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Dear Sir/Madam

Consultation – National Framework for Distribution and Retail Regulation

Ergon Energy Queensland Pty Ltd (Ergon Energy) appreciates the opportunity provided by the MCE to comment on the Retail Policy Working Group's "Working Paper 1".

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

A handwritten signature in black ink, appearing to be 'Tony Pfeiffer', with a long horizontal line extending to the right.

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Ergon Energy Queensland Pty Ltd

**Response to Working Paper by Retail Policy Working Group-
Retailer Obligation to Supply Small Customers
Retailer – Small Customer Market Contracts
Retailer – Small Customer Marketing**

**Ministerial Council on Energy
8 December 2006**

Working Paper 1 – Retailer obligation to supply small customers, Retailer – small customer market contracts, and Retailer – small customer marketing

Ministerial Council on Energy

8 December 2006

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

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Overview

Ergon Energy Queensland Pty Ltd (Ergon Energy) welcomes the opportunity to make this submission with respect to the Public Consultation Working Paper (the Working Paper) to the Ministerial Council on Energy (MCE) prepared by the Retail Policy Working Group (the RPWG). Ergon Energy notes that this is the first Working Paper and focuses on three issues:-

- Retailer obligation to supply small customers;
- Retailer – small customer market contracts; and
- Retailer – small customer marketing.

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.

Approach and Structure

Ergon Energy's comments on the Working Paper address the following:

- Background to Queensland Government Reforms;
- Retailer obligation to supply small customers;
- Retailer – small customer market contracts;
- Retailer – small customer marketing; and
- Conclusion.

Background to Queensland Market Restructure

Ergon Energy supports the move towards achieving national harmonisation to the extent possible, while recognising the unique characteristics of individual jurisdictions. In this regard, we note that Ergon Energy is required by legislation to operate as a non-competing retailer in Queensland. This makes Ergon Energy's position unique, and one which must be recognised in the process of future national rule development. By way of background the reforms occurring within Queensland which have directly impacted Ergon Energy are noted briefly below.

The current reforms have been triggered by 2 major announcements by the Government in the preceding 12 months:

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

The effect of these reforms has meant the preparation of number of legislative instruments including in particular the *Electricity and other Legislation Amendment Bill 2006*, which has amended the *Electricity Act 1994*. The Bill has imposed certain restrictions on Ergon Energy in its capacity as a retailer, including in particular s55G which states:

55G Restriction imposed on Ergon Energy and its subsidiaries

- (1) This section imposes conditions on a retail authority held by the GOC Ergon Energy or any of its subsidiaries (the retailer).
- (2) The retailer must not enter into any negotiated contract.
- (3) The retailer can only provide customer retail services to a customer for premises if the retailer is an area retailer for the premises and –
 - (a) on the day this section commences, the customer was a non-market customer of the retailer for the premises; or
 - (b) under section 50, the retailer must provide the services; or
 - (c) the retailer is the financially responsible retail entity for the premises and the premises are –
 - (i) in the retailer's retail area; and
 - (ii) connection to a supply network without the customer having made a retailer services application for the premises to a retailer.

Maximum penalty for subsection (3) – 500 penalty units.

Ergon Energy highlights these issues to ensure that the RPWG considers the specific Queensland regulatory and operational requirements imposed upon Ergon Energy when developing the national framework. Ergon Energy is supportive of a national harmonised approach but stresses the importance of policy makers being cognisant of specific jurisdictional policies when transitioning to the national framework.

On a more general note, in preparation for full retail competition in Queensland, industry codes have been developed through extensive consultation with community, retail, 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 minimizing 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 Queensland arrangements which should be first considered.

In this regard, it appears that the RPWG may not have fully understood the Queensland framework when developing the options in the Working Paper. Those areas of inconsistency of interpretation that have been identified are noted below.

Retailer Obligations to Supply Small Customers

Ergon Energy agrees with the RPWG proposal that the decision whether or not to impose an obligation to supply should remain with the jurisdictions, but that the obligation should apply a common national framework around standard offer terms and consumer protection measures.

The Working Paper discussion is based on the premise that the obligation to supply is, and should be, imposed on designated retailers in respect of designated geographic areas. The RPWG suggests that the obligation to supply implies a need for the retailer to maintain the financial, business systems and energy trading capacity to satisfy supply requests from significant numbers of customers.

However this approach fails to recognise the Queensland framework. The obligation to supply in Queensland after 1 July 2007 will apply to the Financially Responsible Market Participant (FRMP) for a connection point, rather than the "area retailer". This is inconsistent with the recommendation that the NEL and NGL should provide a mechanism whereby local retailers are required to make standing offers to specified customer classes, and which underpins much of the RPWG discussion. The Queensland approach is preferable to the RPWG proposal. It ensures that the obligation does not operate as a barrier to entry for new retailers, as the burden of the obligation only grows in direct proportion to the size of the retailer's customer base, whilst spreading the burden beyond the "local" retailers.

To whom does the obligation apply

Ergon Energy agrees that the definition of the customers to whom the obligation to supply applies should be made on the basis of consumption thresholds by jurisdictional ministers, by the application of common principles. Such an approach should also allow the application of different thresholds for different customer classes (such as small business and residential customers).

Tariffs, Terms and conditions

Ergon Energy agrees that the preferred approach is Option 3 which provides for retailers to have discretion as to whether to adopt the standing offer terms and conditions or to provide alternative terms & conditions that are not inconsistent with them.

The proposal that the Law should provide that standing offer tariffs are those published by the designated local retailers, must also be reconsidered in light of the



discussion above, and provide flexibility for the standing offer tariffs to be those determined by the pricing entity and published in the Government Gazette.

Deemed Supply Arrangements

Specification in the rules of the tariffs, terms and conditions of deemed supply arrangements represents a level of detail which is considered unnecessary, and difficult to amend.

The issue of the duration of the deemed supply arrangements has been addressed in Queensland through the existence of the obligation upon the FRMP to supply. The result is that the move-in customer is deemed to enter into the default or standard contract with the FRMP at the standing offer tariff. That contract continues to apply until such time as the customer moves to a market contract.

Retailer – small customer market contracts

Ergon Energy considers that existing consumer protection laws should be relied on to the extent possible. The *Trade Practices Act 1974*, *Privacy Act 1988* and the State Fair Trading Acts already provide a comprehensive national consumer protection regime. Duplication of these provisions in an energy specific regulation would result in increased compliance costs and complexity with no associated improvements in consumer protection. Before additional obligations are adopted, a need to regulate on an energy specific basis must be established, while the benefits to consumers must be demonstrated to exceed the cost of regulation.

Cooling-off periods are provided by the RPWG as an example of where energy-specific regulation and general consumer protection laws are inconsistent. Ergon Energy agrees in limited instances such as this, given the inconsistency in jurisdictional rules, that there would be a benefit in providing energy specific consistency in the minimum terms.

Ergon Energy generally supports the minimum contract terms proposed in Attachment 1, Part A of the working paper, and provides the following specific comment:

- A requirement to provide a customer with information about network charges should not be imposed where a customer is supplied on a standing offer tariff which does contain a separately identifiable component which reflects a pass-through of network charges. Accurate calculation of network charges for a particular customer would not be possible in such instances, and a requirement to provide some kind of estimate would only result in potential misinformation and customer confusion;
- Advance notice should not be required to be provided to customers in relation to a change to the standing offer tariff. The one month notice requirement in Queensland that is referred to in the Working Paper, is notice by the pricing entity to retailers to ensure time to make necessary system changes. Notification to customers should be satisfied by publication on the retailer's web-site.
- Meter reading should be required no more than 12 monthly, or be subject to jurisdictional variation. Such approach recognises the physical differences between jurisdictions which impact upon the practicality of conducting more regular meter reads.

- Jurisdictional flexibility should be maintained in relation to customer termination of contracts and should be linked to a final meter reading.
- A requirement to include network charges on a bill can not be imposed where a customer is supplied on a standing offer tariff which does contain a separately identifiable component which reflects a pass-through of network charges
- Bill smoothing should not be included as a minimum term for the purposes of customer protection. Bill smoothing is an alternative payment arrangement which retailers may choose to offer customers, rather than a payment assistance mechanism.

Ergon Energy does not consider it necessary to include the possible additional terms listed in Part B. The approach to developing the contract should not be one that simply adopts all existing clauses in every jurisdiction, thereby creating and continuing over-regulation. To the extent that some of those terms are considered necessary, we provide the following specific comment:

- A retailer should not be required in the first instance to advise a customer of the right to escalate their complaint to a higher level of management and subsequently to the ombudsman. Experience shows that many complaints can be resolved without need for escalation. However, where escalation opportunity is raised with the customer it is more likely that the customer will seek immediate escalation rather than seek to resolve the complaint at the initial contact point. Unnecessary escalation only serves to increase retail costs which are ultimately born by customers. If the issue can not be resolved within a reasonable timeframe, the customer should then be advised of the escalation process.
- The discrimination clause is a clear example of unnecessary and confusing regulation.

Retailer – small customer marketing

Ergon Energy agrees in principle with the requirement to regulate retailer marketing activities, subject to the ability to exclude application of the requirements to particular retailers.

As noted above, Ergon Energy is restricted by legislation from competing for customers and is precluded from offering retail services other than the Standard Retail Contract at the gazetted notified price.

As such, the Queensland Electricity Industry Code recognises that Ergon Energy will not directly be engaging in retail marketing activities while the competitive restriction is in force, and provides that:

“While section 55G of the Electricity Act is in force, Ergon Energy is not required to comply with this Chapter 7”¹

¹ *Electricity Industry Code: Third Edition, Draft 27 October 2006, clause 7.1.2. Chapter 7 addresses Retail Marketing Conduct.*

It is therefore important that there is explicit recognition in the NER that retailers precluded from competing for customers are excluded from the requirement to comply with national marketing and price disclosure obligations.

Transitional Issues

The Working Paper clearly states that it is not intended to address transitional issues for each jurisdiction. While Ergon Energy agrees that the transitional issues are best dealt with on a jurisdictional basis, 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. The timeframe must recognise system and process changes required to ensure compliance with a new regime.

Conclusion

Subject to the comments above, Ergon Energy broadly supports the RPWG approach. In particular, we reiterate the following:

- the framework adopted should be broadly consistent with developments occurring within individual jurisdictions, and particular regard should be had to the recently developed Queensland framework;
- the National Electricity Law (NEL) and the National Gas Law (NGL) should share high level objectives based on common principles but should not be unnecessarily detailed or prescriptive;
- care should be taken to ensure that the search for increased national consistency does not result in increased burden and cost of regulation, which is ultimately born by customers;
- adequate flexibility must be provided for transitioning to a national approach, recognising the potentially significant cost and time for systems and process adjustments required;
- adequate flexibility must be retained in the NEL to recognise differences in jurisdictional policies and market structures.