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Our Ref: ESR003

Application to the ACCC for Authorisation

WALGA's Proposed Energy Group

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Parties to the proposed conduct

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Introduction

A Applicant

- (i) WALGA is a peak industry body that advocates on behalf of all 139 Western Australian Local Governments, also known as 'Local Government Authorities', and provides a range of services to its members (comprising of all the above mentioned Local Government Authorities).
- (ii) WALGA makes this application on its own behalf and on behalf of its current and future Members and Associate Members who wish to constitute a proposed energy group detailed in Schedules 2 and 3 (**Proposed Energy Group**). The members of the Proposed Energy Group are all Local Government Authorities and Associate Members of WALGA. WALGA's Associate Members are organisations associated with Local Government activity and operations, including Regional Councils which operate in specialist areas such as waste management and are formed to oversee management of a particular function (**Associate Members**). WALGA's Associate Members eligible to join the Proposed Energy Group are listed in Schedule 3.
- (iii) Subject to the Australian Competition and Consumer Commission (**ACCC**) granting an authorisation (as well as an interim authorisation) along the lines described in this application, the Proposed Energy Group intends to undertake the conduct described in this application.
- (iv) It is anticipated that the membership of the Proposed Energy Group will initially include WALGA, the proposed foundation members and the current Associate Members, but will be joined over time by future WALGA Members and Associate Members.
- (v) WALGA intends to operate as a facilitator in respect of the Proposed Energy Group, through entry into an MOU with participating Members and Associate Members. WALGA will organise and facilitate the conduct of the Proposed Energy Group inclusive of procurement, administration and contract management.

B Authorisation

- (i) The ACCC may grant authorisation for conduct referred to in one or more of the provisions in Part IV of the *Competition and Consumer Act 2010* (Cth) (the **Act**) and are authorised to do so under the Act.
- (ii) This application requests authorisation for group buying and coordination arrangements which may amount to a cartel provision or an anti-competitive agreement that risks contravening the Act.
- (iii) The Applicant recognises that the ACCC must not grant authorisation unless it considers that the statutory test contained in sub-sections 90(7) and 90(8) of the Act are satisfied.

C Application

- (i) This application is made under sections 88 to 89 of the Act and is compliant with the ACCC's Guidelines for Authorisation of Conduct (non-merger).
- (ii) WALGA seeks from the ACCC:
 - i. an interim authorisation for a period of eight months commencing from 1 August 2021 until 31 March 2022 in respect of engaging in a procurement process and resulting contractual discussions for an agreement spanning an initial contract period for a supply period between 1 April 2022 and 31 March 2025 (**proposed interim conduct**), which is more particularly described in a letter sent to the ACCC on or about the date of this application; and
 - ii. an authorisation in respect of the proposed conduct for a period of 15 years (including for the period 1 April 2022 to 31 March 2025 in respect of fixed term contracts), as is detailed below, as soon as practicable in order to allow for WALGA to undertake work in anticipation of the proposed conduct being approved by the ACCC.

1 The Proposed Conduct

Description of proposed conduct

- 1.1 WALGA seeks an authorisation for a period of 15 years in order to allow members of the Proposed Energy Group to pool their aggregate forecast demand for, prepare and issue tenders in respect of, negotiate terms, jointly acquire under contract and jointly manage contracts for the following "**Relevant Products**":
 - 1.1.1 electricity from the South West interconnected system (**SWIS**), whether from licenced retailers, wholesalers or by underwriting new generation plant up to a maximum of 200,000MWh per annum; and

- 1.1.2 Large-scale Generation Certificates (**LGCs**), Small-scale Technology Certificates (**STCs**), Australian Carbon Credit Units (**ACCUs**), and similar renewable energy certificates, carbon credits, abatement certificates, however created including certificates, credits or units that may be introduced in future up to a volume sufficient to reduce proposed members' energy consumption to net zero emissions.
- 1.2 Subject to the interim authorisation being granted by, WALGA anticipates that the Proposed Energy Group will start engaging in the interim proposed conduct with the energy supply market from or about August 2021. WALGA requires to commence with the proposed conduct pursuant to an interim authorisation at this date for two reasons. Firstly, some of the Members current contracts are reaching term, and in the absence of an interim alternative they may recontract for a two or three year period which would negate the ability of the Proposed Energy Group to optimise its aggregate spend. Secondly, WALGA needs to proceed to market as any delay in the procurement timetable will not allow sufficient time for industry responses, evaluation of bids, and respective Council governance consideration for approval prior to agreement execution to the proposed commencement date of 1 April 2022.
- 1.3 WALGA therefore seeks an interim authorisation for the proposed interim conduct. WALGA anticipates the timeframe in respect of the proposed interim conduct will span between August 2021 and April 2022. WALGA will utilise the methodology defined within the process for acquiring Relevant Products with exception to WALGAs proposal that participating Members are required to enter into a contract with the recommended invited supplier as set out by the draft non-binding Memorandum of Understanding.
- 1.4 WALGA intends to conduct the proposed conduct for which the main authorisation is required on behalf of its Members and Associate Members for a longer term arrangement upon expiry of the initial three-year contract period.
- 1.5 WALGA respects that interim authorisation may provide for running a procurement process and entering into negotiations, but not entering into or giving effect to contracts. On this basis, if practicable, WALGA is also able to undertake a procurement process and recommend Tenderers subject to partial or full interim authorisation by the ACCC prior to the proposed Contract commencement date.

Relevant provisions affected

- 1.6 WALGA is aware that future members of a group buying initiative similar to the Proposed Energy Group may be taken to be competitors in the market for the acquisition of Relevant Products.
- 1.7 In view of this, WALGA considers that there is some risk that the proposed conduct:
- 1.7.1 may result in members of the Proposed Energy Group entering into and giving effect to a contract, arrangement, or arrive at an understanding, which contains a cartel provision prohibited under section 45AD(2), 45AF, 45AG, 45AJ, and 45AK of the Act within the meaning of Division 1 of Part IV of the Act; and

- 1.7.2 having the purpose or likely effect of preventing, restricting or limiting the acquisition or likely acquisition of goods or services by the parties including an agreement not to acquire goods or services from a supplier unless the supplier accepts the terms and conditions offered by the parties and commitments on volume of electricity to be acquired (ie, cartel provisions prohibited under sections 45AD(3), 45AF, 45AG, 45AJ, and 45AK of the Act).
- 1.8 WALGA also considers that there is also a low prospect of the proposed conduct resulting in members of the Proposed Energy Group entering into a contract, arrangement, arriving at an understanding or engaging in a concerted practice that may have the purpose, effect or likely effect of substantially lessening competition in a relevant market within the meaning of section 45 of the Act.
- 1.9 As Local Government bodies, the participating Local Government Authorities may, depending on the specific facts and circumstances, be able to benefit from the immunity provision in section 2BA of the Act which limits the application of the Act to the extent that the Local Government body carries on a business (defined in the Act as a business not carried on for profit).

Rationale for Proposed Conduct

- 1.10 A transition from primarily grid-based, fossil fuel generated electricity to an increasingly decentralised and de-carbonised electricity supply has commenced across Australia with all levels of Government, corporates and industry bodies calling for, and adapting to, energy transition to a greater or lesser degree.
- 1.11 As the peak representative body for Western Australia's Local Government sector, WALGA is keenly aware of the challenges and opportunities associated with the transition from a Local Government perspective. The WALGA project will significantly reduce administrative duplication of process and improve harmonisation within the Local Government sector to collectively move towards renewable energy policy implementation.
- 1.12 Specifically, WALGA is concerned to support Local Governments' interests in meeting and exceeding community expectations with respect to decarbonisation of energy supply and a prudent approach to expenditure or ratepayer's money. In WALGA's view, the task of decarbonising energy supply is likely to be more successful where, to the extent practicable:
- 1.12.1 the costs of transition are low;
 - 1.12.2 any potential financial and operational benefits of transition to the Local Government sector are maximised; and
 - 1.12.3 risks associated with contracting for Relevant Products are shared among members of a sector, allowing for a diversified approach to decarbonisation and a portfolio approach to risk.

- 1.13 In WALGA's view, the proposed conduct will improve the chances of members of the Proposed Energy Group being a part of an energy transition by:
- 1.13.1 jointly securing long-term energy supply, beyond the customary two to three year contracts that are generally available in retail markets. Joint energy procurement is anticipated to
- (a) increase the preparedness of electricity retailers to offer more competitive prices and for longer terms than is generally the case in the market, at this time – thereby increasing member certainty and capacity to plan for the transition; and
 - (b) provide sufficient risk sharing between members to allow for the Proposed Energy Group to consider directly or indirectly jointly underwriting new entrant renewable energy generation projects and associated environmental certificates;
- 1.13.2 jointly procure abatement and/or offset instruments in order to reach materially reduced net emissions, again on terms and conditions that are likely to be preferable to that, which would be the case if members sought to simply source these instruments independently.
- 1.14 In each case the conditions that WALGA considers to be likely to give rise to community support for the energy transition are likely to be maximised by the proposed conduct, specifically:
- 1.14.1 mitigating the costs of transition;
- 1.14.2 maximising any potential financial and operational benefits of transition to the Local Government sector, putting downward pressure on rates; and
- 1.14.3 sharing between members of the Proposed Energy Group risks associated with contracting for Relevant Products, allowing for a diversified approach to decarbonisation and a portfolio approach to risk.

Rationale for interim authorisation

- 1.15 The interim authorisation is sought on the basis that some potential Members are approaching the end of their supply contracts with electricity retailers. This also forms the basis for the urgency in respect of obtaining the interim authorisation. In Western Australia, supply post contract termination is typically more expensive than contracted electricity supply, which incentivises customers to re-sign for a one to three year period.
- 1.16 In WALGA's view, there is a risk that the Proposed Energy Group membership could be persuaded by electricity retailers to sign up for a one to three year period and miss out on the opportunity to initially participate in the Proposed Energy Group.
- 1.17 Further, in WALGA's view, the proposed interim conduct is very unlikely to substantially lessen competition in the relevant markets, which WALGA considers to be the market for contestable electricity supply in the SWIS from current or future licenced retailers and the market for other Relevant Products, which WALGA considers will be a national or international market.

- 1.18 WALGA notes that its initial procurement process and resulting negotiations do not bind the Energy Group Members to proceed to Contract. Participation in the WALGA project and use of WALGA Contracts as defined by the Local Government (Functions and General) Regulations 1996, Part 4, is non-mandatory. WALGA has structured its initial MOU for Proposed Energy Group members to obtain consent to represent their load profile into the procurement process, but the obligation to proceed to any resulting contract is to the discretion of the Proposed Energy Group Member, and based on value for money considerations.
- 1.19 Finally, in WALGA's view, the public benefits described in this application may be realised more promptly if an interim authorisation is granted.
- 1.19.1 WALGA seeks an interim exemption for the conduct of running a market process in order to present an option to the Western Australian Local Government Sector for Consideration.
- 1.19.2 WALGA seeks interim exemption for the proposed interim conduct timeline outlined in Schedule 4.

Term of Authorisation

- 1.20 WALGA is seeking an interim authorisation to commence engaging in a subset of the proposed conduct (namely the proposed interim conduct) between August 2021 and April 2021 in order to commence discussions, prepare, and commence the procurement process. WALGA is seeking an interim authorisation while the ACCC considers the substantive application for a long-term authorisation of 15 years. WALGA does not intend to enter into and give effect to contracts until either the interim authorisation is extended beyond April 2021 (based on the known outcome of the procurement process) or until substantive authorisation is granted.
- 1.21 A whole of project period of 15 years gives the Proposed Energy Group the required time to effectively establish, maintain and progress the proposed conduct, as well as consider broader strategy for decarbonisation over that period. WALGA notes that the ACCC has considered a similar period appropriate for a range of recent authorisations relating to group energy buying arrangements.

Documents in support of application

- 1.22 WALGA consulted with the ACCC prior to the lodgement of this application in order to understand the precise information likely to be required by the ACCC.
- 1.23 Further, WALGA notes that it has in discussions with prospective members of the Proposed Energy Group explained the competition law risks associated with the Proposed Energy Group and the likelihood that an authorisation would be a mandatory pre-condition to proceeding with the Proposed Energy Group.

Persons affected

- 1.24 In WALGA's view, persons that are likely to be affected by an authorisation of the ACCC include licenced electricity retailers in Western Australia, as well as other suppliers of Relevant Products, and potential customers for Ancillary Services provided by the Proposed Energy Group.
- 1.25 Licenced electricity retailers in Western Australia include (at the time of application) the following entities:
- 1.25.1 Advanced Energy Resources Retail (admin@advancedenergy.net.au);
 - 1.25.2 Amanda Energy (office@amandaenergy.com.au);
 - 1.25.3 Blue Star Energy (enquiries@bluestarenergy.com.au);
 - 1.25.4 Kleenheat (customeradvocate@kleenheat.com.au);
 - 1.25.5 A-Star Electricity (admin@a-star.net.au);
 - 1.25.6 Synergy (salestenders@synergy.net.au);
 - 1.25.7 Alinta Energy (customer.service@alintaenergy.com.au);
 - 1.25.8 Clean Energy (media@cleanenergycouncil.org.au);
 - 1.25.9 Change Energy (sales@changeenergy.com.au);
 - 1.25.10 Shell Energy (sales@shellenergy.com.au);
 - 1.25.11 Perth Energy (info@perthenergy.com.au); and
 - 1.25.12 Horizon Power (enquiries@horizonpower-reply.com.au).
- 1.26 Other suppliers of Relevant Products in Western Australia include the following entities:
- 1.26.1 NewGen (info@newgenenergy.com.au);
 - 1.26.2 Shell Energy (sales@shellenergy.com.au);
 - 1.26.3 Bright Energy (contact@Bright.Energy);
 - 1.26.4 Perth Energy (info@perthenergy.com.au);
 - 1.26.5 Alinta Energy (customer.service@alintaenergy.com.au);
 - 1.26.6 Change Energy (sales@changeenergy.com.au);
 - 1.26.7 Amanda Energy (office@amandaenergy.com.au);
 - 1.26.8 Synergy (salestenders@synergy.net.au);and
 - 1.26.9 Horizon Power (enquiries@horizonpower-reply.com.au).
- 1.27 Potential customers for Ancillary Services provided by the Proposed Energy Group include the following:
- 1.27.1 Azility (info@azility.co);
 - 1.27.2 100 Percent Renewables (info@100percentrenewables.com.au); and
 - 1.27.3 Enel X (contactoenelx@enel.com).

- 1.28 WALGA also considers that its Members and participants in the Local Government sector, more generally, are likely to be affected by the option of becoming a member of the Proposed Energy Group.

2 Market Information and Concentration

Electricity in Western Australia

- 2.1 Western Australia's electricity sector has the following characteristics.

The SWIS

- 2.2 The SWIS, which is an interconnected electricity system located in the State's Kalbarri in the north to Albany in the South and Kambalda to the East.
- 2.3 With minor exceptions, the electricity network infrastructure in the SWIS is owned and operated by State government owned Western Power.
- 2.4 Large scale generation in the SWIS is owned and operated by State government owned Synergy and a variety of independent power producers, such as Alinta Energy, NewGen, Bluewaters, Shell Energy, Perth Energy, Collgar Wind Farm and Bright Energy.
- 2.5 There are a variety of retailers in the SWIS, including Synergy, Alinta Energy, Perth Energy, CleanTech, Kleenheat and Shell Energy. Customers that consume more than 50MWh per annum at any connection point are contestable and may purchase energy from a business other than Synergy. Customers that do not exceed this threshold must purchase electricity from Synergy.
- 2.6 Electricity in the SWIS is traded:
- 2.6.1 in one or more of the Wholesale Electricity Market (**WEM**) markets, including the day-ahead Short Term Energy Market or the Balancing Market, which operates as a spot market;
 - 2.6.2 on a wholesale bilateral basis, using either forward price for load following hedge or other hedge options based on relativity to balancing prices;
 - 2.6.3 in the retail market between "market customers" and consumers. For more sophisticated consumers, these retail arrangements may have some wholesale exposure, such as a part fixed forward price with the ability to take on exposure to the balancing price; and
 - 2.6.4 bilaterally between behind-the-meter generation system operators and consumers by means of "solar power purchase agreements".
- 2.7 WALGA Members generally have the following options in relation to contracting for electricity supply:
- 2.7.1 A Local Government Authority is required by regulation to issue a Request for Tender for the supply of electricity where a contract has a value of \$250,000 or more. Since many Local Government electricity supply contracts have a value greater than this, the tender obligation is typically required.

- 2.7.2 A Local Government Authority may choose to enter into a contract with a Preferred Supplier under WALGA's Preferred Supplier Program, which is gazetted under regulation as Tender Exempt and operates as a prequalified framework arrangement. WALGA issues a Request For Tender to construct its Preferred Supplier Panel.
- 2.8 In either case, WALGA Members have traditionally contracted for the supply of multiple connection points under a single contract, which typically runs for two to three years and which may contain:
- 2.8.1 price adjustment provisions (such as ratchets, index adjustments and change event clauses which allow for charges to be varied if any event occurs that could increase a retailer's costs);
 - 2.8.2 take or pay clauses / minimum annual bill clauses;
 - 2.8.3 contract maximum demand clauses, which may or may not reflect network limitations;
 - 2.8.4 bundled or unbundled pricing (being either a single volumetric charge or a range of charges broadly reflective of wholesale market charges, network charges, capacity charges and energy charges); and
 - 2.8.5 onerous indemnity and liability clauses in favour of the retailer.
- 2.9 In WALGA's view and experience, it is exceedingly difficult to get retailers to agree to changes from their standard terms and conditions.

The non-SWIS areas of Western Australia

- 2.10 While this application relates solely to the acquisition of electricity from the SWIS, the following background is provided for context because WALGA may wish to submit an application in future in relation to supply in the non-SWIS areas of Western Australia. The Non-SWIS region of the State comprise:
- 2.10.1 The North West Interconnected System (**NWIS**), which is an interconnected electricity system in the Pilbara region of Western Australia comprised of electricity networks owned and operated by Horizon Power, Alinta Energy, Rio Tinto and FMG. Generation in the NWIS is owned and operated by Rio Tinto, ATCO Australia, TransAlta and Alinta Energy and retailed by network operators. The State Government is currently progressing a reform program to introduce limited retail contestability in the form of a "light handed" third party access regime, which is anticipated to allow for retail contestability for a small number of large consumers.
 - 2.10.2 The Esperance interconnected system comprised of an electricity network owned by Horizon Power with generation owned and operated by State Government owned Synergy and Infrastructure Capital Group. Electricity is retailed by Horizon Power and Infrastructure Capital Group.
 - 2.10.3 Various non-interconnected systems operated by Horizon Power and various independent power producers.

- 2.11 With the exception of WALGA Members located in certain mining towns, such as Newman, Horizon Power is presently the monopoly retailer for all Local Government Authorities outside of the SWIS. However, there is the prospect of Local Government Authorities procuring electricity under one or more power purchase agreements in respect of onsite, behind the meter, generation systems such as solar power purchase agreements.
- 2.12 Some Local Government Authorities outside of the SWIS may have (or intend to) enter direct relationships with resources companies to purchase directly from privately owned infrastructure.

The Local Government sector and the Western Australian electricity sector

- 2.13 WALGA is constituted under the Local Government Act 1995. All Local Government Authorities in Western Australia are currently WALGA Members.
- 2.14 Local Government Authorities are defined by Western Australian State Legislation in the Local Government Act, 1995. WALGA is also constituted under this Act. At the time of application all Local Government Authorities are Members of WALGA. WALGA also has Associate Members (refer Schedule 3), for example a Regional Council may operate a landfill site, which serves multiple Local Government Authorities rather than each of them having individual facilities. WALGA's Membership is governed by its Corporate Governance Charter.
- 2.15 Members of the Western Australian Local Government sector are, in aggregate, reasonably large consumers of grid-sourced electricity, buyers of renewable energy technology such as solar PV systems.
- 2.16 As large energy consumers, Local Government Authorities are also responsible for sizeable greenhouse gas emissions.
- 2.17 Respective of the total volume of the SWIS, WALGA Members and Associate Members represents an estimated 140,000 MWh, which accounts for around 0.03% in market electricity volume in the SWIS.
- 2.18 These figures are based on data collected from the larger Local Government Authorities compared against the current output displayed on the AEMO Wholesale Energy Market (WEM) Data Dashboard. [AEMO | WEM data dashboard](#)

The market for renewable energy certificates, abatement instruments and similar

Overview of the renewable energy market

- 2.19 Renewable energy in Australia includes wind power, hydroelectricity, solar PV, heat pumps, geothermal, wave and solar thermal energy. According to the *Clean Energy Australia Report 2021* issued by the Clean Energy Council¹ (**Report**), last year Australia produced 62,917 gigawatt-hours of renewable energy, which accounted for 27.7% of Australia's electricity production.

¹ See <https://assets.cleanenergycouncil.org.au/documents/resources/reports/clean-energy-australia/clean-energy-australia-report-2021.pdf>.

- 2.20 The largest sources of clean energy last year came from wind and rooftop solar, with both the wind and rooftop solar sectors setting new annual records. Emerging technologies such as major utility-scale batteries and renewable hydrogen also made rapid progress. Much of the progress was driven by State and Territory Governments.
- 2.21 According to the Report, the benefits of renewable energy are that it makes Australia's electricity system cheaper, more reliable and cleaner. In 2020 the clean energy industry employed more than 25,000 Australians, and households and businesses saved hundreds of dollars on their electricity bills due to the influx of new renewable generation.
- 2.22 In 2020 a quarter of Australia's total electricity generation came from renewable sources. Much of this increase was due to the small-scale solar sector which added more than 3 GW of new capacity in 2020. This brought the small-scale solar sector's share of Australia's renewable energy generation to 23.5%, pushing it past hydro.
- 2.23 The large-scale sector contributed almost 2 GW of new capacity in 2020. The majority of these projects were large-scale solar farms, representing 893 MW of new capacity. The wind sector represented the bulk of new generation, adding 1097 MW throughout the year.
- 2.24 According to the Report, another 76 large-scale wind and solar projects were under construction at the end of 2020, representing over 8 GW of new capacity and employing more than 9000 Australian workers.
- 2.25 16 utility-scale batteries were under construction at the end of 2020, representing more than 595 MW of new capacity. Australian households installed 23,796 small-scale batteries with a combined capacity of 238 MWh in 2020.
- 2.26 In 2020, the Federal Government included renewable hydrogen in its Technology Investment Roadmap, and the states and territories increased their investment in renewable hydrogen.
- 2.27 According to the Report, in WA, of the 19,171 total energy generation (GWH) during 2020, fossil fuel generation comprised 14,528 GWH and renewable generation totalled 4,643 GWH (24.2% of total generation).
- 2.28 In 2020 the WA Government released its first Whole of System Plan (WOSP) which provides a 20-year outlook on the future of the SWIS. The WOSP modelled four scenarios for WA's main grid, and renewables are expected to account for at least 70% of generation capacity under all of those scenarios by 2040.
- 2.29 The WA Government also announced plans to build a 100 MW/200 MWh battery at the decommissioned Kwinana power station in October 2020. This will be the first battery that is built on the state's main grid and will be the second largest battery in Australia upon completion. The battery is designed to support the integration of more renewable energy and improve grid security, and will soak up excess solar power produced by WA's strong uptake of rooftop solar, which is expected to increase to 50% of all WA households by 2030.
- 2.30 WA made significant investments in hydrogen in 2020, including a \$22 million investment by the WA Government in August 2020, which aims to bring forward WA's renewable hydrogen targets from 2040 to 2030 and to develop a 1.5 GW renewable energy and hydrogen hub north of Geraldton.
- 2.31 With this national drive towards transitioning to clean energy and de-carbonised electricity, WALGA and its Members, being large energy consumers responsible for sizeable greenhouse gas emissions, are also expected to adapt and transition to clean energy.

WALGA and its Members are mindful of using taxpayer money to fund these transitions. As stated above, the task of decarbonising energy supply is likely to be more successful where:

- 2.31.1 the costs of transition are low;
 - 2.31.2 any potential financial and operational benefits of transition to the Local Government sector are maximised; and
 - 2.31.3 risks associated with contracting for Relevant Products are shared among members of a sector, allowing for a diversified approach to decarbonisation and a portfolio approach to risk.
- 2.32 In WALGA's view, the proposed conduct, if authorised by the ACCC, will improve the chances of members of the Proposed Energy Group being a part of an energy transition. The proposed conduct is likely to gain community support for the energy transition by:
- 2.32.1 mitigating the costs of transition;
 - 2.32.2 maximising any potential financial and operational benefits of transition to the Local Government sector, putting downward pressure on rates; and
 - 2.32.3 sharing between members of the Proposed Energy Group risks associated with contracting for Relevant Products, allowing for a diversified approach to decarbonisation and a portfolio approach to risk.
- 2.33 In the absence of authorisation by the ACCC for the proposed conduct, members of the Proposed Energy Group will be more reluctant and less amenable to implementing the necessary changes for the transition to clean energy due to the potential costs of transition and the fact that these costs would not be shared between the various Local Government Authorities. Any unnecessary costs incurred in transitioning to clean energy could further flow through to rate payers, which would mean less support by the community for the implementation of the changes.

The Clean Energy Regulator

- 2.34 The Clean Energy Regulator administers national carbon markets for the Emissions Reduction Fund, under which ACCUs are created and traded and the Renewable Energy Target, under which LGCs and STCs are created and traded.

ACCUs

- 2.35 Emissions Reduction Fund contracts are the largest source of ACCU demand with around 10.2 million ACCUs delivered in the 2018-2019 financial year, however there is an emerging demand from State and Territory Governments². This demand is driven by the need to meet government commitments or policies to offset emissions and accounted for over 65,000 ACCUs in the 2018-19 financial year.³ In 2019-20 this demand totalled \$200,000 in units compared to the \$4,270,000 procured through Emissions Reduction Fund Contracts.

² According to the Clean Energy Regulator. See <http://www.cleanenergyregulator.gov.au/Infohub/Markets/buying-accus/australian-carbon-credit-unit-demand>

³ As recorded by the Clean Energy Regulator. See <http://www.cleanenergyregulator.gov.au/Infohub/Markets/buying-accus/australian-carbon-credit-unit-demand>.

- 2.36 Whilst State and Territory Government demand represents a small portion of the total ACCU demand, WALGA Members and the Proposed Energy Group will require an even smaller percentage of carbon offsets. The scope of Local Government work is predicted to produce far less emissions than State Government activities, simply based on the consumption profile of state versus Local Government entities.
- 2.37 WALGA estimates that the Local Government sector will account for approximately >5 %. As such, the entire potential membership of the Proposed Energy Group does not represent a material share of the aggregate market for ACCUs demand in Western Australia.
- 2.38 WALGA has been informed by numerous market participants that higher levels of buying commitment will result in a better commercial outcome as it provides suppliers with a degree of certainty over a period of time.

LGCs

- 2.39 Accredited renewable energy entities such as power stations that generate electricity from eligible renewable energy sources are entitled to create LGCs based on the amount of eligible renewable electricity that produces above their baseline. As a guide, one LGC is equal to one megawatt hour of eligible renewable electricity. To be eligible for accreditation, some or all of the power generated by the power station must be generated from an eligible renewable energy source. These LGCs can act as a form of currency and can be sold, transferred and traded. Usually the market is dominated by electricity retailers, who are required to surrender a designated number of certificates to the Clean Energy Regulator each year.
- 2.40 According to the Clean Energy Regulator's LGC market update in October 2019, 6.4 gigawatts of new large-scale renewable energy capacity to meet the 2020 Large-Scale Renewable Energy Target was approved.
- 2.41 There is opportunity for Local Government Authorities to procure LGC contracts in order to either surrender those LGCs as part of an emissions reduction strategy or transfer to liable entities such as electricity retailers.
- 2.42 WA Local Government Authorities procure LGCs as an option partied to their energy contract. This is in the form of a proposed premium against any given volume consumed. WALGA has identified that these premiums are significantly above the current spot prices presented to the wider market. WALGA has communicated with industry on their ability to provide more competitive premiums for LGCs and has received feedback that aggregation will likely provide a more favourable cost for the sector. A large portion of Local Government Authorities in WA wish to make a transition to renewable energy and this is reflected with new internal energy policies. The largest barrier to make this transition is the cost and many Local Government Authorities who are not able to justify the cost of a transition under the current market prices offered individually will now be able to do so with a cheaper premium achieved through aggregation.
- 2.43 There are currently 12,018,970 LGCs registered on the Renewable Energy Certificate (REC) Registry. WALGA estimates that the Local Government sector will look to procure 20,000 initially LGCs each year in order to surrender to meet renewable energy and carbon emission reduction claims.

STCs

- 2.44 Currently over 28.8 per cent of WA households have rooftop solar PV installed and behind-the-meter PV is set to increase in the coming years to reach an estimated between 2612MWh and 5,037MWh of installed capacity by 2029-304. Importantly STCs generated from rooftop PV are set to displace large-scale solar. State and Local Government Authorities will be required to work closely to ensure the needs of the system are met, but also that there is a clear pathway to a cleaner, more variable market.
- 2.45 STCs are created, and then registered in the REC Registry, following the installation of an eligible system. STCs are most commonly assigned by system purchasers to eligible system vendors in consideration for a reduced sale price. Eligible systems include:
- 2.45.1 solar panels systems that has a capacity of no more that 100kW and a total annual electricity output less than 250MWh;
 - 2.45.2 wind systems that has a capacity of no more than 10kW, and a total annual electricity output of less than 25MWh; or
 - 2.45.3 hydro systems that have a capacity of no more than 6.4kW and a total annual electricity output of less than 25MWh.
- 2.46 STCs are tradeable through the open market, or via the STC clearing house. The Clean Energy Regulator operates the STC clearing house. There are currently 16,646,475 STC registered in the REC Registry and 565,154 recorded on the STC clearing house list.

Geographic Area/s

- 2.47 WALGA considers that the Proposed Energy Group will be comprised of WALGA Members and Associate Members in the SWIS in relation to the procurement of electricity but more generally across Western Australia in relation to the procurement of LGCs, STCs and ACCUs, as well as other abatement instruments.

Process for acquiring Relevant Products

- 2.48 WALGA proposes to enter into a Memorandum Of Understanding with current and Future Members of the Proposed Energy Group, which will provide for:
- 2.48.1 WALGA to manage and administrate a process of seeking terms and prices from suppliers of Relevant Products that are presently preferred suppliers under WALGA's preferred supplier program (**invited suppliers**) and who already have standard terms and conditions provided to WALGA as a part of the preferred supplier program. In order to do this, WALGA will provide to these invited suppliers a range of information about selection criteria, customer demand requirements, renewable energy content expectations and other preferences, using consumption and forecast demand requirements of Proposed Energy Group members;

⁴ According to the 2020 Wholesale Electricity Market Electricity Statement of Opportunities:
<https://www.energymagazine.com.au/western-australia-generation-will-meet-swis-demand-report/>

- 2.48.2 WALGA to establish a steering committee of WALGA and member representatives who will advise the project. A broad base of Members will assess and evaluate proposals from invited suppliers against a criteria as set out by a procurement plan.
- 2.48.3 it is proposed that the tender evaluation panel will be provided with the following information:
- (a) the various proposals put forward by invited suppliers, including in relation to price, volumes and terms and conditions;
 - (b) the forecast demand for Relevant Products of the Proposed Energy Group members.
- 2.48.4 the steering committee will receive an evaluation report which makes one or more recommendations in relation to Relevant Products. The Proposed Energy Group members are then free to enter or not enter into individual contracts with the recommended invited supplier on the basis of that recommendation. Clearly, if one or more members of the Proposed Energy Group determine not to agree to enter into the recommended contract, then the recommended invited supplier's group buying proposal will fall away.
- 2.48.5 WALGA's Finance and Services Committee will also receive the evaluation report through its procurement governance.
- 2.49 Foundation Members of the Proposed Energy Group are listed in Schedule 2. It is envisaged that other WALGA Members will be able to join the Proposed Energy Group and become Future Members and also maintain capacity to leave the group as convenient to them. This is set out by the draft non-binding Memorandum of Understanding, a copy of which is enclosed for your reference and consideration. Parties are not bound to the proposed group in relation to proceeding to contract following the procurement process. Participating Local Governments will only be bound to the individual supply agreement it executes with the recommended supplier by WALGA, and subject to their internal procurement governance with their Council. The binding nature of the group arrangement is no different for Local Government as when entering an agreement outside of a pre-negotiated structure or using WALGA's standard Preferred Supplier Program.
- 2.50 WALGA will include a Management Fee in the Contracts, payable by the retailer quarterly in arrears. The initial Management Fee is proposed at 1% of turnover and may be revised downwards as the Energy Group grows in size. The Management Fee resources WALGA for its cost of procurement and contract development and for ongoing contract management, maintenance of compliances and due diligence, contract analytics and administration of the Proposed Energy Group.
- 2.51 WALGA will seek an initial contract period from the supply period between 1st April 2022 and 31st March 2025.
- 2.52 WALGA will conduct a further process on behalf of its Members for a longer term arrangement upon expiry of the initial contract period. To this end a transition process towards sustainable energy generation is anticipated.

Competition Factors

- 2.53 WALGA considers that the market share of the Local Government sector in Western Australia in each of the markets described above is likely to be less than 5 per cent. In view of this, WALGA does not consider that authorisation of the proposed conduct is likely to give rise to any adverse impact on competition in those markets.
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3 Public Benefit

- 3.1 The term “public benefit” is not defined in the Act, however, the Tribunal has stated that the terms should be given its widest possible meaning. This includes *“anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements...the achievement of the economic goals of efficiency and progress.”*⁵
- 3.2 WALGA considers that the establishment of the Proposed Energy Group to carry out the proposed conduct will provide significant public benefits.
- 3.3 Principally, the benefits are anticipated to be in the form of:
- 3.3.1 lower energy costs incurred by members of the Proposed Energy Group, given that clean electricity is cheaper than fossil fuel generated electricity, which is expected to put downward pressure on Local Government rates, benefitting residents and businesses. In turn, lower Local Government rates will result in residents and businesses having higher disposable income to use to grow the Australian economy. Lower costs will also result in the Local Government Authorities having more funds available to spend on other projects servicing their respective local communities;
 - 3.3.2 the Local Government Authorities would be likely to secure better prices and commercial terms for electricity if they act together, delivering financial savings and long-term certainty, which is essential to the efficient spending in pursuit of their primary objective to achieve the best outcomes for their respective local communities;
 - 3.3.3 lower transition costs given that members of the Proposed Energy Group would be able to share transition costs resulting in lower government rates, benefitting residents and businesses and ultimately benefitting the Australian economy;
 - 3.3.4 a coordinated approach to transitioning from higher emissions to lower emissions energy consumption by members of the Proposed Energy Group by locking in longer term, cheaper electricity contracts and using economies of scope and scale to reduce and abate emissions in order to give members the optionality to reach net zero emissions;

⁵ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

- 3.3.5 the transitioning from higher emissions to lower emissions will have increased environmental benefits. The Local Government Authorities are committed to promoting the investment in renewable and clean energy to reduce the impact of greenhouse gas emissions on the environment. The public benefit in reducing greenhouse gas emissions is clear as all members of the public have an interest in preserving the quality of air, water and living standards for current and future generations. One of the impacts of climate change are the conditions that led to the widespread bushfires that devastated large parts of Australia at the end of 2019 and beginning of 2020;
 - 3.3.6 the transitioning by the Local Government Authorities from higher emissions to lower emissions will, in turn, support Western Australia's drive to lower emissions and ultimately support the Federal Government in achieving its targets;
 - 3.3.7 greater risk sharing between members of the Proposed Energy Group than may otherwise be the case. For example, by having the option to negotiate contractual mechanisms that allow for minimum take volumes to be smeared across a portfolio of members; and
 - 3.3.8 the proposed conduct is likely to increase public confidence in steps being taken to decarbonise Western Australia's electricity system, which will in turn maximise the prospect of its success.
- 3.4 If the proposed conduct is not authorised:
- 3.4.1 the Local Government Authorities are likely to face higher transition costs given that they would not be able to share their transitioning costs. Again, the higher costs will likely flow through to residents and businesses, and result in increased Local Government charges and/or the Local Government Authorities having less funds available to spend on other projects servicing their respective local communities; and
 - 3.4.2 the Local Government Authorities are likely to face higher transaction costs in that each Local Government Authority would have to individually tender and contract for their electricity supply which will incur transaction costs such as time taken to negotiate and other costs such as obtaining technical and level advice. Potential suppliers will also incur transaction costs in negotiating with the members individually. The higher transaction costs will, in turn, likely flow through to residents and businesses, and result in the Local Government Authorities having less funds available to spend on other projects servicing their respective local communities;
- 3.5 The ACCC has in the past issued authorisations in applications relating to joint energy purchasing groups and determined that those authorisations resulted in public benefits. For example:
- 3.5.1 In January 2020 and again in October 2020 the ACCC granted authorisation to Victorian Councils to pool their electricity demand and collectively tender for the supply of retail electricity services and renewable energy certificates from an electricity retailer for a period of 11 years. The ACCC determined that the proposed conduct was likely to result in public benefits including transaction cost savings, encourage greater competition and investment in the supply of electricity and environmental benefits.

- 3.5.2 In May 2017 the ACCC granted authorisation to the South Australian Chamber of Mines and Energy on behalf of itself and 27 other participating group members to form a joint electricity purchasing group, conduct a joint tender for electricity supply arrangements and jointly negotiate the terms and conditions of their electricity supply agreements, for a period of 11 years. The ACCC determined that the proposed conduct was likely to result in public benefits including transaction cost savings, increased competition for the wholesale supply of electricity in South Australia, greater economies of scale and efficiency through a single supply arrangement rather than individual supply arrangements for each applicant and improved system security in South Australia.
- 3.5.3 In August 2017 the ACC granted authorisation to the Eastern Energy Buyers Group to establish a joint energy purchasing group for 11 years. The ACCC found that the proposed conduct was likely to result in public benefits including transaction cost savings, potential for increased competition for the supply of electricity and gas, and incentives for investment in generating capacity.
- 3.5.4 In July 2016 the ACCC granted authorisation to Melbourne City Council along with 13 other entities to jointly negotiate the terms and conditions of certain electricity sale agreements and to conduct a collective tender process for a period of 15 years. The ACCC found that the proposed conduct was likely to result in public benefits including transaction cost savings, greater economies of scale and efficiency and environmental benefits from any resulting additional reduction in greenhouse gas emissions.

4 Public Detriment (including likely competitive effects)

- 4.1 The Applicant does not consider that the establishment of the Proposed Energy Group will result in any public detriments, including any lessening of competition in any relevant markets.

5 Contact Details for stakeholders

- 5.1 The Applicant considers that all licenced retailers that operate in the SWIS may be interested in the outcome of an application, as well as Local Government Authorities.
- 5.2 What follows is a non-exhaustive list of contacts.
- 5.3 The WALGA Panel composition can be viewed on <https://walga.asn.au/Procurement/Preferred-Supplier-Program/Preferred-Supplier-Directory/Find-a-Contract/Energy-Services>

Alinta Energy	Primary Contact: Sam Bethune (Account Manager – C&I) Email: [REDACTED] Primary phone: [REDACTED] Website:
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	https://www.alintaenergy.com.au
Synergy	Primary Contact: Anazia Farla (Broker Channel Specialist) Email: [REDACTED] Primary phone: [REDACTED] Website: http://www.synergy.net.au
Shell Energy	Primary Contact: Shona Guilfoyle (Account Manager) Email: [REDACTED] Primary phone: [REDACTED] Website: https://shellenergy.com.au
Infinite Energy	Primary Contact: Iulian Sirbu (Retail Energy Manager) Email: [REDACTED] Primary phone: [REDACTED] Website: http://www.infiniteenergy.com.au
Perth Energy	Primary Contact: Jasmin Epps (Manager Key Accounts) Email: [REDACTED] Primary phone: [REDACTED] Website: http://www.perthenergy.com.au
Avertas Energy Limited	Primary Contact: Greg Richardson (Business Development Manager) Email: [REDACTED] Primary phone: [REDACTED] Website: www.avertas.com.au
Azility	Primary Contact: Erin Harrison (Service Manager) Email: [REDACTED] Primary phone: [REDACTED] Website: www.azility.co

6 Additional Information

6.1 The name and address of the person/s authorised by the applicant to provide additional information in relation to this application are below:

Name	Toby Costanzo
Address	WALGA 1/170 Railway Parade West Leederville WA 6007
Contact Number	██████████

Schedule 1 "Declaration by Applicant"

1 Declaration

- 1.1 The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.
- 1.2 The undersigned undertakes(s) to advise the ACCC immediately of any material change in circumstances relating to the application.
- 1.3 The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of section 137.1 and 149.1 of the *Criminal Code* (Cth).



Signature of authorised person

Contract Manager, Management (Western Australian Local Government Association)

Office held

Toby Costanzo

Name of authorised person

This 28th day of June 2021

Schedule 2 Proposed Energy Group

Proposed foundation members

The following WALGA Members have provided an initial commitment to WALGA to be part of Proposed Energy Group, with the right to withdraw if not satisfied with the project outcomes:

The City of Stirling
The City of Mandurah
The City of Perth
The City of Fremantle
The City of Cockburn
The City of Bayswater
The City of Canning
The City of Joondalup
The City of Wanneroo
The City of Gosnells
The City of Armadale

At the time of application the following additional WALGA Members have provided an MOU to proceed to join the Proposed Energy Group:

The City of Greater Geraldton
The Town of Cambridge
The City of Vincent
The City of Albany
The City of South Perth
The Shire of Manjimup
Mandarie Regional Council
The City of Subiaco
The City of Bunbury
The Shire of Carnamah
The Shire of Murray
The City of Kalgoorlie-Boulder
The City of Kwinana
The City of Melville
The Shire of Mundaring
The Town of Mosman Park
The City of Canning
The Town of Claremont
The Shire of Corrigin
The City of Kalamunda
The Town of East Fremantle
The City of Nedlands
The Town of Cottesloe
The Shire of Augusta-Margaret River

Schedule 3 WALGA Associate Members

The following is a list of WALGA Associate Members that have eligibility to join the Proposed Energy Group under the provisions of WALGA's Corporate Governance Charter:

Air Services Australia
Aqwest-Bunbury Water Corp
Black Swan Health
Bunbury-Harvey Regional Council
Central Regional TAFE
Eastern Metropolitan Regional Council
Mindarie Regional Council
Peel Harvey Catchment Council
Rivers Regional Council
Southern Metropolitan Regional Council
Tamala Park Regional Council
WA Super
Western Metropolitan Regional Council
Western Power
Wheatbelt East Regional Organisation of Councils

Schedule 4 Procurement Plan Proposed Timeline

The following table provides an estimated timeline from the commencement of developing the procurement plan, through to the award of a contract.

The indicative timeframes for each stage of the procurement process are as follows:

Stage	Indicative Timeframe
Procurement Plan and Evaluation Plan approved	June 2021
Local Governments to provide updated forecasts of energy consumption volume compared to their standing data (for example Covid-19 having an impact on historical volumes)	June - August 2021
Declarations of Conflict & Interest obtained from Evaluation Panel	August 2021
RFQ released to invitees	Monday 9th August 2021
Supplier Briefing	Thursday 12th August 2021 at 10:00AM
RFQ Closes	Monday 30th August 2021 at 2:00PM WST
Evaluation of RFQ submissions	September 2021
Recommendation Report complete and Steering Group Endorsement	October 2021
WALGA award of contract	11th October 2021
Member governance approval	November - December 2021
Contract transition	December 2021 – April 2022
Contract commencement date	1st April 2022



28 June 2021

Our Ref: ESR001

The Assistant Director: Competition Exemptions
Australian Competition & Consumer Commission
Attention: Mr Simon Bell
By email: simon.bell@accc.gov.au
CC: exemptions@accc.gov.au

Application for Interim Authorisation: Western Australia Local Government (WALGA)

- 1 We refer to the Western Australia Local Government (**WALGA**) application for Australian Competition & Consumer Commission (**ACCC**) authorisation submitted together with this document (**Main Application**).
- 2 By this letter, WALGA notes its request for an interim authorisation in respect of certain of the proposed conduct for which an application for authorisation is made by WALGA on this date.

Background

- 3 WALGA is a peak industry body that advocates on behalf of all 139 Western Australian Local Governments, also known as 'Local Government Authorities' (**Members**).
- 4 WALGA applies to the ACCC for interim authorisation of certain conduct described in the Main Application up and until the point at which WALGA or members of the proposed energy group enter into contracts with the suppliers described in the Main Application.
- 5 The interim application is made on behalf of itself and its current, future and associate Members, more particularly described in the Main Application, who wish to constitute a proposed energy group (**Proposed Energy Group**). The details of the Proposed Energy Group and its proposed membership are set out in the Main Application.
- 6 In terms of section 91(2)(d) of the Act, the ACCC may, where it considers appropriate, grant an interim authorisation which allows parties to engage in proposed conduct which may amount to a cartel provision or an anti-competitive agreement that risks contravening the Act while the ACCC is considering the substantive application.
- 7 This application seeks interim authorisation for a period of eight months, commencing from 1 August 2021 and ending on 31 March 2022, for the Proposed Energy Group to engage in a procurement process (see Schedule 4 attached to the Main Application) and resulting contractual discussions for an agreement spanning an initial contract period of 1 April 2022 and 31 March 2025 (**Proposed Interim Conduct**). This application is pending the granting of the authorisation sought in the Main Application for a period of 15 years.

- 8 For purposes of the Proposed Interim Conduct, it is anticipated that the Proposed Energy Group will start engaging in negotiations with the energy supply market from or about August 2021.
- 9 WALGA requires to commence with the Proposed Interim Conduct in August 2021 for two reasons:
- 7.1 some of the Members' current contracts are reaching term, and in the absence of an interim alternative they may recontract for a two or three year period which would negate the ability of the Proposed Energy Group to optimise its aggregate spend; and
 - 7.2 WALGA needs to proceed to market as any delay in the procurement timetable will not allow sufficient time for industry responses, evaluation of bids, and respective Council governance consideration for approval prior to agreement execution to the proposed commencement date of 1 April 2022.
- 10 WALGA therefore seeks an interim authorisation for the Proposed Interim Conduct during the period August 2021 and April 2022.
- 11 WALGA respects that interim authorisation may be provided for running a procurement process and entering into negotiations, but not entering into or giving effect to contracts. On this basis, if practicable, WALGA is also able to undertake a procurement process and recommend Tenderers subject to partial or full interim authorisation by the ACCC prior to the proposed contract commencement date.

Relevant provisions affected

- 12 WALGA does not consider there to be a risk that the Proposed Interim Conduct may:
- 10.1 result in members of the Proposed Energy Group entering into and giving effect to a contract, arrangement, or arrive at an understanding, which contains a cartel provision prohibited under section 45AD(2), 45AF, 45AG, 45AJ, and 45AK of the Act within the meaning of Division 1 of Part IV of the Act; or
 - 10.2 having the purpose or likely effect of preventing, restricting or limiting the acquisition or likely acquisition of goods or services by the parties including an agreement not to acquire goods or services from a supplier unless the supplier accepts the terms and conditions offered by the parties and commitments on volume of electricity to be acquired (ie, cartel provisions prohibited under sections 45AD(3), 45AF, 45AG, 45AJ, and 45AK of the Act).
- 13 WALGA also considers that there is also a low prospect of the Proposed Interim Conduct resulting in Members entering into a contract, arrangement, arriving at an understanding or engaging in a concerted practice that may have the purpose, effect or likely effect of substantially lessening competition in a relevant market within the meaning of section 45 of the Act.
- 14 As Local Government bodies, the participating Local Government Authorities may, depending on the specific facts and circumstances, be able to benefit from the immunity provision in section 2BA of the Act which limits the application of the Act to the extent that the Local Government body carries on a business (defined in the Act as a business not carried on for profit).

Rationale for Proposed Interim Conduct

- 3 -

- 15 The interim authorisation is sought on the basis that some potential Members are approaching the end of their supply contracts with electricity retailers. This also forms the basis for the urgency in respect of obtaining the interim authorisation. In Western Australia, supply post contract termination is typically more expensive than contracted electricity supply, which incentivises customers to re-sign for a one to three year period.
- 16 In WALGA's view, there is a risk that the Proposed Energy Group membership could be persuaded by electricity retailers to sign up for a one to three year period and miss out on the opportunity to initially participate in the Proposed Energy Group.
- 17 Further, in WALGA's view, the proposed conduct is very unlikely to substantially lessen competition in the relevant markets, which WALGA considers to be the market for contestable electricity supply in the South West Interconnected System from current or future licenced retailers and the market for other Relevant Products (as defined in the Main Application), which WALGA considers will be a national or international market.
- 18 WALGA notes that its initial procurement process and resulting negotiations do not bind the Energy Group Members to proceed to Contract.
- 19 WALGA seeks interim exemption for the Proposed Interim Conduct timeline outlined in Schedule 4 to the Main Application.

Term of Authorisation

- 20 WALGA is seeking an interim authorisation to commence engaging in the Proposed Interim Conduct between August 2021 and April 2021 in order to commence discussions, prepare, and commence the procurement process. WALGA is seeking an interim authorisation while the ACCC considers the Main Application for a long-term authorisation of 15 years.

Public Benefit

- 21 In WALGA's view, the public benefits described in the Main Application may be realised more promptly if an interim authorisation is granted.
- 22 Amongst other, these benefits include:
- 20.1 lower energy costs incurred by Members, given that clean electricity is cheaper than fossil fuel generated electricity, which is expected to put downward pressure on Local Government rates, benefitting residents and businesses. In turn, lower Local Government rates will result in residents and businesses having higher disposable income to use to grow the Australian economy. Lower costs will also result in the Local Government Authorities having more funds available to spend on other projects servicing their respective local communities;
- 20.2 the Local Government Authorities would be likely to secure better prices and commercial terms for electricity if they act together, delivering financial savings and long-term certainty, which is essential to the efficient spending in pursuit of their primary objective to achieve the best outcomes for their respective local communities;

- 20.3 lower transition costs given that Members would be able to share transition costs resulting in lower government rates, benefitting residents and businesses and ultimately benefitting the Australian economy;
- 20.4 a coordinated approach to transitioning from higher emissions to lower emissions energy consumption by Members by locking in longer term, cheaper electricity contracts and using economies of scope and scale to reduce and abate emissions in order to give members the optionality to reach net zero emissions;
- 20.5 the transitioning from higher emissions to lower emissions will have increased environmental benefits. The Local Government Authorities are committed to promoting the investment in renewable and clean energy to reduce the impact of greenhouse gas emissions on the environment. The public benefit in reducing greenhouse gas emissions is clear as all members of the public have an interest in preserving the quality of air, water and living standards for current and future generations. One of the impacts of climate change are the conditions that led to the widespread bushfires that devastated large parts of Australia at the end of 2019 and beginning of 2020;
- 20.6 the transitioning by the Local Government Authorities from higher emissions to lower emissions will, in turn, support Western Australia's drive to lower emissions and ultimately support the Federal Government in achieving its targets;
- 20.7 greater risk sharing between members of the Proposed Energy Group than may otherwise be the case. For example, by having the option to negotiate contractual mechanisms that allow for minimum take volumes to be smeared across a portfolio of members; and
- 20.8 the proposed conduct is likely to increase public confidence in steps being taken to decarbonise Western Australia's electricity system, which will in turn maximise the prospect of its success.

23 Please do not hesitate to contact us should you require further information.

Yours faithfully

Toby Costanzo

Contract Manager, Management