



***Submission
to the
Queensland Competition Authority
(QCA)***

Electricity Conduct Rules

Submission by ENERGEX Limited

7 April 2000

Electricity Conduct Rules

1. INTRODUCTION

This paper is a submission made to the Queensland Competition Authority (QCA) in response to its Issues Paper *Electricity Conduct Rules* dated February 2000. The paper calls for public submissions on certain issues to be made as part of a consultative process for the regulation of the electricity industry as required under the National Electricity Code.

This submission is made by ENERGEX Limited, the distribution entity. The name ENERGEX will be used throughout this paper as a reference to this organisation.

The approach used in this submission is to address in turn each of the issues raised by the Issues Paper.

Comments made in this paper may be made public as part of the normal consultation process by QCA.

ENERGEX submits that regulation should be light-handed to avoid unnecessary intervention in an industry that is rapidly becoming contestable. Rules should only be prescribed where there are clearly demonstrable benefits exceeding the costs of regulation.

2. ADEQUACY OF EXISTING LEGISLATIVE AND MARKET FRAMEWORK

The Authority invites comment on whether or not the current legislative and regulatory arrangements are sufficient to regulate the conduct of electricity entities, and:

- *if sufficient, whether there is a need to consolidate and simplify the requirements of the current legislative and regulatory regime in a conduct related document; and*
- *if not sufficient, the areas in which additional conduct related regulation may be required.*

ENERGEX believes that there is an adequate range of regulatory mechanisms in place and that there is no requirement for highly prescriptive conduct rules. These existing mechanisms include the following:-

- Legal Separation – The distribution and retailing entities are currently separate organisations in Queensland. For ENERGEX, the distributor is geographically, operationally and financially removed from the retailer. There are separate Boards, separate CEOs, separate management teams and separate offices. Indeed, even some of the “common” functions that could be arguably best managed in a single office such as regulatory affairs, have been deliberately separated to remove any concerns about inappropriate outcomes. This complete separation has removed many of the issues that are sought to be addressed by conduct rules. For example, with separate and physically isolated offices, there is no concern about sharing of information about retail transfers. ENERGEX Retail is treated in the same manner as any other retailer in regard to market operations.

- DME / ERU Rules – As part of the market development process undertaken by Government, the Electricity Reform Unit initiated a range of measures designed to ensure that competition is encouraged in the contestable electricity market. For example, it has in place measures regarding provision of network prices direct to customers and provisions about release of information to customers and their retailers. These provisions are effective and in our view the market is operating without problems regarding customer transfer and contestability processing. We have found through experience that such arrangements need to be adequately dynamic to address the frequent developments that occur in the market during transition and this is best achieved through the adoption of appropriate high level principles.
- ENERGEX is also effectively regulated in relation to conduct by the Trade Practices Act (TPA) and Competitive Neutrality Laws. Under the TPA, practices such as contracts or covenants restricting competition, misuse of market power and exclusive dealing are prohibited. These laws relate to how distribution and retail businesses relate to competitors.
- Standard Customer Contracts – Recently, the DME has been facilitating the preparation of Standard Customer Sale Contracts. These contracts are intended to form the basis of arrangements between electricity entities and electricity customers. While these contracts are not yet in place, significant efforts are being expended to ensure that the interests of customers are preserved in their dealings with electricity entities. These contracts will address many issues that might otherwise be covered by conduct rules.

In our submissions to the QCA’s papers on ring fencing, ENERGEX supported the limited use of conduct rules in lieu of highly prescriptive ring fencing arrangements. This is still our view as we believe that further prescriptive measures in relation to ring fencing are unwarranted. However, it is also our view that the existing arrangements (as previously mentioned) adequately address issues relating to both ring fencing and conduct in the contestable market environment.

As a general principle we support minimal prescription and therefore reserve judgement on any additional measures that might need to be put in place until we are aware of QCA’s final determination on ring fencing arrangements. Any additional measures should only be considered in the context of simplifying current arrangements and addressing any market problems that arise.

ENERGEX submits that current arrangements adequately address issues relating to the behaviour of electricity entities in the market. Further complexity through additional conduct rules is unnecessary unless the entire framework is simplified as part of this process.

3. CONDUCT RULE APPROACHES

The Authority invites comment on the appropriate form for preparation of conduct rules for electricity entities, should such conduct rules be deemed necessary.

The Authority invites comment on whether, if conduct rules are to be introduced, they should be in the form of voluntary industry codes or through formal regulatory requirements.

ENERGEX is aware of initiatives in other States for industry to implement their own voluntary codes of conduct. We are generally supportive of this approach if it is deemed that further conduct rules are required. As submitted above, ENERGEX believe that existing arrangements adequately address issues of concern relating to ring fencing and conduct. However, if in the establishment of the total range of regulatory measures, QCA believe that conduct rules are necessary then we would support the use of voluntary arrangements.

In our view the use of voluntary mechanisms will engender the support of these mechanisms by industry participants and significantly reduce the costs of compliance on the part of QCA. Additionally, such arrangements will enable more flexibility in the arrangements. We have found that in a rapidly changing environment, such as currently exists, flexibility of arrangements is crucial.

ENERGEX reiterates that current arrangements adequately address issues relating to the behaviour of electricity entities in the market. However, in its consideration of the total range of regulatory instruments, it is recognised that QCA may still favour the use of conduct rules. If this is the case ENERGEX supports the use of voluntary arrangements.

4. COMPLIANCE ISSUES

The Authority invites comment on the most appropriate form for a compliance system, including the establishment of a complaints resolution processes.

It has been our experience in the market to date that the vast bulk of concerns are addressed at an operational level across participants in the market. For example, in relation to matters of contestability applications and customer transfer processes, there are issues raised from time to time. We note that these issues are generally of a minor nature and often relate to confusion about processes and systems. In the majority of these instances, these issues are resolved to the complete satisfaction of all parties at an operational level between the local distributor and the customers or retailers concerned.

From our experience it is extremely rare that any market related cases ever progress beyond this level of resolution.

The National Electricity Code requires that participants have a dispute management system (DMS) in place. ENERGEX has such a system and although its use is minimal, the mechanism exists as a secondary level of dispute resolution in cases where operational negotiations have failed. This process has significant integrity and we would invite QCA to review the process at any time.

In light of these measures and experience to date we believe that additional compliance measures are unnecessary. Additional measures would add complexity, cost and would not add improvements of any material value.

ENERGEX submits that current arrangements adequately address issues relating to the behaviour of electricity entities in the market. Further complex compliance arrangements cannot be justified based on experience in the market to date.