



Ref. MM/JD

12 August 2011

General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
MELBOURNE VIC 3001

97-99 Adelaide Street
Maryborough QLD 4650
PO Box 163
Maryborough QLD 4650
Telephone 13 10 46
Facsimile 07 4123 1124
Website www.ergon.com.au

Email: AERInquiry@aer.gov.au

Dear Mr Leuner

RE: SUBMISSION ON AER DRAFT EXEMPT SELLING GUIDELINE

Ergon Energy Corporation Limited and Ergon Energy Queensland Pty Ltd (collectively referred to as Ergon Energy) welcome the opportunity to provide comment to the Australian Energy Regulator (AER) on its *Draft Exempt Selling Guideline* (the Guideline). This submission is provided by Ergon Energy in its capacity as a Distribution Network Service Provider and non-competing area retail entity in Queensland.

Ergon Energy acknowledges the work that has been undertaken in incorporating the feedback from stakeholders from previous rounds of consultation on this issue and in general, supports the changes now encapsulated in this Guideline. In this submission, Ergon Energy focuses on our remaining areas of concern.

EMBEDDED NETWORKS IN QUEENSLAND

Ergon Energy welcomes the AER's determination that the decision to extend Full Retail Competition to customers within embedded networks should lie with the jurisdiction. As indicated in our earlier submission¹, Ergon Energy supports the principle that customers in embedded networks should be given access to their retailer of choice wherever possible. However, a range of complex issues ranging from metering, MSATS procedures to safety standards and quality of supply issues would need to be resolved before this could occur. Therefore, this decision sits more appropriately with each jurisdiction.

1

<http://www.aer.gov.au/content/item.phtml?itemId=743347&nodeId=8cb63a04902b3ea8eec5789bd5427d02&fn=Submission%20-%20Draft%20guideline%20-%20Ergon%20Energy.pdf>

PUBLIC REGISTER

Ergon Energy recognises that the inclusion of all exempt sellers on the Public Register would be administratively onerous but does recognise that the Public Register would be a useful tool to capture sufficient information about the magnitude of on-selling activity in the market. Currently the market does not have full transparency of the type or number of customers. This information would be useful as it could be used to inform the market about issues such as customer protection, hardship policy and access to dispute mechanisms.

Ergon Energy supports the inclusion of sufficient information on the Public Register of Authorised Retailers and Exempt Sellers (Public Register) to provide greater transparency and monitoring of the growth in the on-seller market.

In relation to Registrable Exemptions, clause 4.1.1 of the Guideline requires the following information required to accompany the registration application submitted to the AER:

1. Legal Name;
2. Trading name if different to your legal name;
3. Australian Business Number or Australian Company Number;
4. Address of the physical site and brief description of site and its current and intended future use/s (summary);
5. Date from which commencement of selling is intended;
6. Number of premises at the site for which registration is sought, with breakdown between residential, small business and large business customers; and
7. Addresses of any other sites where you are seeking or currently hold a registered or individual exemption.

However, Ergon Energy notes that for individual exemptions, clause 5.2.1 of the Guideline does not contain any indications of what particulars will be published in the Public Register. Ergon Energy suggests that the information published in the Public Register should be the same for both registrable and individual exemption classes.

In relation to the information contained on the Public Register, Ergon Energy suggests that the general conditions for class exemptions should also be published in the Register to inform exempt customers as to their rights and obligations required under on-selling arrangements. Without ready access to information about the conditions imposed on exempt sellers, exempt customers would be unlikely to be able to make complaints or inform the AER of non-compliance. Further, the AER is unlikely to become aware of any material failure on exempt sellers in not meeting exemption conditions.

SPECIALIST ON-SELLERS

Ergon Energy does envisage that there is likely to be growth in the area of specialist on-sellers for load aggregation purposes and other new energy services. Ergon Energy supports the AER's decision that a class exemption would not apply to these on-sellers and that an individual exemption application would be necessary, if not a Retailer Authorisation.

Ergon Energy welcomes the AER's position that 'where an individual exemption is required, the conditions attached to the exemption are more likely to reflect those that apply to an authorised retailer, particularly with regard to the provision of hardship protections and formal avenues for dispute resolution'.

REVOCATION AND DURATION OF EXEMPTION

The National Energy Retail Law (NERL) provides the AER with power to revoke exemptions where there has been material failure by the on-seller to meet exemption conditions. However, the Guideline place the onus on the on-seller to keep the AER informed of any changes that may affect their eligibility. This gives rise to the situation where circumstances may change that affect the ability of the exempt on-seller to meet the conditions of exemption. However, unless it comes to the AER's attention that there has been a material change, no action may be taken and exempt customers may be adversely affected.

To address this situation, Ergon Energy advocates that exemptions should specify either duration or a timeframe for periodic review. The Guideline² indicates that while the NERL and the National Energy Retail Rules (NERR) do not specify any limit on the duration of an exemption, the AER may impose a time limit on the grant or variation of an individual exemption, taking into account factors such as the level of capital investment in the network.

The Guideline states that 'if no expiry date is stated as a condition of exemption, the grant or variation of the individual exemption will continue indefinitely unless it is revoked, in accordance with the Retail Law and Rules'. The requirement to have a periodic review of exemptions that are open-ended would provide increased consumer protection and an opportunity to review the exempt seller's activities against changes in the energy market and emerging technologies.

DISPUTE RESOLUTION AND ACCESS TO OMBUDSMAN SCHEMES

The Guideline addresses concerns raised previously, that exempt sellers operating under a deemed or registrable exemption will not be required to provide hardship policies or flexible payment plans. The Guideline provides that the AER will 'encourage' their use and that where the exempt seller does offer flexible payment arrangements, they will be required to make this known to customers at the time of issuing a reminder notice for an unpaid bill.

Ergon Energy recognises that some of the most vulnerable customers will be those who are exempt customers under the deemed exemption categories, particularly under class D2. However, Ergon Energy notes that the Guideline attempts to afford as much consumer protection as allowable under the NERR by the imposition of conditions on exempt sellers selling to small customers.

Condition 14³ requires that an exempt seller, in the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, make reasonable endeavours to resolve the dispute and to advise the exempt customer of their rights to access Ombudsman schemes or any other relevant external dispute resolution body if applicable. It should be noted that in Queensland, these customers currently do not have access to the Queensland Energy and Water Ombudsman and this will continue to be the case once Guideline comes into effect.

LIFE SUPPORT CUSTOMERS

Condition 15⁴ relating to life support customers requires that 'an exempt person must maintain records of any exempt customers who have life support equipment on their premises that depends on energy for its operation, and must advise the exempt person's

² Draft Exempt Selling Guideline June 2011 p.47

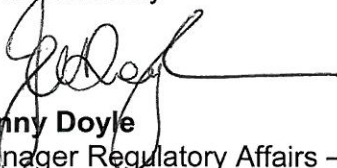
³ *ibid*, ps 61,62

⁴ Draft Exempt Selling Guideline June 2011, p.62

authorised energy retailer and distributor of any such life support customers'⁵. To ensure consistency with the terminology for authorised retailers under the National Energy Customer Framework legislation, Ergon Energy suggests that this condition be amended to require the exempt person to 'provide the retailer or distributor with confirmation from a registered medical practitioner that a person residing at the customer's premises requires life support equipment'⁶.

Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AER require. Please do not hesitate to contact me on (07) 4092 9813 if you have any further queries.

Yours sincerely



Jenny Doyle
Manager Regulatory Affairs – Policy and Regulation

Telephone: (07) 4092 9813
Email: jenny.doyle@ergon.com.au

⁵ Draft Exempt Selling Guideline June 2011, p. 62

⁶ National Energy Retail Rules, p 67