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Karen Krist
a/General Manager, Market Surveillance
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

By e-mail: ContractMarketMonitoring@aer.gov.au

Enhanced Wholesale Market Monitoring and Reporting Guideline – Issues Paper

Alinta Energy welcomes the opportunity to respond to the Australian Energy Regulator's issues paper on the Enhanced Wholesale Market Monitoring and Reporting (WMMR) Guideline. We are an active investor in energy markets across Australia with an owned and contracted generation portfolio of over 3,300MW and more than one million electricity and gas customers.

Since the late 1990s, the National Electricity Market and the development of several gas trading markets have facilitated the efficient and competitive trade of energy, serving the long-term interests of Australian energy consumers. The new information gathering and monitoring powers that have been provided to the AER under *Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023* need to be applied in a manner consistent with the four principles set out on page 20 of the issues paper to support the ongoing efficiency and confidence in these markets. This is particularly important for investors in the energy sector as the transition to a low-carbon energy system gains pace.

We welcome the AER's intent to limit participant burden, being clear on the specific use of information collected and rely on publicly available information when practical to do so. This view was supported by the Australian Competition and Consumer Commission itself in its submission to the Department of Climate Change, Energy, the Environment and Water's consultation on WMMR:

"It is important to recognise that the **compliance burden on industry is increasing**, including with the impending mandatory gas code. As such, we support the inclusion of section 30AE(b) which requires the AER to consider whether the information it requires is publicly available or can be obtained another way."¹

Development of the guideline should have at its focus from the outset:

- The use to which information in the four focus areas described on page 16 of the issues paper will be put;
- The frequency and structure of templates to gather information – to assist reporting entities to plan, design and with as much accuracy as possible, estimate the ongoing cost of compliance and resourcing required;
- The circumstances where the AER can gather the same information (including historic information) from existing sources (such as the ACCC's gas and electricity market monitoring inquiries); and
- Clearly articulate any change processes, including ceasing to collect data and the threshold for changing templates in the future, as frequent change will impose significant compliance costs on market participants (noting the comments from the ACCC above).

¹ ACCC (2023), Submission to DCCEEW - Consultation – Wholesale market monitoring and reporting reform, page 2.

We support the commitment of the Energy and Climate Change Ministerial Council to undertake a post-implementation review of the Wholesale Market Monitoring Reforms four years and six months following the effective date of their introduction.²

Alinta Energy strongly recommends a co-design approach to the development of the Guideline with the AER. This could be achieved by forming a working group that met regularly comprising AER and industry representatives. We believe this approach would assist defining the scope, costs of implementation, ongoing reporting costs and value of information while instilling confidence in how the information will be used the AER.

Alinta Energy also supports excluding Market Monitoring Information Notices and Orders (MMINs and MMIOs) from enforcement under the Guideline.

Specific responses to questions set out in the issues paper are set out below. Alinta Energy would welcome further discussion of this response with the AER, please contact David Calder (David.Calder@alintaenergy.com.au) in the first instance.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jacinda Papps', is written in a cursive style.

Jacinda Papps
General Manager, Regulatory Affairs and Compliance

² Statutes Amendment (National Energy Laws) (Wholesale Market Monitoring) Bill 2023 (SA), Division 1A, subdivision 4, section 18EP.

Section 3: Our approach to wholesale market monitoring and reporting

1. What factors should we consider in integrating contract market data into the structure-conduct-performance framework and our evaluation of wholesale electricity and gas market performance?

Alinta Energy understands the structure-conduct-performance framework will continue to be used to analyse the effectiveness of competition, the nature and extent of barriers to entry (and exit) and the relative allocative, productive and dynamic efficiency of the wholesale market. While integrating contract market data collected in this S-C-P framework, we recommend the AER apply flexibility if information and observed behaviours do not neatly fit into an orthodox model of industrial organisation. The Australian energy market is highly efficient (particularly the spot market for electricity in the NEM) and market imperfections must be measured against the already high level of efficiency (of all three types describe above) that have long been a feature since reform efforts of the 1990s.

2. What are your views on our proposed key areas for assessment:

- market liquidity
- access to markets and barriers to entry and participation,
- incentives for offer behaviour,
- risk positions,

Are there additional areas or types of information we should consider? If so, please advise.

The key areas of assessment seem appropriate in the design of a draft guideline. In relation to risk positions and risk management, Alinta Energy supports an aggregated approach as there is likely to be little value in reporting on individual entity's risk positions, noting the highly commercially sensitive nature of such information.

However, each of the areas need to be carefully defined and the use to which information gathered is to be put well understood and articulated to help guide the development of templates for industry and market participants to use.

3. What are your views on specific metrics that would be valuable for addressing the proposed key areas?

The AER provides examples of metrics that could be applied to the key areas of information gathering and market monitoring in relation to gas market liquidity and barriers to entry for electricity market participants. In developing the Guideline for WMMR, while metrics may evolve as the AER gains greater insight under the S-C-P framework, a static set of clear metrics, with limited changes, to provide such insights would be preferred. Continually adding to the scope of information gathered will impact industry reporting systems and add to the compliance burden.

4. The Guidelines must include a list of the information that we are likely to collect routinely. What do you consider should be collected routinely, and why?

Standard form over-the-counter wholesale contracts for gas and electricity could be routinely collected (swaps, caps, options for example) if ASX or other data sources are not sufficient to support the AER in its WMMR functions. However, consistent with our submission to the Department's consultation in 2023, bespoke contracts should not form part of any routine data collection under the Guideline. ^[OEB] We have indicated the labour-intensive and time-consuming impacts of providing non-standard contract information in this response. By definition, such agreements are not routine.

5. The Guidelines must include the types and classes of information that we do not expect to request. What do you consider should be on that list, and why?

Alinta Energy considers that the following information should not be included on the list:

- Bespoke, one-off contracts described above should not be on a list of types and classes of information set out in the Guideline as discussed above. This would apply to both gas and electricity bilateral contract information of a bespoke nature.
- Contracts for the transmission or distribution of electricity – in the current regulated open access framework it is unclear what value these contracts would have for the AER.
- Contracts relating to fuel and other inputs used in the generation of electricity as these are all tradable commodities with easily observable prices.

6. The Guidelines must include a minimum threshold, below which we will not collect information, for contracted quantity of gas for bilateral trading agreements made between a retailer and an end user. What would be a reasonable minimum contract volume, and why?

We suggest a threshold of 500 terajoules per annum as a threshold for bilateral trading agreements made between a retailer and an end user. This volume would capture agreements of a material nature and below this level, the administration and regulatory burden of collection and reporting will increase materially for participants and the AER.

Section 4: Wholesale market information collection

7. What are your views on our proposal to take a targeted incremental approach to information collection for our enhanced wholesale market monitoring and reporting functions?

An incremental approach to information gathering is appropriate and will benefit from a co-design approach discussed on page 2 above. Industry would have a clear understanding of the type and scope of information sought and through a co-design process, changes to the Guideline may be limited in the future.

8. We are engaging with ASIC and the ACCC regarding sharing information. Are you aware of any other agencies or organisations that collect information that may meet the needs of our wholesale market monitoring and reporting function? If so, please advise.

We believe ASIC and the ACCC are the key agencies that can share information with the AER to meet the WMMR function. In addition, AEMO collects data from market participants that could be shared with the AER.

9. If information sharing between regulatory agencies is not feasible, would you want us to:

- explore a consent framework? If so, please advise what key components would need to be considered.
- seek to harmonise our information requests with those made by other regulatory agencies?

A harmonisation approach to information requests where information sharing cannot occur would be supported to prevent duplication of reporting and preferred to a consent framework. A consent framework would be difficult to manage in practice as gaining participant agreement/consent may be difficult to achieve on a consistent basis. Furthermore, consent would need to be secured each time.

10. Are there any other methods of facilitating information sharing or coordination that we could explore? If so, please advise.

No comment.

11. How can we enable efficient information collection that optimally balances value and burden? Including for the:

- format of information collection
- frequency of information collection
- granularity of information collected.

Please provide your response specific to different contract types and/or Participant characteristics, where relevant.

The development of clear and well-understood templates covering the format of information such as strike price, volume, key terms, counter parties (if applicable), frequency (aligned with the AER's reporting suite) and granularity would be informed and optimised under a co-design process as discussed above. While participants may have different views, openly communicating with the AER on its expectations and requirements will optimise the value of information provided at a minimum compliance cost.

12. What are your views on the granular approach undertaken for DMO 5 and 6?

The highly granular approach taken to Default Market Offer 5 and 6 was in part a response to volatile market conditions in 2022 and the focus on inflation and cost of living pressures in the Australian economy more generally. This level of granularity should be reduced in the future as it requires significant resources for all retailers to prepare, adding to the compliance burden. Noting that the data was used to inform the AER's wholesale market modelling to determine the wholesale energy cost component of the DMO, other changes to the WEC method and the DMO more generally call into question the value of such high precision for this component of the DMO.

13. What historical information do you consider would be most valuable for understanding the contract market and providing perspective for current and future market performance?

We note that the ACCC has collected extensive contract market information for both the gas and electricity wholesale markets. In the first instance, we encourage the AER to rely on this data from the ACCC. As the AER notes, collecting wholesale market information over a period of five years "could represent a significant burden on participants."³

Selecting shorter periods (e.g. 2021-22) may not reduce the cost of compliance. This is another key area that would benefit from a cooperative co-design approach between the AER and participants.

³ AER (2024), *Enhanced Wholesale Market Monitoring and Reporting Guideline - Issues Paper*, page 30.

14. With consideration for (but not limited to) the methods raised in section 4.2, how could we minimise participant burden associated with historical information collection?

As discussed above, reliance in the first instance on data gathered by the ACCC would minimise the burden of collecting historical information.

15. What factors should we assess when considering an anticipated disclosure?

16. Do the confidentiality, disclosure and procedural fairness measures pose any risks to participants? If so, what are they?

We reiterate from our previous submission to the Department that we oppose monitoring information to be used for enforcement functions. We support the treatment of information provided under MMIOs and MMINs as confidential.

We appreciate that the AER will contact information providers prior to disclosing information collected under its market monitoring functions, including the opportunity for a participant to respond to any notice setting out the purpose and extent of the disclosure.