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Wednesday 27th April 2011

Australian Energy Regulator
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Dear AER,

Please be advised that I have no concerns that my particulars, and also this submission appear on the AER's website.

SUBMISSION TO DRAFT DECISION AND ANY REVISED PROPOSAL SUBMITTED BY ENVESTRA

I am truly disturbed after reading the draft that Envestra wishes to include the hot water assets (that it has sold to Origin Energy) to be included in the capital expenditure, maintenance costs, replacement costs, service costs, telemetry costs, meter reading costs and depreciation & amortisation costs of these things, and other non-distribution costs in its access agreement.

If anything, these costs should not be taken as a pass-through cost, for it should no longer be seen as a cost to its business model. After the sale of these assets to Origin, the asset base, and past pass-through costs should be adjusted to show that this is no longer a pass-through cost that is borne by Envestra.

EARLIER ACCESS ARRANGEMENTS

The earlier access arrangement that existed in the period 1 July 2006 until 30 June 2011, needs to be properly vetted again so as to reflect the absence of these assets, for to deem these cost to be unaffected, would cause these costs to be passed through without proper rigour.

The earlier access arrangement in Queensland, saw hot water and its meters as "excluded", "non Duoss", "ancillary", "non reference" and "other" services that were overseen by the Queensland Competition Authority. Under that regime it was treated "light handedly" via the political agenda of the Queensland State Government and the Queensland Department of Mines and Energy.

The previous regulator dealt with these other cost in a different way, as compared to the current NGL which

requires the AER to have regard to the method used in the capital base adopted by the previous regulator. The previous regime was different to the one now in use.

Regulation of hot water supply, its attendant meters and meter reading fees, do not exist in Queensland. Distributors and retailers can charge what they like for these things. There is no safety net, community service obligation, or consumer protection, and the Energy and Water Ombudsman must never deal with this essential service. Queensland has no essential services wing, and the Parliament of Queensland has given no protection to these consumers.

Queensland consumers receive an invoice for hot water sales "BY THE LITRE" and no ascertainment, conversion factor or pro-rated factor, exists for such usage to appear as Mj's (for natural gas powered shared hot water) or kWh's (for electricity powered shared hot water).

REFERENCE SERVICES

The haulage reference services alluded to in the above are now in the hands of a retailer, and no longer in the hands of the distribution network provider.

After reading the draft report, I can understand why the AER is in the dark regarding these reference services, and indeed all matters to do with the supply of hot water is a trade secret between distributors, retailers and the state and national authorities that deal with energy matters.

The capital redundancy of Envestra needs to be revisited so as to reflect the true asset base and pass-through costs of its business model, now that it has changed. Its opening capital base needs adjustment to reflect the goods and services that it no longer has or provides. There should also be an adjustment to Envestra's projected capital base.

The network related service provisions need adjustment also, for Origin now have the ownership and meter reading services in relation to hot water meters. These services should not be included in the access agreement, because Envestra no longer does such provision.

Everything to do with hot water assets, and its attendant services and provisions are no longer a pass-through cost that is borne by Envestra. These are now retail costs borne by a retailer, Origin Energy and its subsidiary Sun Retail. Origin are now the "Responsible Person" for meter reading and data collection service for hot water meters.

If the AER accepts the network management fees paid by Envestra to APA Group, the network operator, any amounts include in this arrangement also needs to specify any cost in relation to hot water. The AER is correct in not considering the inputs to residential demand forecast for this would also include hot water provisions.

The AER needs to recognise that, under the regime of the AEMO, hot water meters and their reading by DNSP's is a haulage of something even though hot water has not undergone "haulage" from or to anywhere. The AEMO is of the opinion that energy meters are also hot water meters. The AEMO is including anything that energy entities want.

It seems that energy distribution companies see these meters as a valid pass-through cost, even though no energy is measured by such devices. In the considerations visited upon by the AER, one matter to do with meter replacement is mentioned:

The number of meter replacements is driven by the requirements of the Queensland Petroleum and Gas (Production and Safety) Act. The AER is satisfied the forecast number of meter replacements is consistent with the requirements of the Act based on the condition of

the network. However, the AER requires Envestra to remove the 10 per cent contingency allowance, which is discussed further in section 3.6.2.4.

That Act does not mention hot water meters.

COMPETITION AND CROSS-SUBSIDISATION

Queenslander's will not tolerate the inclusion and/or cross-subsidisation of procurement, installation, planning and design system, network engineering and support services that relate to the provision for hot water supply. These things are now the providence of Origin and not Envestra.

Hot water provisions are not Envestra's network costs in Queensland, any more.

Queensland has the jurisdictional sway over energy licences at the moment, and none issued so far contain guidance in regards to hot water supply.

The NGL states that when performing or exercising an economic regulatory function or power, the AER must do so in a manner that will or is likely to contribute to the achievement of the national gas objective. The national gas objective is:¹¹

... to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

The AER must take into account the revenue and pricing principles when exercising its discretion in approving or making those parts of an access arrangement relating to a reference tariff. The AER may also take the revenue and pricing principles into consideration in its performance or exercise of any other economic regulatory function or power where it considers this appropriate.

Let us hope that the AER in its future role as consumer regulator, will properly address the concerns of hot water consumers.

METROLOGY

In clause 10.6 "Inaccurate Meters" and the new laws relating to Trade Measurement. I have attached a PDF from the National Measurement Institute and its pattern testing procedures for cold (potable) water meters and also hot water meters (NMI R 49-2.pdf). On page iii of the introduction it states:

While OIML R 49-1 includes sections and clauses that allow for the testing and pattern evaluation of hot water meters, NMI will not pattern approval hot water meters.

The maximum admissible temperature of any pattern approved water meter shall be 30°C with a limiting condition of 50°C.

Hot water meters have no providence in Trade Measurement. From 1/7/10, the exemption, by the National Measurement Institute, still remains and applies to hot water meters. This exemption refers to the pattern approval of hot water meters and is still in place in Australia because there is no testing laboratory in Australia that can test hot water meters for pattern approval.

Whilst hot water meters can be pattern approved in overseas laboratories, there is no agreement in place between Australia and the overseas laboratories. Even if such an agreement was in place, the verification of the hot water meters would still need to be done in Australia. Furthermore, verification periods are set by State and Territory regulatory authorities.

In light of the above, hot water meters may soon be termed illegal. They are exempt from having to be pattern approved for use, but this exemption may soon lapse.

Pattern approval for potable cold water meters has a maximum of 50 Deg C, as an upper limit, but hot water systems have a minimum operational temp of 60 Deg C, because of legionella risk (Australian Standards).

It will be an illegal device for trade measurement. It will not have proper rigor or providence for sale of hot water in trade or commerce.

OTHER SERVICES

In clause 19 the retailers complain about the cost of other services. It is proper for the AER to exclude all matters to do with these "OTHER" services.

COMPETITON AND CONSUMER LAW

In Clause 29.2 Origin submitted that the new competition and consumer law be taken into account. Both of these parties need to make provision for matters to do with;

- The admission by Origin that it deals with property developers and not the end consumer when initiating hot water contracts. (see attached PDF's)
- Unsolicited supply, for energy entities do not have written contracts with the end consumers.
- Unconscionable conduct with regard to hot water supply not being a contestable market, and the ability for price gouging (in Queensland) for shared hot water and meter services.
- Matters of duress, for the energy entity can subjugate the end consumer with threats of disconnection (in Queensland) with consumers having no easy and cost free remedy, as in other jurisdictional schemes.
- The identification of parties that have beneficial control and /or ownership of, and/or leasing of, the master energy meters that power shared hot water heaters. That control causes the end consumer to suffer any cost enforced by the energy entity.

PRICE GOUGING IN AN UNREGULATED MARKET

A remedy that may stop price gouging would be that all pass-through or other attributable costs, also pass a similar test that applies to agreements, and that invoices to end consumers cite those costs without any mark-up allowed. That way all retailers would be on a known level playing field.

Origin already apply cross-subsidisation to hot water consumers in Queensland, with a discount for gas customers, that also are supplied with shared hot water. Origin have the ability to use its hot water customers as a cash cow, in an unregulated market that is Queensland, and thereby defeat proper competition of their competitors who have no such asset.

If Woolworths and Coles entered into the market as retailers of energy, would the ability to use other goods and services proffered by them, be allowed to cross-subsidise energy pricing? Of course not. I see no reason that such a thing should be tolerated in the energy sector. One gets the impression that any disparate and unrelated asset that an energy entity may own, seems to be allowed to intrude into energy matters and energy market competition.

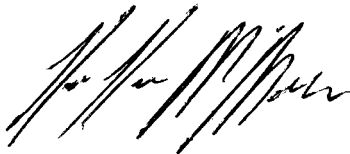
Are any other assets and profits allowed to be used as a hurdle that their competitors do not have? After all, they are selling energy, and this cash cow, and competition barrier, does not bode well for a level playing field.

After all, they are selling energy, and the ability to economise, and bring in savings of administration that retailers use, would be reflected in the price of gas and electricity (i.e. Mj's and kWh's). True cost reflective pricing is needed to satisfy the National Gas Objective.

SUMMATION

I submit that everything to do with hot water supply and its attendant meter goods and services, should be excluded, and excised from, the access arrangements for Envestra in Queensland.

Yours most sincerely

A handwritten signature in black ink, appearing to read 'Kevin McMahon', written in a cursive style.

Kevin McMahon

Attachments:

1. An email from the Secretary of Envestra noting that they have sold their hot water assets to Origin, which also mentions that Origin do the meter reading as a distribution network service provider.
2. 3 PDF's from origin's website that detail, bulk hot water, serviced hot water and hot water infrastructure and conditions of supply and metrology.
3. A letter from Hon. Martin Ferguson that indicates that hot water matters are excluded from national oversight, and that it is in the providence of the states and territories.
4. A PDF from the National Measurement Institute regarding no pattern testing for hot water meters (NMI R 49-2.pdf). I have sent a copy to the NEMO and await their reply.