



**EnergyAustralia**

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### **Statutes Amendment (National Electricity and Gas Laws – Information Collection and Publication) Bill 2015 and the National Electricity (South Australia) (Australian Energy Regulator – Wholesale Market Monitoring) Amendment Bill 2015**

We are one of Australia's largest energy companies with over 2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation and storage facilities across Australia, including coal, gas, and wind assets with control of over 4,500MW of generation in the National Electricity Market

The National Electricity Market (NEM) is a highly transparent and competitive market. Monitoring of any issues that arise occurs during the normal course of business and future planning by market participants, market operator (AEMO), and regulators (AER & AEMC). The market therefore has ample oversight by parties with differing interests. This leads to a collective ability and incentive to address issues. Additional oversight to identify issues can potentially be superfluous and increase costs for all parties, which is not good regulatory practice.

Further to this, the review of governance arrangements<sup>1</sup> identified no deficiencies with the current rule-making framework that would be aided by this proposal. All parties can submit rule changes to the AEMC where they identify possible improvements. Industry participants and regulators are aware of the technological and structural transformation of the industry. This transition is being managed effectively as evidenced by work such as the *Power of Choice* Review, AEMO and ElectraNet renewable integration study, and AEMC's Integration of Energy Storage report.

The information gathering powers relating to wholesale electricity suppliers also ignores competition from new energy sources and services, which are growing in size and impact. However, the resources required to produce a comprehensive report on competition (given the new dynamic of the energy sector) are significant and will likely result in deficiencies if a very broad view is taken on the scope of the report. To address these issues, we recommend that the AER should limit reporting to factually based matters suited to its expertise and note any limitations of their report, particularly in relation to future changes or evolving segments of the electricity market.

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<sup>1</sup> Review of Governance Arrangements for Australian Energy Markets Final Report, October 2015

Periodic reviews were recommended in the AEMC's final rule determination *Potential Generator Market Power in the NEM*<sup>2</sup>

*The focus of the monitoring function should be to periodically review the performance of electricity wholesale markets in the NEM in a systematic manner and to analyse whether market outcomes are observed which are compatible with a workably competitive market environment in the NEM.*

However, we note that the proposed legislation does not reflect this recommendation. As currently drafted, the AER's new function will be on-going monitoring with reports published at least every two years. This should be changed to a biennial review conducted over a reasonable timeframe (e.g. three months). We are concerned that the new function will involve an ongoing, time-consuming obligation to provide information to the AER. There is also a risk of limited transparency in the use of information gathering powers, and limited consultation with affected parties.

To address the areas of concern with the proposed legislation regarding consultation with participants, transparency, good regulatory practice and the content of the AER's reports, we suggest the following amendments:

- A section in each report that describes the use of information gathering powers over the past two years.
- Consideration is given to the nature and type of data requests made of wholesale electricity suppliers – these could be large and time consuming to produce, particularly if the AER request regular updates.
- Where the AER requests specific confidential information from a wholesale electricity supplier, they should respond to the affected party within a reasonable period (e.g. three months) regarding the use of the information. It would be unreasonable for the AER to be able to request information from a participant but not outline how the information is to be used or any conclusions derived from the data provided.
- AER to consult with affected parties before recommendations are published in a report.
- Consultation with participants before publication of confidential information to ensure that aggregation or other steps to de-identify particular parties is appropriate (especially given the immunity from liability covering release of the information).
- Clause 18E that provides the AER with immunity from liability associated with the release of confidential information should be amended to require the AER to demonstrate consultation with affected parties on the confidential information or anonymised confidential information prior to publication.
- Consultation on the content and approach to the reports including any long-run marginal cost methodology to be used.
- Publication or review of the cost-effectiveness of the new wholesale market monitoring function of the AER.

We note the recommendations which motivated this proposal were made in April 2013 – three years ago - so it appears that this new function of the AER is not an integral component of the governance framework. It is not clear that the changes are useful or that they

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<sup>2</sup> AEMC 2013, *Potential Generator Market Power in the NEM*, Final Rule Determination, 26 April 2013, Sydney

appropriately balance the costs and benefits. We would have liked to see a more comprehensive review of draft the legislation and a greater focus on regulatory impact.

The energy market faces challenges from new technology, consumer involvement, and renewable policy. It is a complex problem which requires input from regulators, industry, consumers and government. The new reports should add to the conversation rather than provide opinions based on a time-limited review.

If you would like to discuss this submission, please contact me on (03) 8628 1242.

Regards

**Melinda Green**

Industry Regulation Leader