22 June 2018

Energy Industry Policy – Strategic Futures
Department of Natural Resources, Mines and Energy
energyreview@dnrme.qld.gov.au

Dear Sirs/Madams


AusNet Services welcomes the opportunity to comment on the Department of Natural Resources, Mines and Energy’s (DNRME) Issues Paper in respect of the review of the Electricity Act 1994 (QLD), Gas Supply Act 2003 (QLD) and Energy and Water Ombudsman Act 2006 (QLD) and relevant regulations (collectively, the state-based energy legislation).

AusNet Services is supportive of DNRME’s proposed review of the state-based energy legislation together with any steps proposed to be taken to prevent potential barriers to competition and to support the growth of contestability, open access and competitive neutrality in the Queensland electricity and gas networks.

AusNet Services has identified a number of important issues in relation to the review of the state-based energy legislation that aim to provide greater certainty for electricity and gas network participants. AusNet Services would welcome on-going dialogue with the DNRME as it progresses through to Stages 2 and 3 of its review of the state-based energy legislation.

Prospective amendments to state-based energy legislation

AusNet Service’s view is that any recommendation published by the DNRME, and any subsequent legislative or regulatory amendments, should apply prospectively, not retrospectively. Further, AusNet Services’ position is that any existing licences/authorities granted pursuant to the state-based energy legislation (for example, any transmission authority granted pursuant to the Electricity Act 1994 (QLD)) should not be detrimentally affected by any legislative or regulatory amendments following the DNRME’s review.
Alignment with national laws

AusNet Services notes (and agrees with) DNRME’s comment in respect of the cost, efficiency and effectiveness benefits associated with maintaining consistency of regulation across all levels of government. On that basis, given the potential crossover between the subject matter of the state-based energy legislation and the subject matter of national laws and other state laws, AusNet Services’ view is that the state-based energy legislation should be closely aligned with existing national electricity legislation and rules (for example, the National Electricity Law and the National Electricity Rules). While AusNet Services recognises that it may be appropriate for specific state-based issues to be regulated by state-based energy legislation that is not aligned with existing national laws, it is AusNet Services’ view that any such departures from consistent national regulation should be limited as much as possible.

Powers of entry and resumption

(a) General

Given the importance of broad access rights to allow energy infrastructure to be properly maintained, protected and upgraded, AusNet Services’ view is that the rights of energy entities to enter third party property to access works/assets should be as broad as possible to enable such energy entities to operate and maintain energy infrastructure in order to comply with regulatory requirements (as is currently the case under section 98 of the Electricity Act 1994 (QLD) (the Act)).

(b) Clarification

Section 116 of the Act provides certain electricity entities with the ability to acquire land for the purpose of works or proposed works. Section 116(3A) of the Electricity Act expressly provides that Energex Limited, Ergon Energy Distribution and Powerlink are authorised to acquire such land, while all other electricity entities may only acquire land for the purpose of works or proposed works by way of a gazette notice issued by the Minister.

To foster genuine competitive neutrality, contestability and open access in respect of the Queensland electricity and gas networks, and to prevent potential barriers to competition and unintended protection of the incumbents, AusNet Services’ view is that Energex Limited, Ergon Energy Distribution and Powerlink (who have ‘deemed’ land acquisition rights under the Electricity Act) should not be separately designated from, or be entitled to a more streamlined land acquisition process when compare to, other generation, distribution and transmission authority holders (who require a gazette notice issued by the Minister in order to acquire land in accordance with section 116 of the Electricity Act).
(c) **Public utility providers**

Under the *Land Title Act 1994* and the *Land Act 1994* (together, the *Land Acts*) a public utility easement may only be registered in favour of a ‘public utility provider’ (defined under the Land Acts to be certain persons providing a ‘public utility service’). The concept of public utility service is not defined in the Land Acts or the Electricity Act.

To provide greater certainty to energy entities engaged in the Queensland electricity and gas networks, or seeking to be so engaged in those networks, AusNet Services believes that all holders of a generation authority, transmission authority or distribution authority granted in accordance with the Electricity Act should be expressly deemed to be ‘public utility providers’ for the purpose of the Land Acts.

In AusNet Services’ view, the recognition that all authority holders under the Electricity Act are ‘public utility providers’, together with the more streamlined land acquisition approach for authority holders (see (b) above), will assist in fostering contestability and open access by providing all existing and proposed network participants with greater certainty in relation to land access and tenure for the construction, operation and maintenance of critical electricity infrastructure.

(d) **Easements in gross**

Section 39 of the *Foreign Acquisition and Takeovers Regulation 2015* (Cth) provides that an ‘easement in gross’ which:

- is created for the purposes of a public utility providing products or services to the public;
- the public utility that acquires the interest is authorised by or under a law of the Commonwealth, a State or a Territory to provide those products or service, is not a notifiable action requiring Foreign Investment Review Board approval under the *Foreign Acquisition and Takeovers Act 1975* (Cth) (FATA).

To provide certainty that the acquisition of land by electricity entities under section 116 of the Electricity Act is an easement in gross for the purposes section 39 of the FATA, AusNet Services’ view is that the Electricity Act should expressly refer to an acquisition of land under section 116 of the Electricity Act being, or including, an acquisition by way of an easement in gross.

(e) **Regulated compensation arrangements**
AusNet Services’ view is that the entitlement to acquire or access land under the state-based legislation should be equal for all entities that have the relevant authority under the state-based legislation (for example each generation authority, transmission authority and distribution authority under the Electricity Act).

AusNet Services recognises the underlying competing interests between land access/acquisition for public purposes and the protection of fundamental property rights. In AusNet Services’ view, an effective approach to ensuring that property rights are protected, while providing electricity entities with critical broad land access/acquisition rights (see (a) above), is to encourage electricity entities to negotiate and enter into upfront tenure agreements with the relevant landholders for such land access/acquisition.

Such upfront land tenure agreements can be encouraged by the inclusion of a regulated land compensation regime following the exercise of the compulsory land access rights by the electricity entities under the state-based electricity legislation. In AusNet Services’ experience, such legislated land compensation regimes have been useful in incentivising electricity entities to enter into upfront land tenure arrangements, giving land owners greater input into the land acquisition and reducing inevitable community unhappiness associated with any ‘compulsory’ land acquisition process.

**Joint use of easements**

To further facilitate open access and contestability in the Queensland electricity and gas networks, AusNet Services suggests the introduction of a joint use of easement provision in the state-based energy legislation. AusNet Services notes that other jurisdictions (for example, section 91 of the *Electricity Industry Act 2000* (VIC)) expressly provide for any two or more electricity corporations to enter into an agreement in respect of rights and obligations in respect of any easement to which another party to the agreement is entitled.

In a contestable electricity network environment, with the increased possibility of two or more energy entities requiring access to the same underlying land for the construction, operation or maintenance of energy assets, it is AusNet Services’ view that the express inclusion of a joint use of easement provision will be very useful in avoiding future uncertainty and land tenure concerns.

**Authority holders**

AusNet Services’ view is that in a competitively neutral and contestable electricity network, generation, distribution and transmission entities should be referred to under the state-based legislation as general categories of authority holders. To prevent potential barriers to
competition, AusNet Services believes that there should generally not be any differentiation between members of the categories of authority holders (for example, except for specific circumstances, AusNet Services would not expect there to be any differentiation between Energex Limited, Ergon Energy Distribution and QETC and other generation, distribution and transmission authority holders under the state-based legislation).

Sincerely,

Evan Holland
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AusNet Services