

7 April 2004



MOU Framework
C/- MCE Market Reform
Department of Industry, Tourism and Resources
GPO Box 9839
CANBERRA ACT 2601

By e-mail to MCEMarketReform@industry.gov.au

Our Ref: BN008/0849/0026

Dear Sir or Madam,

COMMENTS UPON MCE DISCUSSION PAPER "AER-AEMC-ACCC MEMORANDUM OF UNDERSTANDING (MOU) FRAMEWORK"

Ergon Energy Pty Ltd ("Ergon Energy") welcomes the opportunity to comment upon the "AER-AEMC-ACCC Memorandum of Understanding (MOU) Framework" discussion paper ("Discussion Paper") recently released by the Ministerial Council on Energy's Standing Committee of Officials ("SCO").

Ergon Energy acknowledges that a MOU between the AER-AEMC-ACCC has the potential to assist in ensuring the efficient operation of these institutions. Ergon Energy has the following primary concerns with the MOU:

- The consultation time frame and the lack of detail in the discussion paper; and
- The proposed information sharing arrangements.

The Discussion Paper only considers the issues at a high level. Ergon Energy is of the firm view that there should be further consultation with industry once the MOU has been drafted. Ergon Energy's concern is that until the actual draft wording is prepared it is very difficult to assess the MOU in any detail. In particular aspects of the MOU will govern interaction between the institutions on the code change process, the detailed wording of which in our view is critical to the success of the proposed new code change process. Whilst we recognise that the SCO is operating under tight timeframes, we consider it imperative that there is further industry consultation once a draft MOU has been prepared. Whilst the Discussion Paper identifies the primary issues that will be dealt with in the MOU, it is difficult to provide a detailed view on the proposal until the draft MOU is prepared.

Ergon Energy has concerns with the information sharing arrangements as outlined in the Discussion Paper. Whilst we acknowledge that there may be opportunities to share information between the institutions to avoid duplication there must be limitations placed on the information that is to be shared. It is imperative that information is only used for the purpose for which it is obtained. In this regard whilst the sharing of certain information

between the agencies is supported, conversely we consider that other information obtained must be clearly ringfenced and kept confidential from other agencies. The ACCC has broad powers to require the provision of information from market participants. In particular we are concerned that information that may be gathered by the ACCC, for example in a market surveillance/competition law enforcement role, should not be used by the AER in its economic regulation role or by the AEMC in its market development role.

We would be pleased to discuss the comments contained in this submission if required. In this regard, please do not hesitate to contact me on 07 3228 8134 or Michael Callow on 07 3228 8259.

Yours sincerely

Rebecca Pickering
Manager Regulation