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Dr Kerry Schott  
Independent Chair  
Energy Security Board

Sent electronically: [info@esb.org.au](mailto:info@esb.org.au)

Dear Dr ~~Schott~~ *Kerry*

**Re: Consultation on ACCC Retail Electricity Pricing Inquiry: Recommendation 41**

Thank you for the opportunity to provide comment to the Energy Security Board (ESB) public consultation on Recommendation 41 of the ACCC's 2018 *Retail Electricity Pricing Inquiry* (REPI).

The ACCC recognises the benefit of consulting on the recommendation to ensure its successful implementation. As stated in the REPI, we believe there needs to be a holistic approach and sufficient resources to monitor, analyse and report on wholesale and contract markets in the National Electricity Market (NEM). This will improve transparency, enhance regulation and allow governments to understand if the market is competitive and promoting the interests of consumers.

The AER is required to systematically monitor wholesale electricity markets in the NEM, but this monitoring activity does not explicitly extend to contract markets. Interpreting and analysing developments in wholesale markets is difficult without also considering activity in contract markets. The contracting activities and positions entered into by generation businesses will influence their incentives in the wholesale market, and their attitude towards wholesale market prices.

The ACCC notes that the AER may also soon have compliance responsibilities under the Retailer Reliability Obligation (RRO). In this role, the AER would need to ascertain whether the contracts entered into by liable entities are consistent with firmness and eligibility guidelines. The effect of the RRO on market participants will also need to be considered. For example, the ability of standalone retailers to access eligible contracts in order to comply with the RRO, and the efficacy of RRO components such as the Market Liquidity Obligation may motivate broader analysis of contract markets that would require access to confidential information.

Rather than the various information gathering powers set out in the consultation paper, the ACCC believes the AER should have a holistic set of powers that enable it to have access to contract data on an ongoing basis. It is also important that the AER's access extends to information at a sufficiently disaggregated level including individual contracts.

We note that the ESB is not convinced that a trade repository is justified on transparency grounds alone (i.e. the REPI recommendation 6), given the expense of establishing and maintaining the repository. While we accept that a repository will involve costs, such costs should be weighed against the benefits of both the REPI recommendation 6 and 41. Looking at the cost-benefit case for either recommendation 6 or recommendation 41 in isolation risks a conclusion that the costs are not justifiable. We consider the costs are much more easily justifiable when looking at the totality of benefits to transparency, price discovery and effective oversight by the AER.

The additional transparency of an OTC trade repository will assist all market participants to understand price and risk levels, and will allow the AER (and other regulatory bodies) to monitor developments in the NEM more effectively. The ACCC's survey of the OTC market, undertaken as part of the REPI, shows that there is a substantial amount of risk management activity taking place in the OTC market.

As the ESB is aware, in August 2018 the ACCC was directed by the Australian Government to monitor and report on prices, profits and margins in the supply of electricity in the NEM at least every six months until 2025. The Terms of Reference for the ACCC's inquiry includes specific mention of the contract market. However, we note that the ACCC's inquiry is limited to seven years and covers the entire electricity supply chain, so is not likely to involve the type of ongoing, systematic monitoring and investigation of the contract market that the AER would be able to conduct. Should there be overlap between ACCC and AER monitoring functions, we will be seeking to minimise duplication and collaborate where possible.

The ACCC is willing to provide further information to the ESB on any of the matters discussed. If you have any questions in relation to this submission, please contact Lyn Camilleri, General Manager Electricity Markets Branch, on (03) 9290 1973.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rod Sims', written in a cursive style.

Rod Sims  
Chair