25 January 2019

Senator Jane Hume
Chair, inquiry into Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 [Provisions]
Senate Standing Committees on Economics
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Energy Networks Australia submission to Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018

Dear Senator Hume,

Energy Networks Australia welcomes the opportunity to provide a submission to the Committee's current review of the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018 [Provisions]* relating to the Australian Competition and Consumer Commission's monitoring of electricity supply in the National Electricity Market.

Energy Networks Australia is the national industry body representing businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to almost every household and business in Australia.

We support a competitive energy marketplace underpinned by sound competition laws which give businesses the agency to make commercial decisions while rightfully preventing anti-competitive behaviour. We do not support forcing businesses to enter into involuntary contracts or the divestment provisions in the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018*. These provisions would create significant investment risk to the detriment of long-term consumer outcomes at a time when investor confidence in the energy sector has already been compromised by policy uncertainty and regulatory interventions[1]. A recent Baker McKenzie report found that Australia's attractiveness as a global investment destination slipped to 17th from 12th this time last year.

Involuntary contracts are detrimental

Forcing businesses to enter into involuntary contracts will not increase contract liquidity or promote further wholesale generation capacity, but it is likely to lead to worse long-term outcomes for customers by increasing investment risk.

A more effective approach to increasing competition in the energy derivatives market would be to ensure all information relevant to decision making is made publicly

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[1] Baker McKenzie, *Global Transactions Forecast 2019, Dealing with the Uncertainty*

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available and other barriers to enter the energy derivatives market are eroded. This would allow the market to deliver better outcomes for customers without introducing unnecessary risks for businesses and investors.

Current competition laws are already sufficient to avoid engagement in coordinated anti-competitive behaviour, especially with the recent increase in the ACCC's penalty provisions where businesses can be fined the greater of 10 million dollars, three times the value of the benefit received or 10 per cent of annual turnover in the past 12 months.

Better outcomes through competition

Threatening energy businesses with divestment creates sovereign risk and is likely to further unsettle investor confidence. 87 per cent of participants in the Australian Infrastructure Investment Report 2018 said the Australian energy sector is 'full of uncertainty' right now, with political and regulatory aspects of highest concern[2]. This uncertainty creates risk and means that investors will require a higher return on their investment if they are to invest in the market. The increased risk is not beneficial to the energy sector nor to customers.

Preventing wholesale price manipulation and lowering wholesale prices without the added cost of risk could more effectively be achieved via a stable national energy policy.

Investment in electricity generation is on the rise in response to an undersupply of electricity in the market despite the high level of uncertainty in national energy policy. Further investment would certainly follow if a stable national energy policy was implemented. More electricity generation would increase competition, lower wholesale prices and lead to more readily available hedge contracts.

The market did not foresee Hazelwood's closure and took some time for new generation capacity to come online and reduce wholesale prices. The ACCC recommended that generators give longer notice periods before closure to prevent this situation occurring again. Enforcing longer notice periods is another means of ensuring the market can respond and deliver competitive outcomes and carries negligible investment risk compared with the threat of forced contracts or divestment of assets.

Energy Networks Australia is a strong advocate for a consistent approach to national energy policy and predictable, stable regulatory regimes because these deliver the best long-term outcomes for customers.

The heavy handed market interventions proposed in the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018* do not foster competition, rather they risk increasing investment uncertainty and making businesses less efficient. In the long term, these factors risk power price increases for customers.

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[2] Infrastructure Partnerships Australia, *Australian Infrastructure Investment Report 2018*

Please contact Garth Crawford, General Manager Regulation on 02 6272 1507 or gcrawford@energynetworks.com.au if you would like further information.

Yours sincerely,

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