AUSTRALIAN ENERGY REGULATOR

Contact Officer: Laura Considine
Contact Phone: [redacted]
Email: [redacted]

30 June 2025

Ms Trudy Fraser
A/Executive General Manager Regulation
Energy Queensland

Sent by email to:

Dear Ms Fraser

Re: Ergon Energy Network's ring-fencing waiver application to continue to use shared branding for Ergon Energy Network and Ergon Energy Retail.

Thank you for the application received on 14 March 2025 for a waiver from the obligations in clause 4.2.3 of the Ring-fencing Guideline (electricity distribution) ('the guideline') to allow Ergon Energy Network to use similar branding as Ergon Energy Retail.

Ergon Energy Network's proposal

Ergon Energy Network is seeking a waiver to continue to use a similar brand name and branding as Ergon Energy Retail, a related electricity service provider (RESP). Under clause 4.2.3(a)(i) of the guideline, a DNSP must use branding for its direct control services that is independent and separate from the branding used by a related electricity service provider for contestable electricity services, such that a reasonable person would not infer from the respective branding that the DNSP and the related electricity service provider are related.

Ergon Energy Network has an existing waiver for this purpose, which was granted by the AER in 2017.[1] The existing waiver allows Ergon Energy Network to operate with a similar brand and name to Ergon Energy Retail, under the condition that Ergon Energy Retail can only offer services under standard retail contracts and can only offer other services by creating a separate brand to offer those services.

The existing waiver will expire on 30 June 2025. Ergon Energy Network has requested that the new waiver be granted for the period until 30 June 2035.

AER assessment and decision

Under guideline clause 5.3.2, in deciding whether to grant 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 Ergon Energy Network's application from 23 May 2025 to 13 June 2025, seeking feedback from stakeholders on the potential risks associated with Ergon Energy Network using similar brand and name to Ergon Energy Retail who performs in

[1] Decision DNSP applications for waivers from the Electricity Distribution Ring-fencing Guideline, section 5.2, pages 67-70.

contestable markets. No parties raised any concerns with this proposal either directly or via public submission.

Our decision is to grant a new waiver to Ergon Energy Network from clause 4.2.3 of the guideline to enable Ergon Energy Network to use a similar brand and name to Ergon Energy Retail. The waiver is granted with the following conditions.

- The waiver will expire on 30 June 2035 unless varied or revoked sooner. Ergon Energy Network will be required to notify the AER in an event of any legislative change in Queensland government policy such as change of names of either entity (Ergon Energy Network and/or Ergon Energy Retail) that would affect the waiver.
- This waiver will apply only to use of the Ergon Energy brand for services that relate to the provision of services by Ergon Energy Retail under standard retail contracts in the Ergon Energy distribution network. Other services not associated with the provision of standard retail contracts must be delivered using a separate brand.

Alignment with the National Electricity Objective

In examining whether an application for a waiver is aligned with the NEO, we have balanced considerations of whether granting the waiver might enable an increase in competition, the likelihood of competition materialising and the costs associated with not granting the waiver. In assessing how Ergon Energy Network's compliance with clause 4.2.3 would impact competition in retail markets in regional Queensland we concluded that the opportunities for increased retail competition in regional Queensland region are limited due to application of uniform tariff policy. Therefore, there is a limited risk of Ergon Energy Network's and Ergon Energy Retail's use of a similar brand and name reducing competition and or enabling cross promotion.

In addition, the costs of complying with the clause 4.2.3, including costs associated with rebranding are likely to be significant and would require efforts to build brand awareness among consumers for both distribution and retail services. Moreover, it would require Queensland Government to pass amending legislation to make the change. Such an approach would lead to uncertainty and additional cost, likely be passed onto customers, which would not align to achievement of the NEO.

The AER considers granting a waiver to Ergon Energy Network contributes to the long-term interests of consumers, aligns with the principles of the NEO while not raising significant risks to contestable markets in regional Queensland.

Cross-subsidisation and discrimination matters

We consider that granting this waiver to Ergon Energy Network will have minimal impact on market competition. While the market is contestable, the degree of retail competition in regional Queensland is influenced by the uniform tariff policy and application of Queensland government's community service obligation. We note that the uniform tariff policy framework does not specify regulated prices to be based on cost of supplying customers and there is often a large differential between the genuine cost of supplying and what consumers pay. However, we understand that some large business customers in regional Queensland pay regulated retail prices that are close to the cost of supply[2]. Other retailers may also identify other service niches in which they can make competitive offers. This means that there are some segments of the regional Queensland electricity market where other retailers may effectively compete with Ergon Energy Retail for customers. However, on the whole, the AER is satisfied that the current environment of subsidised retail prices limits opportunities for Ergon Energy Retail to benefit from the use of a similar brand name.

[2] QCA, Uniform Tariff Policy and Regional Retail Electricity Price Regulation, Final Advice – April 2014, p. 7.

Furthermore, Ergon Energy Network has confirmed that it is compliant with the other provisions of the guideline including functional separation and legal separation with separate offices and staff, which adequately address the risk to discrimination.

We also consider that there is minimal risk of cross subsidisation as Ergon Energy Network maintains separate accounts for its direct control services and its unregulated services through an approved cost allocation methodology (CAM). Ergon Energy Network and Ergon Energy Retail operate as separate legal entities and maintain separate accounts demonstrating low risk of cross-subsidisation.

The AER has considered the potential impact of this waiver on other contestable services, similar to our decision in 2017. In 2017, when granting the waiver, the AER expressed that the waiver could not be used to provide other contestable services, with the intention of protecting emerging markets for behind the meter services. In this decision to grant the waiver, the AER has maintained the condition but have simplified the condition to remove the phrase “such as behind the meter services”. This is because by very nature of the retailer’s role, standard retail contracts do not include any provisions for activities related to behind the meter. We consider the condition inherently excludes any activities that are not considered part of standard retail contracts including behind the meter activities. This approach still promotes competition and provides a level playing field to other providers who wish to offer or are currently offering contestable services in regional Queensland areas.

Cost of compliance to the clause 4.2.3

There is minimal (if any) benefit to consumers in requiring Ergon Energy Network to comply with clause 4.2.3 of the guideline in this instance, and these would be outweighed by the costs of compliance (i.e. setting up a new brand). In the absence of a waiver, Ergon Energy Retail would be required to spend a significant amount of time and money on creating a new brand and a customer campaign to build brand awareness, trust and consumer confidence. This would also require the Queensland Government to pass legislation to this effect, as it has jurisidiction over Ergon Energy Network and Ergon Energy Retail as per the Government Owned Corporations Act.[3]

Waiver duration

We have accepted the suggested waiver tenure and have decided to grant the waiver until 30 June 2035. We concluded that the assessment of risks and benefits is likely to remain stable for this period.

Further, during consultation, we did not receive any concerns related to retail competition or in relation to impact on third parties interested to offer contestable services in regional Queensland. The ring-fencing framework and compliance to the other obligations under the guidelines such as information sharing, maintaining registers and protection of ring-fenced information provides some transparency to stakeholders on DNSP activities around its RESP.

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 Network that the AER is considering a variation or revocation of this waiver.

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[3] Ergon Energy Network and Ergon Energy Retail are related entities and subsidiaries 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 is reminded that under clause 6.3. of the guideline, Ergon Energy Network 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 AERringfencing@aer.gov.au in the first instance.

Yours sincerely

[redacted]

Jarrod Ball
AER Board Member

Sent by email on: 30.06.2025