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5 September 2008

Australian Competition and
Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By Courier

Dear Sir / Madam

ENERGEX Limited - Third Line Forcing Notification

We act for ENERGEX Limited.

Enclosed are the following:

- (a) Form G Notification signed by ENERGEX Limited; and
- (b) Cheque in the amount of \$100 being for the associated lodgement fee.

We look forward to hearing from you.

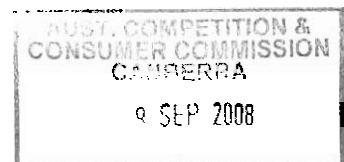
Yours sincerely

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Our Ref PCJB:RZCB:405805028

rzcb A0110875922v1 405805028 5.9.2008



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Form G

Commonwealth of Australia

Trade Practices Act 1974 – subsection 93(1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

1. Applicant

- N93585
- (a) Name of person giving notice: ENERGEX Limited ACN 078 849 055 (**ENERGEX**)
 - (b) Short description of business carried out by that person:
The wholesale supply of electricity via an electricity distribution network in South East Queensland.
 - (c) Address in Australia for service of documents on that person:
C/- Peter James
Allens Arthur Robinson
Level 31, Riverside Centre
123 Eagle Street
Brisbane QLD 4000

2. Notified Arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
 - (i) Engineering consulting services;
 - (ii) Construction services;
 - (iii) Goods used in electricity distribution networks, including earthing devices and overhead and underground electricity network materials, cables, transformers and switchgear; and
 - (iv) Goods used in relation to public lighting including lanterns, lamps, lantern control gear, ballasts, lantern protection, switching equipment, columns, brackets and column termination panels.
- (b) Description of the conduct or proposed conduct:
See Attachment A

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
The Notified conduct relates to the following classes of persons:

-
- (i) subdivision developers;
 - (ii) public bodies in Southeast Queensland (including local councils and the Department of Main Roads);
 - (iii) providers of engineering consulting services in relation to the design of electricity distribution systems;
 - (iv) providers of engineering consulting services in relation to the design of public lighting;
 - (v) providers of construction services in relation to installation of electricity distribution systems and public lighting;
 - (vi) suppliers of goods used in electricity distribution networks; and
 - (vii) suppliers of goods used in public lighting.
- (b) Number of those persons
- (i) At the present time:
 - (A) subdivision developers: Approximately 1500;
 - (B) public bodies in Southeast Queensland: 13;
 - (C) providers of engineering consulting services in relation to the design of electricity distribution systems: ENERGEX approved: 26
Our rough estimate of non-approved firms operating in this area is 75;
 - (D) providers of engineering consulting services in relation to the design of public lighting: ENERGEX approved: 32. Our rough estimate of non-approved firms operating in this area is 75;
 - (E) providers of construction services in relation to installation of electricity distribution systems: ENERGEX approved 23. Our estimate of non-approved firms operating in this area is 150;
 - (F) providers of construction services in relation to the installation of public lighting: ENERGEX approved 24. Our rough estimate of non-approved firms operating in this area is 150;
 - (G) suppliers of goods used in electricity distribution networks: ENERGEX Approved: 159. Our rough estimate of non-approved firms operating in this area is 20;
 - (H) Suppliers of goods used in public lighting: ENERGEX approved: 48
Our rough estimate of non-approved firms operating in this area is 10.
 - (ii) Estimated within the next year:

It is anticipated that the above numbers will remain relatively static over the next year.
- (c) Where number of persons stated in items 3(b)(i) is less than 50, their names and addresses:

The numbers are greater than 50.

4. Public benefit claims

(a) Arguments in support of notification:

See Attachment A

(b) Facts and evidence to be relied upon in support of these claims:

See Attachment A

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(a) the supply in Australia of engineering consulting services;

(b) the supply in eastern Australia of construction services; and

(c) the supply in Australia of goods used in electricity distribution networks including:

(i) the supply in Australia of pole mounted and pad mounted distribution transformers;

(ii) the supply in Australia of electrical cables underground and overhead;

(iii) the supply in Australia of switchgear;

(iv) the supply in Australia of streetlight poles;

(v) the supply in Australia of other ancilliary equipment such as pillars, fuse carriers, fuses, lugs, nuts and bolts (such supply is to consumers both within and outside the electricity utility market).

(d) the supply in Australia of goods used in public lighting including:

(i) the supply in Australia of lanterns;

(ii) the supply in Australia of lamps;

(iii) the supply in Australia of control gear;

(iv) the supply in Australia for ballasts;

(v) the supply in Australia of lantern protection;

(vi) the supply in Australia of switching equipment;

(vii) the supply in Australia of columns; and

(viii) the supply in Australia of brackets.

6. Public detriments

(a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services

described at 2(a) above and the prices of goods or services in other affected markets:

It is submitted that there is not likely to be any significant public detriment from the proposed conduct.

- (b) Facts and evidence relevant to those detriments:
See Attachment A

7. Further information

- (a) Name, postal address and contact phone details of the person authorised to provide additional information in relation to this notification:

C/- Peter James
Allens Arthur Robinson
Level 31, Riverside Centre
123 Eagle Street
Brisbane QLD 4000

Dated **4 SEPTEMBER** 2008

Signed by /on behalf of the applicant:



(Signature)

PETER JOHN PRICE

(Full Name)

ENERGEX Limited

(Organisation)

GENERAL MANAGER Network Programming + Procurement

(Position in Organisation)

Attachment A

1. Background

1.1 ENERGEX's network

- (a) ENERGEX Limited (**ENERGEX**) is a supplier of wholesale electricity services via an electricity distribution network. It owns electricity distribution assets comprising a network in South East Queensland and maintains that network for continuity of electricity supply.
- (b) There is a strong public interest in a network of a high quality design and comprising high quality and durable components, including: for public safety; to maintain the integrity of the network; to minimise the likelihood of network failure (and therefore disruption to the supply of electricity to consumers); and to minimise the cost of replacing and maintaining parts of the network (which costs are passed on to electricity retailers and, ultimately, consumers).
- (c) Some of the electricity distribution network in South East Queensland is designed and constructed by ENERGEX itself (or through contractors engaged by ENERGEX to perform the work for ENERGEX directly).

1.2 New network elements for subdivisions

- (a) If a new subdivision is being developed, in some cases it may be more efficient for the design and construction of the associated new electricity distribution network components (the **Subdivision Network**) to be performed by contractors engaged by the developer of the subdivision, enabling the subdivision developer to manage those services, and the timing of their delivery, together with the other design and construction services required for the subdivision.
- (b) However, since the subdivision developer is not licensed to own and operate an electricity distribution network, the Subdivision Network as constructed ultimately must be connected to ENERGEX's network and owned and maintained by ENERGEX as part of its network. In a sense, a subdivision developer therefore would be building the Subdivision Network for ENERGEX – not as agent for ENERGEX, but as a more efficient means to an end (i.e. an ENERGEX-owned and operated Subdivision Network) than if ENERGEX were to build the Subdivision Network itself.
- (c) If ENERGEX were to build the Subdivision Network itself, ENERGEX would either provide the necessary services in-house or engage providers of engineering consulting services and construction services which have satisfied ENERGEX of their skill and experience to perform the relevant services to a standard acceptable to ENERGEX, bearing in mind factors such as safety, the need for network integrity and on-going maintenance requirements. Similarly, ENERGEX would choose goods for installation and integration in the network of a standard acceptable to ENERGEX.

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- (d) Naturally, design and product quality goes to whether the Subdivision Network will meet an acceptable standard on commissioning and initial testing of the Subdivision Network, but it also goes to the longevity and reliability of the Subdivision Network over time and the cost to ENERGEX to maintain the Subdivision Network. That is partly a function of quality of design and network components, but also other factors such as compatibility of design and components with ENERGEX's own network (and spares pool) and ENERGEX's own maintenance practices and expertise.
 - (e) If ENERGEX is satisfied that a new Subdivision Network meets sufficient standards for connection to the ENERGEX distribution network, ENERGEX will issue a "**Certificate for Electricity Supply to Subdividers**" (certifying that electricity supply is available or will be made available to the subdivision). Conversely if ENERGEX is not satisfied that a new Subdivision Network has met sufficient standards for connection to the ENERGEX distribution network, ENERGEX will not issue the Certificate for Electricity Supply to Subdividers and therefore will not connect it to the network.

1.3 Suppliers to ENERGEX

- (a) ENERGEX maintains a list of pre-qualified consulting engineers and network construction providers for its own use. Currently a pool of 26 consulting firms and 23 construction service providers are pre-qualified by ENERGEX (being the list maintained in relation to sub-divisions and CD Patrols trading as Intrinsic Energy). A sample of the current pre-qualified consulting engineers is set out in Schedule 1 and is available on ENERGEX's website at http://www.energex.com.au/upload/technical_documents/20080619_180512_6902735.pdf.
- (b) ENERGEX allows other service providers to be tested and join the pool of pre-qualified service providers if they pre-qualify against the ENERGEX pre-qualification criteria. There is no charge levied by ENERGEX for pre-qualification with the exception that the applicant must meet ENERGEX's travel costs. Testing by ENERGEX of service providers involves a desk top review and a field audit (which is repeated every 2 years).
- (c) ENERGEX maintains a list of goods (and the manufacturers of the goods) it believes meet ENERGEX's requirements for use in ENERGEX's network. The product list is available on ENERGEX's website at http://www.energex.com.au/upload/technical_documents/20080806_130019_8556482.pdf. The list broadly coincides with ENERGEX's own purchasing arrangements for such goods, for ENERGEX's own use in its network.
- (d) While the list refers to particular manufacturers of products, the list has been collated because of assessments ENERGEX has made at various times about the quality of the products described in the list. That is not to say that products of other manufacturers could not also be found to meet the requirements of ENERGEX, but such assessments would be made by ENERGEX as part of its periodic

procurement assessment processes for the supply of such products or following direct application from a supplier for the supply of such products.

1.4 Public Lighting

- (a) In some cases public lighting (being streetlighting installed on roads or other public thoroughfares) is undertaken by Public Bodies (being local councils or the Department of Main Roads) or developers and then ownership of that public lighting is transferred to ENERGEX. ENERGEX then has ongoing maintenance obligations in relation to that lighting.
- (b) As with sub-division networks, if ENERGEX were to install the public lighting itself, it would either provide the necessary services in-house or ENERGEX would engage providers of engineering consulting services and construction services which have satisfied ENERGEX of their skill and experience to perform the relevant services to a standard acceptable to ENERGEX, bearing in mind factors such as safety, the need for network integrity and on-going maintenance requirements. Similarly, ENERGEX would choose goods for installation of a standard acceptable to ENERGEX.
- (c) The list of pre-qualified service providers referred to in paragraph 1.3(a) also contains pre-qualified service providers in relation to public lighting design. There are currently 32 pre-qualified engineering consultants that provide public light design services. ENERGEX also maintains a list of 24 pre-qualified providers of construction service providers for the installation of public lighting.
- (d) The list of goods referred to in paragraph 1.3(c) includes public lighting goods which meet ENERGEX's requirements and broadly represent the goods that would be purchased by ENERGEX for public lighting which ENERGEX designs and constructs itself.

2. Proposed Conduct

- (a) ENERGEX intends, as a condition of ENERGEX acquiring a new Subdivision Network from a subdivision developer and issuing a Certificate for Electricity Supply to Subdividers to the subdivision developer, to require that the subdivision developer:
 - (i) use engineering consulting services in relation to the Subdivision Network of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services;
 - (ii) use construction services in relation to the Subdivision Network of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services; and
 - (iii) use goods in the Subdivision Networks from suppliers who has been pre-qualified by ENERGEX as supplying goods of an appropriate standard and which are compatible with ENERGEX's network, spares pool and ENERGEX's own maintenance practices and expertise.

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- (b) ENERGEX intends, to refuse to acquire a new Subdivision Network from a subdivision developer and to refuse to issue a Certificate for Electricity Supply to Subdividers to the subdivision developer, if the subdivision developer does not:
- (i) use engineering consulting services in relation to the Subdivision Network of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services;
 - (ii) use construction services in relation to the Subdivision Network of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services; and
 - (iii) use goods in the Subdivision Networks from suppliers who has been pre-qualified by ENERGEX as supplying goods of an appropriate standard and which are compatible with ENERGEX's network, spares pool and ENERGEX's own maintenance practices and expertise.
- (c) ENERGEX intends, as a condition of ENERGEX acquiring new public lighting from a public body or a developer, to require that the public body or developer:
- (i) use engineering consulting services in relation to public lighting of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services;
 - (ii) use construction services in relation to public lighting of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services; and
 - (iii) use goods in public lighting from suppliers who has been pre-qualified by ENERGEX as supplying goods of an appropriate standard and which are compatible with ENERGEX's network, spares pool and ENERGEX's own maintenance practices and expertise.
- (d) ENERGEX intends to refuse to acquire new public lighting from a public body or a developer if that public body or developer does not:
- (i) use engineering consulting services in relation to public lighting of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services;
 - (ii) use construction services in relation to public lighting of a person who has been pre-qualified by ENERGEX as having appropriate skill and experience in relation to such services; and
 - (iii) use goods in public lighting from suppliers who has been pre-qualified by ENERGEX as supplying goods of an appropriate standard and which are compatible with ENERGEX's network, spares pool and ENERGEX's own maintenance practices and expertise.

3. Benefits to the Public

It is submitted the proposed conduct is likely to have the following public benefits:

- (a) The proposed conduct would ensure, through insisting on the use of goods and providers of services that have been assessed by ENERGEX for safety and quality, that Subdivision Networks and public lighting will be of a standard comparable to the standard of those parts of the network and public lighting ENERGEX constructs for itself directly.
- (b) This is essential for public safety; to maintain the integrity of the network; to minimise the likelihood of network failure (and therefore disruption to the supply of electricity to consumers); and to minimise the cost of replacing and maintaining parts of the network and public lighting (which costs are passed on to electricity retailers and, ultimately, consumers).
- (c) By the proposed conduct using a pool of accredited suppliers, together with the mechanism for ENERGEX to periodically permit new suppliers of services and new products to be added to the accredited lists, the process of ENERGEX testing a Subdivision Network and issuing a Certificate for Electricity Supply to Subdividers and the process of ENERGEX testing new public lighting can be faster and more efficient and more flexible for developers and Public Bodies than ENERGEX having to conduct complex and time consuming audits of each item of a Subdivision Network or public lighting to assess its quality and performance. This avoids the cost and delay to developers and public bodies and of such an audit (which cost and time impact would negatively affect consumers through higher costs of subdivided land and delay in a subdivision becoming available). Even if such an audit approach were used, it is not technically feasible for ENERGEX to form a complete view on the likely deterioration of products within the Subdivision Network or public lighting after the time of the audit. Therefore an audit approach inevitably would involve risks that the Subdivision Network or public lighting would be less reliable and more expensive to maintain after it is transferred to ENERGEX. Ultimately, that risk and cost would be passed to consumers (through increased network and public lighting failure and ENERGEX's increased costs being passed to electricity retailers).
- (d) The proposed conduct enables ENERGEX to proceed on the basis that developers and Public Bodies will engage and control the suppliers of goods and services for the design and construction of a Subdivision Network and / or public lighting, rather than ENERGEX having to design and construct each Subdivision Network and / or public lighting (itself or through providers engaged by ENERGEX). That is more efficient for developers and Public Bodies, enabling them to manage those services, and the timing of their delivery, together with the other design and construction services required for the subdivision and / or public lighting. Ultimately, that is likely to benefit the public in the cost and timing of release of subdivided land and public lighting.

It is also submitted that the proposed conduct is not likely to substantially lessen competition in any market described in section 5 of the Form G, since suppliers of relevant

goods and services will have opportunities to become accredited and to supply. Those opportunities are no less than if ENERGEX were to construct the Subdivision Network or public lighting itself (or through suppliers engaged directly by ENERGEX). Aside from ENERGEX's interest in network quality, public safety and cost to maintain, ENERGEX is indifferent to the identity of the suppliers of relevant goods and services.

Schedule - Accredited Subdivision and Streetlighting Consultants

2007 19.06.2008

ENERGEX Accredited Subdivision and Streetlighting Consultants

Subdivision and Public Lighting Designers

Office Location(s)	Expressed Interest in email	Subdivision	Consultant	Address	Suburb	State	Post Code	Phons	Fax	Email
Brisbane			Alinta Asset Management	PO Box 6969	Mt Gravatt	QLD	4122	(07) 3323 6105	(07) 3323 6010	Stephen.Afoakwah@alinta.net.au
Brisbane	✓		Amplo Pty Ltd	PO Box 2098	Inala Heights	QLD	4077	(07) 3372 9280	(07) 3372 9805	design@amplo.com.au
Brisbane			Ashburner Francis P/L	PO Box 5722	West End	QLD	4101	(07) 3510 8888	(07) 3510 8899	brsbane@ashburnerfrancis.com.au
Brisbane			BCA Consultants	PO Box 7760	East Brisbane	QLD	4169	(07) 3240 3200	(07) 3240 3299	bca@bcaconsultants.com.au
Brisbane	✓		Cavill & Associates	41 Mackay Terrace	Bardon	QLD	4065	(07) 3369 2932	(07) 3369 2932	rcavill@bigpond.net.au
Grafton (NSW)			Clarence Consultants Pty Ltd	PO Box 1261	Grafton	NSW	2460	(02) 6642 7239	(02) 6642 4868	michae@svreference.com.au
Brisbane	✓		Electrical Remediation Design Services	P O Box 578	Morningside	QLD	4170	(07) 3899 6299	(07) 3899 4299	mr@synerg.com.au
Brisbane	✓		Electro Technical Consultants	2/180 Moyhill Rd	Tamara	QLD	4068	(07) 3871 1139	(07) 3871 1159	kg@synerg.com.au
Gold Coast			EMF Griffiths Consulting Engineers	PO Box 3525	Southport	QLD	4215	(07) 5593 2075	(07) 5593 2095	gcmal@emf.com.au
Gold Coast	✓		George Firth & Associates	PO Box 1130	Surfers Paradise	QLD	4217	(07) 5592 0222	(07) 5592 0279	vaughan@georgefirth.com.au
Brisbane			GS & A Technical Services Pty Ltd	PO Box 1097	Pak Ridge	QLD	4125	(07) 3899 6244	(07) 3899 6211	gs@synerg.com.au
Brisbane			Guthridge, Haslam & Davey	GPO Box 668	Brisbane	QLD	4001	(07) 3316 3748	(07) 3316 3333	ben@engr@gnid.com.au
Brisbane	✓		J & P Richardson Insulators Pty Ltd	114 Campbell Avenue	Wacol	QLD	4076	(07) 3271 2911	(07) 3271 2623	jp@jpr.com.au
Logan			J J van der Boer & Associates	PO Box 5137	Daisy Hill	QLD	4127	(07) 3200 8177	(07) 3200 8377	va@vanderboer.com.au
Brisbane	✓		KPL Engineering	12 Oakdale St	Browns Plains	QLD	4118	(07) 3806 8000	(07) 3806 8200	les.davis1@bigpond.com
Caboolture / Underwood	✓		Lecol Consulting Pty Ltd	11/75 Kings St	Caboolture	QLD	4510	(07) 5431 6900	(07) 5431 6999	info@lecol.com.au
Brisbane			Lincoln Scott Australia Pty Ltd	PO Box 2227	Milton	QLD	4064	(07) 3368 6600	(07) 3368 6699	venthaliday@lincolnh.com
Sunshine Coast	✓		Millwell Services Pty Ltd	71 Millwell Rd	Maroochydore	QLD	4558	(07) 5443 3607	(07) 5443 3867	millwe@bigpond.net.au
Brisbane			m33 Minor Project Power Planning	PO Box 677	Kenmore	QLD	4069	(07) 3878 8601	(07) 3878 8631	mpe@bigpond.com
Gold Coast	✓		Peter Eustace & Associates	PO Box 712	Nerang	QLD	4211	(07) 5596 1425	(07) 5596 1071	eustace@onthenet.com.au
Brisbane	✓		R J Humphrey & Associates	PO Box 6691	Upper Mt Gravatt	QLD	4122	(07) 3711 7375	(07) 3711 7372	rhassoc@bigpond.net.au
Brisbane / Woombye			Robin Russell & Associates	21 Nicholas Street	McDowall	QLD	4083	(07) 3872 5555	(07) 3872 5566	m@robins.com.au
Logan			Vision Energy Pty Ltd	80 Achievement Cres	Acacia Ridge	QLD	4110	(07) 3274 4155	(07) 3274 4544	jim.allerton@visionenergy.com.au
Gold Coast			VOS Hesthill Consultants	PO Box 1474	Southport	QLD	4215	(07) 5531 2955	(07) 5532 7080	lofeld@vosgroup.com.au
Gold Coast	✓		Wood & Grove Engineers	Level 2, 15 Leichhardt St	Spring Hill	QLD	4000	(07) 3811 4500	(07) 3811 4600	shawn.liverson@wge.com.au
Brisbane			WorleyParsons Services Pty Ltd	PO Box 15081	City East	QLD	4002	(07) 3221 7444	(07) 3221 7791	ian.kennedy@worleyparsons.com

Public Lighting Designers Only

Office Location(s)	Expressed Interest in email	Subdivision	Consultant	Address	Suburb	State	Post Code	Phons	Fax	Email
Brisbane			BCC City Design	Locked Mail Bag 6996	Albion	QLD	4010	(07) 3403 0543	(07) 3403 0507	pete@brsbanen.qld.gov.au
Brisbane			Connell Wagner Pty Ltd	Level 1, 433 Boundary St	Spring Hill	QLD	4004	(07) 3248 3477	(07) 3246 1001	hlwhite@conwag.com
Brisbane			Dept of Main Roads	GPO Box 1412	Brisbane	QLD	4006	(07) 3251 3414	(07) 3252 9059	greg.p.o'neil@mainroads.qld.gov.au
Brisbane			Manward (Qld) Pty Ltd	PO Box 10173	Brisbane	QLD	4001	(07) 3018 5000	(07) 3018 5099	bailey@qld.manward.com.au
Brisbane			Marnett Australia Pty Ltd	PO Box 1823	Milton	QLD	4064	(07) 3858 6700	(07) 3858 6705	Bruce.Johnston@marnett.com
Brisbane			Parnell Design (Qld) Pty Ltd	PO Box 988	Spring Hill	QLD	4004	(07) 3263 7725	(07) 3357 1715	pete@pdesign.com.au

