Queensland

Electricity Amendment Regulation (No. 4) 2012

Explanatory Notes for SL 2012 No. 211

made under the

Electricity Act 1994

General outline

Short title

Electricity Amendment Regulation (No. 4) 2012.

Authorising law

Sections 44A and 335 of the *Electricity Act 1994* (the Act).

Policy objectives and reasons for them

The Queensland Solar Bonus Scheme (the Scheme) is primarily administered under section 44A of the Act. Section 44A(1)(b) provides for a per kilowatt hour amount (feed-in tariff) prescribed in regulation to be credited by the distribution entity against the charges payable by a small customer for electricity produced by small photovoltaic generators that is surplus to household usage and is supplied to the Queensland electricity network. The *Electricity Regulation 2006* prescribes two credit amounts: an amount of $0.44 per kilowatt hour for small customers who applied to join the Scheme before 10 July 2012 and $0.08 per kilowatt hour for small customers who apply to join the Scheme on or after 10 July 2012.

The policy objectives for the amendment regulation are to limit the future costs of the Scheme and its contribution to cost increases for electricity in Queensland. Modelling of 2011 uptake estimates that the business-as-usual cost of the FiT to the Scheme's 2028 end date to be more than $1.8 billion. Growth of the Scheme in early to mid 2012 far exceeded 2011 growth tends, suggesting this figure may be conservative. The increasingly rapid uptake of the Scheme is driving inequitable cost increases to electricity in Queensland, as costs are passed directly through to Queensland electricity customers.

To minimise Scheme costs and electricity price impacts, on 25 June 2012 Government announced the closure of the 44 cents tariff to new customers from 10 July 2012, and additional cost saving Scheme changes by the end of 2012 to: end the transfer of 44 cents entitlements; set a 30 June 2014 end date for the 8 cents tariff; and set a 30 June 2013 deadline for installations under the 44 cents tariff.

The proposed amendments are necessary to end practices that transfer the 44 cents entitlement between small customers for the same premises, contributing to higher Scheme costs. These practices were developed out of administrative convenience and were enshrined by 2011 amendments to the Act. The *Electricity Price Reform Amendment Act 2011* inserted a new section 328 into the Act preserving the 44 cents entitlement for a qualifying generator up to 30kW that was the subject of a Scheme application before 8 June 2011, and for any small customer from time to time for the premises at which the qualifying generator is installed.

A prescribed end date of 30 June 2014 for the 8 cents tariff also limits Scheme costs as the current legislative framework would otherwise require payment of this tariff until the Scheme end date of 2028. The 30 June 2013 deadline for installation of approved systems under the 44 cent tariff is necessary to close the 44 cents tariff.

Achievement of policy objectives

The proposed amendments are authorised under sections 44A(2) and 335 of the Electricity Act, inserted under the *Water Legislation (Dam Safety and Water Supply Enhancement) and Other Legislation Amendment Act 2012*, and are expected save around $300 million to 2028.

Section 44A(2) of the Act provides for a regulation to prescribe categories of small customers for the purpose of receiving a prescribed credit amount (feed-in tariff), and the circumstances in which a category of small

customer is entitled, or stops being entitled, to the prescribed credit amount. There are no categories of small customer or circumstances currently prescribed in the *Electricity Regulation 2006*. The amendment seeks to prescribe these small customer categories and circumstances.

The amendment prescribes two small customer categories: 'category 1' - customers that submitted a complete application for the Scheme before 10 July 2012 but after 8 June 2011 (due to the effect of section 328 of the Act); and category 2 - customers that submitted a complete application for the Scheme on or after 10 July 2012. The amendment also prescribes two circumstances for when a 'category 1' small customer is entitled or stops being entitled to the prescribed credit (or feed-in tariff) for that category ($0.44 per kilowatt hour).

These proposed amendments achieve the policy objective by limiting the circumstances in which a 'category 1' small customer is entitled to the tariff rate of 44 cents. The customer must maintain the electricity account for the premises in their name (with an exception for name changes between spouses), and must connect their approved qualifying generator to the network by 30 June 2013. This amendment prevents the transfer of the 44c/kWh tariff between a Scheme customer and new property owner / tenant at the change of account name such as on a change of property ownership or tenancy. Implementation is expected to limit Scheme costs by reducing the number of customers receiving the 44 cents tariff over time.

Section 335 of the Act applies to customers who applied to join the Scheme before 8 June 2011 when legislation to cap system sizes at 5 kilowatts capacity took effect. Under section 335 of the Act, these customers stop being entitled to the 44 cents rate if they fail to connect their qualifying generator before 30 June 2013, or if they change the name on the electricity account for the premises to another person other than their spouse. If section 335 is triggered, and subject to eligibility criteria that requires the qualifying generator to be 5kW capacity or less, these customers automatically revert to a credit amount prescribed in regulation until an end date prescribed in regulation. The *Electricity Regulation 2006* currently does not prescribe a credit amount or end date for section 335. This amendment seeks to prescribe both the credit amount and end date.

The proposed amendments prescribe an alternative 8 cents tariff rate where a Scheme customer forfeits the 44 cents tariff under section 335, either by changing the name on the electricity account for the premises to another person other than their spouse or by failing to meet the 30 June 2013 deadline for connection of their system. As this prescribed credit amount is

lower than the 44 cents per kilowatt hour otherwise payable the amendment will produce savings over time.

Savings are also delivered by setting a 30 June 2014 end date for payment of a credit amount to 'category 2' small customers (customers on the 8 cents tariff) and for the purpose of section 335 of the Act. Without this amendment, the 8 cents tariff would be payable until the 2028 Scheme end date.

Consistency with policy objectives of authorising law

The regulation is consistent with the objectives of the Act and amends the *Electricity Regulation 2006* to clarify the conditions under which an ongoing credit is payable for exported solar photovoltaic energy.

Inconsistency with policy objectives of other legislation

The regulation is not inconsistent with any policy objectives of any other legislation.

Alternative ways of achieving policy objectives

The amendments contribute to a suite of policy measures approved by Government to contain the costs of the Scheme. The first of these measures, implemented via amendment regulation in July 2012, was to reduce the feed-in tariff rate from 44 cents to 8 cents for new Scheme customers from 10 July 2012.

The cost of the Scheme is determined primarily by its design. Major Scheme design components (the obligation to credit a small customer for exported electricity, an end date for Scheme, the size of systems that can be installed, the nature of export arrangements, and the amount of credit to be paid) are contained in either legislation or regulation and therefore legislative / regulatory amendment is necessary to reduce Scheme costs.

Providing a head of power in the Act and including the proposed amendments in a regulation allows for more flexible administration of the Scheme. This is desirable because the Scheme is subject to highly changeable external factors, including photovoltaic prices and federal renewable energy policies that can change quickly, without notice, and in unforeseeable ways, escalating Scheme costs.

The alternative approach is to implement cost savings via legislative amendment. This approach can constrain the ability to act quickly in response to the rapidly changeable external influences on the cost of the Scheme.

Benefits and costs of implementation

The benefit of implementation is that future costs of the Scheme will be reduced and these savings will pass through to electricity bills. No additional costs to the Government are anticipated with the proposal. Network distributors and electricity retailers may incur additional costs where systems, administration and operational adjustments are required to implement the changes.

A Preliminary Impact Assessment determined that a Regulatory Assessment Statement (RAS) was warranted to consider the potential impacts on the solar PV industry, but also found that there were exceptional circumstances that warranted a RAS exemption being sought. On 24 May 2012, the Treasurer and Minister for Trade approved a RAS exemption on the basis of the significant costs, and detriment to electricity consumers via increased electricity prices that would occur if changes to the Scheme were delayed.

Compliance with Part 5 of the *Statutory Instruments Act 1992* (SIA) is determined pursuant to section 43 of the SIA, as the proposal will not impose appreciable costs on the community.

Consistency with fundamental legislative principles

By prescribing limitations for the payment of a prescribed credit and an end date for the prescribed credit of $0.08/kWh, the amendments could be considered to modify the operation of section 44A of the Act, raising issues of Fundamental Legislative Principle. The amendments are authorised via a head of power in section 44A(2) of the Act. Section 44A(2) was considered justified because it delegates power to quickly adjust the Scheme in response to rapidly changing and uncertain external policy and market influences, to contain Scheme costs and associated electricity price rises that are borne by the community as a whole.

Consultation

Consultation about the regulation has been undertaken with the Department of Premier and Cabinet (DPC) and the Department of Treasury and Trade. The Treasury Department was consulted in May 2012 regarding the need for a RAS.

DPC and Queensland Treasury and Trade have no objections to the proposed regulation. The Treasurer and Minister for Trade approved an exemption from preparing a RAS on the basis that a delay in making changes would delay cost savings anticipated for electricity bills. Therefore no formal industry or community consultation about the proposed regulation has occurred. On 25 June 2012 Government notified the public in a Ministerial media release and online that it intended to make the changes to the Scheme proposed in this amendment by the end of 2012.

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Energy and Water Supply.

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