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ECONOMICS PAPER

Can there be a single energy market in Australia?

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Australia's energy markets are jurisdictionally based in the States and the Territories. They have evolved from government owned and operated businesses to supply electricity and gas to consumers. Performance criteria and measures have developed around the assets of the business rather than in response to economic market conditions. The emergence of an energy market in Australia has seen the establishing of the national electricity market and the national gas market as separate markets for energy. The convergence of these markets is promoted by aligning the framework law for electricity and gas and the elimination of restrictive practices particularly in the gas industry. Despite this development entry into the industry is limited and it is expected that the large organisations currently dominating the energy market will continue to do so in the future. A single energy market is emerging but more needs to be done to make it happen.

A single energy market would foster competition for energy products. Market participants would benefit from price information that is reliable and consistent with competition.

Demand for energy will increase¹ and supply of energy needs to be sufficient to meet this demand. The supply of energy requires efficient investment and the market structure needs coordination to ensure that energy is supplied at the lowest overall cost to consumers.

Participation in a single, competitive energy market would lessen obstacles to competition and supply would meet the growing demand for energy in line with economic growth and productivity.

Towards a national energy market

The emergence of a national energy market can be seen with the national electricity market and the national gas market. These markets evolved separately and independently although they have similar governance arrangements. Their focus has been to supply electricity to consumers from generation through transmission and distribution or from extraction through gas pipelines to consumers. Markets for electricity and gas are jurisdiction specific having been started and operated within State and Territory borders.

The reform of the energy sector required a number of issues to be resolved and initiated before a national energy markets could arise. Improvements to investment in the industries supplying energy required strengthening the national character of energy markets' governance, improvements to economic regulation for energy markets and to increase the penetration of the natural gas into energy markets².

The Standing Committee of Officials of the Ministerial Council on Energy referred to the Australian Energy Market Agreement commitments where the governments of Australia agreed to "implement a series of reforms to deliver fairer, more effective access regimes for both gas and electricity,

¹ Australian Bureau of Agricultural and Resource Economics (ABARE), *Australian Energy: National and state projections to 2019-20*, ABARE report to the Ministerial Council on Energy, abare eReport 03.10, Commonwealth of Australia 2003; Dickson, A., Akmal, M. and Thorpe, S. 2003, *Australian Energy: National and State Projections to 2019-20*, ABARE eReport 03.10 for the Ministerial Council on Energy, Canberra, June. This report states: "Growth in total energy consumption is forecast to average 2.3 per cent a year in the short term (to 2005-06) and 2.1 per cent over the long term (to 2019-20)."

² Ministerial Council on Energy Standing Committee of Officials, *Review of the National Gas Pipelines Access Regime: Consultation Paper*, August 2005.

achieving commonality where appropriate and focusing on economically efficient outcomes that are in the long term interests of consumers.”³ The agreement established energy market institutions to oversee the emerging energy market and a framework for governments to make laws for specific matters.

The objectives of this agreement are:

- to promote the long term interests of consumers concerning price, quality and reliability of electricity and gas services
- to establish a framework for further reform.

The items of further reform are expressed in the agreement:

- strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate of investment
- streamline and improve the quality of economic regulation across energy markets to lower the cost and complexity of regulation facing investors, enhance regulatory certainty, and lower barriers to competition
- improve the planning and development of electricity transmission networks, to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity
- enhance the participation of energy users in the markets including through demand side management and the further introduction of retail competition, to increase the value of energy services to households and businesses
- further increase the penetration of natural gas, to lower energy costs and improve energy services, particularly to regional Australia, and reduce greenhouse emissions
- address greenhouse emissions from the energy sector, in light of the concerns about climate change and the need for a stable long-term framework for investment in energy supplies.

These items signaled the determination of governments to promote a national market for energy. This reform meant that Australia’s energy sector would undergo significant uncertainty during a period of transition to a competitive energy market in Australia. The uncertainty would arise not only in terms of the investment to be made to meet future demand for energy but also the technological changes that would need to be implemented to accommodate climate change⁴.

Before the reforms of the 1990s

Prior to the reforms of the 1990s energy markets were limited and restricted to services provided by State and Territory governments. The supply of energy was mainly natural gas with a few suppliers dominating the market for gas with pipeline regulation and electricity comprising government owned entities generating electricity, electricity transmission and distribution being controlled. Pricing of energy was heavily influenced by political and engineering considerations and little or no attention given to economic considerations and outcomes. Investment in these industries mostly comprised public funding from budget allocations and appropriations.

Electricity

Electricity supply has tended to be referred to as systems. The system focused on the jurisdiction in which it was generated and supplied. There was no or limited interconnection beyond the State or Territory into each others’ grids. Each State and Territory had local agencies to plan, develop,

³ Standing Committee of Officials of the Ministerial Council on Energy, *2006 Legislative Package: Gas Legislative Framework*, November 2006. The agreement is between the Commonwealth, State and Territory Governments, dated 30 June 2004. The agreement has been amended dated 2 June 2006. The objectives are unchanged.

⁴ Energy Reform Implementation Group (ERIG), *Discussion Papers*, November 2006 at p 4.

commission and operate electricity systems within the jurisdiction. The focus of this development of electricity systems was asset performance or as *Towards A Truly National And Efficient Energy Market* says⁵, “economic considerations tended to be secondary to achieving robust engineering outcomes.” No competitive market for electricity existed.

The economic reforms of the electricity industry during the 1990s have transformed electricity supply. The National Electricity Market (NEM) in Queensland, New South Wales, Victoria, South Australia and the Australian Capital Territory separated vertically integrated supply chains. Competition began between generators and between retail suppliers.

Open access at fair and reasonable tariffs occurred with the bringing of the monopoly network elements under economic and access regulation. According to *Australian Gas Markets: Moving toward maturity*:

“This was a revolutionary step for the industry, placing economic and market considerations on an equal footing with engineering excellence, supply availability and reliability — the traditional drivers for the government-owned electricity sector.”

The reforms of electricity market since the 1990s has received renewed support in recent years. In 2002 the then Chairman⁶ of the Australian Competition & Consumer Commission (ACCC) said: “My concern is that the reform process started in the 1990s is stalling. So far we have established national markets for electricity, but have not established the conditions necessary for their effective operation.”

At the time the Chairman observed some of the energy issues that needed reforming:

- more interstate competition in energy
- structure of the energy industry
- public and private ownership of energy assets
- retail contestability
- State based arrangements that differ between States.

Reforms were needed to advance competition in the wholesale market for electricity. Also, the reforms needed to address price spikes in electricity.

A further area of reform was implementing full retail contestability. This depended on State governments to implement retail contestability that was occurring at different rates⁷.

Natural gas

The gas industry is mainly State based and interstate sales of natural gas has been restricted or prohibited under State laws. The interconnection of gas by way of pipelines has been described as weak by *Towards A Truly National And Efficient Energy Market*:

“The gas ‘networks’ were typified by a few transmission pipelines from basin to population centre (usually the capital city) with a distribution network at the end. Little ‘off-take’ from the transmission pipeline occurred before it reached the population centre. Much of the gas network constituted a natural monopoly.

Access to the network by ‘third parties’ on fair and just terms was not guaranteed and served to limit new entrants both upstream and downstream.”

⁵ Council of Australian Governments Energy Market Review, *Towards A Truly National And Efficient Energy Market*, Commonwealth of Australia 2002 (Parer Report).

⁶ Professor Alan Fels, “Reforming Australia’s Infrastructure”, National Infrastructure Summit, 14 August 2002, Melbourne.

⁷ Professor Alan Fels, “Reforming Australia’s Infrastructure”, National Infrastructure Summit, 14 August 2002, Melbourne.

The Australian Bureau of Agricultural and Resource Economics (ABARE) released a report⁸, *Australian Gas Markets: Moving toward maturity*, that said:

“The market for natural gas in Australia is characterised by having only a small number of producers, a small number of consumers, limited depth in consumption (as reflected in limited diversity of end user needs) and legacy agreements that limit competition.”

At the time three suppliers dominated the gas supply industry. While emerging gas suppliers would reduce market concentration in the medium term, the ABARE report noted that this would not be sufficient to alter the domination of the three existing gas suppliers:

“By 2010, it is expected that three firms will still control around 85 per cent of supplies in eastern Australia.”

The market for gas has a small number of end users demanding a large amount of gas supplied.

Australian Gas Markets: Moving toward maturity shows that former regulatory impediments in the gas industry have given way to unrestricted gas resources for consumption and there has been an increase in pipeline interconnections. Other mechanisms such as contractual arrangements restricting supply (e.g. reselling) are due to lapse. However, the small number of suppliers means that transparency is not present or very limited. The issue of transparency is important for its impact on the liquidity of the industry. The reform of State regulations was seen as a positive move to reduce impediments to entry into the gas supply industry. Despite these reforms, the ABARE report notes:

“But it would not be sufficient to establish transparent spot markets, as the number of retailers operating either nationally or in jurisdictions is likely to remain very small.”

This view was expressed three years later in a report⁹ to the Energy Reform Implementation Group, *The gas markets in Australia: Impediments to efficient development*. This report said that a lack of transparent information is evident “around market prices, contractual arrangements, and general market and system capabilities.”

The gas market in Australia has two markets for the supply of gas to end users¹⁰:

1. market for the commodity ‘natural gas’
2. market for transport service to ship the natural gas through pipelines.

These were identified in *Australian Gas Markets: Moving toward maturity* for a mature gas market. These markets are needed for a competitive supply of gas to end users.

A national energy market

The Council of Australian Governments (COAG) is steering reform of Australia’s energy systems into a national energy market. It established the Ministerial Council on Energy (MCE) to manage reform and to report to COAG on developments and make recommendations for change. MCE is taking initiatives by recommending the establishment of other groups such as the Energy Reform Implementation Group (ERIG). These initiatives are giving momentum towards a national energy market.

⁸ Short, C., Heaney, A. and Burns, K. 2002, *Australian Gas Markets: Moving Toward Maturity*, ABARE eReport 03.23 Prepared for the Australian Gas Association, Canberra, December 2003.

⁹ KPMG, *Energy Reform Implementation Group, The gas markets in Australia: Impediments to efficient development*, December 2006.

¹⁰ Short, C., Heaney, A. and Burns, K. 2002, *Australian Gas Markets: Moving Toward Maturity*, ABARE eReport 03.23 Prepared for the Australian Gas Association, Canberra, December 2003 at 2.

The Australian Energy Market Agreement established governance bodies to regulate gas and electricity markets. These bodies are:

1. **Ministerial Council on Energy**
providing national oversight and coordination of energy policy development and national leadership on energy issues.
2. **Australian Energy Market Commission**
responsible for rule-making and energy market development at a national level, including in respect of the National Electricity Rules and the National Gas Rules.
3. **Australian Energy Regulator**
responsible for economic regulation and compliance at a national level, including in respect of the Australian Energy Market Legislation.
4. **National Electricity Market Management Company Limited A.C.N 072 010 327**
responsible for the day-to-day operation and administration of both the power system and electricity wholesale spot market in the National Electricity Market and other support activities.

A true national energy market not possible in the short term

The national energy market essentially consists of the eastern States and the Australian Capital Territory. The energy market in Western Australia and the Northern Territory are essentially stand alone markets as they are not connected into the National Energy Market due to geography and the lack of population spread to generate demand for energy.

Despite this feature of Australia's energy markets the markets for energy are developing using similar processes to rationalise the energy sector and encourage more participants in the industry. The Australian Energy Market Agreement is working to coordinate the cooperative arrangements and to foster consistency across jurisdictions. For example, the Western Australian Government is not committed under the agreement to transfer functions to the national regulators in relation to gas and electricity. However, it is committed to conferring functions with respect to the access rule for gas on the national regulator¹¹.

The Australian Energy Market Agreement appears to recognise that in the short to medium term of the national energy market that a truly national energy market is not possible. However, the terms of the agreement seem to leave room for a truly national energy market in the long term. In the meantime, the agreement sets up the legal framework for the regulation of energy in Australia dealing with gas and electricity as the basis for the national energy market.

A workable energy market across Australia

A workable national energy market requires a regulatory framework that is consistent allowing market participants to operate reasonably freely and flexibly to respond to market signals. The laws administered by regulators need to be based in principles that can be applied with certainty by market participants in a confident manner. If stricter measures are needed for regulatory purposes then these measures should be detailed in subordinate legislation such as rules. These rules need to be reviewed periodically to maintain their currency with prevailing circumstances in the emerging national energy market.

¹¹ Standing Committee of Officials of the Ministerial Council on Energy, *Statement of Scope: A National Legislative Framework for Gas and Electricity*, July 2006 at 6.

The legal framework set up by the National Electricity Law and the proposed National Gas Law will enable the establishing of a national energy market. The objectives of the National Gas Law and the National Electricity Law are¹²:

For the National Gas Law:

The objective of this law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of national gas.

For the National Electricity Law:

The objective of this law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.

MCE decided on these objectives following recommendations made by its Expert Panel on Energy Access Pricing. MCE agreed with the recommendations saying¹³:

“there is no inherent difference between the gas and electricity regimes which requires a difference in basic approach, and that a common objective would have significant benefits in developing a common approach to revenue and network pricing across the energy sector.”

The similar objectives in the National Gas Law and the National Electricity Law will ensure consistent regulation under the law by the national regulator. The objectives provisions comprise a “point of congruence” between policy makers and legislatures, the regulator and rule makers¹⁴.

It would appear that the stated objectives for the National Gas Law and the National Electricity Law should provide for a common approach to revenue and network pricing. However, the objectives do not seek to promote a national energy market. Instead they promote efficient investment and efficient operation use of the services provided. These factors are the outcomes of an efficient single market for energy. The focus seems to be on some elements of a market for energy instead of focusing on an objective of market efficiency.

The objectives are further obstructed by the matters of the service provided to consumers. First, they focus on the “long term interests of consumers”. This implies that inefficiencies are operating in the short to medium terms and that consumers will not benefit from efficient investment and services. There is no apparent focus on an efficient market that will deliver the long term benefits to consumers in the short to medium terms.

The second set of matters concern the itemising of “price, quality, reliability and security of supply” in relation to gas and electricity. These items are not the only issues for the supply of energy. There are other customer relations issues that participants in the energy market should focus on. Objectives that point to an efficient market would achieve these items and market participants would behave properly to avoid complaints and disputes with consumers.

The objectives are too verbose and appear to fail in their expressed intentions. By not expressing them in terms of market efficiency and clearing so that demand is supplied at the best price available

¹² These objectives are drawn from Standing Committee of Officials of the Ministerial Council on Energy, *Statement of Scope: A National Legislative Framework for Gas and Electricity*, July 2006 at 12.

¹³ Standing Committee of Officials of the Ministerial Council on Energy, *Statement of Scope: A National Legislative Framework for Gas and Electricity*, July 2006 at 12. Criticisms of this approach to provide similar objectives and legal frameworks for the regulation of gas and electricity markets can be viewed in “Convergence of gas and electricity laws”, *Australian Energy Law and Economics*, Vol 1 Issue 2 April 2007 at www.iantunstall.com.

¹⁴ Standing Committee of Officials of the Ministerial Council on Energy, *Statement of Scope: A National Legislative Framework for Gas and Electricity*, July 2006 at 12-13.

in the market in the absence of intervention or market domination by a few participants, they tend to be obtuse. It appears from the expressions that the objectives provide a check list that can be easily monitored for a few items of market efficiency while avoiding other issues that an efficient market would call for. They appear to be engineered objectives rather than policy prescriptions of a free market. The emerging market for energy will be thwarted by operators and regulators seeking to make the industry accountable on specific grounds as expressed in the objective.

Despite these deficiencies in the expressions of objectives, it appears that the National Gas Law and the National Electricity Law provide a legal framework for a workable energy market. The itemising of issues in the objectives may be the road from over reliance on engineering processes and procedures into a market system where economic issues need to prevail. The workable nature of the energy market is the checking of factors that will eventually, in the long term interests of consumers, bring about a more efficient energy market where the quality, reliability and security of supply of energy is finally matched by price. Until the long term, price will be subject to supply determinants and efficiency will be measured on asset performance.

Desire for a national energy market

Securing Australia's energy future is not only essential but it is desired by participants for establishing a national energy market. It will provide a competitive framework for the flow of energy and its price¹⁵ in the market place overcoming the setting of prices according to non-economic factors. Participating corporations need to undertake large investments for the long term and this investment needs to occur now. ERIG considers that "the private sector is inherently more capable of responding rapidly to altered market circumstances than the public sector."¹⁶ In addition, government owned organisations are frustrated and constrained by the lack of adequate funding that is available from appropriations. ERIG expressed the view that "if governments wish to focus their scarce resources on investments in areas other than energy assets, the private sector could appropriately and adequately fill the investment gap, given clear signals from governments, appropriate government policies and competitive market conditions."¹⁷

In its report to COAG ERIG said:

"ERIG strongly believes that securing Australia's energy future will necessitate the development of a consistent, coherent and national approach to all elements of energy policy, regulation, governance and practice."

This is a broad belief that requires governments to privatise their energy businesses and to provide the legal framework so that market participants can operate with certainty particularly in making investments. The urgency of this reform was expressed in *Securing Australia's Energy Future*¹⁸:

"Australia's energy needs are growing rapidly, necessitating large-scale new investments within the next decade."

The desire of participants for a national energy market can be seen in ERIG's report to COAG¹⁹:

"Most energy market participants want Australia to adopt a more national approach to energy market issues. These include Australia's approach to:

- transmission planning and investment;
- regulation across the National Energy Market;

¹⁵ Australian Government, *Securing Australia's Energy Future*, Energy White Paper 2004 at 65.

¹⁶ Energy Reform Implementation Group, *Discussion papers*, November 2006 at 4.

¹⁷ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 84.

¹⁸ Australian Government, *Securing Australia's Energy Future*, Energy White Paper 2004 at 68.

¹⁹ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 44.

- governance of its energy market institutions;
- deregulation of retail energy markets and the lifting of price caps; and
- for current and potential investors in the energy sector, a national approach to greenhouse emissions policy.”

There are economic efficiency gains to be made from this transformation in energy markets to a national energy market. The establishment of energy financial markets will facilitate this transformation to a national energy market and provide for the necessary funds to make investments in energy.

Interruptions or interferences to a national energy market

A national energy market is inhibited by interruptions or interferences by governments who own electricity and gas assets. The private sector is deterred from entering the market or to provide investment in energy assets by the uncertainty created by governments who own these assets. This can be seen in the case of New South Wales where mixed signals have been made about the intentions of the government as owner of electricity assets²⁰. The NSW Government’s Energy Green Paper says²¹:

“The Government is committed to retaining the electricity assets it currently owns. However, it would prefer new investment in generation capacity to be financed by the private sector.”

Later in the Energy Green Paper, the options for reform include²²:

- regulated pricing where electricity is considered to be an essential service and where vulnerable consumers will continue to receive electricity at a reasonable price
- reforming the structure of Government owned business will minimize the risk to Government and private sector investment encouraged.

ERIG received comments about the situation in New South Wales from potential private investors. These comments show that the New South Wales Government is giving ambiguous signals about its intentions for the energy market in New South Wales. ERIG holds the view that this will deter or delay investment in the New South Wales energy sector²³.

The recent *Discussion papers* (November 2006) and the report to COAG (January 2007) by ERIG suggest that interruptions or interferences are strongly evident in the emergence of a national energy market. ERIG identifies these in its report to COAG²⁴:

- there are at least five separate market operators operating gas and electricity markets across Australia (NEMMCO, VENCORP, REMCO, GMC and the IMO). ERIG believes that, ultimately, there should be a single national energy market operator for Australia
- the Australian Energy Market Commission (AEMC) has been established as the national rule making and market development body, but ERIG has very serious concerns about its funding, ability to act strategically and to manage its workflow, and the limits to its national reach

²⁰ This case study was picked up by ERIG in *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 94 drawing on the NSW Government’s Energy Green Paper, Energy Directions for NSW (December 2004).

²¹ NSW Government’s Energy Green Paper, Energy Directions for NSW (December 2004) at 3.

²² NSW Government’s Energy Green Paper, Energy Directions for NSW (December 2004) at 3.

²³ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 94.

²⁴ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 6.

- Australia is moving towards a single regulator, the Australian Energy Regulator (AER), although full implementation of that policy has not yet been achieved
- numerous state derogations from the national rules and regulations covering energy exist, creating a different legal and regulatory framework for the energy market in each state
- transmission planning and decision-making is still regionalised with strategic national planning to optimise system-wide investment not occurring effectively
- each state has its own requirements in relation to retail competition and licensing of retailers
- market arrangements for trading in financial markets between regions is more difficult and risky than it needs to be
- where governments remain as major supply-side participants in the industry by owning and operating substantial energy assets, the impartiality of objectives and mechanisms
- to achieve a national energy market, including through the Ministerial Council on Energy (MCE), are likely to be comprised.

These factors obstructing a national energy market cause ERIG to conclude its report to COAG “that Australia does not yet have a fully national energy market.”²⁵

Importance of a national energy market

A national energy market is important to build a mature energy market that is competitive and delivering services demanded in the market for energy. ERIG maintains that a national energy market is essential to secure Australia’s energy future²⁶:

“ERIG considers more can be done to encourage the development of a national energy market. ERIG believes that all elements of the energy system – generation, transmission, distribution and retail – will be dominated by organisations that, for effectiveness and efficiency reasons, will want to operate in Australia as if it were one national market. ERIG strongly believes that securing Australia’s energy future will necessitate the development of a consistent, coherent and national approach to all elements of energy policy, regulation, governance and practice.”

ERIG calls for the guidance of the energy market “at the highest level, by broad policy objectives covering efficiency and reliability that are set nationally.”²⁷

The importance of a national energy market is evident in the dire need for investment in energy infrastructure and the upgrading of technologies used by market participants to meet the objectives set out in the Australian Energy Market Agreement. ERIG says²⁸:

“Ensuring competitive, efficient and national energy markets is even more important at a time when substantial investment is needed in energy supply infrastructure to ensure sufficient supply of competitively priced and reliable energy to meet growing demand into the future. Ongoing reform of the energy sector is also important because of the economy wide benefits that it generates.”

These issues make a national energy market important and a priority.

²⁵ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 6.

²⁶ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 6.

²⁷ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 6.

²⁸ *Energy Reform: The way forward for Australia*, A report to the Council of Australian Governments by the Energy Reform Implementation Group, January 2007 at 6.

Can there be a single energy market in Australia?

It appears from the intention of the Australian Energy Market Agreement that a single energy market is possible or likely in the long term²⁹. The agreement recognises the geographical and other technological constraints for a single energy market for Australia.

The Australian Energy Market Agreement recognises that a national energy market would provide “effective operation of an open and competitive national energy market will contribute to improved economic and environmental performance and deliver benefits to households, small business and industry, including in regional areas”. The parties to the agreement agree to this provision:

- “13.2 The Parties confirm their commitment to a national approach to energy access whereby:
- (a) there is national consistency within the gas access regime and within the NEM access regime, in accordance with this agreement; and
 - (b) to the extent feasible and where effective regulation is not impeded, there should be consistency and harmonisation between electricity and gas access regimes such that investment in, and use of, energy is not distorted by differing regulatory regimes.”

This is a major concession to energy market reform to achieve a single energy market in Australia. But as ERIG shows in its report to COAG, differing regulatory regimes and administrative arrangements and oversight is distorting access and supply of energy.

In relation to distribution the parties also agreed:

- “14.1 The Parties agree that the national framework for the regulation of distribution and retail activities will commence with the passage of enabling legislation no later than 1 January 2007 to transfer the National Distribution and Retail Regulatory Functions, as set out in Annexure 2, to the AEMC and AER, covering both electricity and natural gas, in accordance with the terms of this agreement.”

The parties are all Commonwealth, State and Territory governments. This means that all parties agree to establish the national energy market and make it operate initially to increase investment into the energy industry. Provisions are made for Western Australia and the Northern Territory but essentially they make the same commitments as the other governments under the agreement. A national energy market is possible under the arrangement set up by the Australian Energy Market Agreement. This means that the legal framework is in place to set up the regulatory arrangements for the national energy market. However, the economic structure for the industry and the market framework is requiring better commitment by the parties. Resistance is evident in the speed at which economic factors are occurring to facilitate an effective national energy market.

While governments that own energy assets continue to claim that energy is an essential service and therefore must be protected against exploitation by potential private sector operators, they cannot secure private investment. This means they cannot fulfill their commitments under the Australian Energy Market Agreement to give effect to a national energy market.

A national energy market could be possible if parties to the Australian Energy Market Agreement undertake their commitments seriously and take steps to remove their direct involvement in the supply of energy. The ability of the governments retaining ownership will be evident in their seeing the advancement of energy supply with private investment thus putting off the cloak of ideology that inhibits the advancement of the market.

²⁹ See for example clauses 13.8 and 13.9 of the Australian Energy Market Agreement.



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