17 December 2004

Review of NCP Reforms
Productivity Commission
PO Box 80
Belconnen ACT 2616

Submission to Review of National Competition Policy Reforms

ENERGEX appreciates the opportunity to respond to the Productivity Commission's *Review of National Competition Policy Reform Discussion Draft*.

As a member of the Regulatory Infrastructure Forum, ENERGEX has contributed to and supports the submission by Network Economic Consulting Group (NECG) in conjunction with other forum members including AGL, Alinta, Energy Networks Association, Enertrade, Queensland Rail and Telstra Corporation.

ENERGEX would like to take this opportunity to reiterate its position and outline some key concerns below.

Market Structure Issues

The ACCC has recently suggested that the existing merger guidelines need to be tightened to include energy-specific criteria to guide decisions in relation to mergers and acquisitions. In particular, the ACCC has raised concerns that the recent Federal Court case involving AGL and the ACCC has potentially opened the way for reintegration. The ACCC's suggestion is for the State Governments or the MCE to issue a policy response to guard against what the ACCC considers to be inappropriate reintegration of electricity supply assets.

In its Discussion Draft, the Productivity Commission concluded that:

> *"…it would be difficult to justify imposing tighter restrictions on mergers in the electricity industry on the basis of the recent merger experience, especially as it has involved two contestable elements of the electricity supply chain. There is a significant risk that any 'knee-jerk' regulatory response could both discourage investment in the industry and reduce the scope for market structures to evolve efficiently over time in response to changing circumstances." [p171]*

ENERGEX supports the Productivity Commission's conclusion. It is however, unclear as to why the Productivity Commission subsequently recommended that the MCE establish an independent process for assessing the

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effectiveness of existing safeguards, including the current ACCC merger process.

ENERGEX supports the Productivity Commission in its view that effective institutional arrangements to deal with potentially anti-competitive merger proposals are important. However, ENERGEX considers that the recommendation of a review of existing merger provisions will create uncertainty for investors as it calls into question the relevance of the existing body of precedents and case law going forward. In addition, the recommendation appears inconsistent with the Productivity Commission's own conclusion that tighter restrictions on mergers in the electricity industry are unjustifiable. As a result, ENERGEX does not support a review of existing merger provisions at this time.

Regulatory Framework

ENERGEX supports the Productivity Commission's view that improvements in the oversight of monopoly service providers are possible and warranted. Specifically, improvements that focus on encouraging investment and meeting customer needs. Regulation of monopoly businesses needs to provide greater certainty for investors by removing inconsistencies across jurisdictions and being less intrusive.

ENERGEX supports the Productivity Commission's proposal to:

> *"…improve incentives for providers to undertake investment to maintain existing facilities and expand networks, including through the implementation of clear nationally consistent principles to guide regulators. Specific approaches outlined in recent Productivity Commission reports into the National Access Regime and the Gas Access Code provide a basis for improvements in this area." [p240]*

In its recent *Review of the Gas Access Regime*, the Productivity Commission recommended a number of regulatory reforms. Whilst these reforms are still being considered by Government, ENERGEX believes that the Productivity Commission's recommendations should be adopted in full for both the gas and electricity sectors. Specifically, ENERGEX considers the following parameters to be key elements of an energy distribution regulation framework:

- a clear objects clause and pricing principles – it is recognised that the Gas Access Code and the National Electricity Code currently contain many conflicting objectives which has created significant uncertainty for service providers;
- a two-tiered approach to regulation – price regulation is applied at Tier 1 in addition to providing for non-building block regulatory alternatives on condition that they satisfy the objects clause; Tier 2 involves price monitoring as a light-handed alternative form of regulation to Tier 1;
- acceptance of the 'propose-respond' model – the 'propose-respond' model is currently utilised within the Gas Access Code and was considered by the Productivity Commission to be an effective model of regulation; and
- full merits appeal of all regulatory decisions – merits based appeal should be available for all regulatory decisions including economic regulatory decisions.

Summary

ENERGEX supports the Productivity Commission's view that energy specific merger provisions are difficult to justify at this time. As such, ENERGEX considers that uncertainty amongst investors is likely to be created should the MCE establish an independent process to consider this issue.

ENERGEX also strongly supports the Productivity Commission's proposal to improve the efficiency of monopoly oversight. ENERGEX supports the implementation of the Productivity Commission's recommendations in it's *Review of the Gas Access Regime* and believes the approach outlined in its report can be extended to cover electricity as well as gas.

If you have any questions, ENERGEX would be happy to discuss its views in further detail.

Yours sincerely

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