12/7/12

Electricity (Early Termination) Amendment Bill 2012

Opening Statement by the Department of Energy and Water Supply

Background Information

In Queensland, small and residential customers have the option to be supplied electricity under a standard retail contract with notified prices or under a negotiated (market) contract.

In Queensland, small customers are those that consume less than 100 MWh per annum and residential customers are those that generally consumer less than 100 MWh[1] but may consume more, and their electricity consumption is for domestic use.

When we move into a house and start consuming electricity, consumers are automatically supplied under a deemed standard retail contract. This means that the contract terms, which are mandated in the *Electricity Act 1994* and the Electricity Industry Code; apply even though the customer has not signed anything. It gives customers protection both through a set of standard terms and conditions and through regulated tariffs which are known as notified prices.

Customers that "go-to-market" are those that have negotiated and consented to a negotiated or market contract with their retailer (retail entity). Market contracts also have a minimum set of terms and conditions, but these are more "light-handed". This means that they only cover a number of minimum terms such as billing and payment options; but do not contain the same types of requirements as those in the standard retail contract.

Market contracts generally offer customers better prices or other benefits in exchange for a commitment from the customer that they'll be supplied by their current retailer for a fixed period of time (1-2 years). Market contracts often offer the customer a % percentage discount off their applicable tariff (usually between 5% and 15%) or offer early payment or direct debit discounts. When assessing whether a market contract is the right product, the customer should examine previous bills to assess their average consumption against the tariff and other charges (such as fixed charges) alongside the offered percentage discount before making a decision to sign-up to a market contract.

Most retailers that sell electricity to small and residential customers have a number of different market offers available. This is an important part of a competitive industry such as the retailing of electricity. The more competition between retailers generally, the better the products, offers and prices that are available to customers. In Queensland, the commencement of full retail contestability on 1 July 2007 saw the advent of customers being able to choose their retailer. With full retail contestability came greater competition in the electricity market and a greater choice of large and small electricity retailers for customers to choose from.

Whilst large retailers can better absorb costs associated with regulatory change, small retailers have a smaller margin and are more likely to be affected by pricing and other regulatory changes. Small retailers are essential to competition as they can produce innovative products and offers for customers with competitive prices.

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[1] 100 MWh is equivalent to a bill amounting to $20,000 per year

Other key matters affecting retail electricity market

Pricing of electricity supply is a key policy matter for all Australian Governments. The Queensland Government in addition to the Cost of Living priorities has also established a Interdepartmental Committee to review the operation of the electricity sector in Queensland. This initiative has also established an independent review panel to examine network costs.

The commencement of the Federal Government carbon tax on 1 July 2012 also has an impact on pricing pressures for electricity. Under its Cost of Living priorities, the Queensland Government froze the standard electricity tariff (Tariff 11) for 12 months from 1 July 2012, excluding an increase due to the introduction of the carbon tax. The Government also made arrangements to lower the equivalent network tariff for residential customers in order to provide a subsidy to retailers for the freeze.

It is important that statements made by retailers to their customers about the drivers of price increases are not misleading or deceptive. In particular, the Government is concerned that broad representations about increases in network costs and State environmental schemes contributing to price rises may have misled some customers, particularly those that are benefiting from the Government's price freeze on Tariff 11 and those on market contracts that might believe price increases are inevitable.

The ACCC is responsible for investigating potential misconduct under Australian Consumer Law, including laws against making false or misleading representations about the price of goods or services. On 10 July 2012, the Treasurer wrote to the ACCC asking it to investigate the conduct of one retailer.

Why did the Government introduce the Electricity (Early Termination) Amendment Bill 2012?

Following the implementation of the price freeze to Tariff 11, some electricity retailers issued notices to their residential customers on market contracts to advise that the charges under their contract would be increasing. Some of these charges related to the fixed component (not the tariff) on their bills. Some of these fixed charges increased by 150% or more. This caused the charges under the market contract (on face value) to be higher than the corresponding notified / regulated prices.

The Government in its press statements has expressed disappointment with this action particularly in light of its election commitments to reduce cost of living expenses including electricity. The Government's delivery of this commitment was to freeze the price of Tariff 11 for the 2012-13 year. The impact of this price-freeze is compromised by the action of some retailers significantly charging above notified prices.

There are market competition issues that would need to be considered before Government could take any action to cap the price that a retailer can charge in a market contract.

The Government decided to prohibit exit fees in certain circumstances to encourage fairness and competition by making it easier and less costly for customers to switch to a different energy retailer. The Bill puts in place this measure.

This measure is achieved through amendments that will require retail entities to notify affected customers of increased charges that are above notified tariffs As with any contractual relationship, the customer will be responsible for assessing the new charges against any discounts or any benefits which form part of their existing negotiated or market contract.

It is important to note that the amendments to the *Electricity Act 1994* are not designed to up-end negotiated contracts which already contain charges and mechanisms (such as CPI rises) for increases to charges over the term of the contract. The proposed changes will not apply to contracts in which the customers agree to higher charges overall, but which are guaranteed to remain the same for the entire term of the contract; thereby providing price certainty to customers.

How do the amendments work?

The amendments only apply to negotiated contracts (market contracts) under the *Electricity Act 1994*.
They apply to small and residential customers only.
The provision is activated only when a retailer issues a notice to a customer advising them that their charges have increased and the increased charges exceed notified prices. The retailer must advise the customer that the increased charges will exceed notified prices and that the customer is able to terminate the contract without having to pay an early termination fee.

The changes will have no effect on existing Ergon customers, as Ergon does not offer market contracts.

If the customer receives such a notice, they have 20 days to make a decision about whether they want to terminate their market contract with their retailer and if they decide to do so, must issue the retailer with a notice in writing to that effect.
The contract will then terminate within 10 days of its issuing to the retailer.
Under these circumstances, the retailer will be prohibited from charging the customer an early termination.

Additionally, the Bill includes a transitional provision so that existing customers with negotiated contracts benefit from this protection. Market customers that have been notified of price increases between 1 June 2012 and the date of commencement of the Bill will have a 20 business day's notice to revert or terminate their contract. A notice period of 20 days is a current feature of many market contracts.

The amendments are designed to operate regardless of what some existing market contracts between the customer and the retailer actually may state about early termination fees.

However, it is important to note that the onus is on the customer to carefully assess whether the new charges, taking into account any additional benefits such as percentage discounts, will make them worse off and whether they would be better off either sticking with the contract, reverting back to a standard retail contract with regulated tariffs, or switching to a new product with a new retailer.

Consultation

Consultation in developing the Bill was limited to Government departments. A Government press statement on 29 June 2012 indicated Government was considering banning break fees. Following introduction of the Bill into Parliament on 10 July 2012, the Department sought feedback from retailer and consumer groups.

Responses received prior to today's departmental briefing indicate:

- retailers have responded thoughtfully and extensively to the proposal
- some retailers indicated concern regarding insufficient time to adequately assess the impacts of the proposal on commercial operations
- some retailers will be unaffected as they don't have market contracts with charges above the notified prices
- some retailers have existing voluntary provisions that allow customers to terminate contracts without penalty if the total bill is higher than a standard retail contract
- some retailers (AGL and AP&G) raised concerns regarding lack of clarity regarding treatment of discounts in applying the proposed legislation; furthermore pointed out that comparing one tariff rate against the notified price does not provide a true assessment of the total cost to customers and that a 'whole of bill' approach is the clearest way to illustrate whether a customer is better off under a market contract or regulated price
- some retailers (AP&G) are concerned that the proposed changes lock them into a price 'ceiling' where they are in an uncertain market environment re wholesale energy prices and therefore may jeopardise their ability to participate in QLD market
- some retailers (Lumo) raised concerns regarding additional costs to change collateral and processes
- consumer groups support the certainty the mandatory ban on exit fees provides rather than leaving for retailer discretion in market contracts
- other feedback from consumer groups
    - written notice should not be required to terminate
- Retailers also sought clarity regarding
    - Treatment of conditional discounts such as Pay on Time
    - whether re-notification is required for those customers who have already been advised of a price increase
    - whether penalties apply to each offense or each event

Urgency of the proposed amendments – what happens if the Bill is not passed as soon as possible?

If the Bill is not debated and passed as soon as possible, some households on market contracts will not be able to access cheaper electricity prices established by the price freeze of tariff 11 without first paying exit fees. This situation will compromise the Government's ability to deliver its priority to reduce the cost of living for all Queenslanders in 2012-13. The passage of legislation will provide certainty of arrangements for both customers and retail businesses. Although the change is retrospective and will affect existing market contracts, it is not an excessive measure, given that some retailers already have in place equivalent provisions for their market customers. Urgent passage of the legislation means that this protection will be available to all customers.