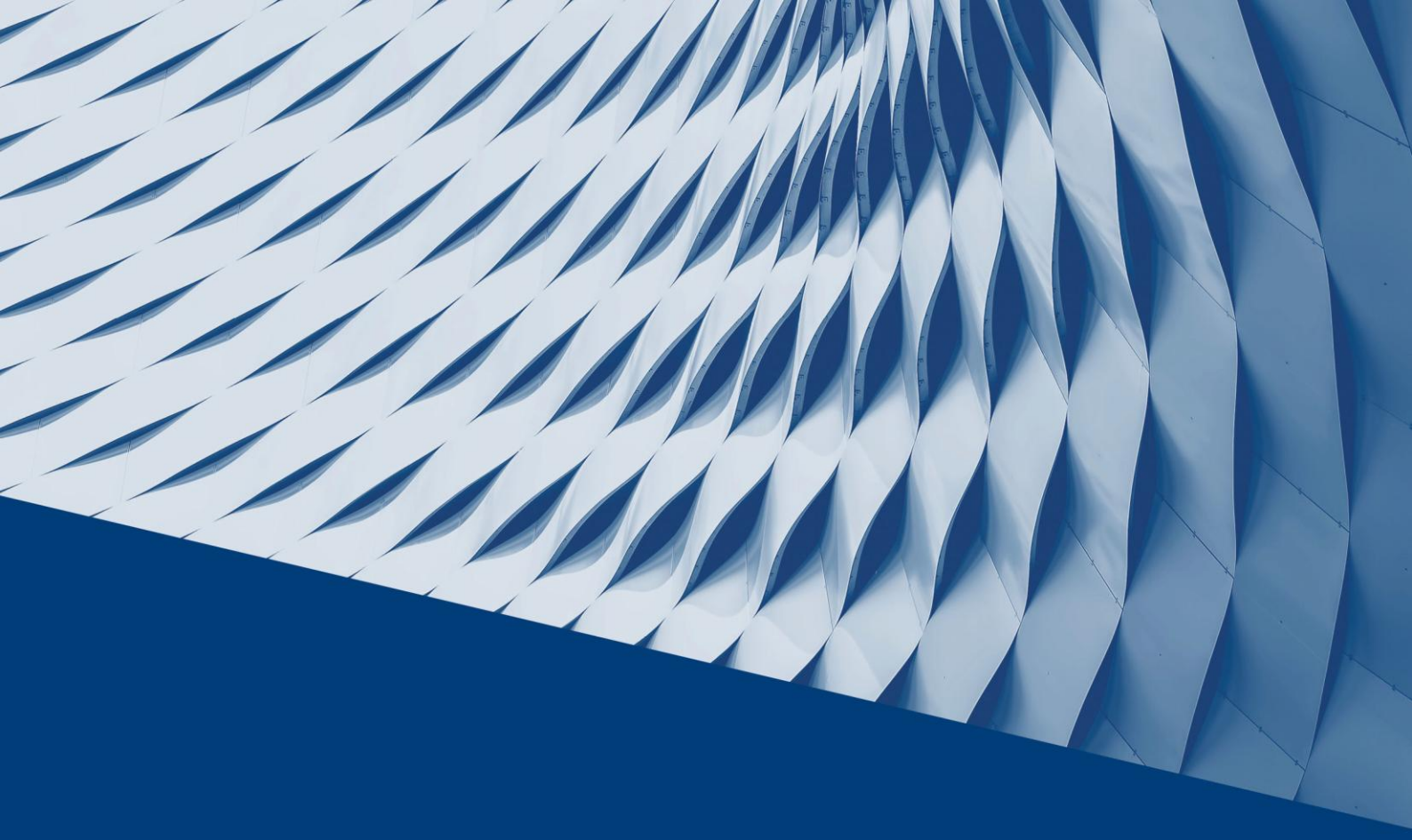

National Electricity Market Wholesale Settings Review

Submission by the Australian Council of Trade Unions in response to the NEM Wholesale Settings Review

ACTU Submission, 17 September 2025
ACTU D. No 35 /2025

ACTU
australian council of trade unions

About the ACTU

Australian Unions have always been at the forefront of winning a fair go. The Australian Council of Trade Unions is the peak body for Australian unions, comprised of 34 affiliated unions that represent nearly 2 million workers. We provide a single representative voice for working people.

The ongoing energy transition represents the most significant structural transformation of Australia's national energy system and economy in decades. To ensure that this transformation delivers genuine benefits to workers and communities, the future electricity system, as well as its framework policy settings, should deliver good-quality jobs and just transition outcomes, alongside abundant, affordable zero-emissions electricity.

Introduction

ACTU welcomes the opportunity to make a submission to the NEM Wholesale Market Settings Review and the efforts of the review panel in facilitating a broad consultation process to date.

This submission highlights some key aspects that should guide any future energy market reforms—ensuring that energy markets serve the needs of the Australian people above the interests of energy company shareholders. We urge this review to acknowledge that mechanisms and conditions in the future energy market that guarantee benefits for workers and communities are not optional—they are essential to delivering a just and inclusive energy transition for all Australians.

While the ACTU appreciates the panel's extensive consultation process, this submission outlines several ongoing concerns from workers and everyday energy consumers around equity, participation, and conditionality.

Summary of Recommendations

1. The proposed Electricity Service Entry Mechanism (ESEM) must include clear, enforceable social license criteria—aligned with FMIA national community benefit principles—to ensure a just energy transition and maintain public trust.

2. The ESEM design must exempt publicly owned energy companies from market concentration limits and include policy frameworks that incentivise ownership by governments and First Nations communities.

3. To maintain public trust and fairness in the energy transition, the NEM Review should:

- *Curb market manipulation by tightening rebidding rules and empowering regulators to penalise spot market abuses*.

- *Reform DNSP and CER frameworks to boost competition and ensure distributed energy resources benefit consumers*.

- *Support household electrification through targeted investment and standards, prioritising low-income and marginalised groups*.

Ensuring social license through community and worker benefits

Given that the proposed Electricity Service Entry Mechanism (ESEM) – as proposed by the panel - represents a significant reform to energy market operations, its current limitations—particularly the inability to attach social license conditions to projects—could seriously hinder the delivery of a just and effective energy transition. The proposed ESEM mechanism focuses purely on commercial and technical criteria for selecting renewable energy projects in its auction process, while ignoring the broader socio-economic variables that are foundational in facilitating a just transition. The draft NEM review report contains only a few lines regarding the treatment of social licence in its proposed market structure, indicating a potential shift from the 'merit criteria' employed in the Capacity Investment Scheme (CIS) to preconditions of participation.

While the review briefly mentions these criteria as potential gateway mechanisms for selecting project proponents, it lacks detail on how they would operate in practice. There is a risk that these preconditions will remain abstract and fall outside the scope of the review. Moreover, even if preconditions are used to determine eligibility for participation in the ESEM, it remains unclear whether they apply to project proponents or to individual projects. If applied to proponents, further clarification is needed on how these conditions will be assessed and enforced. This ambiguity raises a serious concern that the vehicle proposed to replace the CIS in the future will have no mechanism for ensuring minimum standards in terms of community benefit and well-paid, safe, and secure jobs.

To avoid this ambiguity and to ensure social license, the operational design of the ESEM should require entities/proponents that participate to provide concrete social and economic benefits aligned with the Future Made in Australia Community Benefit Principles. These eligibility criteria should be clear and easily quantifiable, and local communities should have the ability to shape the benefits they receive. These conditions

must be nationally consistent and should not be left to separate jurisdictions to decide, as is currently suggested in the interim report.

Without a mechanism to ensure worker and community benefit, any reform to the wholesale market settings of NEM and ESEM design risks losing social license—undermining the success of the energy transition itself. Social license conditions must not be treated as an afterthought—they are essential for a smooth and timely rollout of the energy transition across the short, medium, and long term.

Recognising the role and benefits of public ownership in energy systems

The ACTU advocates for energy market reform that recognises the crucial role of increased public ownership in Australia's energy systems. This approach would democratise the energy market, rebuild public capabilities in renewable energy generation and storage, and help ensure a just transition for all Australians. The increased corporatisation and privatisation of energy markets in Australia over the preceding decades have created an inefficient and disorganised structure of private competition, where the market is highly concentrated among a few generators and retailers. The NEM, designed in parallel with this privatisation process, has consequently failed to adequately deliver on its promised goals: lower electricity prices, effective competition, and investment decisions aligned with the goals of the Paris Agreement[1].

Positive examples of State ownership include the 2023 Build Public Renewables Act passed in New York State[2]—which authorises the state power authority to construct renewable generation, transmission, and storage to meet the state's 70% renewable energy by 2030 goal—as well the Canadian government's recent support for Indigenous-owned energy projects, which has helped stand up at least 135 mostly clean energy projects partly or wholly owned by Indigenous peoples.[3]

There have also been domestic signs of this shift. State governments are increasingly investing in their own energy infrastructure projects, which provides them with greater control over supply and prices. The re-establishment of state electricity enterprises in NSW, Victoria, and (to a limited extent) South Australia is an important recognition of the role of public investment and ownership in the future of our energy systems. In Queensland, the *Energy (Renewable Transformation and Jobs) Act 2024* legislates public ownership targets of at least 54% of generation assets, including pumped hydro by 2035.[4] Community co-ownership models for renewable energy projects are also beginning to emerge, both within First Nations communities and across rural Australia, where Indigenous clean energy equity partnerships are only expected to increase in the coming years.[5]

Research across the EU has found that publicly owned utilities have a higher tendency to invest in renewables.[6] Historic retail electricity price data make clear that in the four decades following 1950, during which Australia's publicly owned electricity supply industry underwent a massive expansion, real electricity prices fell by half, only climbing back up again as privatisation took hold in the 1990s.[7] Public-owned energy providers in Australia have also demonstrated a track record of better outcomes for workers and communities during the energy transition. But the NEM Review largely ignores the potential importance of public ownership structures and its recommendations around market concentration risk actively disincentivising even existing public ownership models.

The proposed ESEM mechanism's market concentration provisions, designed to boost competition, will unduly impact publicly owned renewable developers, as state-owned renewable developers could hit the concentration limit faster than private companies. While the committee acknowledges that "this aspect of the ESEM is not intended to be utilised in Tasmania, which has a unique market structure due to the predominance of its state-owned hydro assets", this exemption should be extended to other publicly owned developers such as those functioning in states including Victoria and Queensland, as detailed above.

Hence, ACTU calls on the review panel to acknowledge the unique role of publicly owned energy companies in delivering public benefits and ensure this is reflected in the design of NEM wholesale Market Settings. In this light, the panel should exempt publicly owned companies from market concentration provisions under review that risk undermining their contribution to Australia's energy systems. The Review should further explore policy frameworks that incentivise ownership shares of generators and networks by Australian governments and local communities, especially First Nations communities, via increased Indigenous equity and other mechanisms. This exploration should particularly investigate sectors like transmission with the characteristics of a natural monopoly. The increased community benefits that come with public ownership of generators and networks can ensure that necessary energy infrastructure can be built promptly and well before fossil fuel power generators close.

Creating an equitable energy system for consumers

Keeping energy bills affordable is crucial to building and maintaining public support for the transition. If households are forced to rely on energy arbitrage to secure fair outcomes, or if the costs of new infrastructure are unfairly distributed via higher energy bills, public trust in the energy transition will erode.

Evidence over the past couple of decades demonstrates that, despite increased retailer numbers, the market remains dominated by a few vertically integrated players who engage in systematic price discrimination[8]. As highlighted by the ACTU's 2024 Inquiry into Price Gouging and Unfair Pricing Practices, consumers continue to bear the costs of market power in electricity generation and retail, enabling retailers to engage in price discrimination [9].

While policymakers have taken actions over the past 25 years to change the NEM's bidding and rebidding rules and performance monitoring, dominant generators continue to exercise market power in the spot market. The reality of high energy prices under the current spot market challenges the NEM review's claim that the market is "efficient." In

practice, this efficiency refers only to matching supply and demand—not to ensuring affordable energy for Australian households. In designing policies to support renewable investment, the review committee should focus on efforts to limit energy bill increases and promote competition at all stages of the supply chain while avoiding framing consumer fairness and investor confidence as opposing goals. To support the goals of our energy transition and improve the efficient delivery of energy services to households and customers—beyond just meeting the needs of producers and operators—the NEM should:

1. **Address market manipulation in the spot market**: While acknowledging the committee's recognition of the risks of excessive rebidding and algorithmic bidding, more attention needs to be given to the impact that this has on energy prices and reliability. The review could advocate for future policy measures that could include suggesting increasing the abilities for regulators (e.g., the AER) to address market manipulation, further distinguish market manipulation from legitimate rebidding practices, and enforce penalties for malpractices. The bidding and rebidding rules should be amended to eliminate the possibility of generators exercising excessive market power.

2. **Regulating against market manipulations**: As more grid-scale batteries and Virtual Power Plants (VPPs) managed by Distribution Network Service Providers (DNSPs) or gentailers come online, addressing market manipulation and boosting competitiveness will become increasingly critical because without reform, a small number of battery owners could regularly set market prices to their advantage. The current regulatory framework for DNSPs tends to favour incumbents, limiting competition and preventing consumers from fully benefiting from distributed energy resources (DER). The review panel should specify how its recommendations align with other reform efforts in the energy market, such as the National CER Roadmap. To ensure CER integration delivers

real consumer benefits, NEM Wholesale market reform must be paired with tariff reform and an independent review of the role of DNSPs in facilitating the energy transition.

3. **Promote greater investment in households facing barriers**: To promote greater uptake and equitable benefits of consumer energy resources, the review committee should advocate for increased investment to help households—especially low-income families, renters, and apartment dwellers—electrify their homes. The ACTU supports the Renew Australia for All alliance, which, through its National Energy Bill Savings Plan, has been advocating to close upfront costs gaps for home electrification and efficiency upgrades for most Australian households over the next decade, starting with those most in need[10]. While the success and popularity of the Cheaper Batteries program demonstrate progress in the right direction, further investment support and regulatory reform (e.g., minimum performance standards) are needed to ensure all households can benefit from the increased integration of consumer energy resources into the national energy system. The NEM review, through its approach and recommendations, should advance both the need for and the value of these supports at the Commonwealth and state levels.

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