

11 September 2014

Mr John Feil
Executive Director
QGDN Application
National Competition Council
GPO Box 250
Melbourne VIC 3001

Email: gas@ncc.gov.au

Dear Mr Feil,

RE: Application for light regulation of Envestra's Queensland Gas Distribution Network

The Energy Retailers Association of Australia (ERAA) welcomes the opportunity to provide comments in response to the National Competition Council's (NCC) consultation on the Application under the National Gas Law for light regulation of Envestra Limited's (Envestra) Queensland Gas Distribution Network (**Envestra Application**).

The ERAA represents the organisations providing electricity and gas to almost 10 million Australian households and businesses. Our member organisations are mostly privately owned, vary in size and operate in all areas within the National Electricity Market (NEM) and are the first point of contact for end use customers of both electricity and gas.

The ERAA has a strong interest in the Envestra Application as three of our members are customers of Envestra's distribution network in Queensland and under full retail contestability in this market, other members may also become customers of Envestra.

Envestra's Queensland gas distribution network is subject to the National Gas Law (NGL) and National Gas Rules (NGR) which sets out the criteria for full or light regulation of its monopoly gas assets¹. Envestra's application for light regulation should be viewed through the context of the AER reforms to improve the regulatory outcomes of gas pipeline and electricity network businesses. The AER's revised approach requires the determination of the total amount of revenue that a distribution network can earn prior to the commencement of the regulatory period, which generally has a five year timeframe. The Building blocks of the total amount of revenue are the total operating and total capital expenditure and the rate of return allowed on the business' distribution network assets.

The rate of return allowed by the AER is predominately driven by the weighted average cost of capital which has been contracting in recent years, as markets have normalised post the global financial crisis. The recent AER determination for the ACT and NSW Electricity Distribution business' Regulatory Proposals (2014-2015), applied a lower rate of return compared to past determinations².

¹ Application for Light Regulation of Envestra's Queensland Gas Distribution Network, p.1

² <https://www.aer.gov.au/node/24576>



Therefore, a lower rate of return would also be reasonably expected to apply to Envestra's Queensland distribution network access arrangements, scheduled to commence on 1 July 2017.

Customer benefit

The Envestra Application details the current expense of full regulation at \$5.2m which is expected to reduce to \$0.6m under light regulation. The saving of \$4.6m over the five year regulatory determination, equates to \$65 per customer³. The savings are driven by the cessation of Access Arrangement and Access Arrangement Information submissions required under full regulation.

The ERAA recommends that the NCC complete benchmarking to ensure the accuracy of Envestra's expenses under both forms of regulation and therefore the quantum of the savings identified in the Envestra Application.

Envestra's intention is to pass on the savings associated with light regulation in the form of lower tariffs⁴. However, the Envestra Application confirms that no detailed consideration has occurred of the prices that will apply under either light or full regulation.⁵ The Envestra Application merely states that future price paths and prices will be subject to commercial negotiation between Envestra and retailers⁶.

The ERAA supports customers receiving the full financial benefit of any move to light regulation as well as savings from the future path of distribution network prices, and is therefore concerned that Envestra's Application is silent on this matter.

The ERAA recommends that the NCC request that Envestra outline a plan to deliver the financial benefit to consumers from light regulation and from the future lower rates of return expected to apply to their network distribution assets. The provision of a robust plan should be a prerequisite to finalising the decision on the Envestra application.

Market power

Market power and countervailing power are critical elements in considering the Envestra Application, as commercial negotiation forms the basis for light regulation. The balance of these elements changes over time through development of markets and participants.

The Queensland Government legislated in September 2014 for electricity retail market monitoring and the introduction of the National Energy Customer Framework from 1 July 2015 in south-east Queensland⁷. These changes are expected to result in new entrants into the Queensland market offering a range of products which could include gas. Therefore, the NCC should be cognisant of this market development when assessing the attributes of the Queensland market.

New entrants under light regulation will be required to negotiate access arrangements under commercially negotiated terms and conditions with Envestra. The ERAA's view is that new entrants have little countervailing power against Envestra's monopoly power to negotiate terms and conditions.

A further concern for the ERAA is that customers' terms and conditions will deteriorate over time as Envestra seeks to extract greater commercial outcomes from customers.

³ Application for Light Regulation of Envestra's Queensland Gas Distribution Network, p.45

⁴ Ibid, p.46

⁵ Ibid, p.48

⁶ Ibid, p.48

⁷ <http://www.parliament.qld.gov.au/work-of-assembly/bills-and-legislation/current-bills-register>

The changes to terms and conditions would be iterative with a retailer reluctant to pursue Envestra through a dispute resolution process for the individual changes due to the expense.

Unless the concerns detailed in this submission are addressed, the ERAA is unable to support the Envestra Application at this time.

Should you wish to discuss the details of this submission, please contact me on (02) 8241 1800 and I will be happy to facilitate such discussions with my member companies.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Cameron O'Reilly', with a stylized, flowing script.

Cameron O'Reilly
CEO
Energy Retailers Association of Australia