

Energex Ring-Fencing Waiver

Submission in response to applications lodged

18 and 19 May 2016

21 June 2016



Energy
Consumers
Australia



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Introduction

Energy Consumers Australia (ECA) thanks the Australian Energy Regulator (AER) for the opportunity to provide comment on an application (in two parts) from Energex for a waiver of ring-fencing requirements. The application dated 18 May, 2016, is primarily for an educational facility (the Education application) and the application dated 19 May, 2016, is argued to be an experiment to understand the operation of large commercial storage systems (the Trial application).

Energex is applying for the waiver because under Queensland law they are prohibited from carrying out a “related business”, which is defined as “the business of producing, purchasing and selling electricity.” In making a waiver application the firm is seeking the exercise of regulatory discretion in its favour.

In any case where a party seeks exemption from regulation, the waiving of an obligation or regulatory forbearance, the onus of proof rests with the party making the application to demonstrate the benefit of the regulator using its discretion. The hurdle is not merely to demonstrate a benefit, but that the benefit cannot be achieved in any way other than through the application of that discretion.

It is notable that recent applications for waiver have not provided this evidence. In addition, the approach taken has been to presume that the regulator will exercise its discretion.

AER decisions on these applications have allowed this failure of the applicants to make their case to become the norm in a dynamic market where more such applications can be expected in future. For example, in approving the Ergon application of 28 October, 2015, the AER did not require Ergon to demonstrate that it had tested the market to determine whether the solution could be obtained as a service, rather than through capital expenditure by the network.

The AER’s approach in these applications has been framed on the assumption that a National Energy Market- (NEM) wide Electricity Distribution Ring Fencing Guideline (the Guideline) is being reviewed and that the decision made in the interim therefore has a reduced significance. ECA submits that this is poor regulatory practice. No matter how qualified a decision is, every regulatory decision has implied value as a precedent. This is particularly the case when it goes to the evidentiary base required for an application and the policy objective for the regulation is the long term interests of consumers.

As outlined in our recent submission to the Guideline,¹ ECA has fundamental concerns about the ability of ring fencing arrangements to protect the long term interest of consumers by fostering competitive markets for new and emerging energy services. This concern is based on the experience in the markets for other essential services, especially telecommunications. Accordingly, ECA also has concerns about Energex's proposed applications and submits that, for the reasons outlined below, only the Education application should be approved.

The Trial application

Energex is seeking a waiver to install solar photovoltaic (PV) and a commercial sized Battery Energy Storage System (BESS) within the embedded network operated by TradeCoast; this is an embedded network that services Energex's Eagle Farm Distribution Centre.

The rationale for the investment provided by Energex is that the system will 'reduce the operating cost of the facility, deliver environmental benefits and contribute to the research and development earnings'.²

The first two benefits are primarily delivered by the solar installation. The additional benefit (Energex's "secondary benefit") is derived from the BESS, of which the application says:

*Energex expects an increase in commercial customers applying for connection of large-scale BESS systems (either in conjunction with a new or existing solar PV system) and has already received tentative requests from a number of commercial customers. BESS pilot projects provide Energex with a better understanding of how the installation of batteries, used in conjunction with solar PV, will impact Energex's future network load profile and power quality.*³

ECA shares Energex's expectation that commercial users will increasingly seek to include BESS units within their energy portfolio and systems. ECA also expects that these units will be provided by a competitive market. Consumers will either purchase their own units outright, or include them as part of a supply agreement from a traditional retailer or a new energy services provider.

¹ Available at: <http://www.energyconsumersaustralia.com.au/policy-and-advocacy/fostering-competitive-markets-in-the-long-term-interests-of-consumers>

² Hocking, J, *Energex application for a ring-fencing waiver under the electricity distribution ring-fencing guideline*, 19 May 2016, 2.

³ Ibid.

Understanding the consequences of these units on Energex's network is a necessary task for a network operator focused on long term consumer interest in reliability quality and safety in an increasingly dynamic and innovative electricity market.

However, the proposal for which Energex is seeking a waiver does not achieve this objective. The PV and BESS will be under Energex's direct control; the market circumstance they need to develop experience of is where the assets are not under their control.

ECA submits that the primary and secondary benefits could both be better achieved in an arrangement where these assets were owned and operated by the owner of the embedded network, rather than by Energex. ECA notes that no analysis is provided by Energex in its application of any other business model considered by Energex that could have delivered the same, or better, objectives. Accordingly, ECA does not believe that the application should be approved.

In addition, ECA encourages the AER not to grant Energex a waiver on a temporary basis pending further review. Network ownership of behind the meter generation and storage has already been identified in the AEMC Storage report as having the potential to reduce competition in innovative services. The presumption applied by the AER should be that the combination of rule changes and the Guideline will make it harder, not easier, for networks to make these investments. ECA has repeatedly flagged its intention to pursue reform in this direction, on the basis that doing so will foster more competitive markets for emerging services in the long term interest of consumers, the paramount interest of the sector.

The Education Application

The proposal for Energex to invest in PV and storage technology for the purposes of a mobile display on new technologies is the kind of consumer engagement that the regulator and consumers have been encouraging networks to engage in.

While Energex has not sufficiently canvassed other ownership scenarios in its application, it is clear that as an itinerant facility, it will not be permanently engaging in storage and generation at any location. For the avoidance of doubt, it is requested that Energex change the undertaking "When not being used for educational purposes, the exhibit will reside at Energex's Eagle Farm Distribution Centre" to explicitly state that when housed at Eagle Farm, the asset will not be connected to the network.

With this amendment, this application is supported by ECA.

Conclusion

Regulatory processes need to be efficient and not impose obligations beyond the benefits likely to be achieved. The desire for simplicity and informality should not, however, be interpreted as an excuse for inadequate applications.

The AER needs to reflect on the consequence of its decisions for the long term interest of consumers, not only in terms of the precedent implications of the outcomes, but also of process.

Energex has poorly made the case for both these applications. In the case of the Education application, however, the value of the waiver can be inferred and it should be accepted. This is not the case with the Trial application. Indeed, the Trial application seems to be entirely the wrong approach for the secondary benefit. ECA, therefore, submits that the Trial application should be rejected.

Once again, ECA thanks the AER for the opportunity to provide comment on the Energex applications. If you would like to discuss this matter further, please contact David Havyatt, Senior Economist, on 02 9220 5508 or david.havyatt@energyconsumersaustralia.com.au.



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