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Dear Sir/Madam

**MINISTERIAL COUNCIL ON ENERGY  
CONSULTATION ON “PROPOSED FRAMEWORK SCHEDULE FOR TRANSFER OF DISTRIBUTION  
AND RETAIL FUNCTIONS”**

Ergon Energy is pleased to make this submission, which is available for publication, in its capacity as an electricity Distribution Network Service Provider in Queensland.

We have reviewed the MCE's proposed framework schedule for transfer of distribution and retail functions and submit that our position is to broadly support the proposed functional split. Ergon Energy considers that the next level allocation of functions between the AEMC and AER is also a critical accompaniment that needs to be carefully decided upon and to the extent we have a view, we have made suggestions regarding this split.

Set out below are our comments against each item in the schedule. Items marked with an \* are where Ergon Energy's position differs to the MCE's proposed National / States / Abolish list.

**NATIONAL**

- 1. Scope of distribution price regulation (services included, services excluded) – determination of basic regulated services/core services which are to be included in price regulation.**

National – allocated to AER.

DNSPs need to have the ability to propose business elements to be excluded from regulation. The aim should be for maximum flexibility and accountability - ensuring that the AER is empowered to make decisions reflecting changing circumstances thereby ensuring regulation is only applied where there is a demonstrated need. This approach needs to be supported by Merits Review. (See Ergon Energy's submission regarding Merits Review dated 7 November 2005). Ideally we would separate the consideration of regulatory scope from application of regulation (for example, as occurs with coverage applications through the NCC with the ACCC responsible for regulation).

In practice this is likely to fall back to the AER. This allocation of responsibilities arguably enhances the role for Merits Review of these decisions.

**2. Price cap regulation for distribution services – *CPI-X price or revenue cap (or some incentive-based variant) form of regulation.***

National – National Electricity Rules (to establish high level principles that are sufficiently detailed to provide accountability for the detailed application of the Rules, which is to be performed by the AER.)

DNSPs need to be able to propose their preferred form of regulation to AER from within an agreed range of options established in NER. DNSPs would retain an ability to propose areas of revenue to be unregulated.

**3. Regulatory requirements in relation to tariff settings – *Tariffs for small customers which should lie between the incremental cost (lower bound) and the stand-alone cost (upper bound) of serving them.***

National – NER high level principles that are sufficiently detailed to provide accountability to the detailed application of the Rules, which is to be performed by the AER.

At a minimum, these Rules should specifically endorse the floor and ceiling concept. DNSPs should be able to propose detailed pricing methodology and associated prices to the AER as well as any proposed side-constraints on price movements, providing they are consistent with high level Rules such as specifying the determinants of upper and lower pricing bounds. DNSPs must have the flexibility to structure prices in a manner consistent with achieving local goals ie. reflecting demand management goals or required system investments or even presence of alternative options for service delivery.

**\* 4. Service performance targets – Service reliability. Service quality and customer service measures.**

National – AER to set the 'measures' for service quality and performance.

State - Minimum standards should be set by the local Jurisdiction with the AER required to have regard to the impact of local standards with DNSPs to propose standards above the minimum tied to some incentive arrangement.

DNSPs need to be empowered to develop arrangements reflecting local conditions and concerns of customers. This empowerment coupled with appropriate incentives will drive innovative improvements in service quality.

5. **Information disclosure – Rules that define the information that must be provided to the AER by distributors for regulatory functions.**

National – AEMC to set high level rules with the AER to establish standard reporting arrangements.

Standard arrangements will minimise long term data collection costs of DNSPs and will assist with timely presentation of information. However, the Rules should constrain the AER from pursuit of unnecessarily detailed information. Ergon Energy considers the need for a reasonableness test with respect to reporting requirements and supported by access to Merits Review to be an appropriate way of managing this.

6. **Connection and capital contributions requirements – basis for the distributor to charge for new connections and capital contributions for capital works.**

National – NER to include high level principles (such as a prohibition on DNSP subsequently recovering capital contribution from other customers) but with a recognition that a range of approaches should be available to DNSPs to address the issue.

DNSPs should propose how capital contributions are to be treated subject to consistency with overarching Rules. This ensures network users will not be disadvantaged and provides the flexibility for DNSPs to adopt the simplest (lowest cost) solution given their specific circumstances.

7. **Distribution network expansion rules – rules clarifying when extensions are part of a regulated service and how charges are levied on a national basis.**

National – AER.

DNSPs should be able to propose arrangements for assessing requests for connection or expansion of the network. This ensures that DNSPs will be able to reflect local (jurisdictional) policies and conditions/network characteristics. This in turn offers the best potential to ensure that expansions are economically efficient and alternative options are fully considered.

8. **Distributor obligation to provide connection services – distributor to provide connection and related services to users; the contractual relationship between distributor, retailer and end-use customer.**

National – NEL to establish obligation, NER to establish principles that guide drafting of default standard contracts (whilst not necessarily drafting the terms of the standard contract).

Requires removal of any overlapping jurisdictional obligations to avoid dual regulation but it is imperative that no entity is left with gaps or inconsistencies relating to obligations to provide customer connection services. National regulation ensures integration with capital contributions and the network expansions/extensions policy.

**\* 9. Distributor disconnections and reconnections of small-end customers – regulation of circumstances in which a distributor can disconnect or reconnect a small-end customer and circumstances in which a retailer can arrange a disconnection.**

National – AEMC for policy position relating to financial issues re small end customers using standard connections.

States/Territories to retain control with respect to technical/safety issues.

Financial issues regarding disconnections/reconnections are intimately related to the cost of providing services and the form of regulatory control and therefore should be undertaken at a national level. Again, the issue of ensuring no dual regulation and no unnecessary regulatory burden is critical.

**10. Distributor interface with embedded generators – regulation of relationship between electricity distribution businesses and embedded generators.**

National – AEMC to determine the policy positions that are documented in the NER which should also include standard minimum provisions for connection services and treatment of Avoided TUOS etc. The AER must take Avoided TUOS into account as part of DNSPs' revenue arrangements.

Must ensure that DNSPs are neutral with respect to treatment of embedded generators – this requires clear guidance to AER to ensure DNSPs are not financially disadvantaged.

**11. Distributor interface with retailers – regulations relating to dealings between retailers and distributors including use of system agreements.**

National – NER to establish principles to guide drafting of default Use of System Agreements.

It is likely to be desirable for default Use of System Agreements to be able to vary across jurisdictions, therefore allow the AER to approve default Use of System Agreements provided they are consistent with NER. Arrangements would need to be established to transition or unwind any agreements or arrangements in place in the various jurisdictions to ensure there is no dual regulation.

**12. Other distribution related market rules.**

National – The NEL should establish that only safety and technical regulation are to remain with jurisdictions.

This is essential to ensuring there is no dual regulation and therefore, minimising regulatory burden and reducing risk of failure to compensate DNSP for regulatory impact.

**13. Network planning – determination of network investments.**

National – AER. There also needs to be integration between distribution and transmission planning.

The pricing regulation regime must integrate assessments of network investments. Increased transparency through mechanisms such as annual planning reports may assist in reducing regulatory risk associated with rejection of investment as not prudent. Rules should be established

once DNSPs demonstrate prima facie need for investment for the AER to justify removal from the asset base. There is a need to ensure that there is not dual regulation of network planning at the jurisdictional level.

**14. Metering – obligations to install, maintain and read meters. Includes the rights in relation to entry to premises for metering purposes.**

National - through legislation and Rules.

Care is required to ensure no dual regulation as metering and entry rights are currently covered by jurisdictional regulation. National control will ensure consistency and support enhanced retail competition while ensuring the AER recognises and agrees to the approach and associated costs borne by DNSPs.

**15. Retail price regulation – relates to the model to be developed by the Commonwealth.**

National via Jurisdictional Direction.

Ergon Energy's concern relates to ensuring that there is no revenue shortfall to DNSPs or distortion of distribution prices by the application of any social policy subsidies on distribution prices. In terms of the distribution component of retail prices, DNSPs should propose pricing structures and side constraints in their pricing principles that ensure that transmission and distribution are transparently passed on to customers/retailers.

**16. Retailer obligation to supply to small-end customer – obligations on designated retailers (local retailers) to supply customers and minimum protections in terms and conditions of default/standing offers.**

National – NEL to establish obligation, NER to establish principles that guide drafting of default standard contracts (whilst not necessarily drafting the terms of the standard contract).

Requires removal of any overlapping jurisdictional obligations to avoid dual regulation but it is imperative that no entity is left with gaps or inconsistencies relating to obligations to provide customer retail services.

Retail obligations need to be consistent with DNSPs obligations to provide connection services. See item 8 above.

**17. Retailer failure arrangements – arrangements to ensure the continuity of energy supply to customers and integrity of wholesale market settlements.**

National.

Ergon Energy does not support any retailer of last resort arrangement that results in DNSPs taking on this role.

**18. Retailer: Small-end customer market contracts – *retailers must obtain informed customer consent to enter Market Contracts.***

No comment – this is primarily for retailers to comment about.

**19. Retailer: Small-end customer marketing – *regulation of marketing conduct of energy retailers.***

No comment – this is primarily for retailers to comment about.

**20. TPA and Privacy Act provisions relevant to market contracts and marketing.**

National.

Need to ensure that sector specific regulation does not duplicate existing consumer protection legislation.

**21. Other retail related market rules not covered elsewhere.**

National – NEL and NER to provide Model Terms for contracts with small-end customers.

Ergon Energy believes that we should aim for simple and transparent regulation so as not to constrain innovation.

**22. Balancing regime and settlements, effecting customer transfer in balancing and settlements system – *regulation to ensure settlements and accurate financial reconciliation of supply/consumption transactions and regulate churn of contestable customers.***

National.

It should be ensured that there is no ambiguity as to who is the responsible retailer at any point in time.

**23. Merits and judicial review.**

National – access to limited Merits Review.

See Ergon Energy's submission "Consultation on MCE Review of Decision-Making in the Gas and Electricity Regulatory Frameworks" dated 7 November 2005.

There would be continued access to judicial review for errors in law. Merits Review is critical to the implementation of a propose/respond model where the regulator has a reasonable level of discretion in order to offset the asymmetric regulatory risk faced by the DNSP.

## STATES/TERRITORIES

- \* 24. **Business authorisation – refers to licensing and authorisation schemes that require distributors to demonstrate technical capability.**

National - Compliance with NER should be included in the NEL - not as condition of jurisdictional authorisations or licence conditions.

State - Jurisdictions to continue to have responsibility for authorising network operations with respect to environmental, OH&S etc.

25. **Distributor/Small-end customer dispute resolution – distributors' requirements to have internal dispute resolution schemes for the small-end customers and participate in independent alternative dispute resolution schemes.**

State - Small customers ( $\leq 0.1$  GWh or 0.16 GWh) should have access to State based dispute resolution as a simpler, lower cost option for small customers rather than relying on a nationally based system. However there is a need to ensure consistency with national guidelines.

26. **Retailer/Small-end customer dispute resolution – obligations of retailers to have internal dispute resolution/record keeping procedures and participate in independent alternative dispute resolution schemes.**

State - Small customers ( $\leq 0.1$  GWh or 0.16 GWh) should have access to State based dispute resolution as a simpler, lower cost option for small customers rather than relying on a nationally based system. Need to ensure consistency with national guidelines.

- \* 27. **Load Shedding and curtailment – rules for reduction of supply of energy to customers in order to maintain system security.**

National with jurisdictional input.

This would be consistent with the fact that the NER currently deals with all aspects of power system security.

28. **Community Service Obligations – jurisdictionally based service obligations applied on distributors and retailers.**

Jurisdictional.

Jurisdictional Directions should be utilised to give effect to any jurisdictional CSO policies and must be taken into account by the AER.

**\* 29. Environmental obligations – *relates to jurisdictionally based greenhouse gas abatement schemes and consideration of demand side response.***

National.

Effective greenhouse gas schemes and demand management responses need to be nationally based to be effective. However, there are likely to be transitional issues in unwinding existing State based arrangements.

**30. Local gas market arrangements.**

Jurisdictional based independent market administrators (IMA) to be established (approved by AEMC) where full gas retail contestability. IMAs to prepare gas retail market rules.

**31. Fair trading legislation provisions relevant to market contracts and marketing.**

Jurisdictional – to ensure no duplication within national regime.

**ABOLISH**

**32. General business authorisations (licensing) for retailers and distributors – *includes any matters other than technical capability and safety.***

Ergon Energy supports abolition subject to clarification as to the nature of any remaining obligations that would be thus removed.

**33. Taxes and levies – *jurisdictionally based which are linked to energy services.***

Ergon Energy comments that any taxes and levies that are not abolished would need to be applied and collected in a transparent way such that distribution prices are not supported.

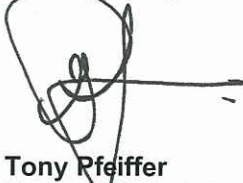
**34. Redundant regulatory instruments – *recognising that some requirements may have been incorporated elsewhere.***

Ergon Energy absolutely supports ensuring that there are no redundant and dual regulatory instruments as part of the general push for minimising regulatory impact on entities.

We once again reiterate our broad support for the proposed functional allocation.

If you have any questions on this and related matters, please contact our Manager Regulation Networks, Tony Pfeiffer (07-3228 7711).

Yours faithfully

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

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