

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

19 September 2017

Dear Committee Secretary,

Re: Senate inquiry into the abolition of limited merits review (LMR)

Spark Infrastructure currently holds 49% interests in CitiPower and Powercor (electricity distribution networks in Victoria), 49% interest in South Australian Power Networks (electricity distribution network in South Australia) and a 15% interest in TransGrid (the electricity transmission network in NSW). We have invested around \$4 billion in these Australian energy networks since 2005, under the Australian national energy law and rules.

Spark Infrastructure participated in the review of the limited merits review framework process led by the COAG Energy Council from late-2016 to mid-2017. This included writing to Minister Frydenberg outlining our support for the decision of the COAG Energy Council in December 2016 to retain limited merits review and implement a number of reforms to the framework. I emphasised the importance of providing stakeholders an opportunity to provide relevant information into the process.

Nearly 40 stakeholder groups provided considered written submissions and participated in policy reference groups to undertake a comprehensive review and policy development process for reforming the LMR framework. More than 80 per cent of stakeholders (including consumer groups) supported the retention of the regime, albeit recognising opportunities for improvement. The outcome of the review was an agreement by the Australian governments to retain LMR and implement a number of reforms aimed at better achieving the policy objectives.

At no time during the review process were the policy objectives supporting LMR (such as balancing competing interests, maximising accountability, regulatory certainty and ensuring the best decision by the regulator¹) considered to be inappropriate or undesirable. Yet, the Commonwealth government has ignored this process and unilaterally decided to discard sound policy objectives and development.

An important recommendation of the Finkel Review published on 9 June 2017 was that the COAG Energy Council be notified if any COAG leader proposes to take a unilateral action that falls within the scope of the Australian Energy Market Agreement (AEMA) prior to taking the action. And further, that the COAG Energy Council should finalise and implement the proposed reforms to the LMR regime. Only 11 days later, a unilateral and un-flagged decision was made by the Commonwealth which stands in conflict with this Finkel Review recommendation and in contravention of the AEMA.

The checks and balances on the regulatory regime and the Regulator provided by LMR are highly valued by investors and assure consumers and network businesses that the Regulator is incentivised to make quality decisions free from error and bias. The importance of this is underscored by the fact that both the Australian Competition Tribunal (ACT) and the Federal Court found that the Regulator had made material errors that, if left uncorrected, would not be in the longer term interests of consumers.

The removal of LMR results in less accountability for the Regulator, and will result in investors seeking higher risk premiums to compensate them for this reduction in good governance.

We understand that the decision to abolish LMR has now been made. Nevertheless, we feel compelled to outline to the Senate Inquiry the impact of the process followed by the Commonwealth.

The Commonwealth's surprise unilateral decision to circumvent the decision of the COAG Energy Council and undermine the important governance arrangements for Australian energy markets contained in the Australian

¹ SCER, 2012, Statement of Policy Intent, <http://www.coagenergycouncil.gov.au/publications/statement-policy-intent-review-framework-electricity-and-gas-regulatory-decision-making>

Energy Market Agreement will adversely impact investment in the energy sector. It will put at risk progress in reforming the energy sector and achieving energy security, and hurt consumers in the long term as prices continue to rise and services become less reliable.

This is evident in the fact that the Commonwealth has sought to abolish LMR by removing the jurisdiction of the ACT to hear limited merits reviews under its own legislation rather than amending the Australian Energy Law to remove the right to seek limited merits review.

Capital is highly mobile and extremely sensitive to perceptions of sovereign risk. Investment horizons are long-term and infrastructure takes time to build. Stability and certainty is what is needed.

The energy sector needs more investment not less, this fact is evident worldwide. Investment is key to reliability and security of supply, to meeting consumer needs, and building an economy with increasing reliance on centrally delivered and efficiently priced renewable energy.

We made these points in our letter to relevant State and Federal Ministers, and other members of COAG, in July of this year.

The willingness of the Australian government to intervene in established market governance arrangements to deliver a short term political objective will force both debt and equity investors to seriously reconsider their view of the level of sovereign risk in Australia.

I would be happy to talk further on these issues. Please contact me on (02) 9086 3600.

Yours sincerely,



Rick Francis
Managing Director & CEO
Spark Infrastructure