AusCID

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25 October 2002

Mr T Gazos
Regulatory Affairs
GPO Box 520 G
Melbourne
Victoria 3001

Dear Mr Gazos

The Australian Council for Infrastructure Development (AusCID) appreciates the opportunity to make a brief submission in response to the ACCC's draft decision on the revenue cap for the Victorian electricity transmission services provided by SPI PowerNet.

The Council formed in 1992 and currently has in excess of 100 members, drawn comprehensively from all economic infrastructure sectors including electricity generation, transmission and distribution, gas transmission and distribution, roads, rail, telecommunications, water, airports and ports. As a representative of investors, operators, financiers and service providers to regulated infrastructure, AusCID recognises the important role that regulation plays in the Australian economy, yet is concerned about the approach the ACCC is taking with respect to its WACC decisions, as set out in its recent draft decision on SPI PowerNet's proposed revenue cap.

These concerns focus on the need for a clear and stable regulatory environment that reduces the perception of regulatory risk and creates incentives for long-term investment in essential infrastructure projects by sending out positive signals to the whole market. It is the view of AusCID that the current approach by the ACCC does not fulfil the above goals.

Infrastructure and utility businesses are highly capital intensive. The investors which are required to put equity into these businesses seek the best possible risk weighted return for their funds. The market for these funds is global, as evidenced by the very high proportion of foreign ownership of Australian infrastructure and utility businesses. Australian investors, too, seek the best risk weighted return from their shareholders funds wherever the investment may be. There is no room for parochialism.

One of the major risks an investor in any utility considers prior to investing is regulatory risk. This is the risk that the rules surrounding the regulation of the business will vary from those rules the investor assumes apply at the time of investment. Any perception of increased regulatory risk decreases Australia's chances of attracting investment funds or increases the required return on that capital. Ultimately, regulatory risk – real or perceived – has the effect of increasing the price of both regulated services for consumers and of reducing their quality.

What a regulatory regime should therefore do is to provide a credible and reliable mechanism for assessing the risks of regulation *ex ante*, and provide a mechanism for limiting the boundaries for regulation if regulation is to occur.

The ACCC's draft decision on SPI PowerNet's proposed revenue cap only serves to increase perceptions that regulatory risk is real. The key cause for concern is that there is an apparent lack of consistency in the ACCC's approach with regards to the allowed WACC in its recent decisions. There is also considerable inconsistency between the approach adopted by the ACCC and the ESC with regards to the allowed WACC in their respective regulatory decisions.

In particular, in four recent regulatory decisions, the outcomes on WACC, while consistent in many important respects, exhibit some fundamental and partly inexplicable differences, despite the fact that all projects are surrounded by very similar risk parameters. More specifically, the ESC's Final Decision on Victorian Gas and the ACCC's Draft Decisions on GasNet, ElectraNet SA and SPI PowerNet differ in terms of:

? the term used for the risk free rate;

? the credit rating on which the debt margin is based;

? the debt margin allowed

? the allowance for debt raising costs (additional to the debt margin); and

? the allowance for equity raising costs.

The message that the Commission will send out to the infrastructure investment community is that there is a considerable lack of certainty with regards to the allowed WACC on their investment. This has obvious consequences for investment decisions by other companies who may be contemplating building new systems or expanding existing ones.

The consequences of under investment are severe, and AusCID is aware that debt providers to regulated businesses have modified their lending behaviour as a result of regulatory risk. Concern regarding uncertainty has led several banks to restrict the structure of funding to regulated businesses beyond the current regulatory period.

Unless better mechanisms are devised to provide certainty about the scope of infrastructure subject to regulation, there will be significant adverse effects for the Australian economy in the medium and longer term. AusCID therefore urges the Commission to take our concerns regarding the discrepancy in recent WACC decisions into consideration before a final decision on SPI PowerNet's revenue cap is released.

Yours sincerely

Dennis O'Neill
Chief Executive Officer