

2 July 2015

Australian Energy Market Commission
PO Box A2449
Sydney North NSW 1235

Dear Sir / Madam

RESPONSE TO CONSULTATION PAPER – NATIONAL ELECTRICITY AMENDMENT (EMBEDDED NETWORKS) RULE 2015 [REF ERC0179]

We refer to the above Consultation Paper and thank the Australian Energy Market Commission for inviting responses to the Consultation Paper.

INTRODUCTION

Strata Community Australia (Qld) is a non-profit, professional organisation for bodies corporate, community managers and suppliers of services to the body corporate industry in Queensland. SCA (Qld), through its predecessor CTIQ, was established in 1984 and currently has more than 550 members. SCA (Qld) members manage around 70% of all 416,000 strata titled properties in Queensland.

The core objectives of SCA (Qld) include:

- representation on body corporate and community title issues to Government;
- educating the general community on strata management and lifting the profile of the profession;
- provision of on-going professional educational development to its members;
- facilitating relationships between members, government, sponsors and suppliers of services; and
- the establishment and maintenance of professional standards of practice for SCA (Qld) members.

RESPONSE TO THE CONSULTATION PAPER

The consultation paper invites stakeholders to comment on the AEMC's objective to "reduce the barriers to embedded network customers accessing retail market offers"¹ which aims to allow more competition and choice for consumers. SCA (Qld) is an industry body advocating on behalf of the whole sector, including consumers. We hence fully support choice in the energy sector, however the consultation paper suggests a misperception about the Queensland energy market and current infrastructure.

¹ AEMC 2015, Embedded Networks, Consultation Paper, 21 May 2015, Sydney, Page 1

Question 1: Facilitating competition

Bulk electricity supply is most relevant to large schemes once they consume more than 100,000 kwh per annum. The amount of schemes considered for bulk on-supply is far greater in Queensland than in many other regions in Australia. As of 30 March 2015 there are 415,814 lots registered in Queensland. Of those, more than half, ie 216,398 lots are in schemes with 50 or more lots (a total of 1,419 schemes)². A conservative estimation is that at least two thirds of these schemes/lots have bulk supply arrangements in place, ie are an Embedded Network per definition.

It is a fact that approximately 145,000 apartments in Queensland and therefore more than 200,000 people will be affected by the proposed rule change.

It is SCA (Qld)'s understanding that Embedded Networks in Queensland have far greater savings for consumers than commercially available in other areas of Australia. The Queensland electricity legislation recognises bodies corporate as legal entities who are entitled to on-supply to the customers, ie owners. To SCA (Qld)'s knowledge bodies corporate save an average of 35-45% off the regulated tariff (depending on size of the scheme) due to the infrastructure in place and because of the stringent regulation of bodies corporate not being able to make a profit.

Installation costs are usually recovered within three years during which savings of approximately 20-30% off the available tariff are passed on to the Embedded Network Customers. In Queensland the body corporate legislation prohibits a body corporate from carrying on a business³:

Body Corporate and Community Management Act 1997
Chapter 3 Management of community titles schemes
Part 1 Management structures and arrangements

[s 96]

96 Body corporate must not carry on business

(1) A body corporate must not carry on a business.

Examples—

A body corporate must not carry on business as—

- a letting agent
- a tour operator
- a restaurant business
- a real estate developer
- a land trader.

(2) However, the body corporate may—

- (a) engage in business activities to the extent necessary for properly carrying out its functions; and**
- (b) invest amounts not immediately required for its purposes in the way a trustee may invest trust funds.**

Examples for subsection (2)(a)—

- 1 leasing part of the common property
- 2 selling body corporate assets no longer required for the scheme

² Refer to Appendix 1, Statistics of Queensland Strata Titles

³ Body Corporate and Community Management Act 1997, Chapter 3, Part 1, Division 1, section 96.

The Standard Regulation Module further states that where a body corporate provides a service to lot owners it can only recover the costs:

169 Supply of services by body corporate⁴

(1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following—

(a) maintenance services including, for example, cleaning, repairing, painting, pest prevention or extermination or mowing;

(b) communication services including, for example, the installation and supply of telephone, intercom, computer data or television;

(c) domestic services including, for example, electricity, gas, water, garbage removal, air conditioning or heating.

Example— The body corporate might engage a corporation to supply PABX services for the benefit of the owners and occupiers of lots.

(2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services.

Note— See also section 96 (Body corporate must not carry on business) of the Act.

(3) In acting under subsections (1) and (2), the body corporate must, to the greatest practicable extent, ensure the total cost to the body corporate (other than body corporate administrative costs) for supplying a service, including the cost of a commercial service, and the cost of purchasing, operating, maintaining and replacing any equipment, is recovered from the users of the service.

Only costs are recovered with maximum savings are passed on to residents. As a result from this, there is no profiteering for bodies corporate and hence less of a requirement to facilitate competition.

The consultation paper states correctly that in Queensland there is no regulatory framework that supports Embedded Network Customers to access retail market offers.⁵ This results from physical constraints in the body corporate sector. Unlike Victoria and NSW, Queensland Networks are not set up virtually. Embedded Network Customers who wish not to convert (or want to opt out) must be physically wired out which comes at a significant cost, often to the body corporate. In the Markham vs Court [2009]⁶ adjudication order, the regulator ruled that the body corporate had to engage an electrician to wire out the applicant and that the costs were to be carried by the body corporate. This cost amounted to approximately \$10,000 which 67 owners had to carry.

SCA (Qld) undoubtedly supports owners to have a choice in electricity suppliers and we are confident that owners will take the cheapest price which incidentally at the present time Embedded Networks do offer.

⁴ Body Corporate and Community Management (Standard Module) Regulation 2008, Chapter 8, Part 5, section 169 (2)

⁵ AEMC 2015, Embedded Networks, Consultation Paper, 21 May 2015, Sydney, Page 8

⁶ Refer to Appendix 2: Adjudication Order Markham vs Court [2009]

Question 2-5: Embedded Network Manager

Introducing an Embedded Network Manager (ENM) for the day-to-day network management has the advantage of being a regulated entity or business and SCA (Qld) would not be opposed to body corporate management firms being able to obtain such a license. However, an ENM must be in a position to protect bodies corporate with a workable process, not at the expense of missing out on consumer savings currently in place. That means if the introduction of an ENM adds additional costs to Queensland electricity supply, there is a negative impact on the owners and occupiers of 216,000 lots. Therefore SCA (Qld) does not see a need for bodies corporate to appoint a manager

We support that a manager will ensure knowledgeable Embedded Network Operators that comply with regulated standards, but not to the detriment of owners. In the current Queensland landscape, an Embedded Network Manager has no beneficial role as the operators still need to physically wire out customers on site.

A solution to the current situation SCA (Qld) envisages is to encourage the development of virtual metering in Queensland that enables operators to remotely “wire out” an owner. Not only would this be easier and less labour intense, it would also be cost effective.

Questions 6 & 7: Grandfathering

As discussed above, SCA (Qld) supports alternative arrangements such as virtual metering which is a workable solution to the existing infrastructure in Queensland. More than 1,000 schemes, or 145,000 lots, are currently in an Embedded Network framework. We envisage that a minimum five year transitional period would be needed to allow sufficient time for body corporate managers to go through the required changes with each of these buildings.

Though the consultation paper states that the initial shortfall of ENM’s would be compensated by existing retailers becoming ENM’s, we envisage a longer transitional period is required for Embedded Network Managers to obtain accreditation and to have a choice of managers rather than having to engage with a manager out of necessity. This timeframe would allow bodies corporate to do their homework and have options in their choices of an ENM.

Other Considerations

In relation to the definition of Embedded Network Customers, SCA (Qld) does not support that tenants in a residential body corporate scheme are deemed to be Embedded Network Customers. Such a definition would enable short-term residents in strata titles to opt out of bulk supply arrangements to the potential detriment of the owner and future tenants. We do not believe that this is reasonable if the cost of this was passed on to the owner.

SCA (Qld) welcomes a disclosure requirement to purchasers that the body corporate has on supply arrangements in place. Adding to transparency this ensures an informed decision is made at the time of purchase.

Conclusion

In summary, SCA (Qld) does not see a need for the proposed rule change to apply to the Queensland body corporate sector as the objective of allowing embedded network customers to access competitive tariffs is to save them money which is unlikely to be achieved in the current Queensland market. While around 200,000 lots are in smaller schemes that do not have access to the savings of Embedded Networks on supply discounts, they have in fact choices available due to the individual metering in place.

FURTHER INFORMATION

SCA (Qld) would welcome the opportunity to further discuss the issues with the review team and Government representatives. In this regard, the Government may contact:

Mail: The President
 SCA (Qld)
 PO Box 1280
 Spring Hill Qld 4004

Tel: 07 3839 3011
Fax: 07 3832 4680
E-mail: president.qld@stratacommunity.org.au

SCA (Qld) appreciates the opportunity to provide this submission.

Sincerely

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

Simon Barnard
President

Appendix 1: Queensland Strata Statistics

Source: Land Titles Office Queensland

TOTAL LOTS AND SCHEMES	31/12/09	31/12/10	31/12/11	31/12/2012	31/12/2013	31/12/2014	30/03/2015
Number of Schemes	38,570	39,604	40,625	41,587	42663	43,862	44,110
Number of Lots	358,552	369,363	379,704	389,257	399914	412827	415,814

Increase from 12 months ago

2.8% and 3.2% 2.7% and 3.4%

BY MODULES	31/12/09	31/12/10	31/12/11	31/12/2012	31/12/2013	31/12/2014	30/03/2015
Standard Module	27,123	27,421	27,748	27,981	28293	28612	28680
Small Schemes Module	7,101	7,649	8,178	8,587	8899	9174	9210
Accommodation Module	2,785	2,893	2,992	3,098	3207	3335	3368
Commercial Module	1,598	1,685	1,751	1,799	1851	1905	1923
Two Lots Schemes Module				172	475	902	998

SCHEMES	31/12/09	31/12/10	31/12/11	31/12/2012	31/12/2013	31/12/2014	30/03/2015
6 lots and under	26,907	27,676	28,455	29,190	29985	30880	31,045
7-10 lots	4,978	5,062	5,145	5,216	5325	5426	5,457
11-20 lots	3,271	3,344	3,415	3,473	3545	3628	3,654
21-50 lots	2,249	2,315	2,356	2,409	2466	2526	2,535
51 to 100 lots	855	884	918	951	982	1018	1,030
Over 100 lots	312	323	336	348	360	384	389

	31/12/13	31/12/14	30/03/15
LOTS IN SCHEMES	399914	412827	415,814
6 Lots and under	98247	100719	101,187
7 to 10 Lots	44306	45150	45,401
11 to 20 Lots	51231	52476	52,828

	31/12/13	31/12/14	30/03/15
LOTS IN SCHEMES			
21 to 50 Lots	79303	81354	81,672
51 to 100 Lots	69048	71608	72,452
Over 100 Lots	57779	61520	62,274

Queensland Body Corporate and Community Management Commissioner - Adjudicators Orders

You are here: [AustLII](#) >>[Databases](#) >>[Queensland Body Corporate and Community Management Commissioner - Adjudicators Orders](#) >>[2009](#) >>[\[2009\] QBCCMComr 243](#)

← Markham → Court [2009] QBCCMComr 243 (30 June 2009)

Last Updated: 31 July 2009

REFERENCE: 1107-2008

ORDER OF AN ADJUDICATOR

MADE UNDER PART 9 OF CHAPTER 6

[BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997](#)

Number of Scheme: 6320
Name of Scheme: ← Markham → Court
Address of Scheme: 36 Australia Avenue BROADBEACH QLD 4218

TAKE NOTICE that pursuant to an application made under the abovementioned Act by
Jaggan Wadda, the Owner(s) of lot 53

I **hereby order** that, within two weeks of Jaggan Wadda (**applicant**) paying all outstanding electricity charges and providing the body corporate with details of an electricity contract that he has entered into with his preferred supplier, the body corporate must engage an electrician to

perform the work necessary to enable the applicant to obtain the benefit of this contract. The body corporate must pay all costs associated with this electrical work.

STATEMENT OF ADJUDICATOR'S REASONS FOR DECISION - REF 1107-2008

“← Markham → Court” CTS 6320

Application

← Markham → Court Community Titles Scheme (← Markham → Court) is a 68 lot scheme under the [Body Corporate and Community Management Act 1997 \(Act\)](#) and the [Act's Accommodation Module Regulation \(Accommodation Module\)](#). The scheme is designed for residential purposes.

This application is by Jaggan Wadda, owner of lot 53 (**applicant**) seeking orders against the body corporate for ← Markham → Court (**respondent**).

Decision

Investigation and Submissions

Submissions

The applicant says that his electricity account was closed without his authority and that the body corporate has acted contrary to the legislation forcing him to purchase electricity from the body corporate without his agreement.

The main submissions by the body corporate manager on behalf of the body corporate were to the effect that:

- The applicant has been using various excuses to not pay his electricity bills;
- The body corporate is given power under the Electricity Act and Accommodation Module to supply and charge for electricity;
- The body corporate should not be compelled to supply electricity if the applicant is not paying for the electricity;
- The applicant is free to change suppliers but he should pay the cost of up to \$10,000 to have a new individual ← meter → installed;
- The present application is vexatious and does not make any sense because the applicant would be paying more for his electricity if he obtained his own supply;
- It is unreasonable to expect the body corporate to change electricity supplier and pay a break free in excess of \$200,000 simply to allow one lot owner to pay more for electricity;
- The committee acted responsibly by accepting Energy One's proposal on 22 May 2006 to guarantee a saving of 8.3% from the standard tariff 11 rate. This saving applied to both the community power and usage by individual lot owners; and
- The committee was not aware that the applicant had not signed an agreement to purchase electricity from the body corporate as the body corporate's agreement with Energy One included a requirement that Energy One would be responsible for all the billing and assume the risk for outstanding accounts.

All owners were given an opportunity to provide written submissions. All submissions are available for inspection by interested persons and it is unnecessary to summarise the submissions here.



The applicant exercised the right to inspect the submissions and then replied to those submissions to the effect that:

- Minutes of committee meetings of 4 August 2006 and 22 May 2006 indicate that all but fourteen owners had entered the required agreement and that Energy One informed the committee that it was important all owners entered into agreements prior to the bulk supply of electricity commencing;
- He did not enter into any agreement himself. Copies of bills subsequently provided to him were in an incorrect name which would indicate that someone illegally closed his account and opened a new account for him in a different name;
- The provision in the regulations that allows the body corporate to charge for electricity applies only if there is a written agreement; and
- The body corporate did not follow the correct procedure. It should therefore be the committee's responsibility to rectify the situation and pay any associated costs.

Investigations following receipt of submissions

The above submissions were received through the legislated processes for inviting written submissions from the body corporate and any persons affected by a community titles scheme dispute (*Act, 243*). Even where the body corporate makes a submission, it is not unusual for a large proportion of owners to also make their own individual submission. Each person who makes a written submission is effectively joined to the proceedings and given a right of appeal (*Act, 289*). This overcomes any concern that the particular position advanced in the name of the body corporate only reflects the views of a couple of committee members.

The legislation does not provide for a formal hearing at which the various persons affected by the dispute can further argue their case. In some circumstances it is appropriate for an adjudicator to make a determination based solely on whatever written submissions have been provided.^[1] However, an adjudicator will need to undertake appropriate investigations if there is insufficient material for the adjudicator to make an express finding on relevant matters.^[2] In carrying out these investigations, the adjudicator must act as quickly and informally "as is consistent with a fair and proper consideration of the application" (*Act, 269(3)(b)*). Despite this need to act quickly and informally, a teleconference or a further round of written submissions may be necessary to allow relevant persons to respond to any significant information obtained in these investigations (*Act, 269(3)(a)*).

On 30 March 2009 I requested a letter be sent to the body corporate manager requesting she confirm whether the applicant had agreed to supply of electricity by the body corporate under section 167 of the Accommodation Module. If so, a copy of the agreement was requested. I further indicated that if no agreement was provided that I would consider ordering that the body corporate reimburse the applicant for his costs of having another  meter  installed to allow him to be reconnected to the tariffed network. Further, I requested that the body corporate manager provide a copy of any contracts and relevant legislative instruments that would substantiate a claim that the body corporate would need to pay a "break fee" in excess of \$200,000 if the applicant was allowed to reconnect himself to the tariffed network.

On 30 March 2009 I also requested a letter be sent to the applicant asking that he provide two quotations for the costs of installing a new ← meter → to allow him to be reconnected to the tariffed network.

On 27 April 2009 a response from the body corporate manager was to the effect that:

- The body corporate entered into an agreement with Energy One on 1 August 2006 for supply of bulk electricity. Part of this agreement was that Energy One would obtain agreement from all owners and the body corporate was advised that all owners had signed agreements;
- Energy One abandoned their contract in June 2007 and did not hand over any records;
- Origin Energy then assumed the role of supplier and biller;
- On 1 August 2007 the body corporate entered into a four year agreement with AGL for bulk electricity supply;
- It was at that time that Mr Wadda advised he had not signed the agreement. AGL has verbally advised that the cost to the body corporate for terminating the contract before the expiry date would be in the vicinity of \$200,000; and
- Mr Wadda currently owes \$202.75 to the body corporate for electricity supply.

On 29 April 2009 the applicant provided a quotation from Fred of Darcy Electrical indicating that the cost to excise him from the bulk metering would be \$4,180 plus around \$750 for Energex to temporarily disconnect the supply.

On 26 May 2009 the applicant provided a quotation from Richard Flanagan & Company indicating that rewiring of the switchboard is not required and the bulk metering arrangement could be disconnected simply by pulling the CT chamber fuses at a cost of \$264.

Due to the disparity in these quotations I telephoned both companies. I spoke to Colin Jermyn from Richard Flanagan & Company. He said that his quotation actually involved disconnecting everyone from the bulk supply arrangement rather than simply disconnecting the applicant. He also indicated that it would cost a lot more to disconnect only the applicant and that he considered the quotation from Darcy Electrical to be very reasonable. I also spoke to Fred from Darcy Electrical who confirmed the details of his quotation and indicated that Jaggan Wadda would need to enter into a new electricity contract first, provide the details to him, and then allow him to arrange the disconnection by Energex and perform the electrical work.

I note that this further information clarified some relevant issues but did not raise any new issues that had not already been canvassed. In the circumstances of the application I was satisfied that it was unnecessary to conduct any further investigations and unnecessary to seek any further responses from the parties in relation to the information obtained.

Agreement needed for supply of electricity

Applicable law

Legislation relevant to the present dispute has provisions to the effect that:

- The body corporate may supply, or engage another person to supply, certain utility services and other services for the benefit of owners and occupiers. These services include electricity supply (*Accommodation Module, 167(1)*); and
- The body corporate may, by agreement with the person for whom services are supplied, charge for the services to the extent necessary for reimbursing the body corporate for supplying the services (*Accommodation Module, 167(2)*).

Findings

I accept evidence from the applicant that he never entered into an agreement for electricity supply from Energy One or from the body corporate. In particular, I am prepared to draw the inference sought by the applicant that someone acted without his authority to close his existing retail electricity account and enter into a new account for supply of his electricity from the body corporate.

In contrast, the evidence from the body corporate manager is contradictory and unconvincing. No copy of any agreement signed by the applicant has been provided. There are allegations that it was the responsibility of Energy One to get the applicant to enter into the relevant agreement. However, the minutes of a committee meeting of 22 May 2006 indicate John Anderson of Energy One told the committee of the necessity for all owners to enter into agreement before *"the bulk supply of electricity can commence"*. Further, the body corporate manager's submissions indicate that Energy One abandoned its contract in June 2007 and the body corporate entered into an agreement with AGL for bulk electricity on 1 August 2007. It is submitted that *"It was at that time Mr Wadda advised that he had not signed the agreement"*. However, I am satisfied that as early as 15 March 2007 the applicant verbally informed the body corporate manager he had not entered into an agreement for electricity supply. A copy of a letter that I accept was sent to the body corporate manager on or around 22 May 2007 confirms and expands upon this initial verbal contact. I am therefore satisfied that the body corporate had an adequate opportunity to seek an explanation from Energy One regarding whether someone had changed the applicant's account without his authority. However, there is no evidence that any attempts were made by the body corporate to resolve this issue with Energy One. Further, I am not satisfied of any reasonable attempts of the body corporate to resolve this issue with the applicant prior to the body corporate entering into the contract with AGL.

Legal position

The applicant has not assisted his cause by failing to provide any logical reason for wanting to obtain electricity from an alternative supplier. However, the legal position is clear. The body corporate needs an agreement with the applicant to charge for electricity supplied to him. The body corporate has failed to follow proper procedures by allowing the applicant to be disconnected from the tariffed network and supplied with bulk electricity without the applicant's consent.

The legislation provides for a scheme where the body corporate can supply certain utility and other services to owners, must charge for these services, but may only do this with the agreement of the person to whom the services are supplied (*Accommodation Module, 167*). Fundamentally, an owner has a choice of whether or not to obtain these services from the body corporate. It is not reasonable to expect the body corporate supply electricity to the applicant without charging the applicant for that electricity. It is also not reasonable for the body corporate to expect the applicant to pay the costs of

electrical work required to rectify the situation when the initial disconnection of the applicant from the tariffed network was made without his consent.

I have not been provided with sufficient evidence to satisfy me that any particular person improperly altered the applicant's electricity supply arrangements so I will simply order that the body corporate pay these costs. If the body corporate can identify who is responsible then the body corporate may wish to consider seeking recovery of these costs from that person. However, I note that, while not insignificant, these costs are likely to only amount to a contribution from each owner of around \$75.

Other matters

I note the body corporate argues that it may need to compensate AGL in an amount of \$200,000 if it breaks its current contract. However, nothing supplied by the body corporate indicates that the applicant is a party to this contract with AGL or that the body corporate will be in breach of this contract if the body corporate continues to purchase electricity for the common areas from AGL but the applicant chooses to select a new supplier.

Finally, the body corporate argues the applicant should still pay the body corporate its rate for his usage of electricity for the time that the body corporate has been supplying him with electricity. I have accepted the applicant's argument that he never entered into an agreement with the body corporate to pay for this electricity. However, I also accept the body corporate's argument that he would probably have been paying a higher rate for the electricity he has used if he was still getting the electricity from his original supplier. While it is possible that the applicant has a number of properties and has negotiated a better rate with a particular supplier, the applicant has not provided any evidence of this. In the circumstances, I am satisfied that the applicant will not suffer any real prejudice from having to pay for electricity he has actually used at the rate charged by the body corporate. To the contrary, he would be unjustly enriched if he was not required to reimburse the body corporate the fair cost of electricity that he has used. I am therefore satisfied that it is just and equitable to require the applicant pay the body corporate for electricity he has used at the usual rate charged by the body corporate.

Conclusion

As the applicant has effectively provided only one quotation and the body corporate will be paying for the work, I am satisfied it is appropriate for the body corporate to choose its preferred electrical contractor. Of course, as a matter of convenience the body corporate may wish to use Fred from Darcy Electrical who is obviously aware of what work is required. In the circumstances, I am also satisfied that it is just and equitable that the applicant must pay all outstanding electricity charges and provide the body corporate with details of an electricity contract that he has entered into with his preferred supplier before the body corporate needs to take any action in this respect.

Order

For these reasons, I make the order above