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30 June 2014

The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
Brisbane QLD 4000

Envestra
Investing in energy infrastructure

By email: sdiic@parliament.qld.gov.au

Submission No. 017
11.1.21
30 June 2014

Dear Sir/Madam,

National Energy Retail Law (Queensland) Bill 2014

Envestra welcomes the opportunity to comment on the National Energy Retail Law (Queensland) Bill 2014 ("**the Bill**") as introduced into Parliament on 20 May 2014 by the Queensland Minister for Energy and Water Supply.

Envestra understands that the aims of the Bill are to apply the National Energy Retail Law ("**NERL**") as a law of Queensland and modify the application of the NERL specifically to protect the interests of regional and small electricity customers.

Envestra also notes that the Queensland Government announced its intention to apply the NERL as a law of Queensland following an Interdepartmental Committee Review of the Electricity Sector in Queensland.

The Government is aware that the NERL will also apply to the gas industry in Queensland and as a gas distributor in Queensland, Envestra provides the comments as set out below.

Wide Bay Distribution Network

Envestra understands that under amendments made by the *Statutes Amendment (National Energy Retail Law) Act 2011* (SA) ("**Amendment Act**"), a regulation may be made about how certain parts of the National Gas Rules apply to a 'nominated distributor' and that 'nominated distributor' arrangements apply to an entity in relation to a distribution pipeline that is not a covered pipeline under the National Gas Law but is authorised under jurisdictional gas legislation.

Envestra understands that it will be nominated in respect of its Wide Bay distribution network, comprising the Maryborough to Hervey Bay distribution network and the Bundaberg distribution network, both of which are authorised under distribution authority DA-A-007.

Envestra accepts this nomination as it will ensure that customers connected to the Wide Bay network will receive the same rights and protections as other gas customers in Queensland in addition to reducing regulatory duplication by operating under a single regulatory framework.

Part 21 National Gas Rules (Billing and Payment Rules and Credit Support)

Envestra understands that when the National Energy Retail Law is applied as a law of Queensland that the amendments made to the National Gas Law by the Amendment Act also start to apply in Queensland.

Envestra notes that the Amendment Act amends the National Gas Rules to include a new Part 21 which contains:

(a) new billing and payment rules (Divisions 2 and 3 of Part 21); and
(b) associated credit support regime (Division 4 of Part 21).

The new billing and payment rules will alter the financial arrangements that have applied between Envestra and its Queensland gas retailers for many years.

Notably:

(a) Envestra and retailers will need to amend their billing and payment systems to implement the new billing period and statement/information formats; and
(b) new credit support arrangements between Envestra and retailers need to be put into place.

The new credit arrangements may require at least some retailers to provide Envestra with bank guarantees, which have not previously been required.

The significant financial encumbrances and approvals associated with credit support combined with the negotiations that Envestra is anticipating concerning possible alternatives to the required level of credit support means that several months should be allowed in order to finalise these arrangements.

Envestra is particularly concerned that the proposed commencement date for the NERL of 1 July 2015 will mean that Envestra and retailers will be operating under access arrangement terms and conditions that are inconsistent with the NERL arrangements. Billing and credit support are critical aspects of the relationship between Envestra and retailers, and it is therefore highly desirable from a legal perspective to have full consistency between regulatory and contractual arrangements.

In these circumstances Envestra requests that the Government defer the commencement of the billing and payment rules and credit support regime i.e. Part 21 of the National Gas Rules for a short period until the commencement of the next access period, which is 1 July 2016.

Retailer of Last Resort

Envestra has recently held discussions with the Queensland Government over the adoption of the Retailer of Last Resort scheme ("**RoLR**") as set out in Part 6 of the *National Energy Retail Law (South Australia) Act 2011* (SA), albeit a final decision on its application is yet to be determined.

In summary and as discussed with Government, in light of other cost increases that are likely to be imposed on Queensland gas consumers, Envestra's preference is that no RoLR system be introduced. The downstream Queensland gas industry has managed without such a scheme since the introduction of natural gas and given the unlikelihood of a retail failure event occurring, and the significant costs involved to set up systems to support compliance with the scheme, Envestra does not believe there to be any material gain or further protection for consumers of a failed retailer with such a scheme in place.

In the event that a scheme must be introduced, Envestra's preference is that it be adopted for "Tier 2 Retailers" only and that at least a one-month period for transferring customers of the failed retailer to the default RoLR is legislated. This would minimise the costs imposed on Queensland consumers, particularly at a time when significant gas prices are anticipated and wholesale gas prices are increasing markedly due in part of the commencement of the LNG industry in Queensland. Further, if a RoLR system is required, Envestra would need a transition period until at least the end of September 2015 (and possibly December 2015) to ensure compliance. This is necessary for Envestra to schedule the work with other elements of its IT programs.

In any case Envestra will continue to discuss the adoption of the RoLR scheme with Government and expects that any modifications to the application of Part 6 (if any) will be addressed in local regulations.

Distributor Liability

Distributor liability is an important issue because:

(a) Envestra currently (and historically) has not been exposed to unlimited liability for customers; and
(b) the introduction of the NERL changes the status quo and exposes Envestra to unlimited liability. Consequently, the likely result is that Envestra's insurance costs would need to increase, resulting in higher tariffs to consumers.

Envestra proposes that the principles that should be adopted by the Queensland Government in implementing the NERL are to:

(a) maintain the status quo with respect to the current allocation of liability risk between the distributor and customers; and
(b) take into account the economic principles concerning allocation of liability in the market place that clearly demonstrate that there are sound reasons as to why distributors (both electricity and gas) should have limited liability exposure.

It is important to note that electricity already operates under a triangular contractual regime, whereas Envestra is moving from a linear to a triangular arrangement. Under the access arrangement regime, Envestra has had some liability protection because its contractual relationship was directly with retailers only.

Under the NERL however, Envestra will now be exposed to liability directly from customers. Unlike electricity, this presents a step change for gas. Hence, unlike electricity, Envestra cannot rely upon any part of the existing regulatory regime for liability protection.

In relation to the second point above, it is well accepted that there are a number of reasons as to why it is appropriate and economically efficient for a distributor to have the benefit of limited liability. Envestra's reasons on the matter have been previously provided to and endorsed by the Queensland Competition Authority and support the current allocation of risk between the distributor and customers.

Envestra therefore requests that the Queensland Government give similar consideration to this issue in the Bill. This would be achieved in Envestra's case by essentially retaining the existing provisions contained in the current access arrangement. Those provisions allow for:

(a) maximum liability of $100m for any one event, for damage to property or persons (the access arrangement allows for $100,000 but Envestra is comfortable with increasing this to $100m in line with prudent insurance levels; and
(b) exclusion of consequential loss.

The above provisions are set out in clauses 27.7 and 27.6 of the access arrangement terms.

Cost Recovery

In relation to recovery of implementation costs associated with the NERL in Queensland, Envestra believes that it should be entitled to cost recovery under the National Gas Law and will rely on the approved "cost pass-throughs" for certain unexpected costs incurred between Access Arrangement reviews. The principles that underpin cost pass-throughs are:

(a) the event was not within the distributor's control;
(b) it was not reasonable to have expected the distributor to forecast the costs associated with the event for inclusion in the distributor's forecast costs for the regulatory period (particularly if there was uncertainty in respect of timing or impact of the future event); and
(c) if the distributor had been in a position to foresee and forecast the event and its cost impact, then that cost would have been incorporated as part of its regulatory forecasts.

It is clear that the implementation of the NERL would satisfy the above cost recovery principles and it would be appropriate for the Bill to recognise this.

An appropriate means of ensuring cost recovery would be for the Bill (or other transitional legislation) to include the following cause (or something similar):

"For the purposes of a distributor's gas Access Arrangement, the costs arising from the preparation and implementation of the National Energy Retail Law (and associated connection framework under the National Gas Law) shall be treated by the AER as a recoverable cost, not subject to a materiality threshold, and shall be recovered in similar fashion to other trigger events in the distributor's Access Arrangement."

Life Support

There are some aspects of the NERL that by default also apply to gas even though they stem from electricity-only issues i.e. life support provisions.

Harmonisation of the NERL has now unwittingly extended the notion of life support to apply to gas, notwithstanding that Australia-wide, there are no known gas consumers currently registered as life support customers or currently dependent upon natural gas for their life support equipment.

The NERL's life support obligations are therefore a new matter of compliance for the gas industry and there are no current processes in place to support the provision by the retailer, following customer contact, of life support details to the gas distributor. That compliance will come at a material cost without providing any practical customer protection outcomes.

In contrast, there are a range of measures that the electricity industry must have in place to support customers with electrically operated life support equipment, and it is recognised that the customer must also have a contingency plan for unexpected loss of electricity supply.

Envestra is therefore requesting that consideration be given to this issue and an exemption made for life support provisions applying to gas distributors.

Extreme Weather Events

Envestra recognises that the NERL's definition for "extreme weather event" is not applicable to gas distributors.

To that end Envestra request that the Bill explicitly provides that the obligations requiring consideration of extreme weather events, does not apply to gas distributors.

Existing Connection Contracts

Envestra supports the Government's decision to ensure carriage of the terms and conditions of pre-existing negotiated connection contracts upon commencement of the NERL in Queensland per sections 26 and 27 of the Bill, and believes that these sections adequately protect the entitlements and/or rights accrued by the relevant parties.

AER Approvals of Connection Contracts

Envestra supports the Government's decision to allow connection services to be provided for a stated period of more than one year under a model standing offer that has not been approved by the AER as set out in section 40 of the Bill.

Small Claims Compensation Regime

Envestra supports the Government's decision to not apply Part 7 of the *National Energy Retail Law (South Australia) Act 2011* (SA) as set out in section 25 of the Schedule to the Bill, which provides for a small claims compensation regime.

All jurisdictions in which Envestra owns distribution networks have existing ombudsman schemes for small customer compensation, and these schemes have worked extremely well for gas distributors over many years. Furthermore South Australia, which was one of the first participating jurisdictions to apply the NERL, has opted not to apply the small claims regime for these reasons.

Local Regulations

Envestra understands that following Parliamentary approval of this Bill that further consequential//application legislation may be required to apply the NERL in full to Queensland and address any further jurisdictionally-specific issues. As mentioned at the outset of this response, Envestra appreciates the opportunity to comment on this Bill and would also appreciate being consulted on these subsequent instruments if possible.

Questions or comments

Envestra trusts that the above response is of assistance however if there are any further questions or comments please contact me on (08) 8418 1125.

Yours sincerely,

Andrew Staniford
Group Manager, Commercial