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### Review of the effectiveness of the PEMM Act 2019 (Cth) – Consultation Paper

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 5,000MW of generation capacity.

EnergyAustralia welcomes the opportunity to make this submission to the Consultation Paper on the Review of the effectiveness of the PEMM Act 2019 (Cth).

#### PEMM Act

We observe that since the introduction of the PEMM Act, other key regulatory reforms have now commenced which contribute to the same objectives which underpin the PEMM Act. We discuss the three PEMM Act prohibitions in turn below.

The Department states the objective of the **retail market prohibition** is to ensure that a retailer makes reasonable adjustments to its prices for small customers where there has been sustained and substantial reductions in its underlying costs of procuring electricity. In practice the Default Market Offer (**DMO**) and Victorian Default Offer (**VDO**) achieve this objective as well, as a direct regulated price. The DMO and VDO are determined based on a retailer's cost. We expect any sustained and substantial reductions to these costs to be reflected in the DMO and VDO from year to year. For example, the VDO decreased for 2024-25 compared to the previous period, based mainly on reductions in wholesale electricity costs. While the DMO and VDO only apply to standing offers, they strongly influence the pricing of the other offers in market (market offers), with retailers increasingly pricing market offers in line with the DMO and VDO over time. This is evidenced by ACCC analysis which shows an increasing clustering of market offer pricing around the DMO (see appendix). Note that any small differentials between market offer pricing and the DMO and VDO which persist might be explained by different approaches to price risk management e.g. some retail offers would adopt hedging of wholesale electricity cost on a different timeframe to the DMO and VDO.

The PEMM Act's electricity **financial contract liquidity prohibition** in Section 153F prohibits generators from refusing to offer contracts, limiting or restricting offers to enter into such contracts, or making offers in a

manner that limits, restricts, or prevents acceptance, if their purpose is to substantially lessen competition in any electricity market. Its objectives are aimed at improving market liquidity of contracts.

We agree with AFMA's observations that liquidity has deteriorated since these provisions were introduced but that this is a function of the continuing challenges of the energy market transition where the volume of controllable generation able to offer firm financial hedges reduces, rather than any generator misconduct. We also observe that the Retailer Reliability Obligation (RRO) and the Market Liquidity Obligation, and any future iterations of it, intend to address the same objective, by imposing mandatory market making obligations. While EnergyAustralia has questioned the effectiveness of the RRO, we acknowledge that its focus beyond generator misconduct has merit. Policy reform in this area needs to be broader and be informed by the factors contributing to illiquidity in current and anticipated market conditions. This would include the impact of other reforms like the Capacity Investment Scheme which underwrite generator investment and could change incentives to contract. Reform to address illiquidity should be a focus in the Post 2030 National Electricity Market wholesale market settings review.

The **electricity spot market prohibition** of the PEMM Act prohibits:

- the 'basic case' under s 153G which prohibits corporations from engaging in fraudulent, dishonest, or bad faith conduct in connection with bids to supply electricity to an electricity spot market, or from manipulating or distorting the spot market through such bids.
- An 'aggravated case' under Section 153H, where a corporation engages in fraudulent, dishonest, or bad faith conduct in connection with bids to supply electricity to an electricity spot market with the intent to manipulate or distort the spot market.

We note the overlap of these provisions with the bidding and rebidding provisions in Rule 3.8.22A of the National Electricity Rules (NER) which prohibit bids and rebids that are false, misleading or likely to mislead.

In view of the above, the overlap in objectives of the PEMM Act prohibitions with other regulatory reforms, including reforms introduced since PEMM Act's commencement, would justify a view that the PEMM Act should be allowed to sunset in recognition that it is no longer needed.

**In a context where the PEMM Act remains in operation, we firmly advocate for the PEMM Act's provisions to remain the same to promote certainty and consistency for industry.** The PEMM Act's prohibitions incorporate very broad concepts. We believe that industry, after significant effort, time and resources, now has a settled and clear understanding of the interpretation of these prohibitions and what they mean in operational practice. Introducing changes to the PEMM Act's prohibitions will likely create significant uncertainty for industry on how the changes should be interpreted, especially where the penalties and remedies for breaches of these prohibitions are extremely significant. Changes would also require significant resources and time to interpret and implement, at a time when there is a substantial number of other reforms being progressed which will already demand high levels of resources to implement.

### **ACCC NEM Inquiry Function**

The Department seeks views on the expiry of the ACCC's NEM Inquiry Function (to monitor and report on prices, profits and margins in the supply of electricity in the NEM) in 2025. EnergyAustralia recognises the importance of market monitoring to provide transparency and to potentially inform policy recommendations. However, we also note that the NEM Inquiry Function involves the ACCC collecting large amounts of information and data from retailers and generators, and responding to these notices involves a

material amount of burden. Balancing the value of the specific market monitoring reports and the burden on industry, our views are:

- There appears to be value in the ACCC's "cost stack" report as an input into DMO pricing, a source of information which informs consultation on industry reform, and also from a broad readership standpoint including a media audience. We support the ACCC focussing its efforts solely on collecting and publishing cost stack data, ensuring the report remains a valuable and well-understood source of market insight while avoiding unnecessary expansion or duplication. To maintain a clear and targeted role, we recommend refining the ACCC's Terms of Reference to focus solely on this scope, reducing overlap with other regulatory bodies, while ensuring it continues to provide valuable market insight.
- In contrast, the value of the "billing outcomes" report and readership is less clear. W
- The ACCC should discontinue any wholesale electricity contract aspects of its inquiry (this was an additional topic in the ACCC's cost stack report in recent years). This is appropriate as the AER will effectively expand the scope of its wholesale market monitoring using its new monitoring powers to cover the ACCC's previous lines of inquiry.

Commented [MD1]: Didn't want them to interpret this to mean we support expanding or changing cost stack data collection more that we support maintaining the value of the report.

If you have any questions in relation to this submission, please contact me (03 9060 0761 or [Selena.liu@energyaustralia.com.au](mailto:Selena.liu@energyaustralia.com.au)).

Regards,

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## Appendix

**Figure 2.3: More customers are paying prices below the default offers**

*Proportion of residential flat rate offer customers without demand paying more, equal to, or less than the default offers, assuming 100% achievement of conditional discounts, all regions combined*

