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Dear Ms Camilleri

Lodged electronically: ElectricityMonitoring@accc.gov.au

ACCC Discussion Paper – Monitoring of electricity supply in the National Electricity Market – November 2018

Thank you for the opportunity to comment on the ACCC's discussion paper.

EnergyAustralia is one of Australia's largest energy companies with around 2.6 million electricity and gas accounts in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own, operate and contract an energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation in the National Electricity Market.

We support the ACCC's monitoring, particularly where it would provide an accurate and consistent view of pricing, policy and profitability outcomes for the electricity sector.

With some refinement, we consider that the data and analysis from the ACCC's Retail Energy Pricing Inquiry (REPI) form a suitable basis for future reporting. As highlighted by the ACCC, there is already a wide range of reports produced by energy market bodies, and we support the ACCC reusing this information and streamlining information requests where possible.

We see value in the ACCC reporting on the benefits and costs of regulatory interventions in the energy market, with a view to ensuring value is being delivered to energy consumers. We have experienced an unprecedented increase in obligations over the past year and believe it is important for a single body to monitor the outcomes of these reforms. The ACCC should also evaluate the ongoing uncertainty around carbon policy as this is affecting real outcomes in the market.

We worked with the ACCC during its REPI and would like to continue assisting ACCC staff, particularly in interpreting our wholesale costs and transfer pricing. This is an important area where operational strategies vary across businesses, and there is ongoing interest in how this affects profitability for vertically integrated entities.

[redacted]

Regards

[redacted]
Industry Regulation Leader

The ACCC's data and framework should follow from its REPI

The discussion of the analytical framework is a useful starting point in understanding the possible data and analyses that could be contained in the ACCC's reports, as well as defining what might be regarded as desirable market outcomes.

We consider that all three frameworks identified by the ACCC would be used and are not mutually exclusive:

- The "market failure" framework seems fairly dominant given the ACCC is monitoring markets and trying to identify problems (in terms of excessive profits, barriers to entry etc) and make recommendations that would address these problems, mainly by increasing competition

- the "legal" framework could involve examining the same data with a view to identifying any weaknesses or gaps in the regulatory framework. Aggregated data or case studies may be useful to explain or support broader findings e.g. numbers and types of compliance breaches

- "distributional or equity" outcomes, particularly for vulnerable and hardship customers, should be monitored. There is also value in exploring customer characteristics, such as income distribution, in understanding customer churn and other customer behaviour, however this may be outside the ACCC's scope.

Regarding legal aspects, the ACCC should clarify how its reporting relates to the Australian Government's proposed divestment legislation and investigations into newly defined forms of prohibited conduct. We expect the ACCC's analysis of conduct would be similar to the REPI reports i.e. with recommendations at a high level rather than directed towards particular entities.

While these framework considerations are useful, the ACCC already has a relatively well-defined set of analysis and associated data in its REPI final report that can be carried forward. The REPI was conducted with input from a wide range of stakeholders and focused on matters of most interest. We note that the ACCC's terms of reference refer to pricing and profitability for retail and generation only. As per the REPI analysis, the ACCC will also need to examine electricity distribution and transmission businesses.

We note the ACCC has sought to establish its data requirements and analysis via consideration of an overall framework. We support the ACCC's consideration of the need to minimise regulatory burden, as suggested by some of the questions in its discussion paper. Specifically, the ACCC should:

- avoid duplication or maintain consistency in the data already prepared by businesses

- avoid duplication of reports by other energy bodies

- to the extent possible, build on prior data templates and minimise changes to these over time to allow businesses to invest in automated reporting systems that improve accuracy, timeliness and minimise compliance costs.

The ACCC's monitoring framework should identify positive market outcomes and increase transparency on issues where there is a poor understanding of the operation of electricity markets. A lack of transparency, cherry-picking of extreme cases or mis-reporting data can add to the current lack of trust in energy companies and result in unnecessary or suboptimal policy interventions.

As mentioned above, we are also supportive of the ACCC monitoring the impact (both positive and negative) of policy interventions to date that are intended to promote the interests of consumers. We hope the ACCC's reporting will provide a useful mechanism for consulting on new and refined recommendations in light of changing market outcomes.

Multiple and inconsistent market monitoring should be minimised

As the ACCC is aware there are multiple, potentially inconsistent methodologies for reporting on market outcomes by various energy bodies. We encourage the ACCC to avoid duplicating other energy market reports and would be supportive of the ACCC seeking a commitment from governments to commit to aligning reporting and methodologies.

Most of the REPI data or analyses were useful and can be refined

Generally the ACCC should seek to improve the data reported in the REPI rather than add to it. The ACCC should look to improve the accuracy and analysis of key measures of interest. Our view of selected measures are:

- **Cost stacks** — this is likely the most useful and widely sought data by stakeholders, and should be a focus of the ACCC's efforts and analysis.

- **Non-retail costs** — while not listed in its discussion paper, the ACCC should consider monitoring network costs and generator fuel costs to help explain electricity price changes.

- **International comparisons** — these data are heavily dependent on assumptions (e.g. foreign exchange) and we think add little value and should be abandoned. Comparisons across jurisdictions are only useful to the extent that costs can be fully explained, otherwise they are likely to be misused e.g. differences are taken as a complete and accurate reflection of profitability without full consideration of particular mixes of generation, network density, climate policies, risk and public/ private ownership etc.

- **Pricing data by customer segments** — we question the value of data presented for some of the socioeconomic and demographic categories collected by survey as the reliability of this information may be affected by small sample size. Information on bills faced by solar versus non-solar customers, as well as the impact of feed-in-tariffs, should be retained and refined in light of policy changes.

- **Pricing data** — the ACCC should report on the level and spread of headline market offers but also report on prices affected by discounting and rebates to accurately capture what the customer actually pays. Retailer practices around discounting, price freezes as well as more sophisticated pricing offers (e.g. time of use) may also provide some indication of product innovation that can be attributed to competition. These practices are also affected by policy intervention to simplify price offerings (e.g. the AER's default market offer) that should be monitored.

We need to better explain the relationship between wholesale and retail prices

We appreciated the ability to discuss this issue with the ACCC during the REPI. Wholesale costs and transfer pricing for vertically integrated businesses pose a challenge for the ACCC. Public reporting must work with averages and aggregate a wide range of transactions over fairly long periods of time. Analysis and findings must accommodate the different strategies and capabilities of each business.

One issue we consider was left unresolved from discussions during the REPI is how "shaping" issues (i.e. changing load and generation availability driven by new technologies) translate into a growing risk and cost of managing wholesale energy portfolios. We would be keen to continue this discussion with ACCC staff and include our energy pricing experts.

Wholesale pricing and market outcomes are already well explained in the AER's Wholesale Electricity Market Performance report. The ACCC should not need to duplicate the data or analysis in the AER's reporting.

Profits should be measured accurately and carefully interpreted

We recognise policy makers and energy customers are interested in profitability and we encourage the ACCC to gather accurate data for this purpose. Businesses will experience periods of high and low profitability and the reasons underlying this need to be properly examined, including in the context of variability in returns over time. Energy investments typically have a long-time horizon and are exposed to different forms of risk. Investment returns will also reflect the particular policies towards risk management as well as shorter term decisions to pass through or absorb cost changes depending on commercial strategies.

We consider that EBITF (earnings before interest, tax and fair value adjustments) is a more appropriate measure than EBITDA and EBIT as was used by the ACCC in examining retail and generation profitability. Depreciation and amortisation reflect capital investment and should be recognised as real costs that retailers need to recover. Tax and interest should be excluded as they reflect financing structures rather than an individual company's operating performance. Fair value changes should also be excluded as they reflect unrealised gains/losses and are highly volatile. We expect the ACCC may be drawn to a particular measure because of data availability, in which case it will need to be mindful of the differences in each measure and should test any findings with individual businesses. The ACCC might find value in tracking results over time rather than trying to normalise and compare measures across businesses.

Measures and expectations of contract market liquidity should be explained

The ACCC should articulate a clear expectation of how liquid contract markets should be, including what forms of contracts, price offers and who is participating in different markets. In exploring concerns about the efficient operation of markets and claims of parties withholding contracts, the ACCC should distinguish between contract availability and offer prices.

The ACCC’s dataset (e.g. figure 5.5 of the REPI final report) contains useful information regarding contract liquidity and, in our view, suggests the market is liquid and competitive. This dataset should include trading out to the next two years and beyond to monitor trends in risk and liquidity, including as they reflect problems in underwriting new investment. This would highlight the impact of commercial and industrial customers who are increasingly reluctant to sign longer-term contracts, and impact of any policy changes to correct for this uncertainty.

The ACCC should conduct further analysis on who is trading in these markets. As the ACCC found in its REPI, there may be barriers to entry in the form of prudential requirements, minimum volumes for trading and platform trading costs.

Measures of efficient markets are mostly well known

The ACCC’s discussion paper adequately covers expectations of competitive wholesale and retail markets and associated measures, including:

- the number of sellers in each market and their concentration
- customer activity in the market
- how closely prices track costs and over what time
- investment responses to sustained high prices, including the exit and replacement of generation capacity
- outcomes for vulnerable customers.

The ACCC should also set objective expectations on the liquidity of financial markets, including the variety of contracting structures used. The AER’s wholesale monitoring reports contain metrics of effective competition and we encourage the ACCC to be consistent with the AER’s approach.

On the retail side, competition should deliver improved customer outcomes that could be measured by Net Promoter Scores, reasons why customers switch, non-price incentives and price offerings involving rooftop solar and batteries, load control etc.

Policy impacts should be monitored to ensure better outcomes for consumers

Our preference would be for the ACCC to maintain a central and periodically published record of key policy interventions that are designed to improve competition and deliver price reductions. This would encompass recommendations adopted by governments from the REPI and the ESB's Strategic Energy Plan, and others arising from the wholesale and retail monitoring reports where the ACCC can draw data from. Ideally, the ACCC's monitoring would measure how well these policies have delivered their intended benefits and at what cost. In making this a more manageable task, the ACCC may wish to prioritise reporting on policies that have the largest expected benefit or highest compliance cost for the sector.

Recommendations made by the ACCC arising out of its monitoring should also be subject to an assessment of expected costs and benefits.

In addition to the large number of policy interventions contemplated for the sector, a further well-documented concern for us is policy uncertainty. This will be apparent in some observed market outcomes and should be monitored by the ACCC.

Timing and process issues in collecting information

We would be able to provide data annually and report on a calendar basis (i.e. mid to late February each year).

Ad hoc analysis and reporting comes at a substantial cost. The ACCC should maintain a consistent methodology to allow us to invest in systems and minimise compliance burden.

We have a preference to provide information on a voluntary basis as this allows some flexibility in responding, including furnishing the ACCC with information that we consider is useful but may not have been requested.