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Energy Security Board
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EnergyAustralia
LIGHT THE WAY

ESB Consultation paper – ACCC Retail Electricity Pricing Inquiry recommendation 41 – AER contract market reporting – February 2018

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EnergyAustralia is one of Australia's largest energy companies with around 2.6 million electricity and gas accounts in NSW, 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 (NEM).

Bilateral transactions that take place over-the-counter (OTC) are important for the efficient operation of, and competition in, the wholesale electricity market. We therefore generally accept regulators' interest in examining OTC trades. Expanding the AER's powers to cover OTC markets and request information under section 28 of the National Electricity Law (NEL) would be preferable to the establishment of an OTC repository, or having OTC contract parties be subject to information requests under the NEL's Regulatory Information Instruments.

We consider no case has yet been made for the AER or other regulators to acquire this information. OTC contracts are typically bespoke, voluminous and would be difficult to properly assess from a regulatory perspective. These contracts also contain commercially sensitive information, and providing them to a regulator carries a risk of inadvertent disclosure and associated financial damages to affected contractual parties. Furthermore, the ACCC's Retail Electricity Pricing Inquiry already reviewed OTC information acquired from 17 retailers and found no systematic issues other than a lack of transparency in OTC markets.

To this end, the NEL's section 28 notices have the following favourable characteristics:

- they are ad hoc, whereas alternatives in the form of purpose-built repositories or other NEL instruments involve parties maintaining and periodically reporting information
- the AER would still be required to gather and assess public information before issuing a section 28 notice. This would include data available from the ASX and from Australian Financial Markets Association (AFMA) industry surveys
- participants might benefit from the confidentiality protections and other restrictions on the AER under NEL sections 18D(2) to (6), which do not apply to information provided voluntarily.

Our expectation is that the AER and other stakeholders would not derive benefits from ongoing OTC reporting, while the costs imposed on parties in providing this information, and on the AER in processing it, are high. There is also the risk of the AER publicly

misinterpreting information and the associated need for market participants to assist the AER in navigating responses to information requests.

The ESB should consult with all relevant OTC market participants in assessing this recommendation. Banks and other financial intermediaries may have specific objections regarding disclosure of contract information that differ from energy market participants that are more accustomed to NEL information gathering provisions. We would also be interested in further NEL amendments to ensure proportionate penalties and recourse for aggrieved parties to recover financial damages in the event the AER were to inadvertently disclose OTC information.

While not publicly available, as we raised in our earlier submission on ACCC recommendation 6, ASIC oversees an existing derivative reporting regime under the Corporation Law. The AER may wish to explore gaining in-confidence access to these data. The AER should also explore the possibility of expanding AFMA surveys to suit its wholesale market monitoring functions.

If you would like to discuss this submission, please contact Lawrence Irlam on 03 8628 1655 or Lawrence.irlam@energyaustralia.com.au.

Regards

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