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10 June 2025

Ms Trudy Fraser
A/Executive General Manager Regulation
Energy Queensland Limited
[REDACTED]
Townsville QLD 4810

Sent by email to: [REDACTED]

Dear Ms Fraser,

Re: Ergon Energy's application for a waiver of obligations under the Australian Energy Regulator's Ring-fencing Guideline – Mareeba and Charters Towers depots as regional offices

Thank you for the application received on 3 December 2024 for a waiver from the obligations in clauses 4.2.1 (a), 4.2.2(a) and 4.2.3(a)i of the Ring-fencing Guideline (electricity distribution) ('the guideline'), to enable Ergon Energy to allow the Mareeba and Charters Towers depots to continue being classified as regional offices for the purposes of ring-fencing.

Ergon Energy's proposal

Ergon Energy is seeking a new waiver to replace an existing waiver that allows its depots at Mareeba and Charters Towers to be classified as regional offices for the purposes of the guideline. The current waiver was approved on the condition that only two types of contestable services could be provided from these depots and expires on 30 June 2025.¹ With the end of the current waiver period approaching, Ergon Energy is seeking a new waiver to allow the Mareeba and Charters Towers depots to continue being classified as regional offices with no conditions attached.

Ergon Energy provided the AER with an addendum letter on 27 February 2025, in addition to its application on 3 December 2024. In this addendum letter, Ergon Energy requested that the new or renewed waiver should expire on 30 June 2040. Ergon Energy provided this letter following an update to the guideline that removed the current maximum term duration for waivers, with appropriate term lengths to be assessed on a case-by-case basis.²

¹ AER, [Ring-fencing waiver notice – Ergon Energy](#), 18 December 2017

² AER, [Ring-fencing guideline \(electricity distribution\) \(version 4\)](#), February 2025

AER assessment and decision

Under clause 5.3.2 of the guideline, before granting a waiver the AER must have regard to the National Electricity Objective (NEO), the potential for a distribution network to engage in cross-subsidisation of services and discriminatory behaviour, and whether the costs of compliance with the guideline outweigh the benefit to consumers of that compliance, including in relation to impacts on competition.

The AER publicly consulted on this application from 9 April 2024 to 7 May 2025, including on the potential for a longer-term waiver to be granted. We received 5 stakeholder submissions in response to our consultation process that will be published on the website alongside this decision notice.

Our decision is to grant a new waiver to Ergon Energy from clauses 4.2.1(a), 4.2.2(a) and 4.2.3(a)i of the guideline to allow the Mareeba and Charters Towers depots to continue being classified as regional offices on the condition that it only applies to the provision of the following services:

- contestable metering services, including installation, testing, faults and repairs, and
- pole installation, replacement and repairs on customer property.

This waiver will expire on 30 June 2045, unless varied or revoked sooner.

Alignment with the National Electricity Objective

Ergon Energy's application has stated that granting this waiver is consistent with the NEO because it will promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of customers, with a particular focus on price, quality, safety, reliability and security of supply for customers that require the contestable electricity services in these regional areas.

Ergon Energy's application states that in practice, competitive providers are:

- not available in these locations;
- only available when the work required is above a certain threshold of dollar value, to make the service provision economic for the competitive provider (i.e. potentially only where a minimum number of customers are requesting the work at the same time);
- available but at a considerable premium on the price, to recover the costs associated with travelling outside their usual areas of operation; and/or
- available but not within a timeframe that meets the customers' requirements.

The application also states that without this waiver, customers would be likely to face higher wait times for services if separate crews need to be dispatched and, also, Ergon Energy would incur higher costs, which would likely be passed onto customers.

The AER has considered costs and benefits of granting this waiver in line with the NEO, in particular:

- **Price:** Granting this waiver may result in a short-term decrease in prices for contestable services in the Mareeba and Charters Towers areas by allowing Ergon Energy to provide services at a lower cost than the existing market. However, allowing Ergon Energy to provide contestable services beyond the scope of this condition (for which there is an established market) may crowd out other service providers and make it difficult for competitors to enter the market. This may result in a

long-term increase in the price paid by consumers in these areas for contestable services.

- **Quality:** Allowing Ergon Energy to perform contestable services will likely improve customer wait times. However, we note that stakeholders have identified that Ergon Energy's staff do not have experience providing consumer-side services. These stakeholders did not comment on Ergon Energy staff's ability to provide pole and metering services under the existing waiver.
- **Reliability and security of supply:** granting this waiver will allow Ergon Energy staff to resolve the issue faced by a customer regardless of whether the issue is behind or in front of the meter. Therefore, it will improve the reliability and security of supply to grant this waiver.

Cross-subsidisation and discrimination matters

We consider that granting this waiver to Ergon Energy with the same conditions as the current waiver will have minimal, if any, impact on market competition. Furthermore, we consider the risk of cross-subsidisation is adequately addressed by Ergon Energy's Cost Allocation Method (CAM) that is approved by the AER. We note that Ergon Energy maintains separate accounts for its regulated distribution services, unregulated distribution services, and non-distribution services in accordance with the principles and policies of its CAM. The CAM ensures Ergon Energy would not cross-subsidise the provision of the contestable services by its related electricity service provider.

The AER considers that there is some discrimination risk of Ergon Energy conferring a competitive advantage on its related electricity service provider. This risk emerges by nature of the situation described in Ergon Energy's waiver application in which an Ergon Energy crew identifies an issue on a customer's site and then resolves it as a member of Ergon Energy's related electricity service provider under this waiver.

We concluded that the potential benefit to consumers in requiring Ergon Energy to comply with clauses 4.2.1 (a), 4.2.2(a) and 4.2.3(a)i of the guideline in this instance, and that these would be outweighed by the costs of compliance for Ergon Energy. We consider that the two main harms ring-fencing aims to prevent (the risk of cross-subsidisation and discrimination) are adequately addressed.

For these reasons, the AER has decided to grant a new waiver to Ergon Energy from clauses 4.2.1 (a), 4.2.2(a) and 4.2.3(a)i of the guideline to enable Ergon Energy to allow the Mareeba and Charters Towers depots to continue being classified as regional offices for the purposes of ring-fencing.

The AER considers that it is appropriate to retain the conditions of the current waiver. This decision was informed by Ergon Energy's market scan identifying an existing market for the provision of contestable services in the areas surrounding the Mareeba and Charters Towers and submissions received as part of consultation. Our decision was also informed by the risk assessment set out as part of determining whether to grant this waiver.

The cost to the Ergon Energy of complying with the guideline outweighs the benefit to consumers of compliance

The cost to Ergon Energy of complying with the guideline is that:

- Ergon Energy staff may have to travel to a customer's site only to be unable to solve the customer's problem, and
- If Ergon Energy wishes to continue to provide contestable services in the Mareeba

and Charters Towers areas, they will have to establish a separate depot (and serve these customers via two separate trips) or serve these customers from further away (ie. from an office that has a regional office exemption).

The benefit to electricity consumers of Ergon Energy complying with the guideline is that:

- The existing contestable market will not be crowded out, which may have flow on effects to ensuring lower prices for electricity services in these areas in the long term.

However, this benefit of compliance will still be delivered to electricity consumers under this waiver because the condition imposed on the waiver will minimise the potential impact on the existing contestable market. Further, we do not consider that there is likely to be competition for the contestable services that Ergon Energy is able to provide from these depots under the condition of this waiver. We therefore consider that there will be little (if any) benefit of having Ergon Energy comply with the obligation.

Therefore, our assessment indicates that cost to Ergon Energy of complying with the guideline outweighs the benefits to electricity consumers of Ergon Energy's compliance with the guideline.

Waiver duration

The AER now has discretion to set waiver durations on a case-by-case basis without a maximum term length under the guideline, including terms beyond the next regulatory control period, where it is appropriate. This flexibility allows the AER to ensure the term for each waiver is appropriate and to cater for circumstances where there may be little benefit to limiting the length of a waiver to two regulatory periods. We are granting this waiver with an expiry on 30 June 2045. We consider it is appropriate given that the application illustrates the lack of projected population growth and therefore contestable markets growth in these locations out to 2046 and there have been no concerns directly related to Ergon Energy's operation under the existing waiver.

Ergon Energy's application states that populations in smaller regional communities are projected to remain at about current levels. For example, out to 2046, the population in the local government area for:

- Mareeba is projected to slightly increase by 1% or less every five years; and
- Charters Towers is projected to slightly decrease by less than 0.5% every five years.

In all, we consider that a longer-term waiver in this instance supports Ergon Energy in delivering efficient and safe services to customers in the Mareeba and Charters Towers areas. It ensures Ergon Energy can respond to customer issues to resolve power outages.

Granting this waiver for the requested duration up to 30 June 2045 is in the long-term interest of customers given the relatively low risk and high benefit of Ergon Energy's participation in delivering contestable services from the Mareeba and Charters Towers depots. This aligns with the NEO in that, granting a longer duration for this waiver serves in the long-term interest of consumers of electricity with respect to the quality, safety, reliability and security of supply of electricity.

Compliance and review matters

The AER has broad discretion to review and revoke ring-fencing waivers that it grants, at any time on its own initiative if there are grounds to do so. Pursuant to section 5.5 of the guideline, in deciding whether to vary or revoke the waiver, the AER will have regard to the same matters for granting the waiver under clause 5.3.2 of the guideline. A minimum of 40

days' notice will be given to Ergon Energy that the AER is considering a variation or revocation of this waiver.

We also remind Ergon Energy that under clause 6.3 of the guideline, Ergon Energy is required to notify the AER in writing within 15 days of becoming aware of a breach of its obligations under the guideline.

If you would like to discuss this matter further, or have any questions, please contact Laura Considine, Director, New Markets and Innovation, on [REDACTED] in the first instance.

Yours sincerely,

[REDACTED]

Jarrod Ball
Board Member
Australian Energy Regulator

Sent by email on: 10.06.2025