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EnergyAustralia

LIGHT THE WAY

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 9060 0000
Facsimile +61 3 9060 0006

enq@energyaustralia.com.au
energyaustralia.com.au

Submitted electronically: ContractMarketMonitoring@aer.gov.au

AER Enhanced Wholesale Market Monitoring and Reporting guideline – Public

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 5,000MW of generation capacity.

EnergyAustralia appreciates the opportunity to provide feedback regarding the AER's issues paper on its Enhanced Wholesale Market Monitoring and Reporting guideline.

New AER monitoring should recognise existing reports

We understand that with its new legislative remit, the AER will be assessing effective competition and the efficient functioning of wholesale electricity and gas markets, with a focus on four specific topics. In general, we strongly encourage the AER to use the analysis/conclusions from the following reports, rather than duplicate existing work:

- the AER's other publications:
 - State of the energy market annual report
 - Wholesale markets quarterly
 - Wholesale electricity market performance biennial report (next one is slated for 2024) (AER biennial electricity report)
- ACCC
 - Inquiry into the National Electricity market, which looked at the hedging contract market in December 2023 (ACCC electricity inquiry report)
 - Gas inquiry reports which report on east coast domestic supply and price outlook
- AEMO publications on electricity and gas supply adequacy (reliability). i.e. Electricity and Gas Statement of Opportunities

Focus areas need sharper definition

The AER's new monitoring functions and powers as set out in the legislation are incredibly broad. The AER's focus areas aim to narrow the AER's lines of inquiry to:

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

However it is not clear what the AER's problem statement is for each of the focus areas, and it is also unclear which markets each of the focus areas is referring to.

We are deeply concerned that the AER will use its monitoring function to collect information to further its general understanding of wholesale markets. While this has some benefit, this will be extremely burdensome on participants and involve high costs that will likely be passed onto customers at a time when customers are already experiencing affordability issues in a cost of living crisis.

We suggest that for electricity, the focus areas/problem statement should logically follow on from the key issues reported in the AER biennial electricity report and the ACCC electricity inquiry report. Namely, liquidity issues in the forward contract market, and participant offer/high price bidding behaviour in electricity spot markets. These two specific areas could be the initial focus for the AER's new electricity monitoring function and information collection should be incremental and targeted, as discussed below. However, we also agree with AFMA's views that liquidity issues in forward contract markets could be explored as a one off topic but we suggest that potentially the AEMC, rather than DCCEEW might be the appropriate organisation.

With regard to gas, it is highly unclear what the problem statement is. Again, we believe that any high prices experienced in 2022 were due to globally driven supply-side constraints, rather than any market power. This is corroborated by ACCC reporting. **We encourage the AER to develop a problem statement to focus its lines of inquiry for gas or at least restrict its focus to certain gas markets i.e. bilateral market for the supply of gas,** rather than ancillary markets in the supply chain e.g. transportation, pipeline, storage markets etc. Again, we suggest the AER review the information collected by the ACCC first to help to define a problem statement, this includes detailed price and cost stack data which is a logical starting point to identify any concerns about current pricing levels.

The AER has indicated that before each report it will document its specific areas of focus for the upcoming report. We ask the AER to go further. The AER's guideline should define what its initial report will focus on for both electricity and gas with reference to specific markets. The guideline should also set out a roadmap of what it expects future reports will focus on and the frequency of those reports, with qualifications that this roadmap might change if need be.

The AER should start with currently collected information, and expand in a targeted way

Industry participants have incurred material costs in responding to previous information requests from regulatory organisations, in particular the ACCC. We are highly concerned that future requests from the AER for its new wholesale monitoring function will involve similar costs and effort. By way of example, the ACCC's information and document notices issued under the gas inquiry have been very costly to respond to.

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In view of the large costs and burden businesses have already incurred, we strongly encourage the AER to start with the information already collected by the ACCC, AER and AEMO, to investigate the AER's focus areas.

We prefer the consent approach to minimise burden and share information and documents between regulatory organisations. If that is not possible, any information requests should exactly mirror previous requests so that businesses have certainty on how to respond.

With regard to wholesale electricity liquidity issues, we recognise that collecting information from all market participants is inevitable to obtain a full understanding of the forward contract markets.

- **The AER should leverage the information collected for the DMOs and the ACCC electricity inquiry reports**, or request future information exactly in line with those requests.
- **Only if new requests are required, the AER should use information requests that provide targeted qualitative explanations of trading approaches, supported by aggregated data points. Consultation on the exact content of the notices is crucial to minimise burden and legal fee costs in clarifying ambiguities.** Qualitative information is critical to ensure that the AER understands what trading approaches a business is adopting, rather than receiving granular and very complex data which is at risk of being misinterpreted. There should be no issue with the accuracy of qualitative responses as businesses are compelled to provide responses accurately.

With regard to behaviour in electricity spot markets, the AER's biennial report discusses certain anecdotal examples where it suspects high pricing is due to a **possible exercise of market power** rather than supply-side factors such as increasing supply costs. We have strong doubts about this problem statement, but if the AER were to explore this line of inquiry, **the AER should take a targeted approach to information collection by limiting information collection to the relevant individual participants.** The value of expanding information collection to other participants has limited usefulness, given different generators will operate under different circumstances e.g. have different costs of supply. Again, the AER should focus on qualitative information responses with aggregated data points, with consultation on the exact content of the notices. For instance, the AER could ask an individual participant for explanations for its bidding behaviour, what its costs of supply for a generator are, rather than requesting specific fuel supply contracts to try to determine those costs.

With regard to gas, again without a clear problem statement, we are highly concerned that the AER's information requests will be unfocussed, request large volumes of information, and thereby incur unnecessary costs. As above, **we suggest the AER review the information collected by the ACCC first to help to define a problem statement.**

Specific questions about information collection

- It is difficult to comment on format, frequency and granularity of information as it depends on the information that is collected. However, as above we have a preference for targeted qualitative information with aggregated data points; over granular information and requests for documents/contracts. As noted above, consultation on the exact content of the notices is highly important.
- **We firmly disagree with information requests which are different based on a participant's size.** Receiving inconsistent data across the industry would not support the AER's analysis. Further, effectively subjecting large businesses to a higher reporting burden (higher frequency, more granular data or more historical data) ultimately imposes more cost on those businesses, places them at a competitive disadvantage and penalises their customers (where costs are passed through to customers).
- With regard to the gas volumes below which supply contracts are not collected, **we suggest a threshold of 10TJ of gas per year as it reflects the definition of Commercial and Industrial customers for the purposes of the National Energy Retail Law and Retail Rules, or equivalent framework.** We also suggest that the AER also impose a minimum time threshold for the **contract length of at least 12 months** (also in line with the ACCC). This would exclude trivial amounts of gas traded under shorter contracts which are not indicative of general pricing in the market.

Confidentiality, disclosure and procedural fairness

We emphasise that the information that the AER will likely collect relating to business risk positions and trading approaches is highly commercially sensitive. While the AER frequently deals with confidential information provided by network service providers, the risks of unauthorised disclosure of commercially sensitive information from retailers and generator businesses are heightened compared to the network service providers, given these industries are competitive.

We note the automatic treatment of information received under the new MMIOs and MMINs as confidential information. We also understand that the critical statutory protections around disclosure in specified circumstances (e.g. where information is de-identified or aggregated), and providing procedural fairness (i.e. notifying the information provider of the intended disclosure etc) also apply to information collected under MMIOs and MMINs. We agree with the AER's approach in applying its confidentiality guidelines to information collected under these new notices.

If you have any questions, please do not hesitate to contact me (Selena.liu@energyaustralia.com.au or 03 9060 0761).

Regards

Selena Liu

Regulatory Affairs Lead