

Lodged via email to AERringfencing@aer.gov.au

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Ergon's waiver application against the Australian Energy Regulator's Ring-fencing Guidelines. Ergon Energy streamlined waiver application (5 May 2025).

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Ergon waiver application against the Australian Energy Regulator's Ring-fencing Guidelines.

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

AEC position on the application.

The AEC acknowledges the technical merits of the proposal/s. Cross subsidy risks, transparency and strict, enforceable safeguards are our major concerns. The waiver must not let Ergon or its retail partner crowd out competitors in wholesale, FCAS or retail markets. And the AER must scrutinise any arrangement that gives the retail partner advantaged access or insights.

The AEC supports innovation and targeted trials that can deliver consumer benefits, but any ring-fencing waiver must preserve competitive neutrality, prevent regulated cross subsidy, and include clear, enforceable conditions and reporting. The regulator must preserve competitive neutrality and prevent monopoly advantage.

The AEC would not oppose a waiver that demonstrably preserves competitive neutrality and prevents cross-subsidy. If the AER is to grant this waiver, in our view the conditions above are necessary for the AER to be satisfied that it has protected consumers and the competitive market. We recommend that the AER require the material and safeguards listed below before any waiver is approved.

Conditions Precedent

In approving the waiver, the AEC will submit that the AER must satisfy itself that:

- No regulated funds (RAB) will be used now or later for these BESS.
- The accounting treatment and timeline for the connection asset transfer to RAB is zero cost.

- The contract terms that bind the retail partner to pay connection/maintenance costs are adequate.
- Ergon will prevent cross-subsidy in practice as well (ledger treatment, cost allocation rules, invoicing flows).
- The technical limits that third parties must accept (response times, SOC floors/ceilings, dispatch overrides) are contracted.
- The priority rules between network needs and contestable market dispatch (via an explicit hierarchy and examples) have been assessed.
- The proposed ring-fencing compliance metrics and reporting templates (what will be reported and frequency) are in place.
- The evidence of prior market procurement attempts (EOIs, RIT-D outcomes) is justifiable and assess why they failed to secure third party BESS.
- Ergon (or Energy Queensland subsidiaries) are prevented from bidding against third-party providers using learnings from these BESS.
- Publish which market services (FCAS, energy arbitrage, LMP/wholesale) the retail partner may access and any market registrations required.
- Any revenue sharing or commercial benefit flows between Ergon and the retail partner (including pass-through arrangements) are compliant. (This includes disclosure (to the AER) of the commercial deal with the retail partner addressing revenue sharing, access priority, cost recovery, and whether the partner pays market rates for capacity.)
- The proposed sunset/expiry conditions and the rationale for the 30 Dec 2040 date, including decommissioning, are in existence.
- The intellectual property, operational algorithms, or data derived from the BESS will be shared externally on fair terms.
- The triggers for when Ergon can consider transitioning BESS into regulated assets are known.

In conclusion, the AEC accepts that a waiver may be warranted where it can be shown to be the least distorting way to deliver demonstrable consumer benefit. However, any waiver must be subject to rigorous, enforceable conditions-precedent. Verification of the claimed failed procurements, strict ring-fencing and non-discrimination obligations for Ergon and any retail partner, transparent reporting of costs, benefits and any information sharing arrangements, clear cost allocation rules and a review mechanism tied to measurable market outcomes are all required. If the AER can satisfy itself that these safeguards are met and competitive neutrality preserved, the AEC would not oppose the waiver.

Please contact David Markham at david.markham@energycouncil.com.au should you wish to discuss further.

Yours sincerely,

David Markham
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