



Hon Stephen Robertson MP
Member for Stretton



MBN2970
MO/10/1482

Minister for Natural Resources,
Mines and Energy and
Minister for Trade

Mr Brian Parmenter
Chairperson
Queensland Competition Authority
GPO Box 2257
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21 APR 2010

Dear Mr Parmenter

Thank you for your letter dated 22 March 2010 providing me with a copy of the final decision of the Queensland Competition Authority (the Authority) on the '*Amendments to the Electricity Industry Code requiring prior notice for price changes*'. I have also received your letter dated 12 April 2010 providing me with a revised set of amendments to correct an error in proposed new Clause 4.12.8(b) and change the proposed commencement date to 31 July 2010.

Thank you for all of the work undertaken by the Authority in developing the proposed Code amendments.

Under section 120(2) of the *Electricity Act 1994*, I have decided –

- (a) **not to approve** the proposed Clause 4.12.8; and
- (b) **to approve** the remaining proposed amendments to the Electricity Industry Code, but with all references to Clause 4.12.8 removed.

I have decided not to approve proposed Clause 4.12.8 because:

1. I believe the Authority has failed to afford electricity retailers natural justice in relation to proposed Clause 4.12.8; and/or
2. Proposed Clause 4.12.8 is inconsistent with the QCA code objective under the *Electricity Act 1994*.

Failure to afford natural justice

In my view, electricity retailers have been denied natural justice in relation to proposed Clause 4.12.8.

A person whose rights, interests or legitimate expectations could be affected by a decision should be given a right to be heard. In this case, that means the electricity retailers, as the proposed Code amendments will be binding on them on commencement.

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The duty to give natural justice is implied in almost all decision-making processes. The only exception is where the statute specifically excludes the rules of natural justice. The rules of natural justice apply right up until the decision is made. This may require that natural justice be provided more than once and as many times as needed.

My view that the Authority has denied electricity retailers natural justice in relation to proposed Clause 4.12.8 is based on the following observations –

- (a) The draft Code amendment included a requirement for electricity retailers to notify customers of the tariff changes by individual written communication including “**details** of how the increase will specifically affect the customer” or by newspaper article provided that “**full details** of how the price change has affected the customer appears on the next bill received by the customer”;
- (b) The Draft Decision did not specify what “details” and “full details” were intended to mean. In my view, those words would reasonably be interpreted to require electricity retailers to provide details about the price increases being imposed only;
- (c) The proposed Clause 4.12.8 published with the Authority’s Final Decision is significantly different to the proposed Code amendments included in the Draft Decision, in that -
 - (i) They require, **as a minimum**, the provision of two **tables** that **both compare pre and post price change information**. There was no indication of any such requirements previously;
 - (ii) While some of the information to be included in the tables referred to in proposed Clause 4.12.8(a) and (b) is information that would be required to be provided under Clause 8.2 of the Code (i.e. a fact sheet based on current prices and a new fact sheet based on the increased prices), there is no obligation under Clause 8.2 of the Code to prepare a table comparing the two scenarios and including the percentage change. There was no indication of any such requirements previously;
 - (iii) The table referred to in proposed Clause 4.12.8(a) relates “to the negotiated retail contract”, which means that a comparison tailored to that particular contract is required. There was no indication of any such requirement previously;
 - (iv) Proposed Clause 4.12.8(c)-(h) requires the information prescribed to be provided, even if no changes are applicable. There was no indication of any such requirements previously; and
 - (v) Proposed Clause 4.12.8(j)-(k) requires the provision of advice on how or where consumers may obtain information to manage their energy usage and their rights to switch energy providers. There was no indication of any such requirements previously.

The Energy Retailers Association of Australia and electricity retailers have, in my view, legitimately raised concerns about the lack of consultation by the Authority about proposed Clause 4.12.8. They claim that compliance with proposed Clause 4.12.8 will impact on their businesses and that some of them may not be able to comply with the requirements by the commencement date.

Inconsistency with the QCA code objective

The QCA code objective is “to promote efficient investment in, and efficient use of, electricity services for the long-term interests of Queensland customers about –

- (a) price, quality, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the Queensland electricity system”.

On the information available to me, I consider that proposed Clause 4.12.8 is inconsistent with the QCA code objective as there is a considerable risk that its implementation may result in an outcome that is inefficient, costly and not in the long-term interests of electricity customers in Queensland.

I appreciate that the cost implications of the implementation of proposed Clause 4.12.8 for electricity retailers will depend on a range of issues including the pricing structure and systems that the retailers have in place. However, in forming my view on the inconsistency of proposed Clause 4.12.8 with the QCA code objective, I consider it relevant that a number of electricity retailers have raised what seem to be valid concerns about the difficulty and potential significant cost of implementing the requirements of proposed Clause 4.12.8.

While I fully agree with the Authority that it is important for customers to be given “full details” of price changes, I consider this important matter requires further consideration. In this regard, I propose to consult consumer groups and electricity retailers through my Energy Retailers’ Roundtable for advice. This will ensure we achieve a consensus view on the level of detail that is appropriate and readily understood by customers.

Notwithstanding that I have decided not to approve proposed Clause 4.12.8, I thank the Authority for its action in addressing the need for electricity retailers to provide customers with prior notice of price increases and am pleased the amendments approved for commencement on 31 July 2010 will provide enhanced protection for small electricity customers.

Should you have any queries about this matter, Mr Dermot Tiernan, Executive Director, Energy Sector Monitoring Division of the Department of Employment, Economic Development and Innovation will be pleased to assist you and can be contacted on telephone 3405 6142.

Yours sincerely



STEPHEN ROBERTSON MP