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Ms Lyn Camilleri
General Manager
Electricity Markets Branch
Australian Competition & Consumer Commission
GPO Box 3131
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Dear Ms Camilleri

ACCC Consultation – Draft guidelines on the Prohibiting Energy Market Misconduct Act

Ergon Energy Queensland Pty Ltd (Ergon Energy Retail) welcomes the opportunity to provide comment to the Australian Competition and Consumer Commission (ACCC), on its draft *Guidelines on the Prohibiting Energy Market Misconduct Act* (the draft Guidelines).

We acknowledge the intent of the draft Guidelines is to explain the ACCC's approach to the enforcement of the recently adopted *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2010* (the Act), and in particular to clarify the types of conduct and circumstances likely to cause the ACCC concern.

Ergon Energy Retail is a regional service delivery retailer, with 738 000 customers located across regional Queensland. As a non-competitive retailer, we offer customers a regulated retail price as set by the Queensland Competition Authority. Consequently, the Retail Pricing Provision of the draft Guidelines will not apply to Ergon Energy Retail as we are unable to offer small customers a market contract.

However, similar to other electricity retailers operating in the National Electricity Market (NEM), we seek to minimise our wholesale market exposure. Ergon Energy Retail therefore has a small vertically integrated position, involving the ownership of the Barcaldine Power Station and two Power Purchase Agreements (PPAs) with two renewable generators, which we use as in internal hedge to limit our exposure to wholesale price events. As such, and due to these PPAs, Ergon Energy Retail is an intermediary, which we suggest is not an uncommon arrangement within the NEM given the large amounts of renewable generation entering the market. We also make clear that our generation capacity is limited to around 320 megawatts of output, well below Ergon Energy Retail's customer load.

Given this, and acknowledging *Part 3 Electricity financial contract liquidity provisions* as outlined in the draft Guidelines, Ergon Energy Retail seeks clarification in the final Guidelines as to whether:

- a PPA will fall within the definition of a related body corporate and trigger clause 3.11 of the draft Guidelines;

- an intermediary (retailer) who does not on-sell excess PPA capacity will be captured by the Guidelines; and
- *Example 19: Limiting or restricting offers to enter into electricity financial contracts, but not for the purpose of substantially limiting competition* of the draft Guidelines (and other similar examples as contained within the draft Guidelines) will be extended to cover intermediaries.

In our view, there is a need to ensure the exemptions available to gentailers as outlined in the draft Guidelines are equally available for PPA/intermediary arrangements.

Should you require additional information or wish to discuss any aspect of this submission, please contact either myself on [REDACTED].

Yours sincerely

[REDACTED]

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