

28 March 2003

Mr Sebastian Roberts  
Acting General Manager  
Regulatory Affairs - Electricity  
Australian Competition and Consumer Commission  
PO Box 1199  
DICKSON ACT 2606

via email: [electricity.group@acc.gov.au](mailto:electricity.group@acc.gov.au)

Dear Mr Roberts

### **Review of Regulatory Test – Discussion Paper**

ENERGEX Retail Pty Ltd (“ENERGEX”) welcomes the opportunity to comment on the ACCC’s recently published Discussion Paper on the Regulatory Test.

The ACCC proposed three non-exclusive options for consideration. What follows are ENERGEX’s comments on each option.

#### **Minor amendments**

Subject to the specific issues raised in this submission, ENERGEX is supportive of the ACCC maintaining the regulatory test in its current form. We believe that the current threshold levels for small and large transmission investments introduced in the Network and Distributed Resources Code changes are broadly appropriate, and see merit in giving the current structure time to prove itself. We therefore do not advocate significant changes to the regulatory test or the supporting areas of the Code at this time.

We note that a distribution investment can be proposed as an alternative project under the regulatory test, and believe that this competition between network alternatives is appropriate.

#### **Definitional amendments**

ENERGEX supports the ACCC’s proposed clarification of the alternative project definition. ENERGEX considers that the regulatory test must involve a comparison of all alternative projects, and should not be artificially limited as proposed by ElectraNet SA and the NSW Government. Ultimately, the regulatory test should be utilised by all participants to further develop the electricity network.

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### *Commercial feasibility*

The ACCC has proposed “technical feasibility” and “commercial feasibility” as criteria for assessing the practicability of “proposals” (which we have assumed to be synonymous with “alternative projects” as the regulatory test is to only ever apply to one proposal at a time). While we acknowledge that proponents of alternative projects should be required to demonstrate the substance of their proposals, we do not support the inclusion of commercial feasibility as a criterion for assessing the practicability of alternative projects. The potential for payments for the provision of network support either on a contractual basis or as direct regulated revenue is often the primary determinant of a project’s commercial viability. At the limit, regulated revenue is the only source of revenue for alternative projects that propose network solutions. It is the regulatory test itself that determines whether an alternative project is commercially feasible, by determining whether the proposal is superior to all the alternative projects considered. Artificially limiting the number of alternative projects that are considered is inappropriate.

Removing the commercial feasibility criteria will avoid the potentially conflicted position of some transmission planning entities, where a network support agreement can be withheld so as to ensure an alternative project is not considered commercially feasible and therefore not a practicable alternative project in the regulatory test.

In addition ENERGEX would support a refinement of the annual planning process that would require each Annual Planning Review to define each need as an additional supply to a node or group of nodes. On occasion, needs have been defined in terms of “transmission capacity” which allows little opportunity for competing non-network solutions. We acknowledge that this problem would also be solved through the separation of planning from transmission ownership, as is being advocated in other forums.

### *Costs*

ENERGEX supports the inclusion of the costs associated with equipment testing in the regulatory test evaluation. We also suggest that the ACCC ensure that the costs of the physical asset used in a regulatory test assessment represent a cap on the value that will be added to the regulated asset based in the event that the project is built. This will ensure that proponents do not discount the cost of their project for regulatory test assessments, only to recover higher costs through regulated revenue .

### *Reliability Augmentations*

ENERGEX endorses Origin’s position that *“ideally there should be no distinction made between reliability and other augmentations, but that this issue would disappear with an appropriately constructed governance framework that separates planning from ownership and allows for the tendering of [all] network solutions.”*

Until planning is separated for network ownership, ENERGEX is supportive of the additional disclosure requirement proposed by the ACCC. To the suggested list we would add a requirement for a justification of the timing of all reliability proposals, including an estimate of when the proposal would have been justified on a net market benefits basis. This additional disclosure will help ensure that all reliability proposals are not advanced until the last possible timeframe.

## **Competition test**

ENERGEX supports the inclusion of competition benefits in the market benefit stream of the regulatory test.

ENERGEX believes that the regulatory test as it is currently written provides for the inclusion of competition benefits in the assessment of each proposal and each competing project. Specifically, the regulatory test defines market benefit as "*the total net benefits of the proposed augmentation to all those who produce, distribute and consume electricity in the National Electricity Market.*" A seventh benefit entitled "Benefits of Competition" could therefore be added to the list used by ROAM Consulting (see pages 31 and 32 of the Discussion Paper) for inclusion in the regulatory test as examples. It would then be up to the proponent to calculate the competition benefits associated with the proposal and the competition alternatives.

Having said this, it may assist industry if the ACCC were to outline a preferred methodology for the calculation of competition benefits. ENERGEX would support a defensible pragmatic approach, and finds the change in reserve margin as proposed by CS Energy or an adjusted HHI approach intuitively appealing. However, we have not had the opportunity to test the practicality of implementing these approaches. In determining an appropriate competition benefit measurement, ENERGEX acknowledges that it is not the lowering of prices *per se* that constitutes a competition benefit, but believes that any reduction in price volatility resulting from additional transmission should clearly be recognised.

## **Additional comments and conclusion**

ENERGEX believes the current regulatory test is broadly consistent with the competitive market and, subject to the issues raised in this submission, should largely remain unchanged.

ENERGEX believes that the regulatory test provides a framework for active competition in the provision of supply solutions that require some regulated revenue. We therefore believe the inclusion of commercial feasibility as criteria for the practicability of alternative projects is inappropriate.

Finally, ENERGEX would like to add its voice to the call for the ACCC to finalise its regulatory principles and include some clarification on the role optimisation might play in asset regulation. This improvement in certainty will help all market participants pursue regulated investment.

Please do not hesitate to contact myself or Richard Abraham on (07) 3407 6128 should you wish to discuss this submission.

Yours faithfully

(SIGNED)

John Young  
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