

21 December 2018

Mr Rod Sims  
Chairman  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Submission made via email: [ElectricityMonitoring@acc.gov.au](mailto:ElectricityMonitoring@acc.gov.au)

Dear Mr Sims

### **Monitoring of electricity supply in the National Electricity Market**

Hydro Tasmania welcomes the opportunity to provide comment on the ACCC's monitoring of electricity supply in the National Electricity Market discussion paper. Hydro Tasmania is Australia's largest producer of renewable energy. We are an integrated energy business providing retail energy products through our Victorian-based retailer Momentum Energy, power and water consulting services through our specialist consulting business Entura, and are a material participant in the NEM.

Hydro Tasmania notes that the establishment of the ACCC's monitoring process follows the ACCC's Retail Electricity Pricing Inquiry (REPI) which concluded in June 2018. The in-depth nature of the REPI and the insight in its findings and recommendations provide assurance that the ACCC is well informed of the issues it will likely face and the approach needed to ensure that it can monitor and report on consumer outcomes. Hydro Tasmania supported the ACCC's work on the REPI and we look forward to continuing to work collaboratively with the ACCC in its price monitoring role. This submission is broken into two sections: monitoring framework and applicability to Tasmania region.

#### *Monitoring framework*

During the REPI, the ACCC requested information from retailers using its powers under S95ZK of the *Competition and Consumer Act 2010*. Using the data obtained, and applying rigorous analysis, the ACCC found the current regulatory and policy approach "has not worked well for consumers"<sup>1</sup>. The data obtained by the ACCC during the REPI provided a clear picture of the state of the retail energy market and Hydro Tasmania is confident that the application of similar analysis, this time using data from both retail and generation businesses, will allow for an accurate assessment of whether outcomes regarding consumer

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<sup>1</sup> ACCC Retail Electricity Pricing Inquiry, Final Report June 2018, page iv.  
<https://www.acc.gov.au/publications/restoring-electricity-affordability-australias-competitive-advantage>



wellbeing have improved since the REPI was released. Hydro Tasmania notes that the REPI information requests led to a significant regulatory burden on participants. Consequently, Hydro Tasmania welcomes the ACCC's intention to align where possible its information gathering activities with existing reporting processes and to limit the regulatory burden for participants associated with any future requests for information.

We urge the ACCC to exercise caution when providing its assessment as the Australian Government's proposed new powers to order divestiture of assets amplify the need for the appropriate oversight to include a broad based assessment of market trends, and not just a snapshot view. The ACCC must be mindful of the significant changes impacting the retail industry as a result of technological change, increased competition from non-traditional business models and the number of industry reforms which have arisen from the REPI and other similar inquiries. We do not believe that the relationship between wholesale prices, network prices, and retail prices will necessarily be linear as some larger retailers will be meeting some of their demand from their own generation. We urge the ACCC's assessment of business profits to be mindful of this relationship.

Given the competitive nature of the market, we expect that retailers will pass through cost reductions from wholesale and network elements whenever these arise. If however, retail tariffs do not fall by the same quantum that the ACCC determines they should, this may not necessarily reflect any decision on the part of the retailer to deny savings to its consumers. In the current environment, significant capital investment is required to comply with new regulatory obligations or to invest in systems, processes or new products in order to stay relevant or stave off competitive threats. These investments may require that some of the savings from reduced wholesale or network prices be retained rather than immediately passed through to consumers.

We believe that any assessment of generator or retailer returns must include thorough analysis of the broader costs of participating in the market, and the degree to which additional regulatory obligations are imposing costs on consumers. We consider this last element to be of particular import in light of the fact that the regulatory framework appears to be growing increasingly disparate in spite of the recommendations of Chapter 10 of the REPI which seek to deliver cost reductions to consumers through regulatory harmonisation.

#### *Applicability to Tasmanian region*

Tasmania is highly regulated and strongly shaped by government policy initiatives for both retail and wholesale sides of the market. In summary this framework includes:

- All small customers have access to a regulated retail price which is currently capped by the Tasmanian Government. The Government has legislated to ensure that any increase in regulated electricity prices for small customers is capped at the rate of change in the Hobart Consumer Price Index: see section 41(5) of the Tasmanian Electricity Supply Industry Act 1995 (ESI Act).
- The Tasmanian Treasurer also has the ability to directly set the wholesale price of contracts hedging regulated supply to small customers in Tasmania through the use of a Wholesale Energy Price Order (WEP Order): see section 40AB(3)(a) and section 40ABA(6) of the ESI Act. As there is a WEP Order in place for FY2018/19, the Tasmanian Government has also used its power to make Community Service Obligations under section 65(1) of the Government Business Enterprises Act 1995 to require Hydro Tasmania to offer all Tasmanian retailers wholesale contracts hedging non-regulated supply to small customers at the WEP Order price for FY2018/19.

- In addition to this regulation relating to the small customer load, a separate framework requires Hydro Tasmania to offer a range of regulated wholesale contracts to all retailers operating in Tasmania, which can be used to hedge any Tasmanian load: see Division 4A of the ESI Act. The wholesale contracting arrangements are underpinned by the Wholesale Contract Regulatory Instrument (WCRI) and administered by the Tasmanian Economic Regulator. The WCRI is based on pricing contracts in Tasmania by reference to Victorian contract prices. The WCRI was introduced in 2014 following an independent review of the Tasmanian electricity supply industry by an Expert Panel comprised of Chair John Pierce, Dr John Tamblyn and Dr Jerome Fahrer.
- The provision of raise contingency FCAS was regulated from 2010 to 2016. It was revoked by the Tasmanian Regulator in 2016 on the basis that the Regulator would continue to monitor FCAS pricing and could reinstate these regulatory arrangements if it saw evidence of inappropriate pricing behaviour.

Hydro Tasmania suggests that there is little value in the ACCC monitoring prices in Tasmania while this level of direct price regulation remains in place. Hydro Tasmania therefore recommends that the ACCC only monitor prices if the regulatory framework changes in the future. We note that the existing WEP Order and associated CPI price cap provisions are underpinned by legislation until 2021 and the WCRI is effective until 2024.

If, however, the ACCC feels that there is value in monitoring prices in Tasmania then Hydro Tasmania would suggest that the ACCC use caution in applying NEM wide metrics for the Tasmanian context. Tasmania has a unique mix of supply and demand attributes including the following:

- The high proportion of households which are provided with subsidised electricity (approximately a third of residential customers in Tasmania receive a concession).
- Maximum demand occurs in winter rather than summer; this is driven by electricity use for space and water heating.
- The challenges of responsibly managing Tasmania's primary fuel source (water) and the energy security considerations that flow from reliance on that fuel source with a single interconnector (noting the recommendations of the Tasmanian Energy Security Taskforce released in 2017).
- The Tasmanian Government's policy to position Tasmania as a net exporter of electricity into Victoria through the Government's Battery of the Nation initiative, which includes the development of further Tasmanian wind generation, pumped hydro and a second interconnector.

Where appropriate these attributes should help guide the ACCC's analysis to ensure a meaningful comparison between jurisdictions can occur.



Yours sincerely



CEO