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**George Maltabarow**  
**Managing Director**

28 March 2007

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
Level 16  
1 Margaret Street  
Sydney NSW 2000

Dear Dr Tamblyn

### **Obligations of Network Service Providers – Connection Applications**

I refer to the AEMC's draft determination on the Rule change proposal submitted by Energy Solutions Australia Pty Ltd.

The Commission has provided compelling arguments which justify its decision not to make a Rule change based on the proposed changes to the Rules. We strongly support the Commission's conclusions.

In our response to the Rule proposal, EnergyAustralia questioned whether the subject matter of the Rule proposal goes beyond the rule making power conferred upon the AEMC by the National Electricity Law (NEL). The Commission, in response noted:

*"...whilst the proposal relates to services for which formal price regulation does not apply, it will nonetheless significantly impact... incumbent network service providers"*<sup>1</sup>

*"Incumbent network service providers have an existing obligation under the Rules to inform connection applicants whether a service being sought is contestable. The proposal by Energy Solutions sought to broaden [the NSPs] obligation to include the compilation and administration of contract registers for distribution to certain parties. When considered in this light the proposal effectively constitutes an extension to the current information obligations under the Rules."*<sup>2</sup>

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<sup>1</sup> Draft Determination, p7

<sup>2</sup> Draft Determination, p8



Partner

While we accept the Commission's decision to proceed with the Rule making process we reinforce that what is proposed is at best on the outer limits of what should be subject to regulation and should be scrutinised accordingly. In its overview and response to the Expert Panel on Energy Access pricing, the Ministerial Council on Energy noted "...the scope of regulation is by reference to the physical facilities or assets that are subject to the regime"<sup>3</sup>.

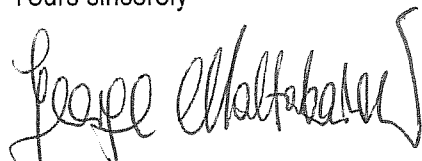
The Rule change proposal specifically focuses on facilities or assets deemed to be outside the regulatory regime. Therefore, despite some services being classified unregulated (and outside the regime) because they are subject to competition, the Rule proposal seeks to create new regulatory obligations for these services on incumbent network businesses. The apparent justification for this is an uneven playing field because parties must contact the incumbent network service provider when connecting to the shared network. It is claimed that this significantly hinders connection applicants and alternative service providers from meeting and interacting in the marketplace.

We agree with the Commission that the proponent has not established that sufficient hindrance to competition exists for these services to warrant regulatory intervention. Nor has the proponent established that a formal requirement on network service providers to create and maintain a register would better replicate a competitive market than existing market arrangements.

For example, a register only lists those parties who have asked to be part of the register. A party wishing to connect could perceive the NSP's register to be an exhaustive list and therefore bypass a wider tender process (which could provide a wider response).

In summary, we support the Commission's draft determination not to proceed with the Rule proposal. The Commission's arguments are convincing and would require significant and compelling new information to justify a reconsideration of its current recommendations. Should additional information be presented that would sway the Commission from its current view, we would request the opportunity to comment on any additional issues raised.

Yours sincerely



**GEORGE MALTABAROW**  
**Managing Director**

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<sup>3</sup> Standing Committee of Officials of the MCE: Overview and Response to Expert Panel on Energy Access Pricing, Nov 2006, p10