



18 May 2010

Australian Competition and  
Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

**By Registered Post**

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*Correspondence*  
PO Box 7082  
Riverside Centre  
Brisbane QLD 4001  
Australia  
DX 210 Brisbane  
www.aar.com.au

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

  
**Peter James**  
 Partner  
 Peter.James@aar.com.au  
 Tel +61 7 3334 3360

**Sophie O'Connor**  
 Senior Associate  
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Our Ref PCJB:SJOS:120019625

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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.

**Applicant**

(a) Name of person giving notice: ENERGEX Limited ACN 078 849 055 (**ENERGEX**).

(b) Short description of business carried out by that person:

The transportation 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) The supply of services relating to the design and construction of connection assets, such as those goods described in paragraph (iii) below, (**Connection Assets**) for customers consuming approximately 4Gwh or more per annum or > 1MV.A - in demand or generation per annum (**Large Customers**);

(ii) The supply of services by ENERGEX to Large Customers, being the testing, commissioning and connecting of Connection Assets to enable the Connection Assets to be connected to ENERGEX's electricity distribution network (**Network Connection Services**); and

(iii) the supply of goods used by Large Customers to enable connection to ENERGEX's electricity distribution network, including earthing devices and overhead and underground electricity network materials, cables, transformers and switchgear.

(b) Description of the conduct or proposed conduct:

See Attachment A

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**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) persons wishing to obtain Network Connection Services;
- (ii) providers of design and construction services in relation to Connection Assets; and
- (iii) suppliers of goods used in electricity distribution networks.

- (b) Number of those persons

- (i) At the present time: The arrangements have not yet been implemented. If implemented, the number of persons likely to be affected by the notified conduct is as follows:

- (A) persons wishing to obtain Network Connection Services: approximately 20-30 per annum;
- (B) providers of design and construction services in relation to Connection Assets: approximately 55;
- (C) suppliers of goods used in electricity distribution networks: approximately 180;

- (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 electrical network design services;
- (b) the supply in Australia of electrical network construction, testing, commissioning and connection services; and

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

**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:

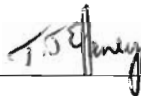
C/- Peter James  
Allens Arthur Robinson  
Level 31, Riverside Centre  
123 Eagle Street  
Brisbane QLD 4000

Dated

10/5

2010

**Signed** by /on behalf of the applicant:



(Signature)

**TERENCE JOHN EFFENEY**

(Full Name)

**ENERGEX Limited**

(Organisation)

**CHIEF EXECUTIVE OFFICER**

(Position in Organisation)

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## Attachment A

### 1. Background

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#### 1.1 ENERGEX's network

- (a) ENERGEX Limited (**ENERGEX**) transports 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 Regulatory Environment

In its Final Decision, Framework and Approach Paper: Classification of Services and Control Mechanisms, ENERGEX and Ergon Energy 2010-15, the Australian Energy Regulator (**AER**) classified the design and construction of new large customer connection assets (the **Service**) as an alternative control service.

The impact of this new classification, which will take effect on 1 July 2010, is that:

- (a) A customer may choose to use either ENERGEX or another service provider to undertake the design and construction of a dedicated Large Customer Connection Asset;
- (b) AER will regulate the Service under a price cap as a quoted service;
- (c) New customers who choose ENERGEX to provide the Service will be required to fund the work, either by way of an upfront payment, or under a negotiated instalment arrangement over a negotiated period of time;
- (d) ENERGEX will have the sole responsibility for testing, commissioning and connecting the Connection Asset to the shared distribution network; and
- (e) Regardless of whether ENERGEX is engaged by the customer to provide the Service, if the Connection Asset is to be operated and maintained by ENERGEX, then ENERGEX will become the asset owner of the Connection Asset from the date of commissioning and will be responsible for its safe and reliable operation.

ENERGEX is concerned to ensure that, under the new regime, other service providers who undertake the design and construction of a Connection Assets for customers, adhere to the

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statutory quality and safety standards which are currently maintained by ENERGEX so that ENERGEX may carry out its responsibility for safe and reliable operation of the distribution network.

### 1.3 Connection Asset as of 1 July 2010

- (a) If ENERGEX were appointed by a customer to design and construct the Connection Asset itself, ENERGEX would either provide the necessary services in-house or engage providers of design and construction 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.
- (b) Naturally, design, construction and product quality goes to whether the Connection Asset will meet an acceptable standard on commissioning and initial testing of the Connection Asset, but it also goes to the longevity and reliability of the ENERGEX network over time and the cost to ENERGEX to maintain its 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.
- (c) It is proposed that, if ENERGEX is satisfied that a new Connection Asset meets sufficient standards for connection to the ENERGEX distribution network, ENERGEX will issue a "**Certificate for Electricity Supply**" (the **Certificate**), certifying that electricity supply is available or will be made available to the Connection Asset. Conversely, if ENERGEX is not satisfied that a new Connection Asset has met sufficient standards for connection to the ENERGEX distribution network, ENERGEX will not issue the Certificate and therefore will not connect it to the network.
- (d) Under the new regime, ownership of the Connection Asset would remain with the customer until such time as ENERGEX issues a Certificate. Once the Certificate is issued, ownership of the Connection Asset would pass to and vest in ENERGEX.
- (e) In some cases, customers may instead choose to have the connection to the ENERGEX distribution network at a point beyond the normal point of connection, and to retain control of the operation and maintenance of certain assets. In such cases, ENERGEX would not be responsible for testing and commissioning the customer owned assets. ENERGEX's concern is in relation to assets which it will own and operate. This is discussed further in section 2(d) below.

### 1.4 Suppliers to ENERGEX

- (a) For safety reasons and to ensure the integrity of the ENERGEX electrical network is upheld at all times, ENERGEX maintains documented processes for pre-qualifying and performance management of Design Consultants, Construction, Inspection and Maintenance Service Providers (the **QA Rated Register**). Currently a pool of 35 Design Consulting firms and 68 Service Providers are on the

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QA Rated Register and a sample of a QA Rated Register is set out in Schedule 1 and is available on ENERGEX's website at:

[http://www.energex.com.au/service\\_providers/technical\\_docs/asp/technical\\_documents.asp](http://www.energex.com.au/service_providers/technical_docs/asp/technical_documents.asp)

- (b) ENERGEX allows other service providers to be added to the QA Rated Register if they meet ENERGEX's QA Rated Register criteria. There is no restriction on the maximum number of service providers who may qualify or on the number of applications that may be considered by ENERGEX for inclusion on the QA Rated Register. There is no charge currently levied by ENERGEX for service providers to be added to the QA Rated Register with the exception that the applicant must meet ENERGEX's travel costs. The process involves a desk top review of management systems and ongoing assessments of performance via field audits.

- (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/service\\_providers/technical\\_docs/asp/technical\\_documents.asp](http://www.energex.com.au/service_providers/technical_docs/asp/technical_documents.asp)

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.

## **2. Proposed Conduct**

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- (a) ENERGEX intends, as a condition of ENERGEX connecting a Connection Asset to the shared distribution network (and issuing a Certificate), to require that:
- (i) design and construction services be carried out by third party designers of Connection Assets which ENERGEX is satisfied have the requisite design and construction experience and expertise in relation to the such Services (whether from the QA Rated Register or by ENERGEX reviewing a proposed supplier at the cost of the customer); and
  - (ii) the equipment used is of a satisfactory standard and is compatible with ENERGEX's network, spares pool and ENERGEX's own maintenance practices and expertise, by reference to the list of equipment and products that have passed ENERGEX's testing requirements from time to time.

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- (b) ENERGEX intends, to refuse to connect a Connection Asset to the shared distribution network (and to refuse to issue a Certificate), if the provider of the Connection Asset does not:
- (i) use design and construction services in relation to the Connection Asset of a person who is on the QA Rated Register and is therefore deemed by ENERGEX as having appropriate skill and experience in relation to such services; and
  - (ii) use goods in the Connection Asset from suppliers who are on the QA Rated Register and are therefore deemed 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) The conditions outlined in paragraphs (a) and (b) will be a contractual requirement of the Network Connection Agreement under which ENERGEX provides Network Connection Services to customers. It is arguable that the proposed conduct of ENERGEX, in requiring customers to engage service providers from the QA Rated Register, may constitute exclusive dealing within the meaning of the Act, and, accordingly prohibited by section 47(1) of the Act.
- (d) We note that large customers will have the option of retaining ownership of assets which otherwise would normally be Connection Assets (and therefore the responsibility for operating and maintaining them), in which case the connection arrangement may not need to be conditioned on use of the ENERGEX-approved suppliers but would need to comply with Australian Standards.

### **3. Benefits to the Public**

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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 Connection Asset will be of a standard comparable to the standard of those parts of the network ENERGEX constructs 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 (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 Connection Asset and issuing a Certificate can be faster and more efficient than ENERGEX having to conduct complex and time consuming audits of each



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Connection Asset to assess its quality and performance. This avoids the cost and delay to customers of such an audit (which cost and time impact would negatively affect consumers through higher costs of delay in Network Connection Services 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 Connection Asset after the time of the audit. Therefore an audit approach inevitably would involve risks that the Connection Asset 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 failure and ENERGEX's increased costs being passed to electricity retailers).

- (d) The proposed conduct enables ENERGEX to proceed on the basis that consumers will engage and control the suppliers of goods and services for the design and construction of Connection Assets, rather than ENERGEX having to design and construct each Connection Asset (itself or through providers engaged by ENERGEX). That is more efficient for consumers, enabling them to manage those services, and the timing of their delivery, together with the other design and construction services required.
- (e) Additional suppliers are encouraged to enter the market which in turn will encourage competitive prices from contactors and consultants tendering to provide the Service.

It is also submitted that the proposed conduct is not likely to substantially lessen competition in any market described in 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 design and construct the Connection Assets 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. Customers will be free to choose contractors and consultants from a number of alternative firms listed on the QA Rated Register and on the basis of price and commercial conditions agreed between the parties.

# Schedule 1 – Sample QA Rated Register

## ENERGEX Accredited Subdivision and Streetlighting Consultants

\* = Expressed interest in small Subdivisions

Office Location	Consultant	Address	Suburb	State	Post Code	Phone	Fax	Email
Brisbane	• Amplo Pty Ltd	PO Box 2098	Inala Heights	QLD	4077	(07) 3372 9280	(07) 3372 9805	design@amplo.com.au
Brisbane/Sunshine Coast	• Ashburner Francis P/L	PO Box 5722	West End	QLD	4101	(07) 3510 8888	(07) 3510 8899	brisbane@ashburnerfrancis.com.au
Brisbane	• BCA Consultants	PO Box 7760	East Brisbane	QLD	4169	(07) 3240 3200	(07) 3240 3299	bca@bciconsultants.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	mail@clarenceconsultants.com.au
Brisbane	• Electrical Reticulation Design Services	PO Box 578	Morningside	QLD	4170	(07) 3899 6299	(07) 3899 4299	mr@synerg.com.au
Brisbane	• Electro Technical Consultants	21/150 Moggill Rd	Taronga	QLD	4066	(07) 3871 1139	(07) 3871 1159	kg@synerg.com.au
Gold Coast	• EMF Griffiths Consulting Engineers	Suite 6, 34-38 Glenferrie Dve	Robina	QLD	4226	(07) 5593 2075	(07) 5593 2095	gcmall@emf.com.au
Brisbane	• GS & A Technical Services Pty Ltd	PO Box 578	Morningside	QLD	4170	(07) 3899 6244	(07) 3899 6211	gs@synerg.com.au
Brisbane	• Gutteridge, Haskins & Davey	GPO Box 688	Brisbane	QLD	4001	(07) 3316 3748	(07) 3316 3333	lsenger@hhd.com.au
Brisbane	• J & P Richardson Industries Pty Ltd	114 Campbell Avenue	Wacol	QLD	4076	(07) 3271 2911	(07) 3271 3623	jp@jpr.com.au
Logan	• J J van der Boer & Associates	PO Box 5137	Daisy Hill	QLD	4127	(07) 3200 8177	(07) 3200 8377	jva@vanderboer.com.au
Brisbane	• Jemena Asset Management Pty Ltd	PO Box 6569	Mt Gravatt	QLD	4122	(07) 3323 6105	(07) 3323 6012	stephen.atox@jema.com.au
Carboothure / Underwood	• Ledel Consulting Pty Ltd	11/75 Kings St	Carboothure	QLD	4510	(07) 5431 6900	(07) 5431 6999	info@ledel.com.au
Brisbane	• Lincone Scott Australia Pty Ltd	PO Box 2227	Milton	QLD	4064	(07) 3368 6600	(07) 3368 6699	Trent.Haliday@wspincolnscott.com
Gold Coast	• MDA Consulting Engineers Pty Ltd	PO Box 1130	Surfers Paradise	QLD	4217	(07) 5592 0222	(07) 5592 0279	info@mdaengineers.com.au
Sunshine Coast	• Millwell Services Pty Ltd	71 Millwell Rd	Maroochydore	QLD	4558	(07) 5443 3807	(07) 5443 3867	millwell@bigpond.net.au
Brisbane	• mp3 Mitro Project Power Planning	PO Box 677	Kemrore	QLD	4069	(07) 3878 8601	(07) 3878 8631	mpp@bigpond.com
Brisbane	• NDI Management Pty Ltd	41 Raff Street	Spring Hill	QLD	4000	(07) 3120 6800	(07) 3832 8330	c.bryant@ndy.com
Gold Coast	• Peter Eustace & Associates	PO Box 712	Nerang	QLD	4211	(07) 5596 1425	(07) 5596 1071	eustace@conhnet.com.au
Brisbane	• R J Humplrey & Associates	PO Box 8691	Upper Mt Gravatt	QLD	4122	(07) 3711 7375	(07) 3711 7372	rj@rsoc@bigpond.net.au
Brisbane / Sunshine Coast	• Robin Russell & Associates	21 Nicholas Street	McDowall	QLD	4053	(07) 3872 5555	(07) 3872 5566	rr@robus.com.au
Brisbane / Gold Coast	• Veritec Pty Ltd	PO Box 218	Coopers Plains	QLD	4108	1300 798 095	(07) 3036 6953	pgolo@veritec.com.au
Logan	• Vision Energy Pty Ltd	80 Achievement Cres	Acacia Ridge	QLD	4110	(07) 3274 4155	(07) 3274 4544	jim.fullerton@visionenergy.com.au
Gold Coast	• VOS Hashill Consultants	PO Box 1474	Southport	QLD	4215	(07) 5531 2955	(07) 5532 7080	holdfield@vosgroup.com.au
Gold Coast	• Wood & Grievie Engineers	Level 2, 15 Leichardt St	Spring Hill	QLD	4000	(07) 3811 4500	(07) 3811 4600	mohsen.khodadady@wgc.com.au
Brisbane	• WorleyParsons Services Pty Ltd	PO Box 15081	City East	QLD	4002	(07) 3221 7444	(07) 3221 7791	creig.moir@worleyparsons.com

### Public Lighting Designers Only

Office Location	Consultant	Address	Suburb	State	Post Code	Phone	Fax	Email
Brisbane	Aecom Australia Pty Ltd	PO Box 1823	Milton	QLD	4064	(07) 3858 6700	(07) 3858 6705	Hitesh.rathod@aecom.com
Brisbane	Arup Pty Ltd	GPO Box 695	Brisbane	QLD	4001	(07) 3023 6000	(07) 3023 6023	Roy.everett@arup.com.au
Brisbane	Aurecon Australia Pty Ltd	Level 1, 433 Boundary St	Spring Hill	QLD	4004	(07) 3173 8477	(07) 3173 8001	lilywhite@arup.aurecongroup.com
Brisbane	BCC City Design	PO Box 1434	Brisbane	QLD	4000	(07) 3027 4753	(07) 3334 0220	rowan.lane@brihanne.qld.gov.au
Brisbane	Floth Pty Ltd	PO Box 2231	Fortitude Valley	QLD	4006	(07) 3252 0977	(07) 3252 2499	ashmolin@floth.com.au
Brisbane	Meinhardt (Old) Pty Ltd	PO Box 10173	Brisbane	QLD	4001	(07) 3018 5000	(07) 3018 5099	Barbara.wicks@meinhardtcorp.com
Gold Coast	Newell Engineering Group Pty Ltd	PO Box 4920	Robina	QLD	4230	(07) 5575 7191	(07) 5575 7292	Brett@newellconsulting.com.au
Brisbane	Roadtek Consulting	PO Box 1496	Eggle Farm	QLD	4009	(07) 3532 2824	(07) 3268 1978	Patrice.k.mcclellan@qld.gov.au
Brisbane	SMEC Australia Pty Ltd	PO Box 5333	West End	QLD	4101	(07) 3029 6651	(07) 3029 6650	Terance.cline@smec.com.au