

14 January 2021



Ms Merryn York
Acting Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2000

Dear Ms York

Draft rule determination: Maintaining life support customer registration when switching

Energy Queensland Limited (Energy Queensland) welcomes the opportunity to provide comment to the Australian Energy Market Commission in response to the *Maintaining life support customer registration when switching* draft rule determination.

The attached submission is provided by Energy Queensland, on behalf of its related entities, including:

- Distribution network service providers, Energex Limited and Ergon Energy Corporation Limited; and
- Regional service delivery retailer, Ergon Energy Queensland Pty Ltd.

Should you require additional information or wish to discuss any aspect of this submission, please do not hesitate to contact me or Charmain Martin on 0438 021 254.

Yours sincerely

A handwritten signature in blue ink that reads "Alena Christmas".

Alena Christmas
Acting Manager Regulation

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Energy Queensland

**Submission to the
Australian Energy Market Commission**

**Draft rule determination –
Maintaining Life Support Customer
Registration when Switching**

Energy Queensland Limited
14 January 2021



About Energy Queensland

Energy Queensland Limited (Energy Queensland) is a Queensland Government Owned Corporation that operates businesses providing energy services across Queensland, including:

- Distribution Network Service Providers, Energex Limited (Energex) and Ergon Energy Corporation Limited (Ergon Energy);
- a regional service delivery retailer, Ergon Energy Queensland Pty Ltd (Ergon Energy Retail); and
- affiliated contestable business, Yurika Pty Ltd (Yurika) and its subsidiaries, which includes Metering Dynamics Pty Ltd trading as Yurika Metering (Yurika Metering).

Energy Queensland's purpose is to 'safely deliver secure, affordable and sustainable energy solutions with our communities and customers' and is focused on working across its portfolio of activities to deliver customers lower, more predictable power bills while maintaining a safe and reliable supply and a great customer service experience.

Our distribution businesses, Energex and Ergon Energy Network, cover 1.7 million km² and supply 34,000GWh of energy to 2.25 million homes and businesses each year.

Ergon Energy Retail sells electricity to 738,000 customers in regional Queensland.

Energy Queensland also includes Yurika, an energy services business creating innovative solutions to deliver customers greater choice and control over their energy needs and access to new solutions and technologies. Yurika Metering, which is a part of Yurika, is a registered Metering Coordinator, Metering Provider, Metering Data Provider and Embedded Network Manager. Yurika is a key pillar to ensuring that Energy Queensland is able to meet and adapt to changes and developments in the rapidly evolving energy market.

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1 Introduction

On 5 November 2020, the Australian Energy Market Commission (AEMC) published a draft rule determination on maintaining life support customer registration when switching (draft rule determination). The draft rule determination follows consultation on a rule change request by the Energy and Water Ombudsman of New South Wales seeking changes to the National Energy Retail Rules (NERR) to maintain life support registration when a customer changes premises or their electricity retailer.

The AEMC has requested feedback on the draft rule determination to make a more preferable draft rule (draft rule) which will change the current life support registration process by amending the NERR to include the following:

- An obligation on the outgoing registration process owner (RPO) to return the medical confirmation form and / or medical confirmation document used to register the customer's premises within 10 business days on request (subject to privacy laws);
- A requirement for RPOs to keep the medical confirmation form and / or medical confirmation document used to register a customer for the period of time that the person remains a customer, and for 110 business days from the date the person ceases to be a customer;
- The ability for customers to use either a medical certificate or a medical confirmation form for the purposes of providing medical confirmation; and
- A requirement for the incoming RPO to inform the customer that for the purpose of providing medical confirmation, the customer may submit the medical confirmation that was submitted to their previous retailer or distributor, provided it is dated less than four years ago and is legible.

The AEMC is seeking feedback on the draft rule determination by 14 January 2021. Energy Queensland's comments are provided in sections 2 and 3 of this submission.

2 General comments

Energy Queensland welcomes the opportunity to provide feedback in response to the AEMC's consultation on the draft rule determination. This submission is provided by Energy Queensland on behalf of its related entities:

- distribution network service providers, Energex and Ergon Energy Network; and
- regional service delivery retailer, Ergon Energy Retail.

As noted in our submission in response to the AEMC's consultation paper, Energy Queensland's retail and distribution businesses take their obligations with respect to the safety and well-being of persons requiring the use of life support equipment (life support users) very seriously. We are therefore supportive of efforts to ensure appropriate protections continue to be provided to life support users as well as to enhance customers' ability to engage in the electricity market. However, the evolving nature of the life support framework and piecemeal approach to reforms is, in our view, resulting in increased complexity, the potential for inconsistent and confusing messaging to customers and significant ongoing administrative, operational and cost burdens for retailers and distributors.

If made, the draft rule will place additional obligations on retailers and, to a lesser extent, distributors, to retain and return medical confirmation documentation used for life support registration purposes and result in changes to communications materials and administrative processes. However, given there is no obligation to deregister a premises where medical confirmation has not been provided, the proposed amendments to the NERR will only effectively simplify the switching or moving process for those customers who have provided medical confirmation documentation.¹ Further, as acknowledged by the AEMC in its draft rule determination, the draft rule will not address other issues raised by stakeholders, such as the need to improve the accuracy of participants' life support registers or to streamline the overall registration, deregistration and medical confirmation processes to ensure better outcomes for life support users and customers.

Consequently, Energy Queensland considers that rather than continuing to make ad hoc amendments to the NERR, a holistic review of the life support framework is required to determine how it can be improved to ensure life support protections are provided to life support users efficiently and cost-effectively. We therefore suggest that the issue of reducing barriers to switching by customers requiring life support equipment or when moving premises should be considered within the scope of a wider review of the framework and implemented as part of a consolidated package of reforms.

¹ As noted in Energy Queensland's submission in response to the consultation paper dated 3 September 2020, of the 13,355 customers who registered their premises for life support protections in South East Queensland between February 2019 and July 2020, only 51 per cent had provided medical confirmation to their retailer.

However, if the AEMC determines to proceed with the currently proposed amendments to the NERR, Energy Queensland is of the view that certain elements will require further consideration, including the following:

- Participants may experience difficulties in verifying the identity of the life support user for the purposes of returning the medical confirmation documentation upon request in accordance with the requirements of privacy obligations relating to sensitive information. This is particularly the case where the life support user is not the account holder at the premises or where the distributor is the RPO. That is, participants, particularly distributors, will not necessarily hold sufficient identification information about the life support user at the premises to verify their identity.
- As there is currently no requirement under rule 126 of the NERR for RPOs to hold copies of medical confirmation documentation for a specified period, clarification is required that the new obligations to retain and return medical confirmation documents will only apply to life support registrations initiated after the date of commencement of the new rules.
- Finally, we note that the proposed draft rule (if made) will commence on 4 March 2021. However, given that the expected date for publication of the final rule determination is 25 February 2021, Energy Queensland does not consider that there will be sufficient time between publication of the final rule determination and the proposed commencement date (i.e. one week) to allow necessary changes to administrative processes and customer communication materials (e.g. changes to participant life support information packs, forms, websites and call centre scripting) to include advice on the ability to reuse medical confirmation documentation and how to request its return. Therefore, we recommend that the commencement date should be extended to allow enough time for participants to make necessary changes to comply with the new rules.

Energy Queensland's detailed comments on the key elements of the draft rule determination are provided in section 3 of this submission. We are available to discuss this submission or provide further detail regarding the issues raised.

3 Specific comments

Energy Queensland provides the following comments on the elements of the draft rule determination for consideration:

Element of more preferable draft rule	Energy Queensland Comment
<p>1. A requirement for the outgoing RPO to return the medical confirmation form and/or medical confirmation document to the customer within 10 business days of the customer's request, subject to applicable privacy laws</p>	<p>As noted in section 2 of this submission, Energy Queensland is concerned about the ability for participants (particularly distributors) to fulfil the requirements of the obligation to return the medical confirmation form and / or medical confirmation document in accordance with privacy laws. Specifically, we do not consider that participants will always have enough information to verify the life support user's identity to enable return of the medical confirmation documents upon request.</p> <p>For example, where the life support user at the premises is not the customer, the medical confirmation documents may have been provided to the RPO directly by that person. In this situation, the RPO may not have sufficient verification data to enable it to return the documents in accordance with privacy obligations. The RPO may also have no authority to provide the documents to the customer, if the customer is not the life support user.</p> <p>This situation is likely to be exacerbated by the proposal to allow the use of a medical certificate in lieu of a medical confirmation form, as this change will potentially result in even less identification information being provided about the life support user for verification purposes (particularly where the life support user is not the account holder at the premises or where the distributor is the RPO). Without a medical confirmation form, it would be impractical for the RPO to obtain consent from the life support user to return the documents to the customer (where the customer is a different person to the life support user).</p> <p>It is also unclear why the draft rule requires that an existing medical confirmation document must be returned to the customer within 10 business days of request. As the registration process allows</p>

Element of more preferable draft rule	Energy Queensland Comment
	<p>customers a minimum of 50 business days within which to provide medical confirmation and the ability to request at least one extension of a minimum of 25 business days, we consider that this timeframe should be extended to 20 business days to align with privacy laws which allow 30 calendar days for entities to respond to requests for access to personal information.²</p>
<p>2. A requirement for RPOs to keep the medical confirmation form and/or medical confirmation document used to register a customer for the period of time that the person remains a customer, and for 110 business days from the date the person ceases to be a customer.</p>	<p>It is unclear why RPOs must keep the medical confirmation form and / or medical confirmation document for an indefinite period of time while the person remains a customer, particularly considering that:</p> <ul style="list-style-type: none"> • the confirmation document is only valid for reuse by the customer within four years (if it is legible); • the life support user may have ceased to reside at the premises and the requirement for life support protection is no longer required; • other NERR obligations commonly employ a two year timeframe;³ and • various other legislation requires the retention of documentation for between five to seven years and the statute of limitations for legal action in Queensland is six years.⁴

² Australian Privacy Principle 12 – Access to personal information.

³ For example: NERR clause 28 requires the retailer to provide a small customer with historical billing data for that customer for the previous two years; NERR clauses 56A and 56B require the retailer to provide information about that customer's energy consumption for the previous two years; NERR clause 59C requires the retailer to retain the record of consent for non-standard retailer planned interruption for a period of at least two years; and NERR clause 65 states that entry into "no contact lists" applies for a period of two years.

⁴ For example: *Queensland General Retention and Disposal Schedule* requires a seven year retention period; *Corporations Act 2001* (Cth) requires companies to keep written financial records for at least seven years and company records including minutes of members or director's meetings which should be held for at least five years; *Fair Work Act 2009* (Cth) requires employee records be retained for seven years; *Income Tax Assessment Act 1936* requires documents relevant to a company's income and expenditure should be held for five years; and the *Limitation of Actions Act 1974* (Qld) provides a statute of limitations of six years for any tortious or contract action.

Element of more preferable draft rule	Energy Queensland Comment
	<p>Consequently, Energy Queensland considers that the requirement to keep a copy of medical confirmation “for the period of time the person remains a customer” is not appropriate and not aligned with other record keeping legislation. We consider that an appropriate retention timeframe should be specified and that the obligation should only apply where a life support user continues to reside at the customer’s premises. There should be no requirement for the RPO to retain the medical confirmation documents if the customer’s premises ceases to be registered for life support protections.</p> <p>Energy Queensland also notes that the requirement for the outgoing RPO to retain medical confirmation for 110 business days after the customer changes retailer appears to apply regardless of the age or legibility of the medical confirmation documents. Where the ability for the customer to reuse the medical confirmation is no longer available, this requirement is an unnecessary administrative burden for the outgoing RPO and offers no benefit for the customer. We therefore recommend that this rule should be amended to clarify that only valid medical confirmation documentation must be retained by the RPO for a specified period after the customer changes retailer.</p>
<p>3. Allowing the use of a medical certificate or a medical confirmation form for the purposes of providing medical confirmation.</p>	<p>Due to privacy law issues noted above, Energy Queensland considers that rather than lessening information provision requirements for customers registering for life support protections, requirements may need to be strengthened to ensure participants are able to comply with privacy obligations when requested to return medical confirmation documents. In this regard, Energy Queensland considers that the adoption of a standard medical confirmation form containing all necessary identity information requirements for verification purposes would be of</p>

Element of more preferable draft rule	Energy Queensland Comment
	<p>benefit. This form could include a form of consent by the life support user at the premises (if they are not the customer) to enable the RPO to return the documents to the customer upon request. It may also be necessary to amend subrule 124(6)(a) of the NERR to ensure sufficient identity information for the person requiring life support protection is provided.</p> <p>It should also be noted that, without further amendment, new subrules 124B(1A) and 124B(2A) will only apply where the customer has provided medical confirmation. Unless the rules are expanded, where a life support user who is not the customer has provided medical confirmation, the RPO would, to comply with the privacy laws, require the consent of the life support user in order to provide their medical confirmation to any third party, including the customer.</p> <p>Unless the RPO can require a medical confirmation to contain the consent of the life support user, or the new subrules can be expanded to include the situation where a non-customer has provided the medical confirmation, then in each case the RPO will need to consider whether the life support user or the customer (if they are different) provided the information and whether subrule 124B(1A) or 124B(2A) actually applies.</p>
<p>4. A requirement for the incoming RPO to inform the customer that for the purpose of providing medical confirmation, the customer may submit the medical confirmation that was submitted to their previous retailer or distributor, provided it is dated less than 4 years ago and is legible.</p>	<p>Energy Queensland notes that if the distributor is the existing RPO, the customer is not required to resubmit medical confirmation when switching retailers. Under the existing process, the distributor will notify the incoming retailer of the life support status at the premises. However, where the distributor is not the RPO and the incoming retailer is not advised that life support protections are required at the premises by the customer, the distributor will not be in a position to notify the new retailer of the pre-existing life support status of the premises until it is identified via the reconciliation process (potentially some months after the transfer).</p>