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16 March 2016

COAG Energy Council Secretariat  
Department of Industry, Innovation and Science  
GPO Box 9839  
CANBERRA ACT 2601

Dear Secretariat

**NATIONAL ENERGY LAW AND NATIONAL GAS LAW AMENDMENT PACKAGE**

Ergon Energy Corporation Limited (Ergon Energy), in its capacity as a Distribution Network Service Provider in Queensland, welcomes the opportunity to provide comment to the Council of Australian Government (COAG) Energy Council on its *National Electricity Law and National Gas Law Amendment Package*, released 3 February 2016.

Please find attached Ergon Energy's submission. Should you require additional information or wish to discuss any aspect of this submission, please do not hesitate to contact either myself on (07) 3851 6416 or Trudy Fraser on (07) 3851 6787.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jenny Doyle'.

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Group Manager Regulatory Affairs

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Enc: Ergon Energy's submission



Submission on the COAG  
Energy Council *National  
Electricity Law and  
National Gas Law  
Amendment Package*

16 March 2016

Submission on the COAG Energy Council  
*National Electricity Law and National Gas Law  
Amendment Package*

Ergon Energy

16 March 2016

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

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# Introduction

Ergon Energy Corporation Limited (Ergon Energy) in its capacity as a Distribution Network Service Provider (DNSP) in Queensland welcomes the opportunity to provide comment to the COAG Energy Council in relation to its *National Electricity Law and National Gas Law Amendment Package*, and more specifically, the draft *Statutes Amendment (National Electricity and Gas Laws – Information Collection and Publication) Bill 2015* (the draft Bill).

Ergon Energy acknowledges the importance of the Australian Energy Regulator (AER) having sufficient and clearly defined powers to enable it to undertake its functions under the National Electricity Law (NEL) and National Electricity Rules (NER). As such, Ergon Energy generally supports the intent of the NEL reforms, which will provide increased clarity around the annual collection and publication of benchmarking material by the AER. However Ergon Energy is concerned about a number of the proposed changes, which we have addressed in detail below.

As a member of the Energy Networks Association (ENA) Ergon Energy has contributed to and supports the ENA's submission.

## Release of information

### *A balanced approach*

The draft Bill proposes to extend the scope of the AER's performance reports to include 'efficiency'<sup>1</sup> and explicitly extends the AER's right to disclose information to include "any information given to it, or in connection with, the performance of its functions or the exercise of its powers" under the NER or the NEL<sup>2</sup>. While Ergon Energy agrees the AER should be provided with all necessary information required to perform its functions effectively, we suggest the manner in which data is applied should be governed by an appropriate framework, particularly when it involves data estimates.

As the AEMC would be aware, the AER may request information or data from DNSPs not kept in the ordinary course of business. This may result in the need for "back-casting" or the creation of estimates where actual results were not classified or categorised in the way the Regulatory Information Notice (RIN) required the information. Estimates and modelling is at times a highly subjective process, wherein analysis can strongly differ. With such a limitation incumbent within the process, such a risk should be mitigated within the NEL so as to provide a governance framework that drives both the effective provision and application of information. As such, we recommend the NEL require the AER to clearly highlight in its models and reports where estimated data has been applied and what accounts / measures have been utilised to account for the application of any estimates.

### *Confidentiality claims*

Under the draft Rule, when the AER proposes to release regulatory information instrument information claimed as confidential, DNSPs such as Ergon Energy will not be entitled to make representations on such a proposal, in terms of the detriment that may be caused by the intended

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<sup>1</sup> Section 28V(2)(a)(iii) & 28V(3)(b)

<sup>2</sup> Section 18A (1). However Ergon Energy notes that this power is subject to the other provisions of the NEL that relate to disclosure of information given to the AER in confidence.

disclosure. Rather DNSPs will be limited to making representations regarding the public benefit in disclosing the information.<sup>3</sup> While Ergon Energy acknowledges that in making a claim of confidentiality under section 28OA of the NEL, a person must include information about any detriment that might be caused to the person if the information were to be disclosed by the AER, we are concerned about the lack of ability for that person to make representations regarding detriment prior to that information being released. Specifically, Ergon Energy agrees with the ENA that this raises the possibility of occurrence of any unforeseen detrimental consequences that may be caused by disclosure, or any unintentional misinterpretation of this detriment by the AER. As such Ergon Energy recommends that the entitlement to make representations prior to the release of regulatory information instrument information claimed as confidential, be extended to include detriment in addition to public benefit.

Furthermore, Ergon Energy notes the amendments are silent on what factors the AER needs to consider when determining public benefit. We recommend clarity around this criterion should be provided for it is essential DNSPs have a level of understanding in this regard when preparing confidentiality claims.

Further, the existing Confidentiality Guideline is explicit that when DNSPs provide reasons demonstrating how and why the disclosure of information would cause detriment, that this detriment may be to the person (ie the information provider) and / or a third party. Throughout drafting of the proposed NEL amendments references relating to confidentiality claims refer to the person and the drafting should be amended to include third parties. For example 28OA (1)(b)(i), notes that in making a confidentiality claim a person may provide supporting reasons of detriment to the person (and not a person). Without mention of a “third party” this clause could be interpreted to preclude such representations from being made.

### ***Timeframes and costs***

Ergon Energy understands and supports the need for open and transparent business practices. However, as any piece of information provided to the AER could be released publicly, it should be noted this measure will result in more administrative work for DNSPs such as Ergon Energy, which could increase costs and magnify time constraints. The capability will necessitate confidentiality considerations be applied to all exchanges of information between the AER and DNSPs. The impacts of this will be variable depending on the information requested by the AER. While Ergon Energy appreciates the AER’s requirements for certain information to undertake its functions and powers under the NEL and NER, the level of information requested should not go beyond what would be reasonably required for the AER to do so.

### ***Implementation***

Ergon Energy supports the transitional arrangements proposed and assumes the AER’s Confidentiality Guidelines will be updated to reflect changes to the NEL. As the guidelines are an important tool in adhering to the NEL, it is recommended that the new NEL does not come into effect until the Confidentiality Guidelines are updated. This will allow for guidance to be provided regarding concepts such as the inclusion of information in confidentiality claims that *“is reasonably within the person’s knowledge and capacity to give”* and that which *“may be relevant”* to the AER’s considerations<sup>4</sup>. As the amendments are silent on what factors may be considered to be relevant

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<sup>3</sup> Draft NEL, Section 28ZB (1e).

<sup>4</sup> Draft NEL, Section 57A (1)(ii)(A)&(B)

to the AER decision making process, it is difficult for DNSPs to assess what such terms, and particularly what constitutes being *in the public's benefit*<sup>5</sup> can be construed to mean.

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<sup>5</sup> Draft NEL, Section 28ZB(1b)(C)



Consultation Question	Ergon Energy Comment
<p>1. What information would be captured under the changes outlined in the removal of barriers for the AER to collect and publish information for the purpose of benchmarking?</p>	<ul style="list-style-type: none"> <li>• Ad-hoc information requests</li> <li>• Cost Pass Through Submissions</li> <li>• Pricing Proposal</li> <li>• Service Target Performance Incentive Scheme</li> <li>• Specific customer information</li> </ul>
<p>2. How often is the information described in the response to question 1 requested by the AER?</p>	<p>Regularly / as required</p>
<p>3. What are the characteristics of the information (such as sensitivity or quantity) described in the response to question 1 that would mean the new provisions would impose a new and more onerous regulatory burden?</p>	<p>The characteristics of the information will vary but will at times include high volume and highly sensitive data. As noted, it should also be considered that; as <i>any</i> piece of information provided to the AER could be released publicly, this will necessitate confidentiality considerations to be applied to all exchanges of information between the AER and DNSPs. Ergon Energy is concerned that this will create delays and an increased regulatory burden (the scale of which is determined by the information) for DNSPs.</p>