

27 June 2014

Ms Erin Pasley
The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

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positive energy

Office of the
Chief Executive Officer

Dear Ms Pasley

National Energy Retail Law (Queensland) Bill and Electricity Competition and Protection Legislation Amendment Bill 2014

Energex Limited (Energex) welcomes the opportunity to provide a submission to the State Development, Infrastructure and Industry Committee in relation to the National Energy Retail Law (Queensland) Bill 2014 (NERL Bill) and Electricity Competition and Protection Legislation Amendment Bill 2014.

The NERL Bill will apply the National Energy Customer Framework (NECF) in Queensland and also apply the national framework for connections, which is encompassed in chapter 5A of the National Electricity Rules. The Electricity Competition and Protection Legislation Amendment Bill will amend the *Electricity Act 1994* to remove retail price regulation in South East Queensland and establish an effective market monitoring regime, and remove or amend provisions of existing Queensland energy legislation to avoid duplication upon commencement of the NERL.

Energex supports the purpose of the Bills, which is to provide enhanced customer protections, reduce the regulatory burden for energy businesses, drive greater efficiencies and foster greater competition in the energy retail market.

Energex has provided a number of comments in relation to each Bill, which are outlined in **Attachment 1**.

The NERL Bill also provides that the Minister must review the operation of the National Energy Retail Law (NERL) no later than 1 January 2018. Energex supports this proposal, on the basis that certain jurisdictional derogations are addressed in the regulations. If these issues are not addressed, Energex will incur significant implementation and ongoing costs to comply, which may ultimately be unnecessary if these provisions are subsequently altered following the review.



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Energex notes that the Department of Energy and Water Supply (DEWS) provided the Committee with supplementary information, which included an overview of the concerns identified by Energex.¹ Energex appreciates the Department's ongoing engagement in regard to these issues and will continue to work with DEWS in relation to the specific drafting of the proposed derogations in the regulations to ensure it achieves the desired objectives as well as with the Australian Energy Regulator to ensure Energex can continue to deliver exceptional customer service and comply with NECF at the least cost.

Should the Committee have any questions in relation to this submission please do not hesitate to contact Mr Kevin Kehl, Executive General Manger Strategy, Regulation and Governance at kevinkehl@energex.com.au or on 3664 4006.

Yours sincerely

A handwritten signature in black ink that reads "T.J. Effeney". The signature is written in a cursive style with a large, looped 'y' at the end.

Terry Effeney
Chief Executive Officer

¹ Department of Energy and Water Supply, responses to Questions on Notice, 10 June 2014, page 5

Attachment 1**National Energy Retail Law (Queensland) Bill 2014**

Energex would like to table with the Committee the following comments in relation to the proposed NERL Bill.

- Section 28 of the NERL Bill provides that the regulator under the Electricity Act or the Queensland Competition Authority may, on its own initiative or at the request of the AER provide the AER with information or assistance reasonably required by the AER to perform a function, or exercise a power. Energex requests that if the information relates to, or was provided by, an electricity entity then this section should include an obligation on the disclosing party to advise the affected electricity entity of the provision of the information and the nature of the disclosure.
- Energex is concerned that the indemnity provisions in section 317 of the NERL Bill do not adequately mirror the existing jurisdictional arrangements in the Coordination Agreement. For example, if Energex performs a disconnection as requested by the retailer, and the customer suffers a loss then the s317 indemnity would have a very different application compared to clause 11(e) of the Coordination Agreement.

The Coordination Agreement indemnity applies if a claim (defined very widely) is made against Energex arising from performing a retailer requested job. The indemnity won't apply where Energex has been negligent, reckless or in breach of the law. Whereas, section 317 applies when a 'shared customer' brings a formal action against Energex. The indemnity then only applies to the extent that the retailer has been negligent, breached a statutory duty or acted in bad faith.

The Coordination Agreement doesn't take into consideration how the retailer came to give Energex the instructions – just that Energex suffered loss from the retailer's request. Section 317 will require Energex to prove that the retailer's instruction was negligent, breached a duty or was made in bad faith.

Energex proposes an amendment should be included to ensure its current risk exposure remains intact that mirrors the current wording of section 11.1(e) of the Standard Coordination Agreement (Annexure C of the Queensland Electricity Industry Code), which provides:

The retailer shall indemnify the distributor against all claims arising from, or incurred by, the distributor as a consequence of the cessation of supply as a result of any disconnection by the distributor pursuant to a service order request, except to the extent that the claim arises from the negligent or reckless act or omission of the distributor, or from any breach or non-observance by the distributor of the Agreement or any applicable law.

Electricity Competition and Protection Legislation Amendment Bill 2014.

Energex would like to table with the Committee the following comments for consideration in relation to the proposed Energy Competition and Protection Legislation Amendment Bill.

- Clause 30 of the Bill appears to have an error as the heading states 'Omission of ss 55DC and 55E' but the direction incorrectly refers to sections 55D.
- Clause 33 of the Bill continues to provide for a retailer and Energex to negotiate a coordination agreement (under section 55H of the Electricity Act) that may differ to the standard coordination agreement that is currently in Annexure C of the Queensland Electricity Industry Code (Code). However, Energex has assumed that the jurisdictional arrangements contained in the Code and coordination agreement would be replaced by the retail support obligations contained in Part 5 of the National Energy Retail Rules and Chapter 6B of the National Electricity Rules.
- Clause 34 of the Bill continues to provide for the operation of the standard coordination agreement under Annexure C of the Queensland Electricity Industry Code. However, Energex has assumed that the jurisdictional arrangements contained in the Code and the standard coordination agreement would be replaced by the retail support obligations contained in Part 5 of the National Energy Retail Rules and Chapter 6B of the National Electricity Rules.