

3 October 2019

Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Lodged online: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/OnlineSubmission](https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission)

### **Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019**

Snowy Hydro Limited welcomes the opportunity to make a submission to the inquiry of the Senate Economics Legislation Committee (the "Committee") into the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019 ("the Bill").

Snowy Hydro Limited is a producer, supplier, trader and retailer of energy in the National Electricity Market (NEM) and a leading provider of risk management financial hedge contracts. We are an integrated energy company with more than 5,500 megawatts (MW) of generating capacity. We are one of Australia's largest renewable generators, the third largest generator by capacity and the fourth largest retailer in the NEM through our award-winning retail energy companies - Red Energy and Lumo Energy.

Snowy Hydro understands that the new categories of prohibited conduct are designed to prevent misconduct in the spot, financial and retail supply markets. While we agree that these are worthy objectives, Snowy Hydro believes that the existing regulatory framework in each of these markets already provides adequate protection against the misfeasance that bill is seeking to address. In fact, the legal framework in each of these markets has already been strengthened in recent years, such as the enhancements to the good faith rebidding requirements that entered into force in 2016, and the regulation of retail tariffs that came into effect in 2019. Snowy Hydro believes that high prices in energy markets reflect other factors, such as increased market concentration, regulatory uncertainty and a lack of strategic transmission investment. The ACCC reached a similar conclusion in the final report of their electricity pricing inquiry in 2018.

The National Electricity Law, National Electricity Rules and their subordinate instruments deal with complex technical and operational matters. Rules governing generators are applied in the context of a closely regulated environment which is characterised by continuous interaction between the generators, market operators and the regulator. The National Electricity Rules in particular is the product of years of refinement through the 'rules change' process managed by the Australian Energy Markets Commission. In this environment, caution must be exercised when seeking to impose new restrictions which do not adequately take account of, or harmonise with, existing laws. It creates a risk of regulatory uncertainty, a disproportionate compliance burden and sub-optimal consumer outcomes in the form of higher prices.

#### **Spot Market Prohibition**

Prior to updating the good faith bidding requirements in 2016, the AEMC conducted a wide-ranging consultation to ensure rebidding requirements were fit for purpose. The current rebidding rules are the product of that rule change process. Snowy Hydro is not aware of any change to the market, or of any instances of rebidding behaviour by participants since that time, which necessitates further changes to these rules. The proposed spot market prohibition also substantially overlaps with existing rebidding rules. It is unclear what conduct the bill is intended to avoid that would not

already be prohibited under the NER. The spot market prohibition would create unnecessary regulatory complexity and pose a compliance risk for generators seeking to comply with two parallel regulatory instruments regulating the same market activity. The consequent uncertainty risks inefficient bidding practices, harming market efficiency and ultimately increasing prices. The prohibition also fails to make appropriate allowance for the physical characteristics of different generation types. For example, Snowy Hydro's main source of generation - hydro-power - is fuel-constrained, and this necessarily requires different bidding strategies to, for example, thermal power stations.

### **Financial Contract Liquidity Prohibition**

Snowy Hydro believes the proposed financial market prohibition is unnecessary given that the *Corporations Act 2001* (Cth) already contains comprehensive prohibitions against market manipulation in financial markets, including in the electricity contracts market. To the extent there has been a loss of market liquidity in electricity derivatives, this is almost entirely attributable to increased market concentration and consolidation (which, in turn, was caused by the privatisation of state-owned generators). The issue of decreasing liquidity can be addressed by lowering barriers to entry (including reducing regulatory uncertainty), lowering transaction costs and improved physical transmission access. Snowy Hydro is unaware of any evidence that suggests generators are withholding or limiting access to capacity. However, to the extent such behaviour is occurring, it will in any event be addressed through the Market Liquidity Obligation (which requires obliged parties to to post bids and offers for standardised electricity contracts on an approved exchange).

### **Retail Pricing Prohibition**

Snowy Hydro believes that the retail pricing prohibition is not necessary. Retail electricity markets as a whole are highly competitive. The problem of excessive standing (default) offer prices has already been addressed by the recently-introduced Default Market Offer, which empowers the AER to impose a price cap on retailers' energy contracts. The ACCC recently confirmed that the DMO is having its intended effect in the second report of its inquiry to monitor outcomes in the National Electricity Market. The proposed retail pricing prohibition in this bill therefore duplicates existing regulation, with unintended consequences in the form of poor consumer outcomes. It creates compliance uncertainty given the lack of specificity of key terms, such as "sustained and substantial" and "underlying costs". The bill also weakens incentives for retailers to seek cost savings, given that sustained and substantial cost reductions must be passed onto consumers in their entirety. The prohibition may therefore lead to a less efficient electricity supply sector and higher prices.

### **Information Gathering Powers**

The Australian energy market is unique in both its function and purpose. It is important that the Committee is aware that any changes to the AER's powers risk undermining the consultative, cooperative and constructive nature of engagement between market participants and the AER. The proposed increase in the AER's powers may lead to market participants becoming more risk averse due to the implications of making an error. Snowy Hydro believes it is important that any changes are subject to a cost/benefit analysis and are in the long-term interests of consumers, as the costs of an increased regulatory burden are ultimately borne by consumers.

The AER's powers should not undermine the safe, secure and efficient operation of the NEM. The desire of all market participants to protect their reputation by acting in compliance with the Rules should be considered. Energy companies already devote significant resources to compliance. This raises the issue of why there needs to be material changes to the compliance regime. Snowy Hydro



believes that information obtained under the AER's new power be treated consistently with the AER's existing powers to collect information.

**Provision of evidence to be given on oath or affirmation**

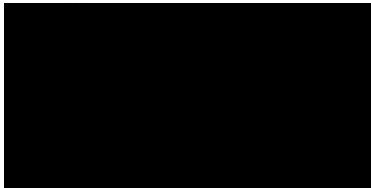
The Bill proposes that the giving of evidence to AER by individuals should be under oath or by affirmation. Snowy Hydro is not aware of any evidence that current rules (which do not include this requirement) have any in any way impaired the AER's ability to enforce energy laws. The AER has developed strong, co-operative relationships with regulated entities and market participants. The bill will effectively regulate an increase in the formality of these relationships, and thereby risks undermining the AER's ability to work cooperatively with industry. Market participants have a strong desire to comply with all regulatory requirements and to that end it is essential that they are able to maintain a workable, productive relationship with the regulator.

Should the AER's proposed enforcement and investigative powers be legislated it is important that they do not significantly expose individuals to increased personal legal risk and significant penalties as a consequence of unintended breaches of law.

The AER should be required to produce guidelines in consultation with market participants on the use of its new information collection powers. Furthermore, the AER's grounds for using the new powers should be the same as its grounds for its use of existing information gathering powers; that is, it must be tied to enforcement of the regulatory regime. In other words, the AER's powers to compel the provision of evidence should be limited to enforcement of a specific NER rule and should not be used for any other purpose.

Snowy Hydro appreciates the opportunity to respond to the Bill and any questions about this submission should be addressed to me by e-mail to [REDACTED]

Yours sincerely,



Panos Priftakis  
Head of Wholesale Regulation  
Snowy Hydro

