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25 August 2022

Energy Ministers Secretariat
Department of Climate Change, Energy, the Environment and Water
GPO Box 858
CANBERRA ACT 2601

By email: energyministers@industry.gov.au

Dear Secretariat,

Re: Consultation- Wholesale Market Monitoring and Reporting Reforms

Thank you for the opportunity to provide a submission to the Energy Ministers' consultation on amending the Wholesale Market Monitoring and Reporting Framework.

We welcome Energy Ministers' consideration of legislative reforms to the existing wholesale market monitoring and reporting functions to promote competitive outcomes. We are supportive of regulators holding appropriate information gathering powers in order to ensure the efficient and effective operation of markets. We recommend that the Energy Ministers consider the following information as they undertake this review.

The Australian Competition and Consumer Commission (ACCC) promotes competition in gas and electricity markets to benefit consumers, businesses and the community. We do this in a number of ways, including by enforcing the economy-wide *Competition and Consumer Act 2010*, competition and consumer laws along with its energy-specific requirements - the Electricity Retail Code and Prohibiting Energy Market Misconduct provisions. We also monitor and report on costs, prices and profits in the energy sector through our 2017-2025 Gas Inquiry and 2018-2025 Electricity Market Monitoring Inquiry.

2017-2025 Gas Inquiry

The Government directed the ACCC to conduct a wide-ranging gas inquiry across the full gas supply chain, as well as to publish regular information on the supply and pricing of gas until December 2025. As part of this inquiry we have used compulsory information gathering powers to regularly collect gas contracts and offers from gas suppliers, analysing and reporting on them in six-monthly interim reports.

2018-2025 Electricity Market Monitoring Inquiry

The ACCC inquiry into the National Electricity Market has a similarly broad remit, with a direction to monitor matters through the whole supply chain – costs, profits and margins. This includes wholesale market prices and contract market liquidity. We are currently using

our compulsory information gathering powers under the inquiry to collect information on wholesale electricity contracts traded between 1 January 2021 and August 2022 to inform analysis on the availability of wholesale electricity contracts for our next biannual report, which is to be provided to the Government in November.

The ACCC is also tasked with enforcing section 153F of the *Competition and Consumer Act 2010* which, among other things, prohibits electricity generators from limiting or restricting the availability of electricity financial contracts for the purpose of substantially lessening competition in any electricity market.

Information-sharing powers

Under section 157A of the CCA, the ACCC can share energy-related information with the Australian Energy Regulator (AER) and Australian Energy Market Commission. The ACCC has shared information with the AER throughout our inquiries, to assist in the AER's compliance and enforcement functions under the National Gas Law and Regulations, National Electricity Law and Rules, and National Energy Retail Law and Rules. This includes recently sharing gas supply contract information to assist the AER in its examination of retailer behaviour in facilitated gas markets and inform its functions in relation to the Retailer of Last Resort scheme. We can, and will continue to, share information with the AER to assist the AER to perform its functions.

Wholesale Market Monitoring and Reporting Reforms

The ACCC supports measures to improve transparency in and the effective functioning of energy markets.

We support the AER having a long-term role in collecting, monitoring and, where appropriate, reporting on gas supply contracts to provide appropriate transparency and promote competitive outcomes in all gas markets. In this regard we have recommended a range of information collection and reporting roles for the AER and AEMO.¹ This includes reporting on LNG netback prices, LNG import and import parity prices, LNG export prices, prices for natural gas in gas supply agreements and prices in gas swap agreements under the recently passed transparency reforms that provide the AER with a new price reporting function.

In addition, we remain of the view expressed in Recommendation 41 of the ACCC's Retail Electricity Pricing Inquiry (REPI) that

The AER's wholesale market monitoring should be expanded and appropriately funded to include monitoring, analysing and reporting on the contract market. This should include analysing the data reported to the OTC repository (recommendation 6), ASX data and data gathered directly from generators and retailers (including through the use of compulsory information gathering powers).

We also continue to support recommendation 6 of REPI, namely that all over-the-counter electricity contracts should be reported to a central repository administered by the AER. The ACCC and other market bodies would then have access to the underlying contract information to maximise information sharing while minimising the administrative burden on market participants.

We note Recommendation 41 predates our current inquiry role and the capacity that brings for information collection and subsequent sharing, including on electricity contract markets.

¹ Amendments to the Gas Statement of Opportunities in Part 15D of the National Gas Rules under the recently passed transparency reforms provide new information collection and reporting roles for the AEMO. Transparency reforms to Part 17 of the National Gas Rules provide the AER with a new price reporting function.

We acknowledge the risk that may be raised by stakeholders that further information collection and reporting in the short term may duplicate the ACCC's collection, analysis and reporting of information under the current inquiry processes and impose an additional administrative burden for market participants. We note however this can be managed by the ACCC and AER working together to minimise regulatory duplication and to appropriately share information that is collected.

We look forward to further assisting the Energy Ministers as they undertake this consultation.

If you have any questions, please contact Sarah Proudfoot, Executive General Manager, Infrastructure Division, ACCC on 03 9290 6965.

Yours sincerely

A handwritten signature in blue ink that reads "Anna Brakey". The signature is written in a cursive style.

Anna Brakey
Commissioner
Australian Competition and Consumer Commission