



Our ref: D214367
Contact: Mr Rajat Sarawat

Ms Kate Ryan
Energy Policy WA
David Malcolm Justice Centre, 28 Barrack Street
Perth, WA 6000

Sent by email to: Kate.Ryan@energy.wa.gov.au

Dear Ms Ryan

ERA submission on the Brattle Group report on improving market power mitigation in the WEM

Thank you for the opportunity to comment on the Brattle Group report and for meeting with the ERA Secretariat on 23 April 2020.

One of the ERA's functions is to monitor the Wholesale Electricity Market (WEM) for market power abuse and compliance with the WEM Rules. Many of the terms and concepts referred to in the market power provisions of the WEM Rules are undefined and would benefit from revision and clarification. Increased clarity and a better functioning market are also in the long-term interests of consumers.

The recommendations of the Brattle Group report would result in wording changes to the market power clauses in the WEM Rules, which will lead to more efficient outcomes for the market. This is in the long-term interests of consumers as the costs of complying with the WEM Rules would fall.

The two key changes proposed by the Brattle Group are the inclusion of a definition of short run marginal cost and revised references to market power. The ERA provides its comments on each of these below.

Definition of short run marginal cost

The Brattle Group report recommends that short run marginal costs should be defined as "all costs that a supplier without market power would include in forming its profit-maximising offer". The report states that this should include "all costs of generating energy that are 'marginal' over a dispatch cycle in that they would not have been incurred if the generator had been available but not running."

This definition of SRMC allows a profit-maximising firm to include in its offers all variable or marginal costs of production. In a competitive market, a firm would only be dispatched if it included valid, variable costs.

This definition is consistent with the ERA's application of SRMC in its monitoring function and the ERA supports the inclusion of the definition as it provides greater clarity to the market.

Market power

The Brattle Group recommends revising references to “when such behaviour relates to market power” and replacing them with clearer and simpler concepts such as “when the Market Participant has market power”. This will make the WEM Rules easier for market participants to interpret and to comply with and for the ERA to monitor and to enforce.

The Brattle Group report does not recommend a definition of ‘market power’, but states that “market power is the ability to profitably raise the market price.” The concept of market power is highly contentious in competition and consumer law and legal precedents exist. The ERA supports the Brattle Group’s approach to not include a definition of market power.

However, the recommended changes to the WEM Rules will be legally binding. The ERA expects that there would not be changes in the economic meaning of the provisions. The ERA suggests that the Brattle Group’s recommendations be legally reviewed to ensure that the intentions of the WEM Rules are reflected by the words proposed and there are no unintended consequences from a legal perspective.

Greater clarity in the WEM Rules will lead to better market outcomes and will ultimately benefit the long-term interests of consumers which supports the objectives of the WEM.

Yours sincerely



Nicola Cusworth
Chair
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c.c. Dora.Guzeleva@energy.wa.gov.au