



30 April 2024

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

Dear Ms Krist

### RE: Enhanced Wholesale Market Monitoring and Reporting Guideline

Shell Australia has been providing energy to Australians for over 120 years. Over the past decade, Shell has continued to invest in onshore and offshore natural gas and LNG exploration and development projects, power and gas trading, renewable energy and greenhouse gas emissions abatement projects in Australia. Shell continues to look for opportunities to grow its portfolio here.

Shell Energy Australia Pty Ltd and its subsidiaries trade as Shell Australia. Further information about Shell Energy and our operations can be found on our website [here](#).

In Queensland, Shell is the owner/operator of QGC and Joint Venture (JV) partner in Arrow Energy. In Western Australia, Shell operates the Prelude Floating LNG facility and is also part of other projects including North-West Shelf and Gorgon.

Shell Energy is Shell's renewables and energy solutions business in Australia. Shell Energy delivers business energy solutions and innovation across a portfolio of electricity, gas, environmental products and energy productivity for commercial and industrial customers, while our residential energy retailing business Powershop, acquired in 2022, serves households and small business customers in Australia.

In Australia, Shell Energy is the largest dedicated provider of business electricity and a leader in energy innovation<sup>1,2</sup>. Shell Energy is investing in battery energy storage projects, electrification projects, energy solutions and renewable energy projects.

Shell Australia and Shell Energy participate in the wholesale electricity and gas markets as separate entities but have prepared a combined submission on this topic to limit duplication in the consultation process only. The appropriate ringfencing and commercial obligations to each independent entity continue to apply.

### General feedback

Shell Australia welcomes the opportunity to provide feedback to the Australian Energy Regulator (AER) consultation on the Enhanced Wholesale Market Monitoring and Reporting Guidelines (the Guidelines). We note that the Guidelines are the first step in implementing the Wholesale Market Monitoring Amendment Bill 2023 (the Bill).

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<sup>1</sup>By load, based on Shell Australia analysis of publicly available data.

<sup>2</sup> Utility Market Intelligence (UMI) survey of large commercial and industrial electricity customers of major electricity retailers, including ERM Power (now known as Shell Australia) by independent research company NTF Group in 2011-2021.



Shell Australia acknowledges that the AER is seeking a complete holistic view of the wholesale markets, and that the additional information received will feed into existing analysis and reporting products, including regular monitoring which focus on short-term trends and long-term market reviews.

We consider that it is important to note that the outcome, purpose, or overall objective of what the data is seeking to achieve will guide the advice the AER receives from industry. While the Enhanced Wholesale Market Monitoring and Reporting Guideline Issues Paper for stakeholder feedback (Issues Paper) describes in detail the approach to market monitoring and reporting, and market information collection, we consider that this document broadly captures the 'how' of the information requests to come rather than the 'why' and 'what for'. Without a specific outcome or objective, it is difficult to provide advice on this front. Because of this, we may update our view once the AER releases specific detail on what the monitoring and reporting will feed into.

With that in mind, Shell Australia would be supportive of the AER adopting a collaborative approach for the future of this workstream, working with industry participants to assess the best approach to information requests in order to find the most cost and time effective way forward for industry and regulators.

We also acknowledge that the AER is seeking to harmonise information requests where there is duplication across regulators. While we support any attempt to reduce the regulatory burden on participants, we encourage clarity on the reasons for data collection in all cases and encourage each agency to be clear on its roles and responsibilities in contributing to a well-functioning market for the ultimate benefit of consumers. We are concerned that duplication could create confusion for market participants from an administrative and reporting perspective, as well as to the market at large if the same information given to two different regulators yields different results. We consider it necessary that the guidelines delineate the role and purpose for information collected by the AER against the activity and reporting undertaken by the ACCC.

Shell Australia also notes that the Issues Paper does not adequately address the issue of data security. While we understand that the AER is undertaking a process to build its internal capability in relation to data, increasing the level of security is essential in ensuring participant confidence in this process, especially considering the severe business impact that could stem from a breach of highly confidential, commercially sensitive information.

Shell Australia also holds significant concerns related to the publication of data, and the impact this could have on market integrity. Even if the data were anonymised, given the sophistication of counterparties in the market, we are concerned that participants would be able to back-solve volumes and derive which of the retailer's hedge with which instruments. Further, we are concerned that quantities of particular contracts, i.e. caps, are not very liquid, which limits the number of participants being able to trade them. This could be used to identify certain parties and their strategies which could impact, or damage, competitive positions within the market. We therefore caution the AER in its use of the information provided through these powers.

The bulk of our submission is contained to the sections below, where we address the concerns raised here in more detail.

Shell Australia thanks the AER for the opportunity to provide comment on this process and we welcome further engagement. If you would like to discuss any parts of the submission, please contact me at [Shelby.macfarlanehill@shellenergy.com.au](mailto:Shelby.macfarlanehill@shellenergy.com.au).

Yours sincerely,

Shell Australia



## AER approach to wholesale market monitoring and reporting

In general, Shell Australia supports that the AER will approach information requests by first determining what the desired reporting outputs will be. We consider that this aligns with the legislated requirement which the Bill introduces, for greater transparency on what products an information request will serve.

While we support the AER's quest for greater transparency, we query what the desired outcomes are that the AER seeks to achieve. The Issues Paper states that the "additional visibility of contract information will enable a more robust and in-depth understanding of wholesale electricity and gas markets".<sup>3</sup> However, aside from reporting and seeking further information, we query what end this is seeking to achieve and if there is an identified problem which the AER is trying to solve. We consider that the Guidelines should be clearer about the specific outcomes of the requested information, further than simply informing different reports.

We consider this is relevant in answering the questions posed throughout the Issues Paper, particularly those in relation to the AER's approach to the information collected. For instance, with Question 1, when considering what factors should be incorporated to the structure-conduct-performance framework, we consider that an opinion on this would be easier to form once the AER has communicated a clear objective. Shell Australia, as well as the industry at large, is generally welcoming of the opportunity to collaborate with governments and regulators to provide information in a manner that would save time and cost for both parties.

### Views on Proposed Key Areas

While we recognise that the AER has initial views on where to start with the collection of information under these powers, further clarity should be provided around *what* exactly is intended to be captured. Because markets naturally fluctuate, so too do participants strategies and observations of it. Therefore, the consultation question which asks "what information should we consider" is not simple to comment on without a clear objective to answer. For example, if the AER is collecting information on international gas market sales, it could consider the information it needs to collect in respect of domestic gas market sales that then relates to any associated sale on the international market.

It is also not clear *how* the AER will consider the information it collects, particularly under the four proposed key areas of market liquidity, access and barriers to markets, and incentives. As it currently stands, it is unknown to participants whether the collection of this information will lead to informing a policy change or seek to mitigate known issues within the market. For instance, it is well known that South Australia has issues with market liquidity; will the AER seek to collect information to resolve this issue or to further understand the foundations of the cause.

In terms of considering which metrics would be valuable in addressing the proposed areas, Shell Australia considers that the AER will need to have a level of granularity of specific positions across regions to show trends at scale. We consider that the granularity of the data has an impact on how useful it can be in determining any accuracy or analysis of the final results.

### Minimum Thresholds

Shell Australia recommends that the minimum threshold for contracted gas agreements be consistent with ACCC notices and AEMO short-term gas transactions.

## AER approach to information collection

The Issues Paper states that "the AER's wholesale market monitoring and reporting functions have been expanded to include wholesale gas markets and electricity and gas contract markets". At the outset, Shell Australia observes that the ACCC gas inquiry (that also involves gas market monitoring) has been on foot since 2017 and has been extended until 2030. Since early 2024, the ACCC has also collected information from gas

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<sup>3</sup> *Enhanced Wholesale Market Monitoring and Reporting Guideline, Issues paper for stakeholder feedback*, AER [March 2024] pg.15.



market participants in respect of the Gas Market Code. Further, short-term gas transactions are also reported to the AEMO Gas Bulletin Board, where the AER has access to the unaggregated data.

If not considered and well managed, the additional collection and reporting of information by the AER could become a duplicative exercise that adds significant administrative burden and cost to gas market participants without providing commensurate benefit or value to the effective operation of the market. The core issue of declining supply will not be solved by increasing collection and reporting of information.

While there is a recognition of the potential for duplication in reporting, the bigger issue of duplication of activity by agencies has not been addressed. Shell Australia suggests that it is more appropriate for the AER to first distinguish its purpose from that of the ACCC and then identify the appropriate collection and reporting of information from market participants (including any necessary harmonisation). This would remove confusion that would naturally be caused by two agencies carrying out the same function and encourage efficient operation of the gas market.

Shell Australia recommends that the guidelines clearly delineate the role of the AER as against the activity and reporting undertaken by the ACCC and identify the purpose of the AER's information collection.

Further, as stated in Shell Australia's previous submission on the Bill, we do not support information provided under the new powers to be potentially used for enforcement purposes. We consider that there are already clear pathways for the AER to access information for enforcement reasons, which remain the appropriate means for it to access such information.

### Collection and Harmonisation of Information

The guidelines add to an environment where there are a number of significant information reporting reforms being implemented concurrently and in which Shell Australia already has separate reporting obligations to various other government bodies. While Shell Australia welcomes the fact that the AER is engaging with the ACCC, it does not obviate the fact that this additional intervention is adding to an already significant compliance and reporting burden. Entities (including Shell Australia) are not currently required to provide gas transportation, compression, or storage contracts. The introduction of new reporting requirements has significant associated administrative burden and associated costs. It appears appropriate for the ACCC to collect all gas market contracts, as well as obtain directly from AEMO publicly available information. This would capture bids and offers that are transacted on. If the AER considers this insufficient, it must align collection and reporting against the ACCC's s53ZT and/or s95ZK Notices. Shell Australia would be happy to meet with the AER to discuss current reporting to the ACCC and provide examples. The types of information and documentation collected by the ACCC Gas Inquiry within the past year are summarised as follows:

- Documents collected: Gas supply contracts (minimum term of these varies depending on whether the collection is from a producer or retailer), documents containing price and non-price terms and conditions of offers and bids, specified documents relevant to LNG Sales information.
- Information collected: Short-term supply outlook, long-term supply outlook, 2023 supply, gas supply contracts, gas supply bids and offers, LNG sales, new gas supply projects, expressions of interest.

However, if the AER does not delineate its activities from the ACCC resulting in both agencies reporting on the same issues, even if the same information is collected by both agencies, it could be interpreted differently - leading to inconsistency in reporting and confusion in the market. For this reason, Shell Australia reiterates the necessity of the AER clearly delineating its role against the activity and reporting undertaken by the ACCC.

The AER should continue the current practice of collecting information from suppliers (rather than users/customers) as a practical way to avoid duplication, decrease administrative burden and increase efficiency. Should the AER not accept Shell Australia's submission on the types of information to be collected, this is particularly relevant in respect of gas transportation and storage contracts as a small number of companies (such as APA, Jemena and Lochard Energy) provide services to a larger customer base. In these circumstances, it does not make commercial sense to collect information from both parties.

The collection of gas market information (for physical supplies of gas) should be limited to gas market contracts and publicly available information from AEMO. If this is not sufficient for the AER's purposes, it should align and



harmonise its requirements with those of the ACCC (both in terms of content and timeframes) to avoid duplication and additional burden upon gas market participants and to ensure clear and consistent reporting.

### Financial Risk Management Products

In relation to financial risk management products, Shell Australia recommends that the ASX should provide futures market data to the AER on behalf of participants as all Over-The-Counter (OTC) derivatives are reported up to the OTC derivative trade repository. This data should be able to be extracted from this central database accordingly. Given the intricate and bespoke ways in which hedging against exposure risk is carried out, we are concerned at what the AER is seeking to derive from this information and question whether it would benefit the operation of market.

Shell Australia requests that the AER implement a materiality test in order to address these concerns as we consider that the futures market can, at times, be disconnected from wholesale markets as it represents a firm binding financial obligation to cash settle on the difference between the futures price and the spot market price outcome. In winter, the futures price tends to trade at a premium as there is an increased risk of higher prices due to physical production or pipeline issues. Also, only some participants that trade physical gas can trade financial contracts, so it would only be a subset and not be entirely representative of whole of market supply and demand dynamics in forward contracting. Further, we consider that within the forward market, volumes are extremely small and often traded by proprietary traders that have no underlying physical position and are merely speculating.

There is an error in Appendix C of the Issues Paper in relation to financial risk management products. It states that the ASX lists a quarterly and annual futures product, however the ASX only lists quarterly Vic DWGM futures contracts. These can be effectively 'grouped' into calendar or financial year contracts and traded as 'custom' markets where a calendar or financial year market trades the four underlying quarterly futures contracts trade accordingly.

### Consent Framework

While it is acknowledged and appreciated that the AER has sought to reduce participant burden with the introduction of a consent framework, we consider that implementation may be more time consuming and burdensome than the AER anticipates. Particularly where this relates to reporting to the ACCC and AER, due to the nature of gas market projects and associated contractual frameworks.

Many contracts prohibit the supply of confidential information to third parties without the consent of the counterparty, although typically a mandatory government reporting requirement is an exception. Consequently, while seeking consent to allow sharing of information between agencies appears pragmatic, it adds extra burden to the reporting entity to have to seek counterparty consent. Shell Australia would be happy to discuss this issue further should this assist the AER.

Shell Australia suggests that it would be more efficient to harmonise requests across agencies. At present, the ACCC collects documents and information by issuing s95ZK Notices (for its Gas Inquiry) and s53ZT Notices (in respect of the Gas Market Code). It is important to note that significant time and effort is expended in responding to ACCC's notices. Where information cannot be shared under legislation, to drive efficiency and decrease administrative burden, the AER could use its two new information gathering methods (MMIOs and MMINs) to align with the ACCC's information gathering process - but this should be in respect of both content and reporting periods. If notices require provision of the same type of information but over different reporting periods, or one seeks information presented in a different level of detail or template, this still results in additional administrative burden, such as additional internal project management, the creation of different subsets of responsive information (and the administrative work associated with that record keeping activity), and additional internal approvals.

To give a practical example, if a notice is received on 1 April 2024 requiring reporting of information from the date of the notice for the next three months and another notice is received on 4 April 2024 requiring reporting of information from the date of the notice for the next three months, even if the type of information sought is identical, the fact that the notices are not issued to capture the same timeframe results in different information being produced in response to each notice. Where the ACCC and AER may be reporting on the same or



similar issues, collecting different information, may cause confusion due to inconsistency in interpretation of data as well as the resulting reports.

### Targeted Incremental Approach

As mentioned previously, Shell Australia supports a collaborative approach in which the AER identifies the purpose of information collection and meet with industry participants to understand the information it needs to collect to achieve its objective. This would be an efficient and cost-effective solution for both industry participants and the AER.

Past energy market reforms have included workshops and working groups with affected stakeholders in an iterative stage that led to better designed and more workable outcomes.

We consider that with a targeted incremental approach to information collection, the AER must understand that each change decreases efficiency and increases administrative burden and costs of compliance. A collaborative approach, on the other hand ensures both parties take the time to understand what objective is being sought and how best to meet it.

For these reasons, Shell Australia supports a collaborative approach over an incremental one.

Further, when considering other methods of facilitating information sharing, Shell Australia considers that a co-ordinated approach across jurisdictions would be beneficial in analysing trend data of the entire wholesale gas or electricity market.

## Information collection framework

As stated above, Shell Australia welcomes the opportunity to work collaboratively with the AER on this process, and we note that this approach is highlighted in section 4.2 of the Issues Paper.

We agree that the compliance burden could be greater or lesser depending on the size of the participant, size and type of request, as well as the frequency of the request. For instance, smaller participants may face an increased burden in responding to information requests where they do not have the internal capacity to compile the information required on top of their business-as-usual workload, particularly where there is a requirement to respond to bespoke requests on a frequent basis. Shell Australia therefore supports the AER tailoring its information collection framework to participant size and capability to allow a framework which is conducive to industry participation.

### Frequency and Granularity of Requests

Shell Australia considers that it is appropriate for the AER to balance the granularity of information being requested with the frequency at which it is requested. For instance, for routine information requests where the AER is requesting a large amount of highly granular information, these should be at a low frequency – either annually or bi-annually. However, where these requests are set to occur at a high frequency, i.e. quarterly, these should be at either low granularity or completely identical each reporting period so that the internal systems can be set up and automated to reduce the compliance burden on participants. This is important as if a request is altered even 5-10%, this would essentially need to be treated as a new request. An example of inefficient information collection that does not balance value and burden would be short-term gas transactions reported on the Gas Bulletin Board within a business day of the trade date. We consider that this request seeks overly granular information at a transaction level (rather than at deal level), and with no material benefit to the market. We strongly recommend that the AER does not adopt the same approach for information collection.

The same can be said of bespoke high granularity information requests for targeted information on an infrequent basis, which are resource intensive for all participants to respond to. Where this occurs, we consider that the AER must be mindful of what other reporting requirements participants are subject to ahead of putting a notice or order into effect. Shell Australia considers that this metric also needs to take into consideration the amount of requests a participant receives from the many functions within the AER (i.e. wholesale contract information as well as cost information associated with retailer obligations), as well as those from other regulators.



Indeed, the same considerations apply to the AER seeking to harmonise information requests with other regulators such as the ACCC. If the AER seeks relatively similar information with several nuances, this could constitute a whole new information request which would add to the compliance burden participants face.

We would welcome a collaborative approach in working with the AER to identify the purpose and outcome of the reporting so that we can provide information in an efficient and cost-effective manner. For instance, if the AER is seeking to provide a report focusing on annual trends, we can provide annual data.

### **Format of Requests**

Shell Australia suggests that a template which aligns with the ACCC template would be an appropriate format of information requests where the AER is seeking to reduce the burden of compliance on participants. For example, where the ACCC already requires market participants to provide information by completing and submitting an Excel spreadsheet, the AER could require submission in the same format and covering the same timeframe. This would significantly reduce the administrative burden imposed on market participants.

Importantly, if the AER creates its own template, we strongly recommend that this is developed with relevant industry participants to ensure that the template works with existing reporting as much as possible.

If the AER elects not to align the timing of its information collection with that of the ACCC, Shell Australia suggests that the AER considers other known events when setting its requirements and avoid periods of time that are known holidays or are high demand periods for industry. For example, reporting due on 1 January or 30 June.

Also, Shell Australia recommends that the information collected includes a section to provide context to ensure appropriate interpretation of the data. Where the same or similar information is being provided to different agencies, the interpretation or resulting reports could vary. Having the chance to contextualise information where appropriate may assist in minimising any variances.

Further, we also recommend that the AER aligns definitions across regulators to further harmonise information requests across industry.

### **Historic Information**

Shell Australia suggests that provision of historical gas market information is not necessary or useful because the ACCC's Gas Inquiry commenced in 2017 and gas market participants have been providing information from this date. It is unduly burdensome to now require gas market participants to repeat that process – particularly where the additional purpose or use of that information has not been identified.

We also consider that when looking at historic information, there are nuances between financial year and calendar year, and it is unlikely that there will be much benefit from using financial year data. While it is acknowledged that the AER may be seeking trend information on the wholesale markets, we are concerned that the line between benefit and burden may be blurred.

The type of benefit that could be drawn from the use of historic information is two-fold; first, it could identify wholesale market trends, but we are concerned that where this is publicly reported on these trends could inform future bidding strategies which could lead to less competitive outcomes for the market at large. Secondly, while the AER may be able to collect contract information, these will not be indicative of future market performance. While contracting behaviour may change, it is the fundamental supply and demand balance that will be most important in informing the AER's holistic view of the market.

### **Data Security**

The Issues Paper does not adequately address the topic of data security. Because participants will be providing a significant amount of highly confidential and business critical information to the AER, it is important that the AER has cyber-security protocols in place, consistent with Security of Critical Infrastructure requirements. While we acknowledge that the AER will build internal capability to be able to enforce the new wholesale market monitoring, the cyber security segment of this capability will be critical to ensuring participant confidence.



Given the confidentiality and commercial sensitivity of the information, and in an environment of ever-increasing cyber security risk, we encourage the AER to consider and examine the practical steps it will take to ensure information remains confidential. We encourage the AER to consider:

- How it will store the information to ensure it is adequately protected and cannot be shared (inadvertently or otherwise);
- The mechanism by which it will require information to be shared, and the security protections that can be applied to information sharing (e.g. password protections, encrypted file transfer etc.); and
- How confidentiality can be maintained where an AER employee who handles commercially sensitive/confidential information takes new employment in private sector – particularly where that employment is within the gas market industry.

#### **Approach undertaken for DMO 5 and 6**

The DMO determination directly impacts a retailer's ability to compete and innovate in the market. For the DMO a more granular approach was supported to accurately capture retail costs to inform the bottom-up cost stack approach the AER have taken in recent DMO determinations. However, this granularity comes at a cost, ongoing and numerous annual requests to provide information require significant resource and time to comply with. In order to ease the regulatory burden associated with such requests it is important that there be minimal change year on year to prevent further ongoing system development that may be required to provide new information or information in a different way.