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Dear Mr Leuner

**Issues Paper: AER approach to retail exemptions**

Ergon Energy Corporation Limited and Ergon Energy Queensland Pty Ltd welcome the opportunity to provide a submission to the Australian Energy Regulator on its *Issues Paper: Approach to Retail Exemptions* (June 2010) (Issues Paper).

Ergon Energy has provided comment on selected questions raised for consideration in the Issues Paper as well as on the draft determination annexed to the Issues Paper.

Should you wish to discuss any aspect of this submission, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink that reads 'C. A. Price'.

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**Ergon Energy Corporation Limited  
and  
Ergon Energy Queensland Pty Ltd**

**Issues Paper: Approach to Retail Exemptions**

**Australian Energy Regulator  
2 August 2010**

# Issues Paper: Approach to retail exemptions

## Australian Energy Regulator

2 August 2010

This submission, which is available for publication, is made by:

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## 1 INTRODUCTION

Ergon Energy Corporation Limited (EECL) and Ergon Energy Queensland Pty Ltd (EEQ) welcome the opportunity to provide a submission to the Australian Energy Regulator (AER) in response to its *Issues Paper: Approach to Retail Exemptions*, June 2010 (Issues Paper).

This submission is provided by:

- EECL, in its capacity as a distribution network service provider in Queensland; and
- EEQ, in its capacity as a non-competing area retail entity in Queensland.

In this submission, EECL and EEQ are collectively referred to as 'Ergon Energy'.

Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AER require.

## 2 GENERAL COMMENTS

As a general comment, Ergon Energy supports the development of a national framework for exempt selling and acknowledges the complexities faced by the AER in seeking to develop a regime that captures the range of on-supply arrangements that exist - i.e. from caravan parks to large customer-owned networks such as airports and industrial parks.

Ergon Energy supports a framework for exempt selling under which:

- Deemed exemptions are applied to small-scale on-supply arrangements, regardless of whether the customers supplied under the arrangement are classified as small or large, i.e. a person engaged in the on-supply of energy on a small-scale should be regarded as an exempt seller for all premises within the site.

In Ergon Energy view, 'small-scale' should be defined through a combination of:

- the number of premises within a single site (e.g.  $\leq 25$  small customers as has been proposed); and
  - the volume of energy sold (e.g.  $< 'X'$  MWhs per annum).
- The proposed conditions of energy sale to exempt customers are, with limited exception, only applied to on-supplied customers that are classified as small (i.e. residential or small business).

Ergon Energy suggests that this framework would:

- be administratively simpler for both the AER and on-suppliers; and
- align to the coverage and policy intent of National Energy Customer Framework (NECF).

### **3 OVERVIEW OF EXEMPTIONS**

#### **3.1 The AER's role**

Ergon Energy provides the following comments with respect to the AER's role under the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR):

- The concept of 'sale of energy' should be expanded to include circumstances where, although the cost of energy is included in another charge, it is a materially significant proportion of the total costs sought to be recovered. That is, service arrangements should not be utilised as a means of avoiding the unauthorised sale of energy. This concept would better reflect the exempt seller related factors (e.g. 'incidental' selling and exempt seller circumstances) and should be reflected in the Class 2 exemption in the Draft Determination provided at Attachment 1 of the Issues Paper.
- The Public Register maintained by the AER should also include information regarding:
  - the date that the exemption was granted; and
  - the basis upon which the exemption was granted and the nature of the conditions that apply.
- The information provided by exempt sellers to the AER should include not only the number of premises within the site under exemption and the customer segments served, but also the nature of the activities undertaken by the exempt seller, i.e. its business characteristics.

#### **3.2 Distinction between retail exemptions and network exemptions**

Ergon Energy supports the application of NECF to customers in isolated networks to the extent that the NECF arrangements can be practically applied. It is understood however that, consistent with the application of the National Electricity Law and National Electricity Rules, the NERL and NERR will only apply to the interconnected electricity system.

Therefore while it is open for a jurisdiction to extend the operation of NECF to isolated networks and non-grid connected customers, this will need to occur through the jurisdiction's Application Act, or comparable legislation. Unless this occurs, retail exemptions for on-supply in isolated networks will continue to be administered at a jurisdictional level.

Ergon Energy believes that, given the varying geographic, economic and cultural issues that exist within and between isolated networks, the question of if and how NECF will be applied is a matter that is appropriately left for jurisdictional decision.

#### **3.3 Current jurisdictional approaches**

While Ergon Energy supports the existing jurisdictional approach of self-assessment for small-scale on-supply arrangements, registration of significant on-supply arrangements (i.e. in terms of the number of parties on-supplied or their characteristics) would assist in:

- providing confidence that exempt customers are receiving appropriate protections, where these customers are 'small'; and
- complement the Network Service Provider exemption regime through increased transparency regarding the location of significant on-supply arrangements and their characteristics.

## 4 ISSUES FOR DISCUSSION

### 4.1 Apparent growth in on-selling

In addition to the issues identified in the Issues Paper, Ergon Energy notes that there is the potential for on-supply arrangements to reduce the level of participation in demand management and energy conservation measures, including controlled load and off-peak pricing.

Ultimately, the AER should weigh the costs of regulatory intervention against the benefits to be derived when determining the range of consumer protections to be applied to on-supply arrangements.

### 4.2 Policy Principles

Ergon Energy provides the following comments on the proposed policy principles:

- Ergon Energy supports the proposition that small customer protections under the NERL and NERR should not be extended to large customers. There may however be value in including a condition regarding the provision of meter data by the on-supplier (periodically or upon request) – this would increase the transparency of billing arrangements and facilitate the movement of large customers from on-supply to retail market contracts.
- It is acknowledged that the introduction of full retail competition may not yet be fully reflected in building requirements and planning instruments. This however is an issue for jurisdictional determination and as such, should only be addressed by the individual jurisdiction concerned, through regulatory and legislative change. In particular, the exempt selling framework should not be inconsistent with, or seek to displace, jurisdictional policy, including the establishment of embedded networks (i.e. whether or not embedded networks are permitted).
- The Issues Paper states that the AER’s intention is to not permit deemed exemptions in circumstances where access to a retailer of choice “is possible”. It is unclear how the AER proposes that this principle will be assessed, e.g. whether this will include an analysis of costs and benefits, and enforced, e.g. given that physical changes to the site may be required.
- Although Ergon Energy appreciates the AER’s concerns regarding a failure of supply to exempt customers as a consequence of default and disconnection of the exempt seller, it is not practical for the AER to attempt to apply the concept of a retailer of last resort because:
  - the proposal as currently defined would be administratively burdensome - a number of warnings may be issued prior to disconnection (i.e. the issuing of a warning in itself is not evidence that disconnection will occur) and the volume of warnings issued across sites with deemed and registrable exemptions are likely to be significant;

- it is unclear what the AER would propose to do in circumstances where notification of disconnection is provided. The suggestion that the AER would involve itself in the investigation of procedures “to avoid disconnection of the exempt seller’s customers” may be beyond the AER’s legislative authority. It also implies that retailers and distributors may be prevented from pursuing their contractual and regulatory rights and obligations with respect to disconnection (e.g. mitigation of financial risk, obligations with respect to the processing of service orders); and
- it is unclear whether there is evidence that this is a material issue under existing arrangements (i.e. continuity of supply issues exist under the current jurisdictional regimes).
- A right of access for an exempt customer to an energy Ombudsman scheme is a matter for jurisdictional discretion. As a general principle, a right of access should only be granted in circumstances where there is a financial contribution by the exempt seller to the scheme’s operation.

#### **4.3 Exempt seller factors**

In relation to the AER’s proposed treatment of off-grid supply networks, Ergon Energy repeats the concerns raised in section 3.2 of this submission and further notes that in Queensland:

- retail price regulation currently exists for non-market customers on isolated networks; and
- in circumstances where NECF is applied to isolated networks, further consideration is required of the number of on-supply arrangements that will exist. Should the number of on-supply arrangements be significant, individual exemptions would be an inappropriate default position.

#### **4.4 Customer related factors**

Ergon Energy has no comment to provide on the customer related factors.

### **5 PROPOSED EXEMPTIONS**

#### **5.1 Deemed class exemptions and registrable class exemptions**

As discussed in section 2 of this submission, Ergon Energy supports the threshold for registration being linked to a combination of premises within a single site and the amount of electricity being sold, for example where:

- the site includes  $\leq 25$  relevant customer premises (e.g. residential and small business); and
- the sale of energy is less than ‘X’ MWhs per annum.

Recognition of the volume of energy sold would ensure that registration does not need to be pursued for small-scale energy sale arrangements where a small number of large business customers are on-supplied.

## 5.2 Class exemption categories

The following comments are provided on the exemption categories outlined in the Draft Determination.

### ***Class 1 exemptions***

Ergon Energy supports the exemption attaching to the site owned, occupied or operated by the on-supplier, rather than the on-supplier's specific characteristics.

Ergon Energy is concerned however that the framework proposed by the AER fails to adequately address the issue of on-supply arrangements where energy is sold within a site to a mixture of 'small' (i.e. residential or business customers consuming <100 MWhs per annum) and 'large' (i.e. business customers consuming  $\geq$ 100 MWhs per annum).

By way of example, the proposed Class 1 deemed exemption appears to provide that:

- a deemed exemption will apply to a site that has  $\leq$  25 small customer premises (noting the additional requirements regarding sale within the limits of the premises and metering);
- the person engaged in on-selling energy under the deemed exemption will be an exempt seller;
- all persons to whom an exempt seller sells energy at the site will be exempt customers, regardless of whether they are small or large, i.e. an exempt customer is a person to whom an exempt seller sells energy and who would be a retail customer of the seller if the seller were a retailer. That is, whether a customer is an exempt customer is linked to the status of the person on-selling the energy, not the customer's classification as small or large; and
- the conditions attached to the Class 1 exemption apply generally to exempt customers.

As a consequence, the small customer rights and obligations apply to both small and large on-supplied customers at the site. This is a much broader application of the consumer protection framework for large business customers than is intended under NECF.

Ergon Energy does not believe that this is (or should be) the intended application of the exempt selling regime.

### ***Class 2 exemptions***

Consistent with the comments provided in section 3.1 of this submission, Ergon Energy suggests that the 'sale of energy' should be expanded to include circumstances where, although the cost of energy is included in another charge, it is a materially significant proportion of the total costs sought to be recovered. That is, service arrangements should not be utilised as a means of avoiding the unauthorised sale of energy.

### ***Class 3 exemptions***

Ergon Energy has no comment on the proposed deemed exemption.



### ***Class 4 and 5 exemptions***

Ergon Energy supports the use of transitional deemed exemptions. It is suggested however that the date for revocation of the transitional deemed exemptions should be:

- linked to the date for commencement of NECF within the relevant jurisdiction, e.g. two years following commencement. This would recognise that the timeframe for commencement of NECF will vary between participating jurisdictions; and
- developed with regard to any transitional arrangements related to exempt selling contained in jurisdictional Application Acts.

With respect to class 5 exemptions, the AER may wish to consider the introduction of a condition that energy charges are based on a documented calculation methodology which may be requested by the AER at any time.

### ***Registrable exemptions***

Ergon Energy's provides the same comments as for the 'Class 4 and 5 exemptions'.

### **5.3 Individual exemptions**

In relation to the framework proposed for individual exemptions:

- Although section 527(b) of the NERL provides that the NERR can make provision for the revocation of exemptions (i.e. as distinct from the revocation of a condition attached to an exemption), no such mechanism has been included in the NERR. Given that the circumstances of exempt sellers and the exempt customers that they supply may change materially over the course of time, it would be prudent for all individual exemptions to be issued subject to either a time limitation or general right of review. This would also support the development of procedures for revocation under the Exempt Selling Guidelines, as contemplated by rule 907(2)(a) of the NERR.
- As raised in section 3.3 of this submission, it is understood that without a specific referral of authority by a participating jurisdiction:
  - the NERL and NERR will only apply to the interconnected electricity system; and
  - retail exemptions will continue to be administered at a jurisdictional level.