



Final decision

Ergon Energy

**Application for Waiver from
Ring-Fencing Guidelines**

May 2011

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Shortened forms

Shortened form	Extended form
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
Climate Change Strategy 2007	ClimateSmart 2050: Queensland Climate Change Strategy 2007: a low carbon future
DNSP	Distribution Network Service Provider
Ergon Energy	Ergon Energy Corporation Limited
NER	National Electricity Rules
QCA	Queensland Competition Authority
Ring-Fencing Guidelines	Queensland Competition Authority's Electricity Distribution: Ring-Fencing Guidelines, September 2000

Summary

This document sets out the Australian Energy Regulator (AER)'s final decision in respect of Ergon Energy's ring-fencing waiver application.

On 16 March 2011, Ergon Energy applied to the AER for a waiver from s. 1(b) of the Queensland's *Electricity Distribution: Ring-Fencing Guidelines* (Guidelines).¹ This section prohibits Ergon Energy from carrying on a 'related business', which is defined as a business of producing, purchasing or selling electricity.² A waiver from s. 1(b) may be granted, if Ergon Energy can demonstrate that the administrative cost of compliance with the section outweighs any benefit, or any likely benefit, to the public.³

The subject of Ergon Energy's waiver application related to small generation assets sought to be built, owned and operated by Ergon Energy on its office buildings and depots – specifically, photovoltaic (PV) devices which use cells to convert solar energy into electricity. Ergon Energy submitted that a waiver should be granted, because the PV installations formed part of its corporate plan to improve energy efficiency for its buildings.⁴ Moreover, compliance with s. 1(b) would require Ergon Energy to create a subsidiary company to own and operate the PV systems. Ergon Energy stated that such procedure would be costly and provide no benefit to the public.

Having assessed Ergon Energy's application, the AER released a draft decision on 21 April 2011. The draft decision indicated the AER's intention to issue a notice to waive Ergon Energy's ring-fencing obligation under s. 1(b) in respect of the PV installations.⁵ More specifically, the AER contemplated granting a waiver which would cap the combined generation capacity for all PV installations at 300 kilowatts.

For the reasons set out in this document, the AER's position has remained substantially unchanged since its draft decision. Accordingly, the AER now issues its final decision under s. 29 of the Guidelines.⁶

¹ Queensland Competition Authority, *Final Determination: Electricity Distribution: Ring-Fencing Guidelines*, September 2000.

² Glossary of terms, Queensland Competition Authority, *Final Determination: Electricity Distribution: Ring-Fencing Guidelines*, September 2000.

³ Section 21, Queensland Competition Authority, *Final Determination: Electricity Distribution: Ring-Fencing Guidelines*, September 2000.

⁴ Ergon Energy, *Application for a ring-fencing waiver under section 21 of the electricity distribution: Ring-Fencing Guidelines*, 16 March 2011, p.2-3.

⁵ AER draft decision, *Ergon Energy: Application for Waiver from Ring-Fencing Guidelines*, April 2011.

⁶ Section 29 of the Guidelines states that the Queensland Competition Authority must issue a final decision within 30 days after the last day for submissions on the draft decision.

1 Background to Ergon Energy's waiver application

Section 1(b) of the Guidelines prohibits a distribution network service provider (DNSP) from carrying on a 'related business' within its legal entity. A 'related business' is defined as a business of producing, purchasing or selling electricity'.⁷ As such, Ergon Energy would be prohibited from owning and operating any generation assets.

On 16 March 2011, Ergon Energy applied for a waiver from s. 1(b) of the Guidelines in respect of its PV installations on its office buildings and depots. The PV installations generate electricity by using solar cells to convert solar energy, and therefore fall within the definition of a 'related business'.

In Appendix 1 of its waiver application, Ergon Energy identified 16 PV installations – nine existing PV systems (the first was installed in 2008) and seven proposed PV installations (all due for completion during 2011). Moreover, Ergon Energy has sought a waiver in respect of all future PV installations on its office buildings and depots.⁸

Following the procedures set out in ss. 22 to 30 of the Guidelines, the AER has taken the following steps for the purpose of assessment:

- published a media notice in *The Australian* newspaper and sought comment on Ergon Energy's waiver application (30 March 2011).
- issued a draft decision and sought submissions on the draft decision by 6 May 2011 (21 April 2011).

The AER received only one submission on the draft decision, from Ergon Energy.⁹

⁷ Section 30, Queensland Competition Authority, *Final Determination: Electricity Distribution: Ring-Fencing Guidelines*, September 2000.

⁸ Ergon Energy, *Application for a ring-fencing waiver under section 21 of the electricity distribution: Ring-Fencing Guidelines*, 16 March 2011, p.1.

⁹ Ergon Energy, *AER draft decision on Ergon Energy's application for a ring-fencing waiver from Ring-Fencing Guidelines*, 6 May 2011.

2 AER's draft decision

In the draft decision, the AER broadly accepted Ergon Energy's submission that a waiver should be granted under s. 21. The AER considered there would be no public benefit in requiring Ergon Energy to comply with its ring-fencing obligation under s 1(b) of the Guidelines. In reaching its view, the AER took into account the following circumstances:

- creating a separate company to own and operate the PV systems would be costly and provide no public benefit. Ergon Energy estimated that the establishment costs of a new subsidiary company and the annual operating costs of the PV systems would amount to \$11,700 and \$157,000 respectively.¹⁰
- these PV systems are relatively small in terms of generation capacity, and they would not be used by Ergon Energy to enter either the generation or retail markets.¹¹ Consequently, they are unlikely to have any negative impact on the competitive outcomes in these markets to the public detriment.

Furthermore, the AER recognised that these PV installations represented a good corporate initiative on the part of Ergon Energy - to support the Queensland Government's *Climate Change Strategy 2007*¹² and to improve the energy efficiency of its buildings.

However, the AER was not prepared to issue a notice of waiver that would apply to all future PV installations as requested by Ergon Energy.¹³ The AER considered that there could be risks in providing an open-ended approval, as there was no guarantee that future PV systems would operate along the same lines as those subject to the current waiver application. As a result, the AER proposed to grant a waiver for all PV installations, subject to a combined generation capacity cap of 300 kilowatts. As such, the 16 PV installations identified in Appendix 1 of Ergon Energy's application would be included in the cap. Should any future installations result in the cap being exceeded, Ergon Energy must submit a new waiver application to the AER under s. 22 of the Guidelines.

The AER reserves the right to vary, revoke or amend this waiver in relation to any PVs that have not been built by Ergon Energy to date.

Furthermore, Ergon Energy's other activities would remain subject to all other aspects of the Guidelines, and s. 1(b) would continue to apply to any other relevant activities of Ergon Energy.

¹⁰ Ergon Energy, *Application for a ring-fencing waiver under section 21 of the electricity distribution: Ring-Fencing Guidelines*, 16 March 2011, p.2.

¹¹ Ergon Energy, *Application for a ring-fencing waiver under section 21 of the electricity distribution: Ring-Fencing Guidelines*, 16 March 2011, p.2-3.

¹² http://www.thepremier.qld.gov.au/library/pdf/initiatives/climate_change/ClimateSmart_2050.pdf

¹³ AER draft decision, *Ergon Energy: Application for Waiver from Ring-Fencing Guidelines*, April 2011, p.5-6

3 Submission by Ergon Energy

In its submission dated 6 May 2011, Ergon Energy proposed an alternative form of waiver. Instead of a total generation capacity cap of 300 kilowatts for all PV installations, Ergon Energy sought a cap that would relate to “Gross Floor Area, for example 10kW per 100m²”.¹⁴ Ergon Energy submitted that its proposed cap would allow for solid and standardised fit out and construction features in all of its future property projects.

Additionally, Ergon Energy pointed out that the waiver should only be limited to PVs installed on its office buildings and depots, rather than applying to PVs generally.

¹⁴ Ergon Energy, *AER draft decision on Ergon Energy’s application for a ring-fencing waiver from Ring-Fencing Guidelines*, 6 May 2011, p.1.

4 AER's final decision

The AER's final decision is to issue a notice to grant a waiver to Ergon Energy in respect of its PV installations, subject to a limit based on the total combined generation capacity of all PV installations. Consistent with its draft decision, the AER broadly accepts Ergon Energy's proposal that a waiver should be granted under s. 21 of the guidelines. The AER considers there is no public benefit in requiring Ergon Energy to comply with its ring-fencing obligation under s 1(b) of the Guidelines.

However, the AER does not accept the limit on PV capacity suggested by Ergon Energy in its submission on the draft decision. The AER considers that a simpler cap based on total generation capacity would be more practical and have fewer administrative costs. For example, it does not require regard to be given to both the size of the PV installations and the floor area of the buildings on which they are installed, thereby complicating verification and enforcement of the waiver. A total generation capacity cap puts a limit on how much PV capacity Ergon Energy can install, but is sufficiently flexible to allow Ergon Energy to adopt its choice of fit out and features for any of its property projects. Ergon Energy's proposed cap in contrast provides no limit beyond the floor area it has available to install PV installations. A clear limit removes the possibility that the PV installations could be used to compete in related markets.

As such, the AER considers the position reached in its draft decision should remain in relation to this matter. That is, that the total combined generation capacity of Ergon Energy's PV installations should be capped at 300 kilowatts.

The AER accepts Ergon Energy's submission that the cap should be made expressly limited to PV installations on Ergon Energy-owned office buildings and depots, rather than applying to PV installations generally.

Under s.29 of the Guidelines, the AER's final decision is to issue a notice to grant a waiver to Ergon Energy on the following terms:

Terms of the AER's Notice

The AER will issue a notice under s. 21 of the Guidelines to waive Ergon Energy's obligation to comply with s. 1(b) of the Guidelines in respect of PV installations.

This waiver applies to all PVs installed (or to be installed) on Ergon Energy's office buildings and depots, with a combined generation capacity capped at 300 kilowatts. As such, the 16 PV installations identified in Appendix 1 of Ergon Energy's application are included in the cap. Should any future installations result in the cap being exceeded, or if Ergon Energy installs PVs on physical assets other than office buildings and depots that it owns, Ergon Energy must submit a new waiver application to the AER. Ergon Energy's other activities would remain subject to all other aspects of the Guidelines, and s. 1(b) would continue to apply to any other relevant activities of Ergon Energy.

The AER reserves the right to vary, revoke or amend this waiver in relation to any PVs that have not been built by Ergon Energy to date.

