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PEMM Review Secretariat

Submitted by email: PEMMReview@dcceew.gov.au

Review of the effectiveness of the *Prohibiting Energy Market Misconduct Act 2019* – Consultation Paper

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the Department of Climate Change, Energy, the Environment and Water's (DCCEEW) Review of the effectiveness of the *Prohibiting Energy Market Misconduct Act 2019* (the PEMM Act) Consultation Paper.

In putting together this submission we have used the assessment approach set out in the Consultation Paper to guide consideration of the key issues being examined under the review – i.e., the effectiveness of the PEMM Act, if it is needed, and whether it should be allowed to sunset. In doing so, we have found that the problems the PEMM Act is intended to resolve, are being addressed by several more targeted and better suited regulatory reforms / instruments, many of which (particularly as it relates to the retail provision) have been adopted since or around the time the PEMM Act was introduced in 2019. Therefore, when contemplating the counterfactual scenario where the PEMM Act does not exist, we see no resultant reduction in the efficient operation of the energy market, or the level of protection afforded to consumers.

Given this, our conclusion is that the PEMM Act should be permitted to sunset. This view is reinforced by the ambiguous and imprecise nature of many of the Act's provisions which serve to undermine any possible effectiveness it may have by creating uncertainty from both a compliance and enforcement perspective. We expand on these points below.

1. Retail provision

As indicated in the Consultation Paper, many of the issues the retail prohibition was originally intended to address relate to disadvantages for disengaged customers, many of whom are likely to be in hardship. However, since the implementation of the PEMM Act in 2019 there have been several regulatory reforms that have increased the level of customer protection and market transparency, enabling energy consumers to make more informed decisions. These include:

- *Default pricing and price comparators*: The default market offer (DMO) and Victorian Default Offer (VDO) came into effect in July 2019, shortly before the implementation of the PEMM Act. In addition to setting a maximum price for customers on default contracts, the DMO and VDO serve as a reference price. When advertising or promoting market offers, retailers must demonstrate the price of their offer relative to the DMO or VDO, enabling customers to objectively and simply compare the price of different retail offers. The Commonwealth has also established an energy comparison site – Energy Made Easy (administered by the Australian Energy Regulator (AER)) – that allows customers to compare offers across different retailers. Collectively, the determination of a regulated reference price and an independent price comparator provides a layer of transparency that demonstrates how retailers are competing and reflecting input costs in their prices.

- *Better Bills Guidelines*: In July 2019 Victoria introduced obligations on retailers to provide information on bills indicating to customers whether they are receiving their retailer's deemed best offer. Similar obligations were introduced across the broader National Electricity Market (NEM) in March 2022 under the AER's Better Bills Guideline which places obligations on retailers for preparing and issuing bills that make it easy for customers to understand billing and pricing information, including if they would be better off under a different offer.¹
- *Consumer reform package*: The AEMC is currently considering a reform package from Energy Ministers that will look to make several changes to the national electricity retail rules aimed at improving customer outcomes.² These include a plan to ensure hardship customers effectively pay no more than a retailer's best offer and restricting the ability for retailers to place customers that do not engage in the market on prices higher than the DMO.

The adoption of more targeted regulation since the implementation of the PEMM Act, reinforces that the retail provision is not needed and is now redundant. Even if the provision is retained, key aspects such as the reference to 'reasonable adjustment' and 'sustained and substantial reductions' are inherently ambiguous which undermines both compliance and enforcement, and ultimately the workability and effectiveness of the provision.

2. Contract market provision

The contracting provision essentially prohibits electricity generators from refusing to offer electricity financial contracts for the purpose of substantially lessening competition. However, such behaviour is already forbidden under section 46 of the *Competition and Consumer Act* (CCA) which prohibits generators from unreasonably refusing to offer financial contracts for anti-competitive purposes in circumstances where a generator has substantial market power. In addition, a range of conduct relating to financial products and services, including electricity financial products, is prohibited by Part 7.10 of the *Corporations Act* which seeks to ensure the integrity and fairness of financial markets.

The impetus for the adoption of the contract market provision was due to concerns around the impact of contract market liquidity. However, it should also be noted that the Market Liquidity Obligation (MLO) that operates alongside the Retailer Reliability Obligation (RRO) that was introduced in July 2019, places a requirement on large generators to offer contracts when the RRO is triggered. In its recent Wholesale Electricity Market Performance Report, the AER noted contract market liquidity (as measured by the liquidity ratio) is at an all-time high in all regions of the NEM, except for South Australia.³

3. Bidding provision

The electricity spot market provision prohibits bidding conduct by generators that is intended to distort or manipulate the spot market and / or made fraudulently, dishonestly or in bad faith. However, again such behaviour is already forbidden under the current regulatory framework. The Australian Consumer Law (ACL) and CCA respectively prohibit misleading or deceptive behaviour and prohibit firms that have substantial market power from engaging in conduct that would substantially lessen competition. The National Electricity Rules (NER) also require generators to submit bids into the market that are not false or misleading, and each generator must submit a verifiable reason for any rebids and keep a record that is reviewable by the AER.

4. ACCC NEM Inquiry Function

¹ AER, 'Better Bills Guidelines' version 2, 30 January 2023.

² This package includes seven reform measures. See <https://www.aemc.gov.au/rule-changes/assisting-hardship-customers>.

³ AER, 'Wholesale Electricity Market Performance Report 2024', December 2024, pg. 47.

We accept there will always be a level of monitoring and scrutiny in energy markets given the importance of the sector to consumers and the broader economy. It is important, however, that monitoring activity is as efficient as possible including through the avoidance of duplication that will help minimise the cost of compliance. On this basis we do not consider market monitoring by two national regulators (ACCC and AER) alongside other jurisdictional regulators to be efficient. Historically, information requests from the Victorian Essential Services Commission (ESC), the Essential Services Commission of South Australia (ESCOSA) and the Independent Competition and Regulatory Commission (ICRC) have often mirrored the information sought through ACCC and AER Information Notices.

The AER's wholesale electricity and gas market monitoring powers have recently been expanded as part of its assessment of wholesale market performance. Like the ACCC, the AER can now request information from market participants relating to electricity and gas contracts. It has been stated that the focus of the AER's reporting will be distinct from the ACCC's Electricity and Gas Inquiries, but in practice it appears likely there will be significant overlap in the reporting and both bodies will likely collect similar information.

If you wish to discuss any aspect of this submission further, please contact Shaun Cole at shaun.cole@originenergy.com.au or on 03 8665 7366.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve Reid', with a stylized flourish at the end.

Steve Reid
General Manager, Regulatory Policy