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AER's Enhanced Wholesale Market Monitoring and Reporting Guideline – Issues Paper

Proudly Australian for more than 186 years, AGL Energy (AGL) supplies around 4.3 million energy and telecommunications customer services. AGL is committed to providing our customers simple, fair, and accessible essential services as they decarbonise and electrify the way they live, work, and move.

The *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023 (the Amendment Bill)* has recently passed both houses of South Australian Parliament.¹ This will see amendments to the National Electricity Law (**NEL**) and National Gas Law (**NGL**) (**the Energy Laws**) relating to the AER's wholesale market monitoring functions and its wholesale market reporting functions.

Under the changes to the Energy Laws, the AER is required, amongst other things, to prepare wholesale market monitoring guidelines (**the Guidelines**).

AGL welcomes the opportunity to provide feedback on the issues paper published as part of the development of the Guidelines.²

We also acknowledge the AER's efforts to engage with stakeholders as part of the development of the Guidelines and the publication, its decision to grant extra time for submissions, and the publication of an indicative timetable.

The interaction between the AER's wholesale market monitoring functions and its reporting functions

While we acknowledge there is a natural interaction between the two functions, we note the amendments to the Energy Laws describe the AER's monitoring functions and its reporting functions separately.³

Broadly, the AER's monitoring and reporting functions sit under Part 3, Division 1A (for the NEL) and Chapter 2, Part 1, Division 1AA (for the NGL).

The issues paper notes the AER produces a suite of reports on the performance of wholesale electricity and gas markets including its Wholesale markets quarterly; the Wholesale electricity market performance biennial report; the State of the energy market annual report; \$5,000 report; significant price variation reports; special reports produced on an ad hoc basis and quarterly market statistics.

AGL considers it would be useful for the Guidelines to clarify:

- the scope of the AER's wholesale market monitoring functions; and
- the publication and reporting of information under the AER's wholesale reporting functions.

¹ [https://www.legislation.sa.gov.au/lz/path=/b/current/statutes%20amendment%20\(national%20energy%20laws\)%20\(wholesale%20market%20monitoring\)%20bill%202024](https://www.legislation.sa.gov.au/lz/path=/b/current/statutes%20amendment%20(national%20energy%20laws)%20(wholesale%20market%20monitoring)%20bill%202024)

² <https://www.aer.gov.au/industry/registers/resources/guidelines/enhanced-wholesale-market-monitoring-guideline-2024/initiation>

³ *National Electricity Law*, Part 3, Division 1A, section 18C(1) and (2), *National Gas Law*, Chapter 2, Part 1, Division 1AA, section 30AC(1) and (2).



Further, where the AER produces reports which sit outside the scope of its wholesale reporting functions, it would be useful for the AER to clarify in the Guidelines where these reports fit within its enhanced wholesale market monitoring and reporting framework and obligations, particularly around the collection of information and the publication and reporting of this information.

Information requirements

The AER states in its issues paper that its approach to wholesale market monitoring and reporting is based on a 'backwards design approach', which we understand to mean that the specific information required is determined based on the desired reporting outputs. We are broadly supportive of this approach however note, in line with our comments above, that these reporting outputs should fall under the definitions of the AER's wholesale market reporting functions under the recently amended Energy Laws.

We are supportive of the AER's commitment to only collect information that can provide meaningful insights into the performance of wholesale energy markets.

Information sources – wholesale gas and electricity markets

The issues paper notes the AER has primarily used publicly available information to understand the structure, conduct and performance of the wholesale gas and electricity markets and how market participants contribute to competition and efficiency in those markets.

We note that Australian Energy Market Operator (**AEMO**), as the operator of the relevant wholesale markets, has access to market information that goes beyond what is available publicly. In the first instance, we would recommend that the AER relies on information from AEMO in exercising its enhanced wholesale market monitoring and reporting functions.

AEMO is best placed to provide information to inform the AER's wholesale market monitoring functions and could provide relevant participant specific information at the frequency and level of granularity required by the AER without placing additional burden on market participants.

Information sources – financial risk management products for wholesale gas and electricity

We support the AER's proposal to engage with ASIC to explore how it could use existing information sharing frameworks to streamline information collection and reduce duplication. This may enable the collection of the derivative transaction information relevant to the AER's wholesale monitoring and reporting functions.⁴

AGL would also be supportive of the AER considering whether it is possible to obtain information from any other relevant market operators, such as the ASX. This would enable the AER to receive a single consistent data set from the market operator, rather than seeking information from individual market participants.

Information sources – other contracts relating to wholesale gas and electricity markets

The issues paper refers to a range of other contracts that sit outside the definition of 'financial risk management products' for both electricity and gas.

As noted by the AER in its Issues Paper, the ACCC already collects significant volumes of information relating to both electricity and gas. We would strongly encourage the AER to coordinate information

⁴ AER, *Enhanced Wholesale Market Monitoring and Reporting Guideline – issues paper*, March 2024, p 24, 25



requests with the ACCC and also other regulators including the Essential Services Commission to minimise the burden on market participants. We note that even minor differences, between AER and ACCC information requests are likely to result in a significant additional burden on market participants in terms of allocation of staff time and financial cost.

For example, the issues paper notes that the AER is required to include in the Guidelines a minimum contract quantity of gas, below which the AER will not collect bilateral contracts. AGL would encourage the AER to use the same minimum contract quantity of gas that is used by the ACCC in its information requests.

More broadly, if the AER needs information that a market participant has already shared with another organisation, and there are inadequate information-sharing arrangements in place, we recommend requesting the market participant to forward the previously provided information directly to the AER.

Information gathering tools and prior consultation

The amendments to the Energy Laws provide the AER with two new information gathering instruments, namely market monitoring information orders (**MMIOs**) – which can be used to gather information from a class of persons, and market monitoring information notices (**MMINs**) – can be used to gather information from named persons.

We note that the amendments to the Energy Laws require the AER to consult before making an MMIO or an MMIN. AGL supports being consulted as part of the development of these information requests. Meaningful consultation will help minimise the burden on stakeholders in responding to information requests.

In addition to MMIOs and MMINs, the issues paper notes that the AER anticipates it will also use the general information gathering powers set out in section 28 of the NEL and section 42 of the NGL.

Given that MMINs and the general information gathering powers can only be issued to named persons, we would appreciate further information explaining in which circumstances the AER anticipates relying on general information gathering powers instead of issuing MMINs.

While the AER states in its issues paper that it will use stakeholder feedback to develop draft information request templates, this appears to be in reference to the development of draft MMIOs and MMINs. AGL would strongly support the Guidelines including information on how the AER would consult on its use and development of any information requests issued under its general information gathering powers set out in section 28 of the NEL and section 42 of the NGL.

Treatment of information

The issues paper notes the AER will treat information collected for the purpose of market monitoring and reporting responsibly and in accordance with the law, including the Privacy Act 1988, CCA, NEL and NGL, and our information policy and confidentiality guideline.

We understand that the requirements for the AER to treat information, particularly around an anticipated disclosure, vary depending on how the AER obtained the information. AGL would recommend that AER considers implementing a single process to provide certainty to both the AER and market participants on the disclosure of information regardless of how it was obtained.



For example, AGL considers that a single information disclosure requirement similar to section 95ZN of the *Competition and Consumer Act 2010* (Cth) would provide a robust framework around the disclosure of information that could be used by the AER when making decisions around the disclosure of information.⁵

We consider that adopting a single framework, such as the section 95ZN framework, would provide certainty and appropriately balance the need to protect confidential information of parties where the publication risks affecting their competitive position, with the needs of disclosure in the public interest.

We look forward to further engagement with the AER on the development of the Guidelines, as well as the initial MMIOs and MMINs.

Yours sincerely,

Anton King

Senior Manager Policy and Markets Regulation

⁵ This framework is set out in the ACCC's [Guidelines on section 95ZN claims in price inquiries, July 2021](#)