

AER ENHANCED WHOLESALE MONITORING AND REPORTING GUIDELINE – ISSUES PAPER

08 MAY 2024

INTRODUCTION

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

Thank you for the opportunity to make a submission under the Australian Energy Regulator's (AER) Enhanced Wholesale Market Monitoring and Reporting Guideline. While the Issues Paper covers both electricity and gas, our particular focus is on the east coast gas market given it has substantially less transparency to consumers than the National Electricity Market.

The EUAA supports the efficient operation of wholesale markets that have efficient structure and performance and have good conduct practices at their core. Successive ACCC Gas Market Reports¹ since the first in 2016 have highlighted the lack of competitive markets across the gas supply chain that has enable supply side players to exercise market power. Drawing on our members experience, the EUAA had long argued this was the case but our advocacy was rejected by the supply side. It was only when the ACCC was able to gain access to and publish information about the operation of the gas market did we get independent evidence that our position was indeed the case. This lack of competition and exercise of market power remains today even with the many reforms that have occurred in upstream and transport parts of the supply chain.

The EUAA has welcomed the various reforms that have flowed from these ACCC reports, most recently the creation and implementation of the Mandatory Gas Code of Conduct (Code of Conduct) and now reforms on gas pipeline regulation and tariff disclosure. Nevertheless, the exercise of market power continues in the gas market. A necessary, but not sufficient condition to mitigate that market power is transparent and timely market reporting on what is occurring. So we welcome the new wholesale market monitoring and reporting powers now available to the AER for the both electricity and gas market.

We start from a principle that to be able to (p. 2):

“...provide visibility of the underlying drivers influencing how and why market participants behave the way they do, whether the outcomes in wholesale markets reflect effective competition in those markets and whether wholesale markets are operating efficiently”

¹ <https://www.accc.gov.au/about-us/publications/serial-publications/gas-inquiry-2017-30-reports>

requires a wide definition of the required information – both in terms of current scope and history. This will provide confidence to consumers that the AER will have the required information to draw substantive conclusions that can stand the inevitable validity test from the supply side. We expect that the providers of that information will highlight their concerns about the regulatory burden such information requirements might impose of them.

We would argue that the type of information that the AER seeks is no different to what participants could routinely supply as part of internal management reporting to their senior executives and Board. If these documents are not currently being prepared then that is a problem for the company, not for the AER in its information request.

RESPONSE TO SELECTED CONSULTATION QUESTIONS

Consultation questions on our assessment framework

- 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?

- We **Support** the proposed ‘Structure-conduct-performance’ framework set out on p.15 of the Issues Paper. We think it is critical to include gas transportation contracts and gas storage and compression contracts as well as gas swaps and gas bilateral agreements and wholesale electricity contracts, including power purchase agreements, to fully understand the dynamics of the wholesale electricity and gas markets.

Consultation questions on our approach to wholesale market monitoring and reporting

- 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.

- 3) What are your views on specific metrics that would be valuable for addressing the proposed key areas?
- 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?
- 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?
- 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 **Support** AER’s proposed key areas for assessment including (p.16):

“Metrics related to market liquidity for gas could include the volume of trades, number of active participants and concentration of trades in wholesale gas markets and the bilateral contract market.”

This is important because the AER needs to collect data on the bilateral contract market to help its assessment of the competitiveness of the wholesale market.

- The AER reports that it is trying to balance the amount of information it collects (p.17):

“We are proposing to take a reasonably broad approach for the Guidelines to ensure that our monitoring can adapt and respond to market and environmental changes. We envisage that information requests issued in accordance with this Guideline would be targeted and would not be sweeping requests for contract information.”

We believe that AER has to have access to the same contract information that the ACCC has access to in preparing its regular Gas Market Reports. We note that in the past producers were selling gas into the higher priced spot market which meant the contract market lacked competitive pressures. We also believe that the information should cover the whole gas supply chain – not just the commodity part but also the transport (transmission, storage and distribution) part. This information is also collected by the ACCC.

The information the AER needs is not just the final agreed contract but also all stages in the negotiation process to be able to fully appreciate market conduct e.g. is a knowledge asymmetry being exploited by the seller in the negotiation process?

The EUAA considers that it is better to ask for sufficient information to enable a full investigation if the documents reveal inefficiencies or the absence of good faith in negotiations. For example, if the AER receives information that may suggest a particular issue of concern, but does not have all the information required to decide one way or the other, then the process to get that extra information could be very time consuming. All while consumers are potentially suffering the consequences of an uncompetitive market.

The EUAA **Supports** AER information requests being ‘forward looking’ i.e. asking about intentions. We note the Gas Bulletin Board is real time.

We acknowledge that AER will require time to build its capability and capacity to analyse large volumes of data. Nevertheless, we argue that it is better to have the information to analyse rather than creating a real burden of continuously requesting more information on a single event or time period due to insufficient material being requested at the outset. The EUAA would also argue that reducing the number of documents requested over-time once AER has built its capability will be more palatable to the wholesale energy industry than the converse.

We acknowledge that the legislation requires reports to be, at a minimum, biennial. We consider that this is likely to be of very limited use to consumers – i.e. old information that is of limited use in policy advocacy and development. We would support much more frequent reports, especially if they provide a timely focus on a particular issue of concern to consumers which in turn informs a timely policy response.

- On information gathering tools – Market Monitoring Information Notices (MMIN) and Market Monitoring Information Orders (MMIO) should begin as broad as possible. It can take a lot of time to get a new MMIN/MMIO given the AER has to go through a lengthy consultation process to introduce a new one.

Consultation questions on our targeted incremental approach

- 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?

- We are concerned that an incremental approach could be defined too narrowly and end up taking the AER years to get the information gas users need to have - and importantly Governments need to have to develop timely policy. We **do not support** a targeted incremental approach to information collection and instead propose that AER pursue a broad starting base, collecting as much information as possible.

Consultation questions on information sharing and coordination among agencies

- 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.
- 9) If information sharing between regulatory agencies is not feasible (including for external reporting), would you want us to:
- explore a consent framework for information received from other regulatory agencies? 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?
- 10) Are there any other methods of facilitating information sharing or coordination that we could explore? If so, please advise.

- Section 4.1.3 (pp 21-26) discusses ‘efficient information collection’:

As a general approach we argue that ‘efficiency’ should not be assessed solely on the basis of the transactions costs for the provider and the AER; efficiency should be assessed as a balance between transactions costs and the economic rents that gas sellers are able to extract because of the absence of transparent information on market structure, conduct and performance that would inform government policy to remove that ability to extract rents.

We hope that any legal barriers to the AER getting access to all the information the ACCC collects for its Gas Reports are removed.

We also note the ~4 month lag in information that is in the ACCC reports e.g. the most recent report² published on 15th December showing contract price details analyses data up to August 2023 (see pp 79-80). The EUAA supports an AER reporting process that is closer to real-time as this has the greatest impact for consumers.

² https://www.accc.gov.au/system/files/Gas%20Inquiry%202017-2030%20-%20December%202023_0.pdf

Consultation questions on other information collection elements – format, frequency and granularity

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.

Consultation questions on granularity of information

12) What are your views on the granular approach taken for DMO 5 and 6 information collection?

Consultation questions on collection of historical information

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?

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?

Consultation questions on the treatment of 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?

- The AER’s objective of getting transparency on how the gas market is operating is compromised by the longer the delay of publication of market data. We need the same level of real time data for the gas market that is currently available for the NEM.
- The EUAA **Supports** more rather than less frequency in information collection and reporting i.e. quarterly with a high level of granularity and for the full 5 years allowed under the legislation for all participants and all regions. Just because a gas producer is ‘small’ should not dissolve them of regulatory reporting responsibilities – it is simply a cost of doing business in an industry which is not competitive. If it was competitive then the AER would not have to collect all this data.
- The data collection regulatory burden is minimised by ensuring sharing of information raised for other AER functions and by the ACCC/ASIC. We note that AER’s requirements are different to those of the ACCC/ASIC and therefore data not provided to them will be required by AER.
- We **Agree** with the provision of procedural fairness to the information provider – but need to ensure this approval process does not unnecessarily delay timely publication of data to inform Government policy

We note that the AER’s timetable is to put out a draft decision with another round of consultation then a final by early November 2024 at the latest. AER will then start consultation on the MMIOs and MMINs and thus we will not see reports until the second half of 2025. The EUAA encourages the AER to expedite this process wherever possible to ensure timely publication of data.

CONCLUDING REMARKS

The EUAA and its members support efficient and competitive markets. Unfortunately, evidence to-date suggests that this is not always the case in Australia's wholesale energy markets, and therefore the EUAA supports AER in its new role of enhanced wholesale market monitoring and reporting.

We encourage AER to consider the information that they will require to perform a full investigation of an event or time-period, and request that information from the wholesale energy market participants at the commencement of information gathering. We are of the opinion that it is better to have too much information than not enough, especially at the start of a new function.

We also consider that this level of information should not be much different for existing internal management reporting and so should not be burdensome or onerous for the provider.

We also consider that the AER needs to collect information along the whole gas supply chain including gas transportation contracts and gas storage and compression contracts as well as gas bilateral agreements and gas swaps.

Do not hesitate to be in contact should you have any questions.



Andrew Richards
Chief Executive Officer