



Ergon Energy Network Ring-Fencing Waiver Application

Ergon Energy Branding
14 March 2025



Part of Energy Queensland

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1. INTRODUCTION

Ergon Energy Corporation Limited (Ergon Energy Network) is a distribution network service provider (DNSP) that operates an electricity distribution network in Queensland. Ergon Energy Network is a subsidiary of Energy Queensland Limited (Energy Queensland), which is a Queensland Government Owned Corporation (GOC) under the *Government Owned Corporations Act 1993* (Qld) (GOC Act).

Ergon Energy Network builds, operates and maintains an electricity distribution network and supplies electricity to more than 760,000 customers over a vast operating area covering one million square kilometres – around 97 per cent of the state of Queensland. Ergon Energy Network's supply area covers the expanding coastal and rural population centres, to the remote communities of outback Queensland and the Torres Strait. There are over 160,000 kilometres of power lines and approximately one million power poles, in the Ergon Energy Network distribution network, along with associated infrastructure such as major substations and power transformers.

Ergon Energy Queensland Pty Ltd (Ergon Energy Retail) is also a subsidiary of Energy Queensland. Ergon Energy Retail sells electricity to more than 750,000 customers located within the footprint of Ergon Energy Network's distribution network.

As a DNSP, the National Electricity Rules (NER) require Ergon Energy Network to comply with the Australian Energy Regulator's (AER) Ring-fencing Guideline - Electricity Distribution (the Guideline).¹ Ergon Energy Network is committed to compliance with the Guideline and is supportive of the AER granting waivers, where appropriate, with a view to better achieve the National Electricity Objective and deliver net benefits for the long-term interests of consumers.

Ergon Energy Network and Ergon Energy Retail share parts of a common name (i.e. "Ergon Energy") and use similar branding. The name and branding of both entities has been in place for many years and are ultimately a matter for the Queensland Government.

In December 2017, the AER granted Ergon Energy Network a waiver from the branding and cross-promotion obligations of the Guideline.² The waiver allows Ergon Energy Network to use similar branding as Ergon Energy Retail, subject to the condition that the waiver will apply only to use of the Ergon Energy Retail brand for services that relate to the provision of services under standard retail contracts in the Ergon Energy Network distribution area. Other services not associated with the provision of standard retail contracts, including behind-the-meter contestable services, must be delivered using a separate brand. This waiver expires on 30 June 2025.

¹ Version 3, which was published in November 2021.

² [AER Ring-fencing waiver applications final decision - December 2017 13.pdf](#)

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2. DESCRIPTION OF WAIVERS BEING SOUGHT

2.1 Requirement for a waiver

Ergon Energy Network seeks a new waiver from the branding and cross-promotion obligations of the Guideline. It is requested that a new waiver be granted with the same condition as is imposed on the existing waiver. This would allow Ergon Energy Network to continue to use branding similar to Ergon Energy Retail until such time as the Queensland Government changes the name and branding of either entity.

Under clause 5.3.3 of the Guideline, the AER may, in its absolute discretion, grant an interim waiver. Ergon Energy Network would appreciate the AER exercising this option should the timeframe for a decision approach the expiry date of the existing waiver. This would ensure that Ergon Energy Network could continue using existing branding to provide network services, without breaching ring-fencing obligations, until such time as the AER's decision making process is finalised.

2.2 Obligation subject of the waiver

Ergon Energy Network is seeking a waiver of the branding and cross-promotion obligations under clause 4.2.3 of the Guideline.

2.3 Reasons for seeking a waiver

Under clause 4.2.3(a)(i) of the Guideline, DNSPs must use branding for direct control services that is independent and separate from branding used by a RESP for contestable electricity services, such that a reasonable person would not infer from the respective branding that the DNSP and the RESP are related.

The Ergon Energy Network and Ergon Energy Retail names are entrenched in legislation and various instruments and registrations. It would require the Queensland Government to pass amending legislation to make a change. This, and the other regulatory work required to implement a change, would involve significant time and cost and be at the sole discretion of the Queensland Government. For example, both Ergon Energy Network and Ergon Energy Retail are named in the *Electricity Act 1994* (Qld) and the *Government Owned Corporations (Energy Consolidation) Regulation 2016* (Qld) (the GOC Act). Additionally, pursuant to section 67(3) of the GOC Act, the changing of names of candidate GOCs and subsidiaries of candidate GOCs is a matter reserved for formal regulations issued under the GOC Act.

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Should the Queensland Government, in its sole discretion, decide to change the names of either entity, Ergon Energy Network and/or Ergon Energy Retail would be required to act on any direction by the Queensland Government. However, there is no indication that the Queensland Government intends to change the name of either Ergon Energy Network or Ergon Energy Retail.³

The Ergon Energy Network and Ergon Energy Retail names and branding have been in use for many years and are widely recognised and trusted across regional Queensland. Ergon Energy Network understands that the Queensland Government considers this recognition and trust are an important part of the provision of these essential services to regional Queensland. The continued use of common names and branding is therefore desirable and deliberate and leads to increased trust by electricity customers in regional Queensland.

2.4 Proposed waiver commencement date and expiry date

Ergon Energy Network proposes that the waiver commence immediately after the expiration of the existing waiver, on 1 July 2025. It is requested that the AER grant the waiver with an expiry date of 30 June 2035 on the condition that Ergon Energy Network notify the AER upon any change in Queensland Government policy that would affect the waiver, such as a decision to change the names of either entity. This period of time would reduce ongoing administrative burden on both Ergon Energy Network and the AER

2.5 Potential costs if the waiver application is not granted

If the waiver isn't granted, there would be costs to rename and rebrand Ergon Energy Network or Ergon Energy Retail. Such an exercise could only occur at the direction of the Queensland Government. In the event the AER refused to grant this waiver application, the initial outcome for both Ergon Energy Network and Ergon Energy Retail is unclear and would require Queensland Government intervention.

Should Ergon Energy Network be directed to rename and rebrand, the costs would include changing out branding on fleet (including mobile plant, forklifts, cars, commercial vehicles and elevated work platforms), property (offices and depots), other network assets (such as substations and pad mounted substations), personal protective equipment, ID cards, customer agreements and materials, digital systems, website and social media sites.

³ When granting the existing waiver in 2017, the AER noted:

"EEQ's role in providing retail services under standard retail contracts seems to be guided by state government policy rather than a commercial decision. Further, it is not clear that Ergon Energy has discretion to cease provision of these services."

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As one of the largest electricity retailers in Australia, brand change out costs for Ergon Energy Retail, should it be directed to do so, would centre around costs to re-brand customer systems and communication channels (bills, notices, websites, social media etc).

Both entities have very high awareness as long-established brands in Queensland communities. Regardless of which name and brand was changed, there would also be costs for the development of a new brand plus a potential customer campaign to build brand awareness of the new brand to try to maintain customer trust and confidence.

Many of the submissions and commentary in consultation on the 2017 brand waiver focused on the process and costs by which Ergon Energy Network and/or Ergon Energy Retail could be renamed or rebranded. However, the naming and branding of those entities are solely matters for the Queensland Government and not within the control of this waiver application.

2.6 Regulatory control periods to which the waiver would apply

The waiver would apply for the regulatory control period 2025-2030 and 2030-2035, depending on the AER's determination of an expiry date for the waiver.

2.7 Reasons why Ergon Energy Network considers the waiver should be granted

Clause 5.3.2(a) of the Guideline provides that the AER, in assessing a waiver application and deciding whether to grant a waiver or refuse to grant a waiver, must have regard to:

- i. The NEO;
- ii. The potential for cross-subsidisation and discrimination if the waiver is granted or refused;
- iii. Whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation (including any benefit, or likely benefit, from increased competition) would be outweighed by the cost to the DNSP of complying with that obligation.

The NEO

The National Electricity Law provides that:

The NEO is to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity with respect to:

- price, quality, safety and reliability and security of supply of electricity;
- the reliability, safety and security of the national electricity system;
- the achievement of targets set by a participating jurisdiction:

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- for reducing Australia's greenhouse gas emissions; or
- that are likely to contribute to reducing Australia's greenhouse gas emissions.⁴

In examining whether an application for a waiver is appropriate and aligned with the NEO, the impacts on consumers must be at the core of the decision-making process.

Ergon Energy Network is of the view that the NEO would be furthered by granting the waiver.

This application discusses the reasons, costs and benefits for this waiver application. These discussions are relevant to an assessment of the application against the NEO. To directly draw some of these themes back to the language used in the NEO:

- (a) Continuation of the 2017 brand waiver, provides the most stable, secure and efficient path forward.
- (b) Ensuring Ergon Energy Network and Ergon Energy Retail can continue their operations is essential to the continued supply of electricity and related services to customers in regional Queensland.
- (c) The name and branding of Ergon Energy Network and Ergon Energy Retail are ultimately matters for the Queensland Government. If the waiver were not granted, it is not clear that Ergon Energy Network or Ergon Energy Retail would be permitted by the Queensland Government to cease operations and thereby leave customers across regional Queensland without electricity. Not granting the waiver would cause significant uncertainty, disruption and risks to customers across regional Queensland and harm the interests of customers.
- (d) The rebranding and renaming of Ergon Energy Network and/or Ergon Energy Retail would be costly, inefficient and a potential source of confusion for customers.

Further, the existing regulatory requirements that apply to Ergon Energy Network as a DNSP, including the regulatory proposal and determination process, promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers. The continued use of similar branding would not affect the consumer obligations placed upon Ergon Energy Network as a DNSP under the National Electricity Law and NER.

⁴ Section 7, *National Electricity (Queensland) Law*.

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Cross-subsidisation

Ergon Energy Network and Ergon Energy Retail are functionally and legally separated entities. There is no cross-subsidisation between the direct control services provided by Ergon Energy Network and the electricity retail services provided by Ergon Energy Retail. Ergon Energy Network maintains separate accounts for its direct control services and its unregulated distribution services and non-distribution services in accordance with the principles and policies of its Cost Allocation Methodology.

Discrimination

This waiver is limited to Ergon Energy Network continuing to share parts of a common name and use similar branding to Ergon Energy Retail. With the exception of the branding and cross-promotion requirements, should this application be granted, the remainder of the Guideline would remain in full force and effect.

If the AER were to grant this waiver application and continue the imposition of the current condition, it is our view that there is no clear potential for discrimination through use of the common name and branding alone.⁵

Additionally, Ergon Energy Network contends that, while similar, the brands are differentiated to customers through the deliberate use of different colour schemes. Ergon Energy Network uses blue branding while Ergon Energy Retail uses green branding. The intent of this approach is to identify to customers that the entities are separate and provide different services.

Benefits

As the two businesses have operated under the current names and brand for many years, for the reasons set out in this application, it is submitted that the benefits of requiring a name and brand change are outweighed by the costs of doing so.

Additionally, as noted throughout this application, any change in name and branding is a matter solely for the Queensland Government.

⁵ In granting the existing waiver and condition in 2017, the AER agreed that the potential for discrimination was low, stating:

"We consider that: (1) Ergon Energy does not compete with other retailers to actively acquire new customers, and; (2) Ergon Energy cannot compete with other retailers by providing discounts or market contracts, and can only offer prices as determined by the Queensland Competition Authority. Therefore we consider that granting a waiver for continued use of the EEQ brand for the provision of services under standard retail contracts will have limited anti-competitive effects"

Further:

"The waiver allows use of the EEQ brand only for the continued provision of services under standard retail contracts. The AER is satisfied that this is sufficient to protect contestable markets, but we have specifically mentioned that the waiver is not granted for behind-the-meter services for the sake of additional clarity."

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3. CONCLUSION

To comply with the branding and cross-promotion obligations of the Guideline, the Queensland Government would need to initiate a rename and rebrand of either entity. At this time there is no indication that the Queensland Government intends to change the name or branding of either Ergon Energy Network or Ergon Energy Retail.

In assessing the waiver, Ergon Energy Network submits that the AER should be satisfied that there is no benefit in requiring Ergon Energy Network to comply with the branding and cross-promotion obligations of the Guideline and that there is appropriate functional and legal separation between Ergon Energy Network and Ergon Energy Retail and no risk of cross subsidisation. Additionally, if the current condition is continued, there will be limited discriminatory effects from granting the waiver.