



Draft Decision

Queensland DNSPs
Application for Waiver from
Ring-Fencing Guidelines

September 2011

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Shortened forms

Shortened form	Extended form
ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider
Energex	Energex Limited
Ergon Energy	Ergon Energy Corporation Limited
NER	National Electricity Rules
QCA	Queensland Competition Authority
Guidelines	Queensland Competition Authority, <i>Electricity Distribution: Ring-Fencing Guidelines</i> , September 2000

Request for submissions

The Australian Energy Regulator (AER) has made its draft decision in respect of Energex Limited's (Energex) and Ergon Energy Corporation Limited's (Ergon Energy) applications for a waiver from the Queensland Competition Authority's Ring-Fencing Guidelines, September 2000 (Guidelines). Energex and Ergon Energy (the Queensland DNSPs) are seeking a waiver from sections 1(c), 1(d) and 2 of the Guidelines to avoid incurring the costs of submitting and maintaining two sets of regulatory accounts – one set in accordance with the Guideline and the other set in accordance with the AER's annual reporting requirements that are currently being developed.

Interested parties are invited to make written submissions on this draft decision to the AER by 5 pm A.E.S.T on Thursday, 29 September 2011. Submissions can be sent electronically to AERInquiry@aer.gov.au.

Alternatively, submissions can be mailed to:

Mr Chris Pattas
General Manager
Network Operations and Development
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

The AER will consider all information it receives in accordance with the ACCC/AER information policy. The policy is available at www.aer.gov.au.

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission.

All non-confidential submissions will be placed on the AER website. Copies of Energex and Ergon Energy's waiver applications and other relevant material are available on the AER's website.

Inquiries about this draft decision or how to make submissions can be made by email to AERInquiry@aer.gov.au.

Summary

On 4 August and 17 August 2011, Energex and Ergon Energy, respectively, applied to the AER for a waiver from specific clauses of the Guidelines. Clause 1(c) of the Guidelines imposes an obligation on the Distribution Network Service Provider (DNSP) to establish and maintain a separate set of regulatory accounts in respect of prescribed distribution services. Clause 1(d) of the Guidelines imposes an obligation on the DNSP to establish and maintain a separate consolidated set of regulatory accounts for the entire DNSP including the excluded services provided by the DNSP. Clause 2 of the Guidelines imposes an obligation on the DNSP to comply with the Queensland Competition Authority (QCA) Regulatory Reporting Guidelines, with respect to regulatory accounts. These guidelines include a requirement to provide regulatory accounts to the regulator by 31 October of each year.

The AER is currently developing an annual reporting framework for electricity DNSPs which includes a requirement to report regulatory account information to the AER. The establishment of a separate reporting regime by the AER means that the QCA reporting requirements under its guidelines are not required. If the waiver is not granted, unnecessary duplication of reporting requirements will occur.

To avoid unnecessary duplication of reporting requirements, the AER considers it appropriate to waive the specified clauses of the Guidelines. Accordingly, the AER's draft decision approves the Queensland DNSPs' waiver applications.

1 Queensland Ring-Fencing Guidelines

The Queensland Competition Authority (QCA) published the Guidelines in September 2000.¹ Besides ring-fencing obligations, the Guidelines set out requirements for regulatory accounts to be prepared.

On 1 July 2010, the AER assumed responsibility for administering the Guidelines. Under clause 11.14.5(b)(3) of the NER, guidelines in force for a participating jurisdiction immediately before the AER's assumption of regulatory responsibility (transitional guidelines) continue to be in force for that jurisdiction subject to amendment, revocation or replacement by the AER. The AER has not made any amendment, revocation or replacement in respect of the Guidelines to date. The Guidelines also include a procedure that allows the regulator to waive any of the requirements of the Guidelines, subject to certain requirements.

The Guidelines are available at www.aer.gov.au.

1.1 Procedure for waiving ring-fencing obligations

Section 1 of the Guidelines sets out the minimum ring-fencing obligations imposed on the Queensland DNSPs. A DNSP has the right to seek a waiver from these obligations under section 21 of the Guidelines, which states:

The QCA may, by notice to a DNSP, waive any of a DNSP's obligations under section 1 provided that the QCA is satisfied that the DNSP can demonstrate that the administrative cost to the DNSP and its Associates of complying with the obligation outweighs the benefit, or any likely benefit, to the public.

Where a DNSP applies for a waiver from requirements of the Guidelines, the AER must follow the procedure set out in sections 22 to 30 of the Guidelines in assessing the application.

On 18 August 2011, the AER published a notice in *The Australian* newspaper seeking comment from interested parties on Energex and Ergon Energy's waiver applications. No submissions were received by the AER.

¹ QCA, *Electricity Distribution: Ring-Fencing Guidelines*, September 2000.

2 Queensland DNSPs' waiver application

On 4 August and 17 August 2011, Energex and Ergon Energy, respectively, applied to the AER for a waiver relating to specific clauses of the ring-fencing guidelines to prepare regulatory reporting.

Specifically, the waiver being sought by the Queensland DNSPs is in regard to clauses 1(c), 1(d) and 2 of the Guidelines, which state:

1. A DNSP that provides prescribed distribution services in Queensland must:
...
 - (c) establish and maintain a separate set of accounts in respect of the prescribed distribution services;
 - (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the DNSP, including expenditure and maintaining a separate set of accounts in respect of the excluded services provided by the DNPS;
2. In complying with 1(c), 1(d) and 1(e), a DNSP must:
 - (a) if the QCA has published general accounting guidelines for DNSPs which apply to the accounts being prepares, comply with those guidelines; or
 - (b) if the QCA has not published such guidelines, comply with the guidelines prepared by the DNSP and approved by the QCA, or if there are no such guidelines, comply with such guidelines (if any) as the QCA advises the DNSP apply to that DNSP from time to time.

The Queensland DNSPs are seeking a waiver of these obligations to avoid preparing two sets of regulatory accounts annually for the AER – one set in accordance with the Guidelines and the other in accordance with the AER's annual reporting framework that is currently being finalised.

Energex stated that the service classification under the Guidelines do not exactly align with the current service classification set out in the AER's final determination.² Similarly, Ergon Energy outlined the requirement to provide and maintain information on 'prescribed distribution services' and 'excluded distribution services' is not consistent with the AER's final determination.³

² AER, *Final decision, Queensland distribution determination 2011–15*, May 2010, pp. 384–387.

³ AER, *Final decision, Queensland distribution determination 2011–15*, May 2010, pp. 378–383.

3 AER's assessment

The AER has the power to waive obligations in the Guidelines. Clause 11.14.5(c) of the NER deems the Guidelines to be AER guidelines, and also deems references to the jurisdictional regulators (QCA) to be references to the AER.

Section 21 of the Guidelines provides that the AER may waive a requirement under the Guidelines if it is satisfied that the administrative cost to the DNSP in complying with the requirement outweigh the benefit, or any likely benefit, to the public.

The AER does not consider that Energex's and Ergon Energy's waiver applications were made on trivial or vexatious grounds.⁴ Consequently, the AER is now issuing its draft decision in accordance with section 26 of the Guidelines.

3.1 AER's considerations

The regulatory accounts prepared by the QCA used a service classification that no longer aligns with the service classification for the Queensland DNSPs.⁵ The AER is currently developing annual reporting requirements in respect of distribution services provided by the Queensland DNSPs. The AER's annual reporting requirements will apply to the 2010–11 regulatory year and all future regulatory years.

The AER considers there is no net benefit in the Queensland DNSPs preparing and maintaining two sets of regulatory accounts in accordance with the Guidelines and the AER's annual reporting requirements. However, there are clearly costs of maintaining and preparing two sets of regulatory accounts. Accordingly, the AER intends to waive the obligation for the Queensland DNSPs to prepare regulatory accounts annually under the Guidelines. The revised regulatory accounts the AER is preparing will be consistent with the current service classifications for the Queensland DNSPs. These new reporting requirements will collect more data including financial statements, cost of debt information, opex and capex. They will also seek to promote consistency across jurisdictions.

While the Queensland DNSPs did not specifically request the AER to waive clause 1(e), Ergon Energy did note that clause 1(e) relates to cost allocations for accounts described in clause 1(c). As such, Ergon Energy considered clause 1(e) would become ineffective should the AER agree to waive clause 2 as clause 2 of the Guidelines refers to compliance with clauses 1(c), 1(d) and 1(e). Further, clause 1(e) of the Guidelines is superseded by clause 6.15.1 of the NER.⁶ Accordingly, the AER considers it appropriate to waive 1(e) in addition in to clauses 1(c), 1(d) and 2 of the Guidelines.

The Queensland DNSPs will remain subject to all other provisions of the Guidelines.

⁴ Section 23(a) of the Guidelines states that if the QCA considers the application has been made on trivial or vexatious grounds, the QCA must reject the application without further consideration.

⁵ QCA, *Final determination – Regulation of Electricity Distribution*, May 2001, pp. 45–51.

⁶ Clause 6.15.1 of the NER states: a Distribution Network Service Provider must comply with the Cost Allocation Method that has been approved in respect of that provider from time to time by the AER under this rule 6.15.

3.2 AER's draft decision

The AER proposes to issue a notice under section 21 of the Guidelines to waive Energex and Ergon Energy's obligations to comply with clauses 1(c), 1(d), 1(e) and 2.

The AER invites interested parties to make written submissions on this draft decision to the AER by 5 pm A.E.S.T on Thursday, 29 September 2011.