COMPETITION AUTHORITY

12 APR 2010

DATE RECEIVED

Hon Stephen Robertson MP
Member for Stretton

Queensland Government

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

MBN2884

07 APR 2010

Mr Brian Parmenter
Chairman
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Mr Parmenter

I have been advised that the Queensland Competition Authority (QCA) has sought clarification from my department on the effect of one of the conditions of the Certificate of Delegation in relation to the calculation of the Benchmark Retail Cost Index (BRCI) to establish notified electricity prices for the 2010-11 tariff year.

The relevant condition specifies that *"in calculating the 2010-11 BRCI, the QCA must apply the same methodology as utilised in the 2009-10 BRCI Final Decision which is consistent with the direction of the Queensland Supreme Court of 14 May 2009"*.

I can assure you that the purpose of this condition was simply to ensure the QCA, in making its 2010-11 BRCI decision, complies with the direction given by the Court in the 2009 case involving the judicial review of the QCA's 2008-09 BRCI decision. It was not intended to override the legislation which requires the QCA to make estimates of costs for the relevant years and allows it to make changes to the framework for calculating the BRCI, if it considers there is a clear reason to do so.

However, to ensure this condition cannot be interpreted differently, I have decided to amend the delegation to clarify the original intent of this particular condition. Accordingly, please find attached an amended Certificate of Delegation for the calculation of the 2010-11 BRCI.

Should you have any queries regarding my advice to you, Ms Kathie Standen, Acting Director, Policy Division, Department of Employment, Economic Development and Innovation, will be pleased to assist you and can be contacted on telephone 3225 8256.

Yours sincerely

STEPHEN ROBERTSON MP

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CERTIFICATE OF DELEGATION

Under section 90(3) of the *Electricity Act 1994* (Qld)

Delegation

In accordance with section 90(3) of the *Electricity Act 1994* (the Act), I delegate to the Queensland Competition Authority (QCA) the following functions and powers (the delegated activities) for 2010-2011:

1. Calculation of the Benchmark Retail Cost Index (BRCI) under Chapter 4, Part 2, Division 3 of the Act;
2. Application of the change in the BRCI to the tariffs for the previous tariff year as required by section 90(5) of the Act; and
3. Publication of the amended tariff schedule for the relevant tariff year in accordance with sections 90(2), 90(7) and 96 of the Act.

This delegation does not include the power to fix principles under section 95 of the Act.

Conditions of delegation

1. The QCA must apply the change in the BRCI to the tariffs for the previous tariff year, taking into account any other changes to notified prices made by the Minister under the provisions of section 90 of the Act which are not the subject of this delegation, which will be advised prior to the required date for publication of the tariffs in accordance with the Act and this delegation;

2. The QCA must consider the following policy objective of the Queensland Government when exercising the delegated powers and functions:

    a. the annual indexation of electricity tariffs by the index should ensure that existing retail headroom in the tariffs at the date of the Original Delegation made prior to the commencement of full retail competition[1] remains relatively stable (although not necessarily the same from year to year); and
    b. the policy of enabling small market customers to revert to notified prices should not result in a retail entity providing customer retail services to non-market customers at a loss;

3. In calculating the 2010-2011 BRCI, the QCA must act according to law, and in particular have regard to the decision and reasons for decision of the Queensland Supreme Court in AGL Energy Ltd v QCA & Anor; Origin Energy Retail Ltd v QCA & Anor [2009] QSC 90.

4. The QCA must complete the delegated activities for the 2010-2011 tariff year no later than 31 May 2010;

5. On the same day that the QCA gazettes the tariff schedule for a tariff year, the QCA must make a public announcement of the change to the notified prices; and

[1] The Original Delegation was made under section 90(3) of the *Electricity Act 1994* on 27 March 2007.

6. Any other conditions formally notified by the Minister from time to time.

This delegation applies to the calculation of the BRCI for 2010-11 only, and revokes and replaces my delegation of 3 June 2009.

STEPHEN ROBERTSON MP
Minister for Natural Resources, Mines and Energy
and Minister for Trade

Dated: 7 March 2010