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Manager EMR Projects
National Energy Market Branch
Department of Industry, Tourism and Resources
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CANBERRA ACT 2601

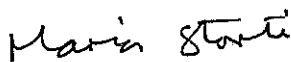
Dear Sir/Madam

Response to the National Electricity Law Exposure Draft

ActewAGL welcomes the opportunity to respond to the National Electricity Law (NEL) Exposure Draft released on 1 December 2004. ActewAGL is a member of the Energy Networks Association (ENA) and fully supports the detailed responses in the ENA submission. However we would like to supplement these with our own perspectives in a brief submission (attached).

Should you have any questions relating to this submission, please direct them to Mr David Graham, Director Regulatory Affairs and Pricing on (02) 6248 3605 or by e-mail to david.graham@actewagl.com.au.

Yours faithfully



Maria Storti
Chief Finance Officer

Submission on the Proposed National Electricity Law and National Electricity Rules

ActewAGL welcomes the opportunity to respond to the Information Paper of the Standing Committee of Officials of Ministerial Council on Energy on the proposed National Electricity Law (NEL) and National Electricity Rules (NER) and the exposure draft of the NEL.

ActewAGL is a genuine multi-utility combining energy distribution and retail operations with interests in water services management and telecommunications. It operates as a unique public-private joint venture between the Australian Gas Light Company (AGL) and the ACT Government owned ACTEW Corporation. The ActewAGL Distribution partnership owns and operates the electricity distribution network in the ACT and the gas distribution networks in the ACT, Queanbeyan and Nowra. The ActewAGL Retail partnership sells energy throughout the Capital Region and southeastern NSW. ActewAGL thus provides services to close to 140 000 electricity customers and just over 96 000 natural gas customers in the region and has more than 1000 employees and assets of over \$800 million.

Over the past year, ActewAGL's electricity and gas distribution businesses have been subject to detailed reviews by the ACT's Independent Competition and Regulatory Commission under the National Electricity Code and National Gas Code, respectively. Based on our experience in these and past reviews, ActewAGL is particularly concerned about three aspects of the Draft NEL:

- The pricing and regulatory principles for the Australian Energy Regulator (AER), which have the potential to create divergences between regimes covering electricity and gas assets;
- The excessive information gathering and investigative powers of the AER; and
- The absence of a merits review, which is fundamental to ensure accountability in the regulatory process.

Regulatory and pricing principles—consistency across electricity and gas is essential

Section 15 (2) of the NEL Draft sets out the principles that the AER must follow when making an electricity transmission determination. ActewAGL is concerned that these principles seem out of step with policy developments affecting gas and infrastructure assets more broadly. They may therefore result in different sets of principles applying to electricity transmission and other energy and infrastructure assets.

Australian governments have already responded to the Productivity Commission's *Review of the National Access Regime* (Part IIIA of the *Trade Practices Act*) and are currently preparing a response to the Productivity Commission's *Review of the Gas Access Regime*. Key elements of the PC's recommendations and governments' proposed amendments to Part IIIA are not reflected in the NEL Draft principles. For example, the

NEL Draft does not recognise the need to ensure that revenue is 'at least sufficient' to recover costs. The NEL Draft also does not recognise the need to take account of efficient 'long run' costs. The requirements in the NEL Draft to 'make allowance' for the value of assets and to 'have regard to' any valuation of assets are also of concern to ActewAGL, as they do not provide adequate guidance for the regulator, thereby creating considerable uncertainty for regulated firms.

In recommending amendments to Part IIIA, the Productivity Commission specifically referred to the need to prevent *unwarranted divergence* between access pricing regimes covering different infrastructure sectors. As an owner of electricity and gas assets, ActewAGL is keen to see that a consistent regulatory framework is applied to both, so that incentives to invest are not distorted.

ActewAGL believes that, in order to prevent any *unwarranted divergence* between principles applying to different assets, the Draft NEL pricing principles should be amended to ensure that they include key concepts already accepted by Australian governments for infrastructure assets generally, and under consideration for gas.

Information gathering and investigative powers for the AER – why widen the powers in the current energy codes and the Trade Practices Act?

Sections 21 to 29 of the NEL Draft set out the AER's powers of entry, search, seizure and information gathering. These provisions appear to be more aggressive than those that apply through the *Trade Practices Act* and the current energy codes. This is clearly inconsistent with the stated intention in the Information Paper that accompanies the NEL Draft. The Information Paper says that NEL Draft is intended to *not* change the substantive rights, powers and obligations of market participants.

ActewAGL believes that any widening of regulators' information-gathering and investigative powers should only be adopted if a full assessment of the likely costs and benefits indicates that it is justified. More intrusive reviews involve costs and risks for regulated firms, particularly when they involve the use and transfer of confidential information. This additional burden should not be placed on firms unless there are clear benefits in terms of better regulatory outcomes.

Merits review – a fundamental component of the regulatory framework

ActewAGL notes that the Information Paper states that the proposed National Electricity Law does not preclude the future introduction of merits review. ActewAGL understands that the broad issue of the availability of merits review is being addressed in the context of governments' responses to the Productivity Commission's *Review of the Gas Access Regime*.

ActewAGL believes that the availability of merits review is fundamental to the operation of an effective, efficient, fair and accountable regulatory framework and urges continuing progress including consultation with the industry on this matter.