

# Ergon Energy Corporation Limited

Submission on the *Better Regulation:  
Distribution and Transmission  
Confidentiality Guidelines  
Issues Paper*  
Australian Energy Regulator  
14 May 2013





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This submission, which is available for publication, is made by:

Ergon Energy Corporation Limited  
PO Box 264  
Fortitude Valley  
BRISBANE QLD 4006

Enquiries or further communications should be directed to:

Jenny Doyle  
Group Manager Regulatory Affairs  
Ergon Energy Corporation Limited  
Email: [jenny.doyle@ergon.com.au](mailto:jenny.doyle@ergon.com.au)  
Ph: (07) 4092 9813  
Mobile: 0427 156 897



## Part A: Response to the Issues Paper

### INTRODUCTION

Ergon Energy Corporation Limited (Ergon Energy) welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) on its *Better Regulation: Distribution and Transmission Confidentiality Guidelines* (the Guidelines) *Issues Paper* (Issues Paper). This submission is provided by Ergon Energy, in its capacity as a Distribution Network Service Provider (DNSP) in Queensland.

Ergon Energy broadly supports the objective of the Guidelines proposed by the AER in its Issues Paper and considers that the Guidelines will serve as a useful mechanism to improve stakeholder understanding of the AER's approach to classifying confidential information. This is particularly important for Ergon Energy as we work toward the submission of our regulatory proposal in 2014.

Where appropriately developed and applied, Ergon Energy considers that the Guidelines will deliver the following benefits identified in the AER's Issues Paper:

- Providing appropriate protection of confidential information, while maximising stakeholder ability to scrutinise;
- Facilitating greater accountability of regulated businesses to the confidentiality claims they make; and
- Ensuring appropriate distilling of information into confidential and non-confidential.

Ergon Energy agrees with the Energy Networks Association (ENA) that:

- The Guidelines should make the process of claiming confidentiality more predictable and well-understood by all stakeholders; and
- A number of enhancements to the approach (as cited in the ENA's submission) will further the aims of achieving the right balance between protecting and disclosing information, and facilitating improved stakeholder engagement;

And on this basis Ergon Energy has contributed to, and supports, the ENA's submission on the Issues Paper.

Detailed responses to the specific questions raised in the Issues Paper are included in Part B of this submission. Ergon Energy is available to discuss this submission or provide further detail regarding the issues raised, should the AER require.

## Part B: Responses to the questions raised in the Issues Paper

### Manner in which NSPs may make confidentiality claims

#### Question 1

What are stakeholders' views on requiring NSPs to make confidentiality claims using the template in Attachment 1?

Ergon Energy supports a collaborative approach to the management of issues involving the protection and disclosure of information and for this reason supports the use of the AER's proposed template for making confidentiality claims. Similar to the ENA, Ergon Energy considers that the template would assist in:

- streamlining the confidentiality claims process;
- alleviating the AER's administrative burden in assessing claims; and
- addressing the issue of unnecessary confidentiality claims.

However, for reasons suggested by the ENA, Ergon Energy does not support the form of the template included in Attachment 1 to the Issues Paper and instead prefers the following modified template, proposed by the ENA, which includes the recommended category approach; removes the obligation for a Network Service Provider (NSP) to specify public benefit; and only requires detriment to be specified to the extent that it is reasonably practicable to do so. In particular, Ergon Energy believes that whilst it may be prudent for NSPs to indicate the specific detriment that would result from disclosure of information for



which confidentiality is sought, this should not be a pre-requisite for approval of the claim. Additionally, Ergon Energy does not believe it is appropriate for a NSP to assess the public interest in disclosure of information. Such an assessment remains the statutory obligation of the AER, which cannot be delegated nor derogated from.

Column1	Column2	Column 3	Column 4	Column 5	Column 6	Column 7
Document containing confidential information	Page and paragraph number of the document which contains confidential information	Does the information for which confidentiality is being claimed fall within any of the recognised confidentiality categories? If so please specify which category or note 'other'	Provide a brief explanation of category  If information falls within 'other' please provide further details on why the information should be treated as confidential	Please specify the detriment which may be caused from information disclosure, to the extent that it is reasonably practical to do so	Has the confidential information been identified by highlighted yellow shading? If not, please provide reasons	Has a public version of this document been provided? If not please provide reasons

### Categories or lists of confidential information

#### Question 2

Should the confidentiality guidelines specify categories of information by which NSPs must classify any claims of confidentiality?

Ergon Energy agrees with the ENA that the focus the confidentiality guidelines should be on identifying categories of information which can generally be accepted as confidential.

Ergon Energy asserts that the acceptance or rejection of a claim for confidentiality will essentially depend on the content of the document rather than its type, and for this reason Ergon Energy considers that establishing categories of confidential information will provide NSPs with a clear understanding of the nature of the information the AER will generally consider to be confidential.

Ergon Energy does not agree with the AER's view that classification of information on the basis of categories would represent a greater administrative burden than requiring NSPs to specify the detriment that would be incurred from disclosure and further, undertaking an assessment of the potential public benefit from disclosure.

Ergon Energy is strongly supportive of the inclusion of categories of confidentiality, and consistent with the ENA, believes such inclusion will appropriately inform the focus of the confidentiality guidelines, and assist with:

- Streamlining the process for making confidentiality claims;
- Providing guidance and clarity for NSPs in relation to the nature of information which could be considered confidential;
- Relieving the administrative burden on the AER in making such assessments by identifying the basis of each claim and enabling the AER to more easily assess its veracity;
- Retaining the regulatory discretion for the AER to reject claims, regardless of category; and
- Delivering a simplistic and less costly alternative to the AER's proposed approach.

However, Ergon Energy considers that the inclusion of categories should not be exhaustive, nor should they limit an NSP's ability to claim confidentiality for information that falls outside the listed categories. Furthermore, Ergon Energy would expect that any such confidential information would receive the same protection from disclosure that the AER affords information which can be clearly categorised.

**Question 3**

In addition to the proposed items listed in section 4.2, are there any other items stakeholders consider we should protect?

Ergon Energy notes that the list of items the AER is considering protecting are broadly aligned with the proposed categories initially put forward by the ENA, with some notable exceptions:

- Confidential contractual terms, which if disclosed, could expose the NSP to breach of contract;
- Information provided by third parties on a confidential basis which, if disclosed would adversely affect third party interests or the general public interest; and
- Proprietary information of a NSP or third party.

Ergon Energy concurs with the ENA's request for these categories to be included in the Guidelines, on the basis of their relevant and legitimacy and strongly supports the consolidated list categories proposed by the ENA in its submission.

**Question 4**

In addition to the proposed items listed in section 4.2, are there any other items stakeholders consider we should disclose?

It is Ergon Energy's view that the format in which information is presented is irrelevant and that the actual information, its context and meaning, should be the core consideration in respect of a NSP's claim for confidentiality.

**Website notices****Question 5**

What are stakeholders' views on requiring NSPs to use the template in Attachment 2 to determine the proportion of information over which they have claimed confidentiality?

Ergon Energy reiterates the ENA's general view that identification of the total number of pages of a regulatory proposal that are to remain confidential would not assist, and may in fact inhibit, a stakeholder's understanding of a particular regulatory proposal. Moreover, Ergon Energy notes that pursuant to clause 6.9.2A of the National Electricity Rules the obligation to determine the proportion of confidential information identified in a regulatory rests with the AER.

**Blanket confidentiality claims****Question 6**

What are stakeholders' views on our proposed measures for dealing with blanket confidentiality claims in the confidentiality guidelines?

Ergon Energy broadly supports the AER's position on blanket confidentiality claims. Though Ergon Energy encourages the AER to consider that some documents will contain a large proportion of confidential information, and in circumstances where significant amounts of data or information is confidential, the remainder of the document may be rendered meaningless, or information may no longer convey the intended message or context. On this basis, Ergon Energy believes the Guideline should include an appropriate degree of flexibility to ensure a 'meaningless' public version of a document is not required.

**Third party documents****Question 7**

What are stakeholders' views on our position that NSPs should verify all third party confidentiality claims that are included in their submission?

To the extent that third party confidentiality claims are included in submissions, Ergon Energy believes the fundamental consideration should be the nature of the information for which confidentiality is being claimed. That is, the nature of the information is the central issue, rather than who prepared or provided it.



Ergon Energy agrees with the AER's position requiring verification of all third party confidentiality claims by NSPs, on the basis that this will assist the AER with its decision making in relation to claims for confidentiality.

### Scope and coverage

#### Question 8

Should we apply the confidentiality guidelines, as a policy, to all information we receive from NSPs and gas service providers? If not, what information handling procedures should we use to deal with this information?

Ergon Energy acknowledges and generally accepts the application of the principles to be enunciated in the Guidelines, to formal submissions by NSPs as a part of their regulatory proposal process, subject to those principles being generally consistent with the approach put forward in this submission.

Further, Ergon Energy seeks confirmation that the binding nature of the confidentiality guidelines is intended to apply only for regulatory proposals. It is Ergon Energy's expectation that any broader application would be by agreement for the purpose of assisting a regulatory process, and on a non-binding basis.

### Compliance costs

#### Question 9

What are stakeholders' views on ensuring appropriate disclosure of information whilst minimising administrative costs?

Ergon Energy notes that any additional costs incurred by NSPs in complying with the Guidelines will ultimately be passed on to customers. Consequently, Ergon Energy suggests that in order to achieve the purpose and objective of the Guidelines without adversely impacting customers, the Guidelines should maintain a focus on minimising administrative costs, whilst preserving the desired balance between protecting confidential information and the disclosure of information where it would be in the public interest to do so.

Understanding that such a balance isn't always easy to achieve, Ergon Energy believes processes which are likely to result in increased administrative costs ought to be introduced only where the additional benefits of doing so clearly outweigh the additional costs. On this basis, Ergon Energy supports the ENA's suggestion for modifying the AER's proposed approach to facilitate appropriate disclosure of information, whilst reducing administrative costs, and concurs with the ENA's view that the appropriate identification of categories of information likely to be considered confidential would serve as a reasonable and effective means of reducing the administrative burden for NSPs by:

- reducing the time required to determine whether a confidentiality claim is warranted; and
- reducing the chances that such claims may be rejected, and thereby the time required to make modifications/redactions.

### Limited release of information

#### Question 10

Should we facilitate NSPs disclosing information to certain stakeholders for the purpose of making a submission to the AER?

Ergon Energy generally supports the AER facilitating the disclosure of information to third parties, subject to the agreement of the particular NSP. However, where information has been formally accepted as confidential, any disclosure of that information should be at the sole discretion of the NSP.