



Final Decision

Queensland DNSPs
Application for Waiver from
Ring-Fencing Guidelines

October 2011

© Commonwealth of Australia 2011

This work is copyright. Apart from any use permitted by the Copyright Act 1968, no part may be reproduced without permission of the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601.

Contents

Shortened forms	ii
Overview	iii
1 Background	1
1.1 Queensland Ring-fencing Guidelines	1
1.2 Queensland DNSPs' wavier application	1
1.3 Procedure for waiving ring-fencing obligations	2
2 AER's Draft Decision	3
2.1 Submissions on draft decision	3
3 AER's Final Decision	4

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

Overview

On 4 August and 17 August 2011, Energex and Ergon Energy, respectively, applied to the AER for a waiver from specific clauses of the Queensland Competition Authority, *Electricity Distribution: Ring-Fencing Guidelines*, September 2000 (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 obsolete. To avoid unnecessary duplication of reporting requirements, the AER considers it appropriate to waive the specified clauses of the Guidelines. Accordingly, on 12 September 2011, the AER released a draft decision indicating its intention to issue a notice under section 21 of the Guidelines to waive the regulatory account clauses of the Guidelines, as per Energex's and Ergon Energy's waiver applications. The AER also indicated its intention to waive the related requirement clause 1(e) of the Guidelines.

The AER received no submissions on its draft decision and has not received any other information to suggest it should depart from its draft decision. Therefore, consistent with that decision, the AER will issue a notice under section 21 of the Guidelines to waive Energex's and Ergon Energy's requirements to comply with section 1(c), 1(d), 1(e), and 2 of the Guidelines.

1 Background

1.1 Queensland Ring-fencing Guidelines

The QCA published its Guidelines in September 2000. These Guidelines set out requirements for regulatory accounts to be prepared and provided to the regulator annually.

On 1 July 2010, the AER assumed responsibility for administering 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.

Under section 21 of the Guidelines the AER has the power to waive obligations in the Guidelines.

1.2 Queensland DNSPs' wavier application

On 4 August and 17 August 2011, Energex and Ergon Energy, respectively, applied to the AER for a waiver of their regulatory accounts obligations under the Ring-fencing Guidelines.

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.

Further, 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.¹ Similarly, Ergon Energy outlined the requirement to provide and

¹ AER, *Final decision, Queensland distribution determination 2011–15*, May 2010, pp. 384–387.

maintain information on ‘prescribed distribution services’ and ‘excluded distribution services’ is not consistent with the AER’s final determination.²

1.3 Procedure for waiving ring-fencing obligations

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.

Following the procedures for waiving ring-fencing obligations set out in sections 22 to 30 of the Guidelines, the AER has taken the following steps:

- Published a media notice in *The Australian* newspaper and sought comment on Energex’s and Ergon Energy’s applications (18 August 2011). No comments were received.
- Issued a draft decision (12 September 2011) and sought submissions on the draft decision by 29 September 2011.

² AER, *Final decision, Queensland distribution determination 2011–15*, May 2010, pp. 378–383.

2 AER's Draft Decision

In the draft decision, the AER agreed with the Queensland DNSPs that there is no public benefit in them preparing and maintaining two sets of regulatory accounts in accordance with both the Guidelines and the AER's annual reporting requirements. However, there are costs associated with preparing and maintaining two sets of regulatory accounts.

The AER also considered that the regulatory accounts prepared by the QCA include service classifications that no longer align with current service classifications for the Queensland DNSPs.³ As such, the AER considered it unnecessary for the Queensland DNSPs to report obsolete information. Further, the AER is currently developing annual reporting requirements for the electricity DNSPs to apply from the 2010–11 regulatory year. These new reporting requirements will collect more data, compared with the QCA reporting requirements, including financial statements, cost of debt information, opex and capex. The AER's reporting requirements will also seek to promote consistency across jurisdictions and reflect applicable classifications for each DNSP.

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). The AER noted in its draft decision that clause 1(e) of the Guidelines is superseded by clause 6.15.1 of the NER.⁴ Accordingly, the AER considered it appropriate to waive 1(e) in addition to clauses 1(c), 1(d) and 2 of the Guidelines.

Given these considerations, the AER released a draft decision under section 26 of the Guidelines indicating its intention to waive the Queensland DNSPs requirement to comply with ring-fencing clauses 1 (c), 1 (d), 1 (e) and 2 of the Guidelines.

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

2.1 Submissions on draft decision

The AER invited interested parties to make written submissions on its draft decision by 29 September 2011. No written submissions were received in response to the draft decision.

³ QCA, *Final determination – Regulation of Electricity Distribution*, May 2001, pp. 45–51.

⁴ 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 AER's Final Decision

The AER received no submissions nor other information to suggest it should depart from its draft decision. Therefore, consistent with the draft decision, the AER will grant Energex's and Ergon Energy's requests for a waiver from the obligation to comply with the regulatory accounts provisions of the Guidelines. Accordingly:

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