments will overcome current legislative constraints by allowing public utility easements to be registered in favour of service providers and owners of infrastructure that may be used by service providers.*

Whilst there is no definition of '*public utility service*', section 369(2) of the *Land Act 1994* (Qld) (with similar provisions in the *Land Title Act 1994* (Qld)) provides examples of what would constitute a public utility service.

The term '*public utility service*' by its very nature has the connotation that there must be a service provided to the public at large rather than for example a service being provided by a commercial entity which owns infrastructure to one person or other entity at a mine or other site upon which a commercial operation is being undertaken. That is the view taken by the relevant departments in past dealings.

On that basis, the proposed expanded definition of '*public utility provider'* may not allow for the scenario where an entity may be approved by the Minister to provide a public utility service but fails to provide the service to the public at large by nature of or the use of the word 'public' in the term 'public utility service'.

Review of the explanatory memorandum and the summary seems to indicate that this interpretation is not the intention of the legislative amendments but this could be made clearer. For example, a commercial entity may be approved by the Minister to provide a service to a mine which will not service the public at large.

Ergon Energy submits that the references to '*public*' in the definition of '*public utility provider*' and the provisions referring to a '*public utility service*' need to be revisited and amended to clarify the above matters.

In particular, proposed new sub-clause (e) of the definition of "public utility provider" does very little to expand or add anything to the current sub-clause (e) (to be renumbered as (g) once the amendments are passed) which already allows the Minister to approve a person to provide a public utility service. Proposed new sub-clause (f) of the definition of "public utility provider" also contains the words *'public utility service'* which creates ambiguity in the case where the infrastructure is being used by an entity to provide a service to one person or for example a mine. Section 369(3) provides *"Also, a public utility easement may be registered in favour of a person mentioned in schedule 6, definition public utility provider paragraph (e), only if the easement is for the public utility service mentioned in the paragraph."* Paragraph (e) of the current definition (to be renumbered as (g) once the amendments are passed) does not have any public utility services mentioned in the paragraph.

Ergon Energy considers that the drafting in section 369(3) needs greater clarity as to what is being referred to. A simple solution may be to define what a public utility service actually is and remove references to "*public*" by renaming it a "*utility service*" or similar.

We would be pleased to make further detailed oral or written submissions to the Committee at your convenience in relation to the matters outlined above.

Graeme Finlayson
Company Secretary and General Counsel
Ergon Energy