



6 February 2006

Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
Australia Square NSW 1215

Dear Dr Tamblyn

Consultation on the National Electricity Amendment (Advocacy Panel) (February 2006)

The Energy Networks Association (ENA) welcomes the opportunity to comment on the Australian Energy Market Commission's Rule change to implement governance and accountability changes to the National Consumers Electricity Advocacy Panel (the Panel) - *National Electricity Amendment (Advocacy Panel) Rule 2006* released in January.

The ENA considers it essential that the Panel is governed by best practice governance and accountability principles. The ENA agrees that the Panel needs to maintain a perception that members as a collective can make objective funding allocation decisions. The ENA does not, however, agree that to achieve this requires the exclusion of all persons associated with Registered Participants from eligibility for membership of the Panel.

The proposed amendment to exclude all persons associated with Registered Participants from appointment as a member to the Panel under the proposed clause 8.10.2(b)(2) of the *National Electricity Rules* (the Rules) is a significant concern for the ENA. The ENA considers this limitation to be unnecessary. Currently, only the Chairperson has this restriction. This substantial amendment is unnecessary to overcome the perception that the members cannot make objective funding allocation decisions when representing particular constituencies.

Within the Ministerial Council on Energy's (MCE) consultation on Consumer Advocacy which commenced in March 2005, the MCE requested comments on the KPMG report – *Review of Consumer Advocacy Requirements* (the Report). The Report found that it is critical for the advocacy function to be free of conflict and that the perception and actual existence of independence is vital. To make this conclusion, the Report uses the ASX Corporate Governance principle relating to the promotion of ethical and responsible decision-making¹.

¹ KPMG *Review of Consumer Advocacy Requirements – Report for User Participation Working Group*, March 2005, p. 18 at www.mce.gov.au



The Report is referring to *ASX Guidance Note 9A – Principles of good corporate governance and best practice*². Principle 2 of this Guidance Note includes the need for the board (or committee) to have majority independence. The principle does not require all members to be independent.

The reasoning behind requiring a majority of independent members and not requiring every member to be independent is that often, members that do have affiliations which result in them not being independent have significant expertise, background and understanding that results in them providing a substantial contribution to the board or committee that they are part of. As long as the majority of members are independent, then the perception and actual existence of independence of the board or committee is maintained. This best practice approach is followed by many ASX300 companies, where there are numerous persons that act as directors on more than one ASX300 company board. This is acceptable where the director discloses all conflicts of interest and is able to act in the best interests of the company, then the independence of the board is not being jeopardised.

In applying Best Practice Principle 2, a Panel that consists of four members and a Chair can have one or two members that have an affiliation with a Registered Participant without compromising the independence of the Panel. A member affiliated a Network Service Provider (NSP) will have unique industry knowledge and perspective. In addition, this approach would contribute to industry ownership of the Panel's objectives and outcomes. In light of the level of relevant background and expertise industry member/s could contribute to the Panel's work, the ENA considers it essential that at least one member of the Panel be a person affiliated with a NSP.

Please feel free to contact me on (02) 6272 1555 to discuss the issues raised in this letter further.

Yours sincerely

A handwritten signature in black ink that reads 'W. Nagle'.

Bill Nagle
Chief Executive
Energy Networks Association

² Australian Stock Exchange Corporate Governance Council, *ASX Guidance Note 9A – Principles of Good Corporate Governance and Best Practice Recommendations*, March 2003, p.11 at www.asx.com.au

