



Minister for Energy and Resources

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Mr Chris Pattas
General Manager, Networks (Operations & Development)
Australian Energy Regulator
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MELBOURNE VIC 3011

Dear Mr Pattas,

SPI ELECTRICITY PTY LTD 2011-15 DISTRIBUTION DETERMINATION INSURANCE PASS THROUGH EVENT - DRAFT DECISION

The Victorian Government welcomes the opportunity to provide a submission on the 'SPI Electricity Pty Ltd 2011-15 Distribution Determination Insurance Pass Through Event – Draft Decision'.

As a matter of principle, the Victorian Government would not support any regulatory outcome that resulted in the victims of negligence paying for damage caused by their electricity network, where that damage is due to negligence and the network business failed to take action expected of it to avoid or reduce that damage.

I understand that the existing arrangements would most likely preclude such an outcome if a network business were to seek to pass through such costs. Nevertheless there is some community concern that such an outcome may be possible, and it is important that the intent of the existing framework is clarified by the Australian Energy Regulator (AER).

More generally, I understand that this draft decision is made by the AER in compliance with an order of the Australian Competition Tribunal to remake the definition of 'insurance event' for the purposes of the SPI Electricity Pty Ltd (SPI) 2011-15 distribution determination.

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This definition is relevant to the operation of the 'pass through' regime prescribed by the National Electricity Rules. That regime operates to allow an electricity distributor to apply to the AER for approval to recover costs incurred by the distributor where a defined event occurs during a regulatory period, the costs incurred are material and have not been allowed for in the distributor's approved annual revenue requirement. These defined events are generally events regarded as 'beyond the control' of the distributor, which are definable but which may not actually occur during a regulatory period.

In its October 2010 Victorian distribution revenue determination 2011-2015 final decision (distribution determination), the AER added an 'insurance event' to the list of pass through events prescribed by the National Electricity Rules. The AER did this in accordance with the discretion allowed it by the Rules.

This event will allow an electricity distributor to apply to the AER for approval to recover costs incurred in relation to a claim made on the distributor's insurance policy where those costs exceed the associated insurance cap and where that insurance policy has been approved by the AER. I understand that the purpose of the event is to provide a disincentive to electricity distributors to 'over insure' resulting in higher insurance premiums and higher costs to consumers.

My concern with the draft definition of an insurance event is that it may apply to any event which results in a claim on a distributor's insurance, whether or not that event is beyond the control of that distributor or within the control of the distributor. In particular, if consumers are required to pay for an event that could have been avoided by a distributor, this will have the effect of reducing the incentives on the distributor to:

- take out efficient levels of insurance; and
- take efficient steps to minimise the likelihood of an event leading to an insurance claim occurring.

If the AER does receive an insurance event pass through event application from a distributor, I expect that the AER would consider relevant matters such as:

- the event leading to the insurance claim, and surrounding circumstances, including acts the distributor took, or failed to take, to prevent the event occurring;
- the actions of the distributor following the event, including acts the distributor took, or failed to take, to mitigate the impact of the event and the amount claimed by the distributor;
- confirming that the distributor has not under insured in relation to the event;
- the conduct of the distributor in related legal proceedings (if relevant); and
- the findings of a Court (if relevant) in relation to the conduct of the distributor regarding the event and that a finding of negligence or wrongdoing on the part of the distributor may significantly reduce the pass through amount approved by the AER.

As noted earlier, as a matter of principle, the Victorian Government would not support any regulatory outcome that resulted in the victims of negligence paying for damage caused by their electricity network where that damage is due to negligence and the network business failed to take action expected of it to avoid or reduce that damage.

Finally, I am concerned with the confidentiality surrounding the Tribunal hearings in relation to this matter (which I understand was opposed by the AER). I would urge all parties involved to disclose fully the Tribunal's decision and reasons for its decision in favour of SPI's application.

Should you have any queries in relation to this submission, please do not hesitate to contact Mark Feather, Executive Director, Energy Sector Development in the Department of Primary Industries on telephone (03) 9658 4793 or by email on mark.feather@dpi.vic.gov.au.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Michael O'Brien', with a long, sweeping horizontal line extending to the right.

HON. MICHAEL O'BRIEN MP
Minister for Energy and Resources

12 / 9 / 2012