

28 April 2014

The Hon. Justice Peter Michael Mansfield AM
President
Australian Competition Tribunal

By email: registry@competitiontribunal.gov.au



Your Ref: ACT 1 of 2014

Dear Justice Mansfield

Re: Application for Merger Authorisation of Macquarie Generation

The Public Interest Advocacy Centre (PIAC) wishes to provide the following information to the Australian Competition Tribunal (the Tribunal) in relation to the Tribunal's consideration of the application for merger authorisation of Macquarie Generation, made by AGL Energy Limited.

PIAC makes the following submission as an interested third party to the Tribunal's consideration of the application in question. For the avoidance of doubt, PIAC does not apply to be an intervener in these proceedings.

By way of background, PIAC is an independent, non-profit law and policy organisation. PIAC works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues. PIAC operates the Energy and Water Consumers' Advocacy Program (EWCAP), established in 1998, which develops policy and advocates in the interests of low-income and other residential consumers in NSW energy and water markets. PIAC receives funding from Trade and Investment NSW to carry out its work in this area. PIAC operates independently of all relevant interests in the matter before the Tribunal.

Vertical integration of retailers and a lack of transparency about increasing electricity prices

PIAC is not in a position to undertake a forensic assessment of the evidentiary material on which the Australian Competition and Consumer Commission (ACCC) made its decision to oppose AGL Energy's application for Merger Authorisation for Macquarie Generation. However, if the ACCC's conclusions about the public detriment of the proposed acquisition¹ are soundly based on relevant evidence, and prima facie there seems no reason to doubt that, the negative consequences to which the ACCC is adverting should the application be approved are of sufficient magnitude to cause us strong concern.

PIAC is also concerned that, given the NSW Government's decision to de-regulate retail electricity prices from 1 July 2014, the presence and operation of large companies such as AGL, which possess significant generation assets and retail customer bases (so called 'gentailers'), would be likely to cause a lack of competitive pressure and transparency surrounding cost components, which would in turn lead to increased electricity prices.

Under price regulation, the NSW Independent Pricing and Regulatory Tribunal (IPART) has historically determined a regulated retail electricity price, including a retail cost component. Information regarding electricity transmission and distribution network prices, which are set by the Australian Energy Regulator (AER), as well

¹ Australian Government, *ACCC Issues List Re: The Application for Merger Authorisation for Macquarie Generation*, 7 April 2014, 8 ff.

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as the cost of environmental schemes, are publicly available. Information from the decisions of regulators such as IPART has, therefore, allowed analysts to isolate generation costs in different states (by subtracting retail, network and environmental scheme costs from the overall price).

However, this has not been possible in Victoria, following price deregulation.² The Australian Energy Market Commission (AEMC) has noted that the ranges of competitive market components of electricity bills (ie, retail market costs and wholesale market or generation costs) 'appear larger than expected' (even when the impact of factors such as operating costs in different jurisdictions is taken into account).³

PIAC is concerned that the control of generation assets by the three vertically-integrated retailers may result in an artificial inflation of the wholesale and retail-market costs. Where a retailer owns significant generation assets, PIAC is concerned that a lack of competitive pressure in either market (retail or wholesale) might allow retailers to resist the imperative to reduce costs to consumers. The ACCC has noted that, following the proposed acquisition, the three major vertically-integrated retailers would have approximately 70% of electricity generation capacity.

PIAC believes that the lack of competitive pressure is compounded by the reduced transparency surrounding different electricity cost components, which is a feature of a retail market without a regulated retail electricity market. In addition, it seems likely that transparency would be further reduced by the greater vertical integration of electricity providers. On the basis of the above, PIAC shares the view of the ACCC that the proposed acquisition is not in the public interest.

If you require any further information from PIAC in relation to this matter, please do not hesitate to contact me or Oliver Derum, EWCAP Senior Policy Officer, on 02 8898 6518 or oderum@piac.asn.au.

Yours sincerely



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² AER, *State of the Energy Market 2013*, 2013, 129.

³ AEMC, *2013 Residential Electricity Price Trends: Final Report*, 2013, 89.