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4 March 2022

Nicola Roscoe
GM Strategy and Regulation
Ergon Energy Network
420 Flinders Street
Townsville
By email: Nicola.Roscoe@energyq.com.au

Dear Ms Roscoe

Re: Ergon Energy waiver application for new energy storage devices

Thank you for your letter and streamlined waiver application dated 12 January 2022, requesting the AER's approval of a waiver from the electricity distribution ring-fencing guideline (**the guideline**) for five new batteries.

AER assessment and decision

The guideline specifies that, in assessing a waiver application, we will consider the benefits to consumers of the DNSP being required to comply with the obligation, relative to the cost to the business of complying with the obligation. In our November 2021 update to the guideline, we also identified that where a DNSP wants to supply excess capacity of batteries to third parties and cross-subsidisation risks do not arise, the applications would meet the criteria for a streamlined waiver. As the Ergon Energy application identifies that the five batteries are not in the RAB, we have determined that the application meets the criteria for consideration under a streamlined waiver. Furthermore, there is no harm to consumers from cross-subsidisation with this proposed application.

We consider that granting the application would likely be in consumer interests as without this waiver the batteries would be limited to providing network support only. Therefore, we believe that approval of the application promotes the National Electricity Objective.

Ergon Energy Retail (EEQ) will be using the excess capacity of the batteries. We understand EEQ were the only body that expressed interest in using the excess capacity through a public process and that the contract with Ergon Energy is an arm's length commercial arrangement.

The guideline has a number of obligations to prevent discriminatory behaviour in favour of a particular entity (namely those obligations set out in clause 4.1 and 4.3). These obligations cannot be waived. Based on the information Ergon Energy has provided we believe that the application is compliant with these obligations. However, to ensure ongoing compliance with this clause we are making as a condition to this waiver approval a requirement to share with

the AER information on the contractual arrangement between the two entities. This is further outlined below. This will provide ongoing comfort that Ergon Energy is complying with its obligations as set out in clause 4.1.

Having considered these matters outlined above, we have decided to grant a waiver from Ergon Energy's obligation to comply with clause 3.1 of the guideline until 30 June 2035. The waiver will allow Ergon Energy to supply excess capacity of the five identified batteries to EEQ, subject to the conditions identified below.

Conditions

As indicated in our 2021 explanatory statement and final communication on the streamlined waiver process, conditions to this waiver are likely to apply.

The following conditions apply with this waiver approval:

- Providing the AER with information on the contractual arrangement between Ergon Energy and EEQ. This information includes the contractual terms, conditions and payments. This information should be provided to AERringfencing@er.gov.au within 20 business days of the contract being finalised. Where there are changes in this contractual arrangement, the AER should be notified within 20 business days. We acknowledge the commercially sensitive nature of this information and will treat this information, accordingly, noting our policies regarding information privacy and disclosure of information.
- Ex-post public sharing of information about the battery (e.g. location(s), size, intended purposes and uses, approved cost allocation method, and a key contact for external stakeholders if they wish to discuss the project further) and any useful learnings from the battery usage that will support the battery market.
- Provide on an annual basis a comparison of the uses (volume and frequency) of the battery that confirms and differentiates between Ergon Energy network usage and spare capacity leased to Ergon Energy Retail, and an explanation of any differences between the two. The independent assessor, as part of the annual ring-fencing compliance assessment, is to confirm the comparison is accurate.

If you have any questions, please contact Mark Feather on 03 9290 6958 or email AERringfencing@er.gov.au

Yours sincerely



Justin Oliver
AER Board Member