



First Nations Clean Energy Network

**Submission to the Australian Energy Regulator on Ergon
Energy's application for a waiver from clauses 3.1(b) and 4.2.3
of the Ring-fencing guideline (Electricity distribution)**

March 2024



Overview

Ergon Energy applied to the Australian Energy Regulator (**AER**) for a waiver from clauses 3.1(b) and 4.2.3 of the Ring-fencing guideline (Electricity distribution) on 25 October 2023.

The objective of that guideline is to:

- promote the National Electricity Objective by providing for the accounting and functional separation of the provision of direct control services by Distribution Network Service Provider's (DNSPs) from the provision of other services by them, or by their affiliated entities.
- promote competition in the provision of electricity services.

The Guideline imposes obligations on DNSPs targeted at, among other things:

- cross-subsidisation, with provisions that aim to prevent a DNSP from providing other services that could be cross-subsidised by its distribution services; and
- discrimination, with provisions that aim to:
 - prevent a DNSP conferring a competitive advantage on its related electricity service providers that provide contestable electricity services; and
 - ensure a DNSP handles ring-fenced information appropriately.

As noted by the AER on the consultation page for the waiver application, if approved, the waiver *“would allow Ergon Energy to install, own, operate and maintain distributed energy resources behind participating customers’ meters in isolated networks in Queensland (complete list of isolated networks is in Ergon’s addendum).”*

The First Nations Clean Energy Network (**Network**) welcomes the opportunity to make a submission on Ergon Energy’s waiver application and thanks the AER for granting an application to the Network to enable us to respond.

The Network considers that the waiver should not be granted at this time for the reasons we have set out below, and, including because it is being made in the context where a Queensland Government Strategy (the proposed co-designed and inclusive Remote and First Nations clean energy strategy) is not yet developed, and that Ergon Energy’s own *Isolated Networks Strategy 2030* is to be updated, as directed by part 3.5 of the [Queensland Energy And Jobs Plan](#).

Additionally, the Network is collaborating with a number of First Nations communities in Far North Queensland who will be directly impacted by the proposal outlined in the waiver application. The Network considers that further consideration should be given to the views of these communities (and consumers of electricity in these communities) before any approval is granted.

About the First Nations Clean Energy Network

The [First Nations Clean Energy Network](#) (Network) is made up of First Nations people, groups, community organisations, land councils, unions, academics, industry groups, technical advisors, legal experts, renewables companies and others - working in partnership to ensure that First Nations share in the benefits of Australia's clean energy transition.

The Network is led by a Steering Group of First Nations leaders.

Australia's rapid transition to renewable energy will require access to vast areas of land and waters, including for thousands of kilometres of new transmission infrastructure. Enabling and empowering First Nations to play a key and central role in Australia's renewable energy transition goes beyond just social licence issues - it presents a unique opportunity for Australia to design a system that is fair and just and which can also positively impact and result in other social and economic benefits for First Nations.

As a national, First Nations-led coalition, the Network aims to enable and empower First Nations to participate in, benefit from, respond to, and shape renewable energy projects that impact their communities, land, waters and Sea Country.

The First Nations Clean Energy Network's approach is built on three pillars:

- **Community** The First Nations Clean Energy Network supports First Nations communities to shape the design, development and implementation of clean energy projects at every scale
- **Industry partnerships** The First Nations Clean Energy Network acts as an innovation hub, promoting best practice standards and principles that companies should adopt and investors should require before committing capital to a clean energy project
- **Policy reform** The First Nations Clean Energy Network advocates to lift significant federal and state regulatory barriers and stoke government investment, removing regulatory barriers to energy security and clean energy generation

Lessons from the work of [Original Power](#) with renewable energy projects in remote communities - community and economic development outcomes, self-determination and empowerment, reduced cost of power for consumers

As noted by the waiver application, the current *Isolated Networks Strategy 2030's* ambition statement is:

- *“to support community development and participation in renewable energy supply while providing safe, sustainable, cost effective and reliable networks”*

The strategy's objectives are:

- a reduction in consumption of imported fossil fuel with the aim to transition from the traditional fossil fuel generation to local renewable generation and imported renewable sourced fuel substitutes;
- providing economic benefit through **enabling energy services from the community** and **stimulating regional development, by realising electricity savings**, and by minimising CSO payment (**emphasis added**)
- mitigation of asset and fuel-related risk by reducing reliance on a single technology and fuel source and reducing the need to transport diesel and associated materials across sensitive environments.

The Network is concerned that the waiver application, which will extend the reach of Ergon Energy to behind consumers' meters and thereby dramatically extend Ergon Energy's existing competitive advantage, will have the effect of acting both counter to the strategy's objectives (particularly the objective to provide economic benefit) and will further lock out Queensland's First Nations communities and consumers from participating in the clean energy transition.

As has been demonstrated by [Original Power's](#) work in the Northern Territory, in similar, remote community settings, community-led proposals can be developed that would meet (were those outcomes to apply in the Northern Territory) both the ambition statement of the *Isolated Networks Strategy 2030* and the strategy's objectives as set out above.

Accordingly, in the Network's view, the waiver application has the potential to limit consumer choice, and reduce economic benefit and electricity savings for consumers. In addition, the waiver application, as presently framed, fails to demonstrate how this waiver could meaningfully and materially reduce current widespread experiences of energy insecurity for households and communities in the target region (including reductions in the cost of energy and incidence of prepay meter disconnection for consumers).

Until Queensland's Remote and First Nations clean energy strategy provides clear direction as to how that strategy will deliver for Queensland's isolated networks, including in relation to cost reduction, a waiver application that grants encroachment by a utility and extends its competitive advantage to a certain class of consumers should, in the Network's view, be treated with significant caution.

The waiver application's failure to guarantee participation in cost reduction benefits associated with renewable energy access

The application states that "*Pending its update, the Isolated Networks Strategy 2030's ambition statement is "to support community development and participation in renewable energy supply while providing safe, sustainable, cost effective and reliable networks."*

The proposed waiver seemingly frames consumer consent to the proposed Ergon Energy programmes as participation in the renewable energy supply.

However, despite hosting the generation resource on home or community there is no accompanying guarantee considered in the waiver application that the consumer participates in cost reduction benefits associated with renewable energy access.

Further, this waiver application, if granted, could lock out those same consumers from choosing renewable energy options that do achieve cost reductions or other energy security improvements (as has been demonstrated by Original Power in its work in the Northern Territory).

In contrast to the majority of Australian energy consumers, First Nations communities like those acknowledged in Ergon Energy's addendum typically face barriers to accessing rooftop solar including because of housing and land ownership tenure, tenancy arrangements or financial hardship, effectively locking them out of opportunities presented by renewable energy to reduce their cost of energy.

Similarly, the Queensland Government holds a public ownership policy position that excludes community ownership from the definition of 'public', preventing several communities on the isolated networks and fringe of grid alike from collectively participating and investing in solutions to reduce energy insecurity, including cost of energy.¹

While the Network shares the ambition of Ergon Energy to see a targeted roll out of renewable energy to isolated networks in Far North QLD, we are equally concerned with ensuring that the opportunities to improve energy security and affordability for vulnerable First Nations energy consumers are not lost in the haste of doing so. Further consultation with these communities is required before such an exemption could be considered necessary and desirable from a community and consumer perspective.

This waiver application, if granted, would deepen Ergon Energy's current regulatory advantage over consumers which in turn further reduces the ability for communities on isolated networks to participate in and meaningfully benefit from the clean energy transition. The Network is concerned, accordingly, that this proposed waiver exemption will likely result in yet another government controlled intervention where the transition is done to community and not with the community.

Given the cost of energy impacts on social and economic development, such a loss of opportunity to participate is likely to widen the gap in First Nations communities where the average Australian consumer can and has taken steps to significantly reduce their energy bills (and which is a situation that the Network also considers as running directly counter to the intended objectives of

¹ NB. to be clear, the Network is certainly not advocating for privatisation of the energy system, but we do wish to point out that the current policy position has an impact on remote communities and opportunities for alternative ownership models to deliver price reductions and additional economic benefits for community members and consumers.

not only Ergon Energy's *Isolated Networks Strategy 2030*, but also to the National Electricity Objective as stated in the National Electricity Law and its focus on the long term interests of consumers).

The waiver application doesn't consider the negative impact of the waiver on potential cost savings for consumers and economic benefits for communities

The economic benefits identified in Ergon Energy's waiver application include electricity savings, fuel related asset risk reduction, CSO reduction, and potential job opportunities and regional development. In the Network's view, this fails to engage properly with or identify and articulate Ergon Energy's intention or ability to pass on or share in the cost savings Ergon Energy will experience by intervening at the behind-the-meter level.

As stated in the waiver application:

"If the AER grants a waiver from the legal and functional obligations of the Guideline as proposed, Ergon Energy considers that there will be no harm to electricity consumers. Rather, pending an agreement with the Queensland Government on the sharing of financial benefits, participating communities would benefit from a smoother transition to decarbonisation while maintaining reliability of supply."

However, and repeating our comments about the context in which this waiver application is being made (with incomplete policy and strategic frameworks), the Network's view is that this waiver should not be approved until the Queensland Government clearly identifies its commitment to delivering cost sharing benefits with consumers on isolated networks.

Examples from other jurisdictions, including internationally, and the Network's best practice principles

In Original Power's experience in the Northern Territory, which shares similar isolated consumer and network challenges, the proposed Isolated Network Strategy which the waiver would enable shares similar characteristics with the Northern Territory Solar Energy Transformation Program (SETuP) and the currently proposed Remote Power Systems Strategy (RPSS). Neither of these programs have been able to demonstrate a pass through of cost savings benefits to consumers and have yet to realise their respective program successes.

While we understand it is difficult for utilities to pass through costs when a CSO is still needed after rolling out renewables to isolated communities, this does not mean it is not achievable and in fact national and international best practice guidelines increasingly consider it both achievable and necessary for a just transition.

The Network, for example, released its [Best Practise Principles for Clean Energy Projects](#) in 2022 which included Principle Six, 'Ensure economic benefits are shared'.

These principles were built upon experiences from First Nations communities in Canada and the United States of America. In Canada approximately 20% of renewable energy assets in their transition are owned by First Nations communities which have generated considerable social and economic development opportunities. This was only made possible by co-ordinated inclusion of First Nations people in their national and provincial energy investment strategies over two decades.

In February 2024 the Clean Energy Council and the Network then went on to publish the [Leading Practice Principles: First Nations and Renewable Energy Projects](#) which recommends minimum and leading practice principles including “First Nations participation in and economic development from renewables, particularly through partnerships and equity”. While jobs and lease payments do offer economic benefit, First Nations people understand the scale of opportunity the renewables transition presents and that there are economic opportunities worth pursuing above and beyond jobs or lease payments.

“When you’ve got industry saying let’s talk about job opportunities, we say go away. There will be three jobs maybe in the reality of your project. Guess what... they’ll be highly trained technicians who need a lead time for them to be meaningful.”

“It’s an opportunity to level up, not just say give us your menial jobs... to be treated as a partner.”

(Representatives of Traditional Owner organisation and First Nations community member, interviews in May 2023.)

These best practices are increasingly being adopted across the national energy ecosystem including through ARENA who currently requires a community benefit plan demonstrating material cost reduction benefits for First Nations consumers in its Regional Microgrids Program assessment criteria.

As we have noted above, Original Power (and other community-led proponents) are demonstrating that when community proponents are empowered to take an ownership stake in their local clean energy intervention there is:

1. a pathway to funding streams that are inaccessible to government and utilities, and
2. utilities can experience cost savings without making the full asset investment.

Our contact details

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