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Dear Mr Sir/Madam

## **National Framework for Distribution and Retail Regulation**

Ergon Energy Pty Ltd (Ergon Energy) appreciates the opportunity to provide comment to the Ministerial Council on Energy (MCE) on the *Public Consultation on a National Framework for Energy Distribution and Retail Regulation* (Consultation Paper) prepared by NERA Economic Consulting and Gilbert + Tobin. This submission is made by Ergon Energy in its capacity as an electricity retailer in the National Electricity Market (NEM).

Ergon Energy supports the principle of national uniformity of regulation given the significant opportunities that currently exist to streamline the regulatory environment along with the associated efficiency and cost savings for both market participants and consumers. However, the process for achieving national consistency needs to be carefully articulated and managed, particularly the timing of the transition program. The transition needs to be seamless and articulated to market participants in a timely manner to ensure continued compliance. Consideration should also be given to the various work programs and consultative arrangements already established with the objective to develop and implement NEM wide solutions, for example metrology harmonisation.

The need to carefully manage the transition has been heightened due to the recent announcement by the Queensland Government to introduce full retail competition (FRC) for electricity and gas from 1 July 2007. Given the national reform process and the development of the regulatory and legislative framework for FRC will run concurrently, Queensland market participants, particularly distributors and retailers, are presented with a significant challenge – to ensure regulatory consistency between the two regulatory reform processes. Failure to achieve regulatory consistency will result in system and process duplication, resulting in additional costs which will jeopardise the delivery of the full efficiency benefits attributable to the two reform processes.

Ergon Energy strongly rejects any proposal for a regulatory body other than the Australian Energy Market Commission (AEMC) to establish the initial Rules. Many of the regulatory arrangements outlined in the Consultation Paper are detailed and complex issues. As such, the consultative processes detailed in the National Electricity Law (NEL) should be followed. This approach will ensure the initial Rules are developed through a transparent consultative process. Also, that the desire for expediency in regulatory development does not result in the lowest common denominator being adopted from existing frameworks, rules, codes or guidelines, or indeed by adopting any one of the existing jurisdictional frameworks. In addition, by adopting a review process where industry participants are able to consider the

initial Rules, a broad set of amendments, compared to discrete packages of changes, will assist in mitigating the likelihood of unforeseen adverse regulatory outcomes occurring.

Many of the regulatory principles identified in the Consultation Paper are detailed and complex issues. As such, without knowing the specific details of the actual policy and/or regulatory instruments to be implemented it is difficult to comment fully at this point in time on the suitability of the proposed arrangements.

Ergon Energy's submission does not comment on any initiatives specific to distribution. Our submission focuses only on the regulatory functions specific to retail, in number order as detailed in the Consultation Paper.

### *Part C: Consumer Protection*

#### Retailer Obligation to Supply to Small End Customers

In principal, Ergon Energy supports the recommended approach that the retailer which had the contract with the previous occupants of the premises should be responsible for the Move-in Customer. However, further consideration should be given to the impact the proposed framework will have on second tier retailers. For example, some second tier retailers have, as a business, decided not to participate in the small customer market (annual consumption less than 160 MWh) due to the associated regulatory costs for this market segment. Under some jurisdictional arrangements and potentially under the proposed arrangement, a second tier retailer will be exposed to additional regulatory risk. That is, if the Move-in Customer is a small consumer the second tier retailer may find it is incidentally non-compliant given it does not have the necessary compliance mechanisms in place for servicing this market segment.

#### Small End Customer Market Contracts

Where effective competition exists, Ergon Energy supports the proposal that no energy specific regulation of market contracts should be required. To facilitate the future transition from a regulated market to effective competition, consideration should be given to minimising the number of regulatory requirements which could impede the transition to effective competition. Further consultation should be undertaken on defining the market conditions necessary to demonstrate effective competition has been achieved.

#### Small End Customer Marketing

Ergon Energy considers that the *Trade Practices Act 1974*, *Privacy Act 1988* and the State Fair Trading Acts provide a comprehensive national consumer protection regime. Duplication of these provisions within energy regulation would only increase compliance costs and complexity with no associated increase in consumer protection. To the extent that deficiencies in current consumer protection legislation are considered to exist, it is recommended that these be addressed through the Ministerial Council of Consumer Affairs. This will ensure energy is treated consistently with other industries.

#### Small End-Customer Dispute Resolution

Ergon Energy supports the recommended position provided market participants are not precluded from developing a national scheme at a future date, if determined through broad industry consultation. Albeit, the schemes will be jurisdictionally based, the respective schemes should be nationally consistent as far as practicable.

Ergon Energy supports the inclusion of dispute resolution requirements for small end customers, for example consumers below 160 MWh per annum. However, we do not support the use of a similar definition being applied for vulnerable customers. An appropriate definition of 'vulnerable consumers' should take into account a consumers ability to pay, geographic location and/or being identified under Government policy as a sector requiring additional support.

## *Part D: Other Distribution and Non-Price Retail Regulation*

### Business Authorisation

Ergon Energy agrees with recommendation that there should not be a regime for the licensing or authorisation of energy retailers as this constitutes a barrier to entry and results in additional regulatory costs. The proposed arrangement will ensure minimum requirements for market certainty and consumers protection are maintained without imposing unnecessary barriers to competition. By retaining the current prudential requirement for persons participating in the wholesale market participants and end users will be provided with an appropriate level of assurance as to the prudential soundness and financial stability of an energy retailer.

For public policy matters deemed to be sufficiently serious, such as consumer protection and environmental obligations, Ergon Energy supports the inclusion of these obligations in the overarching legal obligations. Currently these obligations are covered by Consumer Protection Rules, Gas Retail Market Rules, Metering Rules and Retailer Failure Rules. However, the inclusion of these obligations should be limited to situations where the current suite of Federal and State legislation do not provide adequate protection for consumers, safety and continuity of supply and/or market operations.

### Distribution interface with Retailers

Due to the monopoly characteristics of the services provided by Distribution Network Service Providers (DNSPs), Ergon Energy supports the proposed approach to provide a regulated default Use of System Agreement. This arrangement provides contracting parties with the opportunity to reach a competitively negotiated outcome whilst also providing an indication, through the default agreement, of minimum agreement conditions. Albeit, there is scope for specific jurisdictional requirements to be accommodated, these should be kept at minimum given the overarching benefits attributable to achieving a NEM wide approach.

Ergon Energy believes the regulatory framework should also provide for either a mutually agreed or an independently appointed dispute resolution mechanism to address any disputes as to negotiating a Use of System Agreement or interpretation of the agreement between the parties.

### Balancing Regimes, Settlements, Customer Transfers within the Balancing and Settlements

Ergon Energy supports the Consultation Paper recommendation to maintain the current NEL arrangements given their consistency with the proposed overarching policy criteria.

### Metering

The need for a nationally consistent metrology procedure has been broadly supported by industry as evidenced by the key recommendations of the Joint Jurisdictional Review (JJR) of metrology and NEMMCO's current review of Chapter 7 of the Rules. We understand a suite of proposed Rule changes will be forwarded to the AMEC shortly which if endorsed will provide a nationally consistent set of Rules with NEMMCO assuming the role of national technical regulator.

Ergon Energy supports the recommended policy approach of developing nationally consistent metrology procedures under the NEL and Rules. However, cautions against any proposal to permit jurisdictional discretion, as this will only serve to exacerbate current system/regulatory inefficiencies and will limit the potential efficiencies achievable under the proposed overarching policy criteria. In addition, Ergon Energy does not support the establishment of intrusive regulatory mechanisms which aim to influence the type of services provided, for example creating regulatory mechanisms which favour dual fuel retailers over retailers of only electricity or gas.

### Load Shedding and Curtailment

Ergon Energy supports the Consultation Paper recommendation to maintain the current National Electricity Rules given their consistency with the proposed overarching policy criteria.

### Retailer Failure Arrangements

Given the need to preserve the integrity of the wholesale settlements system and to ensure continuity of supply, Ergon Energy supports the development of a national regulatory framework to address retailer failure. However, we do not support the regulatory approach presented in the Consultation Paper.

Ergon Energy believes the respective Jurisdictions should be responsible for appointing or designating one or more Step-in Retailers. Such an arrangement could be conducted via tender or by the jurisdiction directly approaching the Retailer.

The proposal that Retailer of Last Resort arrangements should seek to minimise the impact of adverse market conditions through either statutory novation or administered prices is not considered effective. Novation of the failed retailer's hedge contracts is not considered possible and contingent on the associated terms of the associated ISDA contracts. Furthermore the hedge contracts could have been a contributing factor in the collapse of the incumbent retailer. In the event of administered prices, retailers will be unable to hedge their costs, resulting in its contracted load being settled at the administered pool price. This situation will expose all retailers to increased price risk and increase the risk of a prudently hedged retailer for all non Step-in Retailer loads.

To require a Step-in Retailer to hold in trust receipts from customers of the failed retailer is considered administratively burdensome and impractical. Once a Step-in Retailer event has occurred, the outstanding debt of the failed retailer should be settled by the Receiver or Administrator.

### Interaction with Government Policies

Ergon Energy supports the inclusion of provisions for specific jurisdictional policies to be incorporated in the national framework. However, this provision should only be used in limited situations where it can be demonstrated that the specific jurisdictional policies do not affect the fundamental elements of a national regulatory approach.

We would welcome the opportunity to discuss our comments with you at your convenience. Please feel free to contact me on (07) 3228 7536 should you wish to discuss any aspect of Ergon Energy's submission.

Yours sincerely

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