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Ms M Taylor  
General Manager – MCE Secretariat  
Department of Industry, Tourism and Resources  
GPO Box 9839  
CANBERRA ACT 2601

Dear Ms Taylor

**Expert Panel on Energy Access Pricing – Draft Report**

AusCID is the principal industry association representing the interests of companies and organisations owning, operating, building, financing, designing and otherwise providing advisory services to private investment in Australian public infrastructure.

The Council formed in 1993 and currently has 83 members, drawn comprehensively from all economic infrastructure sectors including electricity generation, transmission and distribution, gas transmission and distribution, roads, rail, telecommunications, water, airports and ports. As a result of our membership base, AusCID is in a unique position to consider the views of infrastructure owners, equity investors and debt financiers and combine them with the views of infrastructure operators.

As a representative of investors in energy infrastructure assets, AusCID is concerned with many of the issues that need to be addressed in the current energy market reform process. The Council considers that the strategic direction set by a national energy policy will have significant consequences for the development of energy markets, investment in energy infrastructure and continued growth of the broader economy.

Senior Officials will be aware that AusCID has for a long time been concerned with the processes being pursued to ensure regulatory harmonisation, to the

extent that is necessary, between gas and electricity markets. The Draft Report from the Expert Panel does nothing to allay those concerns and indeed appears to defeat comprehensively this objective. The Draft Report and the process that is being pursued are heightening concerns among investors in Australia energy infrastructure, the vast majority of which are AusCID members.

There is a strong consensus among investors and operators that the proposals put forward by the Productivity Commission in its review of the Gas Code represent a sensible compromise from which detailed policy making could proceed. Moreover, not only are those propositions supported by those who will ultimately finance future investment, they are among the competing proposals the "best fit" with the general approach that is being adopted by all Australian Governments as expressed in the Communique from the most recent meeting of the Council of Australian Governments.

It appears that the Expert Panel has not had due regard to the general trends currently underlying the reform of regulatory policy in Australia. The general approach that has been developed by the Productivity Commission and adopted first by the Commonwealth Government and now by COAG is to limit the community's exposure to the inefficient use of market power where it exists but in doing so step back from regulatory intervention wherever there is scope for less intrusive regulation or the development of competition. It seems to AusCID, and in particular its investor members, that the underlying philosophy of the Expert Panel is much more directed towards regulator driven outcomes than to those articulated by Australian Governments.

The Expert Panel significantly undervalues the importance investors place on the recent move to strong statutory guidance for regulators through clarifying the objectives of, and establishing pricing principles for, the regimes they administer. The discretion given to regulators should be the minimum necessary to ensure that the likelihood of the objectives of the regime being met is maximised. However, the discretion of regulators should not be constrained to the extent that it prevents the efficient commercial conduct of service providers. Where regulators exercise discretion they should do so in a transparent and predictable way in accordance with pre-established guidelines.

In contrast to the Draft Report of the Expert Panel, investors have been encouraged by the approach that has been adopted by the Australian Energy Markets Commission in relation to the regulation of electricity transmission revenues. The broad regulatory design principles adopted there are seen as a useful first step into developing a well functioning national energy regulatory regime.

AusCID's members strongly support the preference the AEMC has expressed for a "propose-respond" approach rather than a "receive-determine" approach as used by some Australian regulators in the electricity sector. In particular we welcome the reversal of the "presumption of guilt" that some Australian regulators have adopted in the past to the submissions put to them by regulated businesses from a range of sectors.

That the majority of the Expert Panel seems to be opposed to the propose-respond model is increasing the lack of confidence investors have in the energy market reform process. The propose-respond model is consistent with

- the negotiate-arbitrate approach;
- the reform of the National Access Regime; and
- the broad approach recently endorsed by COAG and in particular its stated preference for commercial over regulated outcomes

It is clear to investors the receive-determine approach is inconsistent with each of these.

Individual AusCID members and sector specific industry groups will undoubtedly make detailed submissions in response to the Draft Report despite (even given the recent extension) the inadequate timeframe for consultation. However, the clear message that must be received by Senior Officials and the MCE is that the processes that they are presiding over, and in particular the constant revisiting of issues for no apparent policy purpose, are leading Australian, and indeed international, infrastructure investors to lose faith in the energy market reform process they have long supported. This lack of support may persist over time and this delay will have an effect on future investment irrespective of the final policy positions arrived at. It should be noted however that the views expressed by the Expert Panel, as opposed to the pragmatic approach adopted by the AEMC, do represent a retrograde policy step.

This should not be taken to mean that "getting policy right" is less important than "getting policy done quickly" but continuing delays and re-visiting of issues continue to create uncertainty with little confidence that any new policy developed will be "more right" than the proposals put forward by the Productivity Commission in its review of the Gas Code.

If you wish to discuss these issues any further, please don't hesitate to contact myself on 02 9247 2022 or Dr Warren Mundy on 0409 911 554.

Yours sincerely



Dennis O'Neill  
Chief Executive Officer