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Dear Sir/Madam

**MINISTERIAL COUNCIL ON ENERGY
“CONSULTATION ON MCE REVIEW OF DECISION-MAKING IN THE GAS AND ELECTRICITY
REGULATORY FRAMEWORKS”**

Ergon Energy is pleased to make this submission, which is available for publication, in its capacity as an electricity Distribution Network Service Provider in Queensland.

We have reviewed the MCE's consultation paper and submit that our position is to broadly support Model A (Limited form of Merits Review to be undertaken by the Australian Competition Tribunal).

The Energy Networks Association (ENA), which represents distribution network members including Ergon Energy, will be providing a submission that comprehensively articulates our collective position in relation to each of the points raised in the MCE's consultation paper. Ergon Energy supports the ENA's submission.

As well as the points made in the ENA's submission, Ergon Energy briefly notes below some matters that we consider are important.

1. The move to a national regulatory regime, including the associated process of establishing and reviewing the 'rules' by which the regulator will make its decisions, in itself presents a strong case for Merits Review. We consider it reasonable that where the regulator may exercise discretion (for example in the development of Guidelines and in making revenue determinations), that discretion should be subjected to a reasonableness test triggered by affected parties, and not just a lawfulness test that is catered for with Judicial Review.
2. Merits Review (reasonableness) and Judicial Review (lawfulness) address different interests – one is not a substitutable for the other. We therefore disagree that Model B (Judicial Review with enhancements) can properly deliver the qualitative reasonableness evaluation industry participants and their shareholders are seeking.
3. Model A (as presented in the MCE's paper), is limited from what some might suggest to be their first option ie. Full Merits Review. Ergon Energy is supporting Merits Review but with reasonable

limitations that will deliver brevity of process and workable outcomes both during and after the review.

4. We strongly disagree with the MCE's position in clause 2.60 (page 14) that because under the old National Electricity Law Judicial Review was the only option, then *"introduction of merits review for electricity would need to be justified on substantial grounds and would not be warranted, for example, simply to achieve consistency between gas and electricity"*. There are numerous recommendations resulting from properly authorised reviews that indisputably say that Merits Review is appropriate for the energy sector. This has already been (quite properly) recognised in the gas regime.

To us it seems perverse to use the timing of introduction of Merits Review in one energy sector (gas) as a barrier for another sector (electricity).

5. In clause 5.16 (page 25), there is discussion about ring-fencing and how it is implemented in the gas and electricity sectors. We raise three points on this paragraph:

1st In the case of Queensland, the Queensland Competition Authority's Electricity Distribution Ring-Fencing Guidelines¹ expressly state that in developing the Guidelines (for electricity), the QCA *"uses the ring-fencing provisions contained in the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code) as a template for ring-fencing in electricity, thereby ensuring broad consistency across energy markets"*².

The MCE's document states: *"As to ring fencing, obligations imposed in relation to ring fencing of related businesses are dealt with in the electricity framework in a completely different way than in the gas access context. This means that the nature of the types of decisions about ring fencing is quite different in each context."*

This is clearly at odds with what is reality (at least in Queensland). The ring-fencing intention, content and obligations currently in force are actually the same for gas and electricity.

2nd The MCE's document then goes on to say: *"Electricity relies on a set of ring fencing guidelines and gas access rules contain specific obligations for individual entities that relate to ring fencing of business enterprises."*

Whilst the QCA has issued "Guidelines" for Queensland, they are also clearly taken up in the QCA's regulatory Determination – and therefore are enforceable along with all other aspects of the Determination. We cannot see that ring-fencing in electricity places any lesser obligations on entities than under the gas regime.

3rd The MCE's document says: *"It is not proposed that ring fencing decisions in the electricity framework be subjected to merits review."*

Firstly, as discussed above, we disagree that ring-fencing in electricity is sufficiently different from ring-fencing in gas to even contemplate treating them differently.

Secondly, if the intention is that since electricity ring-fencing rules are in the form of "Guidelines", then they should not be subjected to Merits Review, would concern us.

Such an approach would suggest that any of the Regulator's "Guidelines" would not be subjected to Merits Review. It needs to be taken into consideration that the Regulator will (quite properly) issue Guidelines about any number of matters in order to have an orderly regulatory regime eg. accounting, asset valuation, service quality measures. All of these

¹ Queensland Competition Authority's "Final Determination – Electricity Distribution: Ring-Fencing Guidelines" September 2000

² Ring-Fencing Guidelines Page 3.

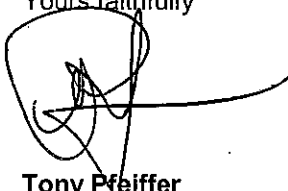
matters cut to the heart of the regulatory regime and the Regulator's discretion within that regime.

Ergon Energy's view is that any matter in which the Regulator may exercise discretion, be it a revenue Determination or the issue of any Guidelines that contribute to the regulatory regime, should be open to Merits Review.

We once again reiterate our support for limited Merits Review (Model A) and refer the MCE to the ENA's submission for more comprehensive discussion of the position of its members.

If you have any questions on this and related matters, please contact our Manager Regulation Networks, Tony Pfeiffer (07-3228 7711).

Yours faithfully

A handwritten signature in black ink, appearing to be 'Tony Pfeiffer', written over a circular stamp or mark.

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