



2 May 2024

Clare Savage  
Chair  
Australian Energy Regulator

Submitted via email: [ContractMarketMonitoring@aer.gov.au](mailto:ContractMarketMonitoring@aer.gov.au)

Dear Ms Savage

### **Enhanced wholesale market monitoring and reporting guideline – Issues Paper**

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the Australian Energy Regulator's (AER) Issues Paper on the Enhanced wholesale market monitoring and reporting guidelines ('Guidelines').

Origin supports the intent of the Guidelines which is to provide transparency around how the AER will exercise its new market monitoring and reporting powers. It is crucial the AER's information notices / orders are appropriately targeted and structured to minimise participant compliance costs; and that any confidentiality risks to participants are addressed. With this in mind, we provide the following comments in response to specific questions raised by the AER in its Issues Paper.

#### **Focus areas and supporting metrics**

The AER proposes that its wholesale market monitoring (WMM) will have four focus areas: market liquidity; access to markets and barriers to entry and participation; incentives for offer behaviour; and risk positions. While these are reasonable areas for the AER to consider, the AER should clarify how its monitoring and reporting will differ from the existing reporting completed by the ACCC in its electricity and gas market inquiries. The metrics proposed by the AER (e.g. number of trades, number of active participants) are also a sensible starting point for analysis.

#### **Approach to information collection**

The AER should minimise any duplication with information requests from other regulatory bodies. Where duplication is unavoidable (because the AER needs this same information to carry out its new WMM functions), the AER should look to directly align its notices / orders with other requests in terms of content, definitions and format (e.g. templates); and be cognisant of any conflicting timeframes.<sup>1</sup> We support the AER consulting with relevant participants prior to issuing them with notices / orders.

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<sup>1</sup> The Victorian Essential Services Commission (ESC) currently adopts this approach when it requires retailers to provide electricity customer billing data. The ESC notice focuses on the Victorian region but is otherwise identical to the ACCC's Billing Notice. We do not encourage the AER to pursue a consent framework or information sharing arrangements (as set out in the Issues Paper) due to confidentiality risks.

The Guidelines should outline what information the AER will not collect. Origin recommends:

- The AER only request information on, or copies of, executed contracts. A requirement on participants to provide all correspondence with counterparties relating to contractual offers and negotiations would be very onerous and likely to yield limited additional insights.
- Excluding location and time swaps from the AER's gas market requests as these arrangements solely relate to the shifting of gas volumes and so are less relevant to assessments of supply and demand positions.
- Excluding exchange for physical transactions from the AER's electricity contract market requests as these transactions are often just used to manage margin requirements and require significant manual work to identify and review.

The Guidelines must also specify a threshold below which the AER must not request information on gas contracts. Origin recommends that participants should not be required to provide information on deals that are either: less than 3 months; or have a total contracted quantity of less than 0.5 petajoules. This threshold would ensure that all significant deals are captured and help to manage the administrative burden on participants.

Regarding the AER's collection of historical contract information, this should be limited to the previous two years. The market has shifted materially in the last five years, especially following the unprecedented volatility of 2022. 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 Inquiry reports.

### **Use of information**

Following the collection of information, we would encourage the AER to engage with participants prior to drawing conclusions based on contract data, noting that certain contracts may be bespoke, complex and difficult to assess / interpret.

The AER asks whether the confidentiality, disclosure and procedural fairness measures outlined in the Issues Paper pose any risk to participants. One risk is that the WMM Bill removes the prohibition on the AER using information obtained for the purpose of performing its WMM functions for any other purpose (which was previously contained in s18D(3) of the National Electricity Law). This means that the AER would not be restricted from using electricity / gas contract information in undertaking its compliance / enforcement function. We remain of the view that information collected as part of the AER's WMM function should not be used for compliance / enforcement purposes. Market monitoring is more appropriately used to address market outcomes as a whole, rather than a means of enforcing national energy laws and rules against individual participants.

Given the confidential and commercially sensitive nature of the information being collected, in addition to the disclosure and procedural fairness obligations under the Competition and Consumer Act / National Electricity Law / National Gas Law, any disclosure of that information would need to 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 with and also 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.

If you wish to discuss any aspect of this submission further, please contact Thomas Lozanov at [thomas.lozanov@originenergy.com.au](mailto:thomas.lozanov@originenergy.com.au).

Yours Sincerely,

A handwritten signature in black ink that reads "S Cole". The "S" is large and stylized, and "Cole" is written in a cursive script.

Shaun Cole  
Group Manager, Regulatory Policy