

ENHANCED WHOLESALE MARKET MONITORING AND REPORTING GUIDELINE | ISSUES PAPER

Australian Energy Producers | 3 May 2024

Australian Energy Producers welcomes the opportunity to provide feedback on the Australian Energy Regulator (AER) *Enhanced Wholesale Market Monitoring and Reporting Guideline* issues paper.

Australian gas producers face increasing reporting requirements from a range of Federal and State departments and agencies. Cumulatively, these monitoring and reporting requirements represent a significant and growing administrative burden, without necessarily improving the functioning of the market. To meet the increasing regulatory requirements, gas producers are needing to dedicate additional resources to reporting processes. This additional cost burden ultimately results in higher prices for the gas produced, exacerbating cost-of-living pressures for Australian households and businesses.

Australian Energy Producers recommends:

- **Governments should prioritise addressing forecast gas shortfalls** rather than adding additional gas market monitoring and reporting.
- **The purpose of the *Wholesale Gas Market Report* needs to be clearly articulated** before additional reporting requirements are imposed on gas producers.
- **The AER should look to use information that is already reported** to other departments and agencies before issuing new requests.
- **Should new requests be unavoidable, they should be harmonised with existing reporting processes**, including with respect to definitions, scope, frequency, reporting period and format.
- **AER must ensure the protection of the confidential and commercially sensitive data** and information during collection and reporting and should **use collected information exclusively for wholesale gas market monitoring**.

To help identify potential areas of duplication and reporting inefficiencies in the wholesale gas market and to consider potential solutions, Australian Energy Producers is looking to establish a forum for discussion comprising the AER, the Australian Competition & Consumer Commission, the Australian Energy Market Operator, and gas producers. Australian Energy Producers would welcome AER's support in establishing such a forum.

Australian Energy Producers is also seeking to engage the Department of Climate Change, Energy, the Environment and Water and the Department of Industry, Science and Resources on this important matter.

Australian Energy Producers welcomes the opportunity to provide input into the development of the *Enhanced Wholesale Market Monitoring and Reporting Guideline* and looks forward to inputting further as it develops.

The purpose of the *Wholesale Gas Market Report* needs to be clearly articulated before additional reporting requirements are imposed on gas producers; increased reporting results in increased administrative costs and puts upward pressure on gas prices

Governments should prioritise addressing forecast gas shortfalls rather than adding additional gas market monitoring and reporting | The east coast wholesale gas market is central to energy security and energy affordability, as well as emissions reductions efforts, for the States which it serves. However, the Australian Competition & Consumer Commission (ACCC) and the Australian Energy Market Operator (AEMO) continue to warn of forecast gas shortfalls in the east coast market as early as 2024 at peak times, with structural shortfalls expected from 2028.¹ The ACCC is clear that "*current expectations of gas demand through the energy transition will still require additional sources of gas supply.*"² The need for new gas supply should be prioritised by governments, noting additional monitoring and reporting requirements do not address the need for new supply and may in some instances work against.

Reporting requirements are a significant regulatory burden for gas producers that increase administrative overheads and in-turn the cost of gas for Australian homes and businesses | Australian gas producers are already experiencing increased reporting requirements from a range of Federal and State departments and agencies, including the ACCC, AEMO, AER, Australian Securities and Investment Commission (ASIC), the Department of Climate Change, Energy, the Environment, and Water (DCCEEW), and the Department of Science, Industry, and Resources (DISR), amongst others. Within each agency and body, there are often multiple reporting processes and initiatives such as the *Gas Inquiry 2017-2030* and the mandatory *Gas Market Code* both being administered by the ACCC.

Cumulatively, these monitoring and reporting requirements represent a significant and growing administrative burden on gas producers. This burden is further exacerbated by significant duplication and lack of harmonisation between reporting processes, even within single agencies. To meet these increased regulatory requirements, gas producers are committing additional resources to these processes, including in some instances taking on new administrative staff. This additional cost ultimately results in higher prices for the gas produced – impacting the economics of domestic gas production and/or increasing the costs of operation for domestic gas users.

It is essential that the 'value-add' of the *Wholesale Gas Market Report* be clearly articulated over and above existing reporting processes, in particular the ACCC *Gas Inquiry 2017-2030* | The ACCC *Gas Inquiry 2017* was launched in 2017 to "*improve transparency of the gas market in Australia and support the efficient operation of the gas market.*" To meet this objective, the ACCC requires gas producers to regularly report on gas

¹ ACCC, *Gas Inquiry 2017-2030 – Interim update on east coast gas market December 2023*, 2023

² ACCC, *Gas Inquiry 2017-2030 – Interim update on east coast gas market December 2023*, 2023

availability as well as price, volume and terms and conditions of gas offered and supplied. Based on the information provided in the issues paper it is unclear how the proposed *Wholesale Gas Market Report* differs from the *Gas Inquiry 2017-2030* in terms of aim or scope. It is essential that the additional value of the *Wholesale Gas Market Report* be clearly articulated prior to commencing additional data and information gathering. This should include engaging with Treasury and ACCC to ensure all departments and agencies are clear on the separation of functions.

Where possible, AER should look to use information that is already reported to other departments and agencies before issuing new requests; should new requests be unavoidable, they should be harmonised with existing reporting processes.

AER should assess whether the proposed market monitoring and analysis outcomes can be met using information already provided to other agencies and departments | Before issuing new request for information from natural gas producers, the AER should undertake a comprehensive stocktake of the information gas producers are already providing Government bodies. The stocktake should consider the definitions, scope, frequency, reporting period and format of ongoing reporting processes and requirements. Where possible, AER should look to leverage these existing reporting processes to avoid duplication. The AER's access to existing reporting could be facilitated through information-sharing arrangements with the relevant agency. Where sharing of information between agencies isn't possible, gas producers are able to consider sharing the same body of information with the AER at the same time as sharing with other agencies.

Where duplication is unavoidable, the AER should harmonise the requests as much as possible, including with respect to definitions, scope, frequency, reporting period and format | By aligning with the nature and timing of existing reporting processes, gas producers are able to respond to the multiple requests as efficiently as possible. In contrast, should new data requests differ even moderately with regard to these factors, it will significantly increase the resources required to respond. For example, changes in definitions or uncertainties in scope may require gas producers to solicit new legal advice to ensure compliance, further increasing the administrative costs of responding. Similarly, a change in reporting period or format, increases the likelihood of that the same information will need to be repackaged and arranged in different way, again adding to the resources required to adhere.

Any collection of information needs to be accompanied by engagement with the reporting gas producer to ensure the information is interpreted accurately and in context | It is important that reported information is assessed accurately and not viewed and interpreted in isolation. To ensure the accurate understanding of the information provided it is recommended that the reporting of information is accompanied by engagement with the reporting entity. This is particularly important given certain contracts and data reported may be bespoke and complex and difficult to assess/interpret.

It is recommended that reporting should be limited to contracts exceeding 3 months in duration and over 0.5 petajoules in volume | The *Guidelines* should be clear on the threshold below which the AER will not request information on gas contracts. It is recommended that participants are not required to provide information on contracts that are less than 3 months or have a total contracted quantity of less than 0.5 petajoules. Such a threshold looks to balance the value-added from reporting with the administrative costs presented by additional reporting.

It is recommended the AER request only information regarding executed contracts and not information ancillary to the contract itself | A requirement on participants to provide all correspondence with counterparties which relates to contractual offers and negotiations would be very onerous with limited additional value. Accordingly, it is recommended that AER place clear constraints on what will and will not be collected, with a focus only on the executed contract itself.

It is recommended that the collection of historical information is limited to the previous two years only and is aligned with the scope and format of information previously reported | The reporting of five years of historic data would require significant administrative resources from gas producers. This is particularly the case if the scope and format of historical data requests differ from information already provided to other departments and agencies. Further, given the market has shifted materially in the last five years, and in particular since the introduction of the Gas Market Code, contracts executed prior to this are likely to have limited relevance in understanding current market conditions, and any key insights will have already been reported in the ACCC's Gas Inquiry process. Accordingly, it is recommended that the collection of historical information is limited to the previous two years only, and that where historical data requests are made they are limited to information already reported.

Gas producers undertake comprehensive emissions reporting under the National Greenhouse & Energy Reporting Scheme | Similarly to gas market data, gas producers report annually on greenhouse gas emissions, energy production and energy consumption associated with their activities under the National Greenhouse & Energy Reporting (NGER) Scheme. The data provided to the Clean Energy Regulator in-turn informs Safeguard Mechanism reporting as well as Australia's National Greenhouse Gas Inventory. The NGER Scheme applies rigorous emissions reporting methods – developed and approved by government – that are in line with Australia's international reporting obligations. Therefore, it is essential that the 'value-add' of including sector emissions in the *Wholesale Gas Market Report* needs to be carefully considered.

AER must ensure the protection of confidential and commercially sensitive data and information during collection and reporting and should use collected information exclusively for wholesale gas market monitoring.

The AER should clearly outline the practical measures that will be put in place to protect confidential and commercially sensitive data and information | The AER needs to clearly

outline the practicalities of keeping sensitive information secure. This includes how the AER will store the data and information to ensure it is adequately protected – if information is to be uploaded and stored in a folder provided by the AER, what measures will be put in place so that a link to the folder is not inadvertently shared with another market participant. It will also need to consider how data and information will be provided by market participants to the AER – will market participants be able to password protected documents and send these via encrypted file transfer or will market participants be required to upload the documents, and if so, what security protections will be applied? Further, has the AER considered any steps that may be required where an employee has recently handled commercially sensitive data of a market participant and takes new employment with a competitor of that market participant?

The AER should ensure all commercially sensitive data and information is appropriately and sufficiently aggregated and anonymised when used | AER should make sure all confidential and commercially sensitive data and information is protected when used as part of the *Wholesale Gas Market Report*, or elsewhere, by ensuring it is appropriately and sufficiently aggregated and anonymised, in line with the measures put in place by AEMO and others.

It is recommended that information provided to the AER for the purposes of wholesale gas market monitoring should not be able to be used for AER's compliance and enforcement functions | The provisions of the *Wholesale Market Monitoring Bill* that remove the prohibition on the AER using information obtained for the purpose of performing its wholesale market monitoring functions for any other purpose (which was previously contained in s18D(3) of the *National Electricity Law*) poses a potential risk. This provision means that the AER would not be restricted from using gas contract information in undertaking its compliance/enforcement function. It is recommended that information collected as part of the AER's wholesale market monitoring 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.

It is recommended that gas producers retain the right to redact confidential and commercially sensitive information prior to it being disclosed | Given the confidential and commercially sensitive nature of the information to be collected, in addition to the disclosure and procedural fairness obligations under the *Competition and Consumer Act 2010* and *National Gas Law*, any disclosure of information should be subject to the right of the participant to make redactions of confidential and commercially sensitive information. These factors will also depend on who the information is being shared and on the granularity of the information being requested, for example, information on individual contracts as opposed to aggregated data. Third party confidentiality obligations may also need to be considered.