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

Via E-mail: [MCEMarketReform@industry.gov.au](mailto:MCEMarketReform@industry.gov.au)

Dear Sir,

**AER - AEMC – ACCC Memorandum of Understanding (MoU) Framework**

InterGen (Australia) Pty Ltd (“InterGen”) would like to thank the Ministerial Council on Energy (“MCE”) and the Standing Committee of Officials (“SCO”) for the opportunity to provide comments on the Discussion Paper “AER - AEMC – ACCC Memorandum of Understanding Framework Discussion Paper” released in March 2004.

InterGen observes that the MoU discussion paper prepared by the SCO is closely related in a number of areas to the “Streamlining the Code Process” discussion paper. InterGen’s comments should therefore be read in conjunction with its more detailed submission on the streamlining of the Code change process.

**Discussion**

InterGen notes that the MoU framework largely consists of non-binding arrangements for staff appointments and secondments, the associated issues of which are mostly administrative in nature and in our view, appropriate to be documented via a MoU.

InterGen however has one area of significant concern, that of exchange of information and sharing of information between institutions. In our view the information sharing proposal in the MoU raises significant privacy and confidentiality issues especially if the intention is to routinely share information and confer in the course of fulfilling their respective functions.



InterGen is fundamentally opposed to information legitimately collected for a particular purpose under certain legislation requirements (such as the TPA) by one agency potentially being used by another agency for an entirely different and unrelated purpose. As an underlying premise, market institutions should not be able to obtain information from another institution if the first institution could not obtain, or is prohibited from obtaining, that information by using its own powers. Further, even where both institutions enjoy the same information gathering powers, as a principle of good governance, information obtained from market participants by one institution for a particular purpose in carrying out its functions should not be provided to other institutions to use for different purposes.

We believe that information sharing arrangements in the MoU should actually expressly prohibit exchange of information rather than openly sanction information sharing, as each of the agencies will potentially be provided with significant commercially sensitive information on organisations within the NEM.

InterGen believes that any information sharing should only occur between the market agencies with the express permission of the affected market participants.

### **Conclusion**

InterGen believes that the MCE proposal to allow open information sharing between the agencies is fundamentally inappropriate and reckless. As opposed to the current drafting, InterGen is of the view that the MoU needs to expressly describe and forbid information sharing behaviour. If it does not, it is our view that the proposal will give rise to significant disputes, including litigation, with industry when the institutions explore the extent to which they can share information.

To discuss this issue further please contact the undersigned on (07) 3001 7133.

Yours Sincerely,

**Simon Taylor**  
**Manager, Strategy and Market Development**