

Australian Energy Regulator (AER)

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Due: 30 April 2024

AER Enhanced Wholesale Market Monitoring and Reporting Guideline – Issues paper

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the AER's Enhanced Wholesale Market Monitoring and Reporting Guideline – Issues paper (Issues paper).

The Australian Energy Council is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

Overall, the Issues paper appears to be a constructive approach by the AER to minimise the burden on participants and costs to consumers associated with the Commonwealth's changes to reporting requirements. The AEC believes genuine harmonisation of data collection as outlined in the Issues paper is critical for achieving this goal.¹ We also note that participants are keen to assist the AER in this process.

Approach

The four monitoring focus areas proposed by the AER (market liquidity, access to markets and barriers to entry and participation, incentives for offer behaviour and risk positions) seem reasonable.² However, the AER should explain how its monitoring and reporting will differ from the existing reporting completed by the ACCC as part of its ongoing electricity and gas market inquiries.

The Guidelines should specify that the AER only request information on, or copies of, executed contracts.³ The AEC supports the Guidelines outlining what information the AER will not collect.⁴

The AEC supports the Guidelines specifying a threshold below which the AER must not request information on gas contracts.⁵ A reasonable quantity minimum is probably around 0.5 petajoules.

Collection of information

The AEC considers the targeted incremental approach outlined in the Issues paper to be a practical approach to implementing the new requirements.⁶ To achieve the best outcomes from this approach the AEC believes the AER needs to maintain open channels of communication with participants to ensure an optimal outcome.

¹ Issues paper, pp21-26.

² Issues paper, question two.

³ Issues paper, question four.

⁴ Issues paper, question five.

⁵ Issues paper, question six.

⁶ Issues paper, pp20-21.

There is significant overlap between the AER's expanded functions and the scope of the ACCC's gas and electricity inquiries. This poses a duplication risk and may result in additional compliance costs. The AER should minimise any duplication with requests from other regulatory bodies. Where duplication is unavoidable (because the AER needs this same information to carry out its new WMM functions), the AER should look to perfectly align its notices / orders with other requests in terms of content, definitions and format (e.g. templates).

With respect to the format of information collection, the AEC would like to see the AER (and the ACCC), quickly develop agreed reporting templates that remain unchanged over time unless there is a major need to alter them. This means the same templates can be used repeatedly by participants without them having to adapt to constantly changing templates. As part of this process the AEC believes it would be beneficial with respect to efficiency, administrative burden and efficacy, if the AER works closely with participants in template development.

With respect to the AER's collection of historical contract information, the AEC believes this should be limited to the previous two years. This would include 2023 and 2024 based on the Issues paper that states consultation on MMIOs and MMINs is expected to commence in the second half of 2024.⁷ Any years prior to this will merely be historical artefacts and of little utility for the AER. This is because the market has changed since 2022 when there was extreme volatility due primarily to exogenous factors. Further the Gas Market Code was not in place then. Hence, the previous two years are likely to provide the best information to assist the AER in its understanding of current market conditions.

Use of the information

The guidelines are unclear as to how the AER intends to deal with integrated portfolios. Participants' decisions in the contract market are informed by considering their entire portfolio/trading position. Following the collection of information, we would encourage the AER to engage with participants prior to drawing conclusions based on contract data, noting that certain contracts may be complex.

The AER asks whether the confidentiality, disclosure and procedural fairness measures outlined in the paper pose any risk to participants.⁸ One risk is that the Wholesale Market Monitoring (WMM) Bill removes the prohibition on the AER using information obtained for the purpose of performing its WMM functions for any other purpose (which was previously contained in s18D(3) of the NEL). This means that the AER would not be restricted from using electricity/gas contract information in undertaking its compliance/enforcement function. We remain of the view that information collected as part of the AER's WMM function should not be used for compliance / enforcement purposes. Market monitoring is more appropriately used to address market outcomes, rather than a means of enforcing national energy laws and rules against individual participants.

Confidentiality

Given the confidential and commercially sensitive nature of the information being collected, in addition to the disclosure and procedural fairness obligations under the CCA/NEL/NGL, any disclosure of that information would need to be subject to the right of the participant to make redactions of confidential and commercially sensitive information. These factors will also

⁷ Issues paper, p7.

⁸ Issues paper, question 16.

depend on who the information is being shared with and the granularity of the information being requested. Third party confidentiality obligations may also need to be considered.

Finally, the Issues paper is unclear as to whether the additional information the AER will be receiving will influence its estimate of the wholesale energy cost (WEC) in the DMO.

Questions about this submission should be addressed to Peter Brook, by email to peter.brook@energycouncil.com.au

Yours sincerely,

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