

2008

**MINISTERIAL COUNCIL ON ENERGY MEMORANDUM OF
AGREEMENT RELATING TO CONFERRAL OF GAS AND ELECTRICITY
FUNCTIONS ADDITIONAL TO THOSE REFERRED TO IN THE
AUSTRALIAN ENERGY MARKET AGREEMENT**

BETWEEN

**THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE AUSTRALIAN CAPITAL TERRITORY
THE NORTHERN TERRITORY OF AUSTRALIA**

(THE PARTIES)

EXECUTED BY



The Honourable Martin Ferguson MP)
Commonwealth Minister of Resources and Energy) On the 20th Day of June 2008

The Honourable Ian MacDonald MP)
New South Wales Minister for Energy) On the Day of 2008

The Honourable Peter Batchelor MP)
Victorian Minister for Energy and Resources) On the Day of 2008

The Honourable Geoff Wilson MP)
Queensland Minister for Mines and Energy) On the Day of 2008

The Honourable Francis Logan MLA)
Western Australian Minister for Energy,)
Resources and Industry) On the Day of 2008

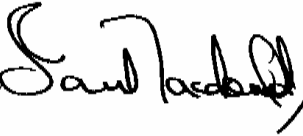
The Honourable Patrick Conlon MP)
South Australian Minister for Energy) On the Day of 2008

The Honourable David Llewellyn MP)
Tasmanian Minister for Energy) On the Day of 2008

Jonathon Donald Stanhope MLA)
Australian Capital Territory Minister for Environment)
and Water and Climate Change) On the Day of 2008

The Honourable Christopher Natt MLA)
Northern Territory Minister for Mines and Energy) On the Day of 2008

EXECUTED BY

The Honourable Martin Ferguson MP Commonwealth Minister of Resources and Energy	)	On the	Day of	2008
The Honourable Ian MacDonal MP New South Wales Minister for Energy		On the	Day of	2008
The Honourable Peter Batchelor MP Victorian Minister for Energy and Resources	)	On the	Day of	2008
The Honourable Geoff Wilson MP Queensland Minister for Mines and Energy	)	On the	Day of	2008
The Honourable Francis Logan MLA Western Australian Minister for Energy, Resources and Industry	) ) )	On the	Day of	2008
The Honourable Patrick Conlon MP South Australian Minister for Energy	) )	On the	Day of	2008
The Honourable David Llewellyn MP Tasmanian Minister for Energy	) )	On the	Day of	2008
Jonathon Donald Stanhope MLA Australian Capital Territory Minister for Environment and Water and Climate Change	) ) )	On the	Day of	2008
The Honourable Christopher Natt MLA Northern Territory Minister for Mines and Energy	) )	On the	Day of	2008

EXECUTED BY

The Honourable Martin Ferguson MP)
Commonwealth Minister of Resources and Energy) On the Day of 2008

The Honourable Ian MacDonald MP)
New South Wales Minister for Energy) On the Day of 2008


The Honourable Peter Batchelor MP)
Victorian Minister for Energy and Resources) On the 8th Day of June 2008

The Honourable Geoff Wilson MP)
Queensland Minister for Mines and Energy) On the Day of 2008

The Honourable Francis Logan MLA)
Western Australian Minister for Energy,)
Resources and Industry) On the Day of 2008

The Honourable Patrick Conlon MP)
South Australian Minister for Energy) On the Day of 2008

The Honourable David Llewellyn MP)
Tasmanian Minister for Energy) On the Day of 2008

Jonathon Donald Stanhope MLA)
Australian Capital Territory Minister for Environment)
and Water and Climate Change) On the Day of 2008


The Honourable Christopher Natt MLA)
Northern Territory Minister for Mines and Energy) On the Day of 2008

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The Honourable Martin Ferguson MP)
Commonwealth Minister of Resources and Energy) On the Day of 2008

The Honourable Ian MacDonald MP)
New South Wales Minister for Energy) On the Day of 2008

The Honourable Peter Batchelor MP)
Victorian Minister for Energy and Resources) On the Day of 2008

The Honourable Geoff Wilson MP )
Queensland Minister for Mines and Energy) On the 19th Day of June 2008

The Honourable Francis Logan MLA)
Western Australian Minister for Energy,)
Resources and Industry) On the Day of 2008

The Honourable Patrick Conlon MP)
South Australian Minister for Energy) On the Day of 2008

The Honourable David Llewellyn MP)
Tasmanian Minister for Energy) On the Day of 2008

Jonathon Donald Stanhope MLA)
Australian Capital Territory Minister for Environment)
and Water and Climate Change) On the Day of 2008

The Honourable Christopher Natt MLA)
Northern Territory Minister for Mines and Energy) On the Day of 2008

EXECUTED BY

The Honourable Martin Ferguson MP Commonwealth Minister of Resources and Energy	) )	On the	Day of	2008
The Honourable Ian MacDonald MP New South Wales Minister for Energy	) )	On the	Day of	2008
The Honourable Peter Batchelor MP Victorian Minister for Energy and Resources	) )	On the	Day of	2008
The Honourable Geoff Wilson MP Queensland Minister for Mines and Energy	) )	On the	Day of	2008
The Honourable Francis Logan MLA Western Australian Minister for Energy, Resources and Industry	) )	16th On the	JUNE Day of	2008
The Honourable Patrick Conlon MP South Australian Minister for Energy	) )	On the	Day of	2008
The Honourable David Llewellyn MP Tasmanian Minister for Energy	) )	On the	Day of	2008
Jonathon Donald Stanhope MLA Australian Capital Territory Minister for Environment and Water and Climate Change	) ) )	On the	Day of	2008
The Honourable Christopher Natt MLA Northern Territory Minister for Mines and Energy	) )	On the	Day of	2008

EXECUTED BY

The Honourable Martin Ferguson MP Commonwealth Minister of Resources and Energy	) )	On the	Day of	2008
The Honourable Ian MacDonald MP New South Wales Minister for Energy	) )	On the	Day of	2008
The Honourable Peter Batchelor MP Victorian Minister for Energy and Resources	) )	On the	Day of	2008
The Honourable Geoff Wilson MP Queensland Minister for Mines and Energy	) )	On the	Day of	2008
The Honourable Francis Logan MLA Western Australian Minister for Energy, Resources and Industry	) ) )	On the	Day of	2008
The Honourable Patrick Conlon MP South Australian Minister for Energy	) )	On the	18 Day of June	2008
The Honourable David Llewellyn MP Tasmanian Minister for Energy	) )	On the	Day of	2008
Jonathon Donald Stanhope MLA Australian Capital Territory Minister for Environment and Water and Climate Change	) ) )	On the	Day of	2008
The Honourable Christopher Natt MLA Northern Territory Minister for Mines and Energy	) )	On the	Day of	2008

EXECUTED BY

The Honourable Martin Ferguson MP Commonwealth Minister of Resources and Energy	) )	On the	Day of	2008
The Honourable Ian MacDonald MP New South Wales Minister for Energy	) )	On the	Day of	2008
The Honourable Peter Batchelor MP Victorian Minister for Energy and Resources	) )	On the	Day of	2008
The Honourable Geoff Wilson MP Queensland Minister for Mines and Energy	) )	On the	Day of	2008
The Honourable Francis Logan MLA Western Australian Minister for Energy, Resources and Industry	) ) )	On the	Day of	2008
The Honourable Patrick Conlon MP South Australian Minister for Energy	) )	On the	Day of	2008
The Honourable David Llewellyn MP Tasmanian Minister for Energy	) )	On the	10 Day of June	2008
Jonathon Donald Stanhope MLA Australian Capital Territory Minister for Environment and Water and Climate Change	) ) )	On the	Day of	2008
The Honourable Christopher Natt MLA Northern Territory Minister for Mines and Energy	) )	On the	Day of	2008



EXECUTED BY

The Honourable Martin Ferguson MP Commonwealth Minister of Resources and Energy	) )	On the	Day of	2008
The Honourable Ian MacDonald MP New South Wales Minister for Energy	) )	On the	Day of	2008
The Honourable Peter Batchelor MP Victorian Minister for Energy and Resources	) )	On the	Day of	2008
The Honourable Geoff Wilson MP Queensland Minister for Mines and Energy	) )	On the	Day of	2008
The Honourable Francis Logan MLA Western Australian Minister for Energy, Resources and Industry	) ) )	On the	Day of	2008
The Honourable Patrick Conlon MP South Australian Minister for Energy	) )	On the	Day of	2008
The Honourable David Llewellyn MP Tasmanian Minister for Energy	) )	On the	Day of	2008
Simon Corbell MLA Australian Capital Territory Acting Minister for Environment and Water and Climate Change	) ) )	On the	10 th Day of June	2008
The Honourable Christopher Natt MLA Northern Territory Minister for Mines and Energy	) )	On the	Day of	2008

EXECUTED BY

The Honourable Martin Ferguson MP)
Commonwealth Minister of Resources and Energy) On the Day of 2008

The Honourable Ian MacDonald MP)
New South Wales Minister for Energy) On the Day of 2008

The Honourable Peter Batchelor MP)
Victorian Minister for Energy and Resources) On the Day of 2008

The Honourable Geoff Wilson MP)
Queensland Minister for Mines and Energy) On the Day of 2008

The Honourable Francis Logan MLA)
Western Australian Minister for Energy,)
Resources and Industry) On the Day of 2008

The Honourable Patrick Conlon MP)
South Australian Minister for Energy) On the Day of 2008

The Honourable David Llewellyn MP)
Tasmanian Minister for Energy) On the Day of 2008

Jonathon Donald Stanhope MLA)
Australian Capital Territory Minister for Environment)
and Water and Climate Change) On the Day of 2008

The Honourable Christopher Natt MLA)
Northern Territory Minister for Mines and Energy) On the Day of 2008



MINISTERIAL COUNCIL ON ENERGY MEMORANDUM OF AGREEMENT RELATING TO CONFERRAL OF GAS AND ELECTRICITY FUNCTIONS ADDITIONAL TO THOSE REFERRED TO IN THE AUSTRALIAN ENERGY MARKET AGREEMENT

RECITALS:

- A. The Australian Energy Market Agreement 2004 as amended in 2006 (AEMA) agreed to the reform of the National Electricity Law and establishment of the National Gas Law and related matters and the conferral of functions and powers, and imposition of duties, on the Australian Energy Market Commission and Australian Energy Regulator (AER) under those laws;
- B. The Ministerial Council on Energy acting under the AEMA has further agreed to the conferral of functions and powers, and imposition of duties, on Ministers of participating jurisdictions, the National Competition Council (NCC), the Victorian Energy Networks Corporation, the AER and the Australian Competition Tribunal as part of the Ministerial Council on Energy's process of energy market reform; and
- C. The purpose of this Memorandum of Agreement is to confirm and summarise the content of those agreements.

OPERATIVE PROVISIONS:

1. PRELIMINARY

1.1 This agreement may be referred to as the Ministerial Council on Energy Memorandum of Agreement relating to conferral of gas and electricity functions additional to those referred to in the Australian Energy Market Agreement.

1.2 The terms of this agreement have the same meaning as in the AEMA and

"**function**" includes a reference to a power, authority and duty.

"**Tribunal**" means the Australian Competition Tribunal referred to in the *Trade Practices Act 1974* of the Commonwealth and includes a member of the Tribunal or a Division of the Tribunal performing functions of the Tribunal.

"**Victorian Energy Networks Corporation**" means the corporation continued under Part 8 of the *Gas Industry Act 2001* of Victoria.

2. OPERATION OF AGREEMENT

2.1 This Memorandum of Agreement is effective when executed by all Parties.

2.2 This Memorandum of Agreement may be amended by agreement executed by all Parties.

3. CONFERRAL OF FUNCTIONS

3.1 The parties agree to the following conferral of functions in accordance with this Memorandum of Agreement, and otherwise in accordance with the AEMA.

3.2 The **Tribunal** will conduct merits review of decisions under and in accordance with the Australian Energy Market Legislation, and the *Trade Practices Act 1974*, and carry out other incidental and related functions.

3.3 Under and in accordance with the Australian Energy Market Legislation in relation to gas, including the National Gas Law and National Gas Rules, and the *Trade Practices Act 1974*, the **NCC** will:

- a. make recommendations to the relevant Minister about the coverage, or revocation of coverage, of pipelines;
- b. decide whether or not to make light regulation determinations, and light regulation revocation determinations, in respect of covered pipelines (unless the pipeline in question is a designated pipeline to which light regulation may not apply);
- c. classify or reclassify a pipeline as a distribution or transmission pipeline;
- d. determine which jurisdiction a cross-boundary distribution pipeline is most closely connected with;
- e. make recommendations to the relevant Minister about whether to grant a 15-year no-coverage determination or price regulation exemption;
- f. provide further assistance to Ministers and the Tribunal in relation to Ministerial coverage decisions; and
- g. carry out other incidental and related functions.

3.4 Under and in accordance with the Australian Energy Market Legislation in relation to gas, including the National Gas Law and National Gas Rules, the **Commonwealth Minister** will:

- a. make or revoke a coverage determination or 15-year no-coverage determination in respect of any cross boundary transmission pipeline;

Exception: the Western Australian Minister will make these decisions for a transmission pipeline which originates in the offshore area of Western Australia and terminates within Western Australia.
- b. make or revoke a coverage determination or 15-year no-coverage determination in respect of transmission pipelines in Queensland, New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory;
- c. make or revoke a price regulation exemption for an international pipeline; and
- d. carry out other incidental and related functions.

3.5 Under and in accordance with the Australian Energy Market Legislation in relation to gas, including the National Gas Law and National Gas Rules, the relevant **State or Territory Ministers** will:

- a. make or revoke a coverage determination or 15-year no-coverage determination for a distribution pipeline situated wholly within their State or Territory;
- b. make or revoke a coverage determination or 15-year no-coverage determination for a cross boundary distribution pipeline that the NCC has determined is most closely connected to their State or Territory;
- c. in respect of the South Australian and Western Australian Ministers only, make or revoke a coverage determination or 15-year no-coverage determination for a transmission pipeline situated wholly within their State or Territory; and
- d. carry out incidental and related functions.

3.6 The **Victorian Energy Networks Corporation** will undertake the functions of the Bulletin Board Operator under the Australian Energy Market Legislation in relation to gas, including the National Gas Law and National Gas Rules, and carry out other incidental and related functions until the establishment of the Australian Energy Market Operator which will then be vested with those functions.

3.7 In relation to Western Australia, under and in accordance with the Australian Energy Market Legislation in relation to gas, including the National Gas Law as applied in Western Australia and the offshore area of Western Australia:

- a. natural gas includes other forms of gas described in section 8 of the *Gas Pipelines Access (Western Australia) Act 1998*;
- b. the Bulletin Board provisions and associated functions will not apply in Western Australia until the Minister publishes a notice in the *Western Australian Government Gazette*, should Western Australia decide to progress the Bulletin Board through the National Gas Law;
- c. the **Economic Regulation Authority** will regulate pipelines in Western Australia which are not international pipelines, or which do not cross into South Australia or the Northern Territory; and
- d. access disputes in respect of pipelines regulated by the Economic Regulation Authority will be arbitrated by the **Arbitrator** first established under section 62 of the *Gas Pipelines Access (Western Australia) Act 1998*.

However, Western Australia may elect to transfer the above functions of the Economic Regulation Authority and arbitrator to the AER in accordance with the AEMA.

3.8 To facilitate further transfer of functions to the national framework, the **AER** will undertake additional gas and electricity economic regulatory and enforcement functions:

- a. under jurisdictional application acts for the National Gas Law and National Electricity Law relating to economic regulatory functions previously performed by jurisdictional gas and electricity regulators;

- b. under the *Electricity Industry Supply Act 1995* of Tasmania after the 2007 distribution pricing determination is transferred to the AER;
- c. under the *Gas Industry Act 2001* of Victoria, including in relation to the approval of fees for the Victorian Energy Networks Corporation; and
- d. other incidental and related functions relating to the above.

3.9 For the avoidance of doubt:

- a. the parties intend this agreement to be a relevant agreement for the purposes of sections 29BA, 44AI and 44ZZM of the *Trade Practices Act 1974* and section 13A of the *Australian Energy Market Act 2004*; and
- b. if the National Gas Law is not applied in Western Australia when it first commences in South Australia, the conferral of functions in the *Gas Pipelines Access (Western Australia) Act 1998* in accordance with the Natural Gas Pipelines Access Agreement 1997 remain in force until the National Gas Law does apply.