

South Australia

# **National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Bill 2015**

A BILL FOR

An Act to amend the *National Electricity (South Australia) Act 1996*.

---

## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### **Part 2—Amendment of *National Electricity Law***

- 4 Amendment of section 2—Definitions
- 5 Amendment of section 15—Functions and powers of AER
- 6 Insertion of Part 3 Division 1A
  - Division 1A—Wholesale electricity markets—AER monitoring and reporting functions
    - 18B Definitions
    - 18C AER wholesale market monitoring and reporting functions
    - 18D Provision, use and disclosure of information
    - 18E Immunity from liability

---

**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

5 This Act may be cited as the *National Electricity (South Australia) (Australian Energy Regulator—Wholesale Market Monitoring) Amendment Act 2015*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

10 In this Act, a provision in Part 2 amends the *National Electricity Law* set out in the Schedule to the *National Electricity (South Australia) Act 1996*

**Part 2—Amendment of *National Electricity Law*****4—Amendment of section 2—Definitions**

- (1) Section 2(1)—after the definition of *AER economic regulatory function or power* insert:

*AER wholesale market monitoring functions*—the AER's wholesale market monitoring functions are as set out in section 18C(1);

*AER wholesale market reporting functions*—the AER's wholesale market reporting functions are as set out in section 18C(2);

- (2) Section 2(1)—after the definition of *VENCorp* insert:

*wholesale electricity market* means any wholesale market for electricity regulated under this Law and the Rules.

**5—Amendment of section 15—Functions and powers of AER**

Section 15(1)—after paragraph (eb) insert:

- (ec) AER wholesale market monitoring functions and AER wholesale market reporting functions; and

**6—Insertion of Part 3 Division 1A**

After Part 3 Division 1 insert:

**Division 1A—Wholesale electricity markets—AER  
monitoring and reporting functions**

**18B—Definitions**

In this section—

*confidential supplier information* means information obtained from a wholesale electricity supplier by the AER under section 18D(1)(b) that is taken to be confidential information under section 18D(2);

*effective competition*—effective competition, in relation to a wholesale electricity market, requires—

- (a) that there be active competitors in the market and that those competitors hold a reasonably sustainable position in the market (rather than there being the mere threat of competition in the market); and
- (b) that prices be determined on a long term basis by underlying costs rather than the existence of market power, even though a particular competitor may hold a substantial degree of market power from time to time; and
- (c) that barriers to entry into the market be sufficiently low so that a substantial degree of market power may only be held by a particular competitor on a temporary basis; and

- (d) that there be independent rivalry in all dimensions of the price, product or service offered in the market;

*wholesale electricity supplier* means a Registered Participant who supplies electricity or services through the wholesale exchange operated and administered by AEMO under this Law and the Rules.

**18C—AER wholesale market monitoring and reporting functions**

- (1) The AER's wholesale market monitoring functions are as follows:

- (a) to monitor and review on a regular and systematic basis the performance of wholesale electricity markets in accordance with this Law and the Rules;
- (b) in connection with paragraph (a), to analyse whether, in relation to a particular wholesale electricity market, there are features of the market that may be detrimental to effective competition within the market;
- (c) other monitoring or analysing functions that relate to offers and prices (including forecast prices, actual prices and bidding) within any wholesale electricity market conferred on the AER by the Rules.

- (2) The AER's wholesale market reporting functions are as follows:

- (a) to prepare, at least once every 2 years, a report on the results of the performance of its wholesale market monitoring functions;
- (b) to provide, as the AER thinks fit, advice on the results of the performance of its wholesale market monitoring functions to the MCE, including advice as to—
- (i) the AER's opinion (and reasons for the opinion) on whether those results identify, in relation to a wholesale electricity market monitored, features of the market (whether systemic or otherwise) that impact detrimentally on its efficient functioning such that a legislative, regulatory or other response is required; and
- (ii) any limitations that the AER considers may restrict its ability to communicate with relevant persons about the results of the performance of its wholesale market monitoring functions;
- (c) other reporting requirements that relate to the AER's wholesale market monitoring functions conferred on the AER by the Rules.

- (3) A report prepared under subsection (2)(a) must, in relation to a wholesale electricity market monitored during the period to which the report relates (which must be a period of at least 5 years), contain a discussion and analysis of—
- 5 (a) features of the market that impact detrimentally on its efficient functioning and the achievement of the national electricity objective, including (but not limited to)—
- 10 (i) the presence of significant barriers to entry; or
- (ii) any other features of the industry structure that raise potential concerns that the market is not functioning as an effectively competitive market; and
- 15 (b) inefficiencies in the market, their causes and whether conditions in the market are such that the inefficiencies are likely to impact detrimentally in the long term on the efficient functioning of the market; and
- (c) the monitoring methodology applied and the results of indicators, tests and calculations performed; and
- 20 (d) other matters of a long term nature relating to the market, including, for example, observations relating to planned increases in interconnector capacity and trends in demand for electricity and in the uptake of alternative sources of energy.
- (4) The AER must publish a report prepared under subsection (2)(a) on its website.

### 18D—Provision, use and disclosure of information

- 25 (1) The following provisions apply to the AER's performance of its wholesale market monitoring functions:
- 30 (a) the AER must, in performing its wholesale market monitoring functions in relation to a wholesale electricity market, use publicly available information to identify any potential features of the market that may be detrimental to effective competition within the market;
- 35 (b) if the AER identifies any such potential market features, the AER may, in accordance with its powers under this Part, obtain information from a wholesale electricity supplier—
- (i) to assist it in determining whether any identified market feature is in fact causing an inefficiency within the market (and in quantifying the extent of the inefficiency); and

- 5 (ii) to analyse if the inefficiency gives rise to competition in the market that is not effective competition (or, in relation to an inefficiency that was observed by the AER but is no longer present in the market, if the inefficiency gave rise to competition in the market that was not effective competition).
- 10 (2) Information obtained under subsection (1)(b) is taken to have been given to the AER in confidence (whether or not an express claim of confidentiality is made when the information is given).
- (3) Despite anything to the contrary in this Part, the AER must not use confidential supplier information for any purpose other than the performance of its wholesale market monitoring functions or wholesale market reporting functions.
- 15 (4) Despite anything to the contrary in this Part, the AER must not disclose confidential supplier information unless—
- (a) the disclosure is for the purposes of its wholesale market monitoring functions or wholesale market reporting functions; and
- 20 (b) the confidential supplier information has been combined or arranged with other information so that it does not reveal any confidential aspects of the confidential supplier information or identify the wholesale electricity supplier to whom the information relates.
- 25 (5) A requirement to disclose information at common law, including under the rules of natural justice, to the extent that the information is confidential supplier information, is limited to the disclosure of such information in accordance with subsection (4) (and the common law, including the rules of natural justice, are modified by force of this
- 30 subsection so as to accord with subsection (4)).

**18E—Immunity from liability**

- 35 (1) Despite any Act or law to the contrary, no liability (including liability for breach of confidence) attaches to a designated entity with respect to the disclosure of confidential supplier information by any designated entity if the designated entity who made the disclosure reasonably believed—
- (a) that the information was not confidential supplier information; or
- 40 (b) that the information disclosed did not reveal any confidential aspects of the information or would not identify the wholesale electricity supplier to whom the information relates.

(2) In this section—

*designated entity* means—

- (a) the AER; or
- (b) a member of the AER; or
- (c) a person assisting the AER to perform its functions (or in the exercise of its powers) under this Division.

5