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25 January 2007

Manager, MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

Dear Sir/Madam

Consultation – National Framework for Distribution and Retail Regulation

Ergon Energy Corporation Limited (Ergon Energy) appreciates the opportunity provided by the MCE to comment on the Retail Policy Working Group's (RPWG) "Working Paper 2".

The attached submission represents Ergon Energy's response to the Working Paper.

Ergon Energy looks forward to providing continued assistance to the RPWG in the development of a national regulatory framework for energy.

Yours sincerely

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Ergon Energy Corporation Ltd

Response to Retail Policy Working Group – Working Paper 2

Ministerial Council on Energy
25 January 2007

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This submission, which is available for publication, is made on behalf of:

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Overview

Ergon Energy Corporation Ltd (Ergon Energy) welcomes the opportunity to make this submission with respect to the Public Consultation Working Paper 2 (Working Paper) prepared by the Retail Policy Working Group (RPWG). This submission is provided by Ergon Energy in its capacity as an electricity distribution network service provider (DSNP) in Queensland.

Ergon Energy believes that it can provide valuable contribution to the RPWG's consideration of these and related issues and welcomes the opportunity to be involved in the ongoing development of the regulatory framework.

Summary of Key Issues

Ergon Energy considers that there are a number of principles which are fundamental to achieving a comprehensive regulatory regime, which services the long term interests of customers. Ergon Energy makes the following high-level comments in relation to the Working Paper's proposals:

- the framework adopted should take account of and reflect recent market developments. To this end, we recommend the RPWG's consideration of the regulatory framework recently developed in Queensland to support the introduction of Full Retail Competition (FRC);

- in developing the regulatory framework, consideration should be given to the existing National Business-to-Business (B2B) arrangements for service orders, meter data and customer and site detail notifications, and the jurisdictional B2B arrangements for network billing to avoid duplication and prevent conflicting regulatory arrangements;

- a triangular model detailing the default contractual obligations for distributors, retailers and customers, should be adopted instead of the modified linear model on the grounds that it is streamlined, takes into account market developments and more accurately reflects the distributor's obligation to provide connections and supply services to customers;

- the National Electricity Law (NEL) and National Gas Law (NGL) should share high level objectives based on common principles but should not be excessively prescriptive or seek to duplicate their terms;

- any transition to a national approach, should recognise the costs and timeframes required to achieve system and process compliance; and

- the regulatory framework should recognise legitimate differences in jurisdictional policies and market structures, for example customers are required by Law in Queensland to pay an ambulance levy to their electricity retailer. Such circumstances should not be overlooked in the search for national consistency.

Background to Queensland Market Restructure

Ergon Energy supports the move towards national harmonisation, while recognising the unique characteristics of individual jurisdictions, where appropriate.

Regulatory reforms occurring within Queensland were instigated by two announcements from the Queensland government, being:

1. the introduction of FRC, effective 1 July 2007; and
2. the privatisation of a number of energy assets (April 2006).

Ergon Energy believes that the regulatory framework in Queensland should be used as the benchmark in moving towards a national environment. The focus throughout the development of FRC in Queensland has been on analysing other jurisdictional arrangements, and assessing the most practical and efficient arrangement for both industry and customers.

In preparation for FRC in Queensland, legislation, regulation and industry codes have been developed through extensive consultation with community, industry, and government representatives. The process has been co-coordinated by independent consultants and has sought to take account of knowledge gained from observing competition in other jurisdictions. As such, the Queensland model represents the most current evaluation of the appropriate balance between consumer protection and minimising the regulatory burden. To the extent that any existing jurisdictional arrangements are to be used as a benchmark for the national framework, it is the suggested that Queensland arrangements should be first considered.

Contractual Models for Distribution Services

Ergon Energy agrees with the statement contained in the Working Paper that there is no need for the national framework to mandate a particular model for all circumstances but that the framework does need to assume a model as the default position for each sector.

Ergon Energy believes that a triangular contractual approach should be supported as the default model. A triangular contractual model ensures the transparent identification and separation of the rights and responsibilities of each party to the contractual relationship.

This argument supports the position proposed by the NERA Economic Consulting/Gilbert and Tobin Paper (Consultation Paper), commissioned by the Standing Committee of Officials and released October 2005. Ergon Energy questions this apparent change in preferred model, given that, under either a triangular or modified linear arrangement, the Coordination or Use of System Agreement will ensure that the customer enjoys streamlined service delivery. Further, as the distributor has the obligation to connect and supply a customer, the triangular arrangement more accurately reflects legal obligations.

Obligation to provide connection services

Ergon Energy agrees in part with the Working Paper's proposal. However we make these specific comments:

- services subject to the obligation – Ergon Energy is concerned that the definition of "connection services" could be interpreted as excluding the distributor from offering demand side solutions as an alternative to increasing the capacity available from the supply side. The definition needs to recognise that in some circumstances, the distributor may offer demand side solutions to meet customer's needs. However, demand side management arrangements would be subject to a separate agreement between distributors and customers outside the standard connection contract;

- capital contributions and embedded generation should also be the subject of a separate agreement between distributors and customers outside the standard connection contract.

- there needs to be adequate flexibility to address legitimate jurisdictional requirements. For example in Queensland, the control of curtailable load resides with the distribution businesses;

- all service orders should be initiated through a retailer. This is in accordance with the *National B2B Procedures;* and

- the Rules should further identify circumstances whereby a distributor is not in breach of its obligations to connect and supply, for example where the connection or supply needs to be interrupted in an emergency.

There needs to be equity and transparency in any national arrangements, however, it is paramount that individual historical jurisdictional policies are considered and given appropriate weight.

Distributor Interface with Customers

Ergon Energy agrees with the Working Paper's proposal that the NEL should contain an obligation on designated distributors to provide connection services to customers within designated regions. Jurisdictional Ministers are best equipped to define the designated geographic region due to their intimate knowledge of regions and any constraints associated within individual jurisdictions.

Regardless of whether the regulator prescribes default terms and conditions for connection and supply through a regulated contract or a Code, flexibility is required to permit distributors and customers to agree to vary terms other than those prescribed as 'minimum' terms and conditions. For example, the ability for a distributor and customer to agree to a direct billing arrangement if preferred by the parties. Note in Queensland, distributors are able to bill large customers directly.

Terms and conditions

In relation to the proposed content of the terms and conditions of the default contract, Ergon Energy generally supports the Working Paper's standard terms and conditions proposed. However there are a number of conditions that have not been raised which require consideration by the RPWG. They are:

- safe access to the premises;
- interruptions to supply;
- privacy and confidentiality;
- applicable law;
- GST; and
- force majeure events.

The Working Paper states that a number of matters should be dealt with through the distributor-retailer interface rather than in the deemed distribution contract. Ergon Energy disagrees. The triangular and/or modified linear approach incorporates a UoS and/or coordination agreement, which details the arrangements between a distributor and retailer in back-to-backing the parties' respective obligations to the customer, does not detail the obligations that a distributor has with a customer. These obligations need to be articulated to ensure the customer and distributor have the requisite knowledge of the terms and conditions of the existing deemed distribution contract.

As previously stated, there needs to be flexibility to negotiate arrangements outside of the minimum terms and conditions.

Coordination Agreement

The Working Paper proposes a default UoS Agreement based on a modified linear approach. Ergon Energy reiterates its view that a contractual arrangement, based on a triangular approach, represents a more workable and streamlined solution while maintaining an equitable balance of obligations between the distributor and retailer.

Although the UoS agreement/coordination agreements existing in other jurisdictions seek to achieve similar goals by back-to-backing the parties respective obligations to the customer, these arrangements fail to take account of recent market developments including the *National B2B Procedures*. The Queensland Coordination Agreement was developed post the introduction of the *National B2B Procedures,* hence the rationale that it should be used as the basis for developing the national framework. In developing the Queensland Coordination Agreement (which is based on a triangular model), a lengthy consultation was undertaken between Ergon Energy and Energex, and a number of retailers operating in the national market.

The Queensland Coordination Agreement is not intended to re-state or override national procedures; rather it sets out to achieve a balanced commitment from retailers and distributors to:

- avoid duplication;
- encourage efficiency; and
- streamline their respective relationships with customers and the delivery of services.

Ergon Energy does not agree with the Working Paper's statement "that under the Law, each distributor and retailer would be obliged to enter into a UoS agreement, in respect of their joint customers (unless a customer sought a different arrangement)". The UoS agreement/coordination agreement is an agreed set of protocols between the distributor and retailer that supports the fundamental obligations to connect, supply and sell, the Law should not allow a customer to interfere and seek an alternative arrangement.

Term and Conditions

Ergon Energy strongly argues that the Queensland Coordination Agreement be seen by the RPWG as a fortuitous opportunity in developing a harmonised national regulatory framework. The opportunity to use the most recently developed agreement between distributors and retailers as a basis for national arrangements should be encouraged by the RPWG.

Ergon Energy makes these specific comments in relation to the detail of the terms and conditions of the UoS agreement/coordination agreement:

- it should be recognised that disputes relating to network billing will be dealt with under the jurisdictional B2B network billing arrangements. Therefore, to avoid duplication, dispute resolution should focus on the terms and conditions of the coordination agreement;
- all service orders should be initiated by a retailer on behalf of a customer, and should only be actioned by a distributor on receipt of a Service Order Request in accordance with the *National B2B Procedures*;
- in respect of information sharing, our submission is that most of the requirements highlighted by the RPWG are covered in the *National B2B Procedures*. Ergon Energy supports a harmonised framework that avoids duplication and regulatory overlap; and
- it is important to note that any information sharing reflects a balancing act in which retailers and distributors handle customer requests. For example, whilst providing a streamlined service to customers, retailers should not be providing information on behalf of the distributor, when it is not within the public domain or appropriately within the retailer's knowledge.

Distributor Interface with Embedded Generators

It is important that the Rules provide guidance to all concerned parties regarding the treatment of interface issues and that embedded generation connections are in accordance with the technical provisions already contained in the current Rules. Our submission is that the regulation of the interface with distributors and embedded generation should:

- be flexible in order to deal with the ongoing evolution of energy supply alternatives, such as embedded generation;
- be considerate of designated distributor's network, for example, Ergon Energy's geographic area covers effectively 97% of Queensland;
- be fair and reasonable;
- provide suitable incentives; and
- provide equitable risk sharing arrangements so as not to increase the regulatory burden and costs for DNSPs.

Excessive prescription in the Rules may limit a DNSP's ability to develop alternative and innovative solutions because of restrictive operating issues. There needs to be sufficient flexibility in the NEL to allow negotiation of commercial terms beyond the standard regulatory framework, in order to suit specific project requirements. A blanket approach should not be adopted due to the evolving nature of embedded generation.

Transitional Issues

Ergon Energy notes that this issue has not been canvassed in this Working Paper. While Ergon Energy agrees that transitional issues are best dealt with on a jurisdictional basis, we repeat the sentiments expressed in our response to Working Paper 1, that some indication of the timeline for transition of jurisdictions to a national framework must be provided. Flexibility must be provided to jurisdictions to allow for smooth transitioning to a national approach in accordance with workable timeframes, which may require ongoing differences. The timeframe must recognise system and process changes required to ensure compliance with a new regime.