



30 April 2024

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

Submitted via email to: ContractMarketMonitoring@aer.gov.au

Dear Ms Krist

Enhanced Wholesale Market Monitoring and Reporting Guideline Issues Paper

Stanwell Corporation Limited (Stanwell) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Enhanced Wholesale Market Monitoring and Reporting Guidelines Issues Paper (Issues Paper).

As a major provider of electricity to Queensland, the National Electricity Market (NEM) and large energy users throughout Australia, Stanwell is invested in providing reliable and affordable energy for today and into the future.

Stanwell is committed to supporting State and Commonwealth Government emissions reduction targets, and in recognition of the changes that will need to occur in the energy market to achieve these targets, we are currently developing renewable energy, storage, and hydrogen projects and technologies within Queensland to support the transition to renewable energy and help to ensure Queensland electricity supply remains secure and reliable now and into the future.

This submission contains the views of Stanwell and should not be construed as being indicative or representative of the views or policy of the Queensland Government.

Stanwell acknowledges the work of the AER in preparing the Issues Paper and we appreciate the opportunity to provide feedback on the development and content of the AER's Guidelines. We are mindful of the important role the AER plays in monitoring and reporting on the performance of the wholesale energy market, especially during a time of rapid transformation as the energy system moves toward more renewable generation in the market.

Overall, Stanwell has significant concerns with the AER's proposed approach to the Guidelines because of the highly confidential nature and extremely broad scope of information that may be requested by the AER under the new enhanced powers.

While we understand the AER's need for accurate and relevant information to perform its regulatory functions, we are concerned the AER has not adequately identified the benefits the

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AER's proposed approach to using these additional powers will bring to the market, how its approach ensures these additional powers will not place an unnecessary burden on market participants, or the costs that will ultimately be borne by energy consumers.

The Issues Paper and proposed broad approach to the Guideline provides insufficient information for market participants to fully understand the types of monitoring and reporting the AER plans to undertake or the specific types of data likely to be requested. We consider the approach is at odds with the transparency and accountability that Energy Ministers' intended¹ would be provided through the Guideline and other requirements on the AER in the Amendment Act.² It is also particularly pertinent given the AER has indicated it does not currently have the capability nor expertise to interpret much of the information that may be requested.³

It will take some time for the AER to recruit and develop the required expertise, which ultimately must be in place before it commences requesting information from participants under these new powers. If this does not occur, there is a risk that too much unnecessary information, or the wrong types of information will be requested. In our view this will make it difficult for the AER to reach sensible conclusions in a timely manner, or at worst, result in inaccurate or entirely wrong conclusions being reached.

Matters to be considered before using information gathering powers

The Amendment Act includes the term wholesale contract market under the more broadly defined 'monitored market' (being a wholesale electricity market, a financial risk management market, or a market prescribed under legislation),⁴ and the Issues Paper outlines the very expansive contract categories the AER will be empowered to require from market participants.⁵

The Amendment Act provides the AER with two mechanisms to collect information:

1. Market Monitoring Information Orders (MMIO) (to be used across a class of participant), and
2. Market Monitoring Information Notices (MMIN) (to be used for more specific information gathering purposes).

We understand these mechanisms are intended to be used either separately or in conjunction with the AER's existing general information gathering powers.

These powers will enable the AER to compel market participants to produce a range of information. In our view, information should only be collected from market participants under these new powers where this information is genuinely not available from another source, or there is a clear identifiable reason (in line with legislative requirements) for doing so.

General information gathering powers

The general information gathering powers are broad in scope. The Amendment Act places a limit on the use of these powers requiring that prior to being exercised, the AER must be satisfied the information is reasonably required for the AER to carry out the function, and the

¹ Reforming the Australian Energy Regulator's Wholesale Market Monitoring and Reporting function - Response to stakeholder feedback, October 2023, pp 4 and 10.

² *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* received Royal Assent 18 April 2024.

³ *Stakeholder Forum – AER Enhanced Wholesale Contract Monitoring*, 9 April 2024.

⁴ *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* Subdivision 1 s 18A.

⁵ *Enhanced Wholesale Market Monitoring and reporting Guideline Issues Paper for stakeholder feedback*, Appendix C, pp 38-45.

AER must consider whether the information is publicly available or can be obtained in another way.⁶

The Issues Paper does not specify the purpose for the types of information proposed to be collected under the general powers, nor the types of reports to be produced and published, noting that the Amendment Act does not appear to have expanded the AER's reporting functions as provided in the NEL.⁷

In our view there is considerable overlap between the contract information the AER is seeking and what is either already publicly available or is being provided under other regulatory requirements. For example, exchange traded caps, options, and futures information can be obtained through publicly available information from the Australian Securities Exchange (ASX), while information on over-the-counter contracts (OTC) can be obtained through the Australian Financial Markets Association (AFMA) publicly published annual reports.

Additionally, non-public contract information can be sourced through information sharing arrangements with other reporting, regulatory or enquiry entities. For example, information on Settlement Residue Auctions (SRAs) can be obtained through the Australian Energy Market Operator (AEMO), while market participants currently provide a large quantity of energy market trading data to the Australian Competition and Consumer Commission (ACCC) under their ongoing electricity and gas pricing enquiries, and to the Australian Securities Investment Commissions (ASIC) under the OTC derivative transaction reporting framework.

We believe there would be considerable benefit to both the AER and market participants if the AER developed its analytical capabilities and market understanding by utilising the vast majority of wholesale contract information currently publicly available, or sourced from information provided to other regulatory entities or market bodies. We believe this approach would place the AER in a better position to understand and identify any additional information requirements it may need while minimising the costs to the market.

Enhanced information gathering powers

A considerable enhancement to the AER's information gathering powers under the proposed changes to the NEL are the additions of MMIOs and MMIN. Both may be issued to 'any person' and both carry Tier 1 civil penalties for non-compliance or for providing false or misleading information.⁸

Again, these instruments have a very broad scope, and we understand the intended use of MMIOs will be for 'regular' and 'ad hoc' information gathering purpose, although no guidance has been provided on the type of information that will be required to be produced, or the frequency of production, noting that the frequency of information collection will impact the cost and resource burden placed on market participants.

It would therefore be helpful to understand the level of detail and the categories of information that may be requested under a MMIO, noting that in order to comply with regular and ad hoc information requests, market participants will need to understand how and in what format to provide information, and ensure appropriate resources, systems, and processes are in place well in advance of an MMIO being issued.

Ad hoc and irregular information requests come with the inherent risk that information provided may inadvertently contain errors. Given MMIOs and MMINs will carry Tier 1 civil penalties, it would be helpful if the AER could provide guidance on the process that will be in place for

⁶ *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* Subdivision 2 s 18EB.

⁷ *National Electricity (South Australia) Act 1996* s18C(2).

⁸ *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023*.

checking and confirming the accuracy of information, and what opportunities, if any, market participants will be afforded to correct errors and omissions without incurring a penalty.

In the event information is not available via an existing source, Stanwell would strongly encourage the AER to align information requests to those of a similar scope and nature issued by other entities, as responding to information requests and providing market information is a considerable undertaking that can consume substantial time and resources. By coordinating reporting timeframes say for example to one annual reporting period, some of the reporting and regulatory burden associated with responding to multiple information requests may be alleviated.

Consultation

We understand the consultation process will differ for MMIOs and MMINs. Consultation for MMINs will be in accordance with section 18EJ of the NEL,⁹ while MMIOs will be in accordance with the Rules.¹⁰ Both processes are subject to varying consultation and production timeframes that are legislatively defined, but also allow the AER to exercise a discretion.

Given the consultation timeframe will differ for each consultation process, we ask the AER to adopt an early engagement approach with market participants prior to issuing MMIOs and MMINs, thereby providing market participants the opportunity to understand what hypothesis the AER is seeking to test, and then allow market participants to provide feedback to the AER on the types of information needed, and whether such information may already be publicly available.

From our perspective the additional engagement process is preferable as it allows for a longer submission period for standard notices beyond the 20-day timeframe,¹¹ and better facilitates a higher level of engagement while minimising unnecessary expenditure of time and resources.

Early engagement and consultation would also go a long way to improving understanding on both sides and help to ensure information requests are targeted to minimise the regulatory burden for market participants, whilst enabling the AER to fulfill its reporting and monitoring functions.

Incremental approach

The Issues Paper proposes an incremental approach to collecting a very broad set of data across four key focus areas. The concept proposed would see the focus areas and information requested expand and change within an undefined timeframe. This approach is vague and makes it difficult for market participants to put in place the processes, systems and resources that may be required to facilitate expanding information requests in an efficient and timely manner.

We see considerable value in the AER identifying the actual data it intends to collect from market participants under the incremental approach, along with an explanation of what the intended uses are. We also encourage the AER to afford market participants the opportunity to provide feedback on the relevance and practicalities their data may provide to the identified monitoring or reporting use.

In addition, Stanwell would like the AER to provide further guidance on the methodology it proposes to apply in order to implement a reasonable and sustainable approach to information gathering. Our suggestion would be a system that is sustainable in the longer-term, able to be

⁹ *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* s 18 EJ.

¹⁰ *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* s 18EG(4); National Electricity Rules, r 9.8.

¹¹ *National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023* s 18 EJ.

implemented at a reasonable cost to participants, and does not become more onerous as the AER's focus areas and information requests expand.

This approach would help to ensure that systems built can be enduring and efficient, without adding to costs associated with incremental system builds or replacements, legal review of requests, and unnecessary business disruption.

Secondary purpose

We understand information gathered under the new enhanced powers may also be used for a 'secondary purpose',¹² however, the AER have not indicated what secondary purposes this may include. We ask the AER to provide further guidance on this point noting the Amendment Act appears to limit the purposes for which MMINs and MMIOs can be used,¹³ and does not appear to expand the existing function of general regulatory information orders and notices, noting these instruments also have limitations placed on their use.¹⁴

Information sharing

Stanwell believes there are benefits in sharing information across authorised entities to maximise the value of the information being collected and lessen the burden of providing multiple data sets in multiple formats to multiple entities.

Stanwell supports the proposal outlined in the Issues Paper and the Amendment Act that would see continued utilisation of information currently in the public domain. We also support provisions for information sharing arrangements between the AER and other market entities such as AEMO. To this end, we would support the establishment of information sharing agreements between the AER, energy market bodies, or other regulators such as the ACCC. We note public statements that Energy Ministers had agreed the Commonwealth will identify and address barriers to information sharing in support of these enhanced AER functions and we would be interested in understanding how this issue is being progressed.¹⁵

We suggest information sharing arrangements be coupled with appropriate policies and practices to limit duplication of information and ensure the safety and protection of the information provided. These arrangements should also provide the benefit of offering a more efficient and cost-effective approach to information gathering for both market participants and information requesting entities.

Additionally, we note existing requests require information to be provided in specific formats or data sets to coincide with the various data and processing systems of each requesting entity. We believe there would be considerable efficiencies of time and resources where information regularly requested for monitoring and reporting purposes can be supplied in the same format.

There may also be scope for the development of a central, secure, transactional database or repository where information can be loaded and updated by market participants and accessed by the AER and other relevant energy market entities. This approach may potentially provide improved efficiencies of time and resources for both market participants and information gathering entities.

Data aggregation

¹² Stakeholder Briefing: *AER Enhanced Wholesale Contract Monitoring*, 9 April 2024.

¹³ *National Electricity (South Australia) Act 1996 s 28; National Energy Laws Amendment (Wholesale Market Monitoring) Bill 2023 ss 18EG (3)(a), (3)(b), (3)(c), (3)(d), 30AA 'relevant agreement', 18EG(5)(a), (5)(b).*

¹⁴ *National Electricity (South Australia) Act 1996 s 28C, 28D, 28F(3).*

¹⁵ Reforming the Australian Energy Regulator's Wholesale Market Monitoring and Reporting function - Response to stakeholder feedback, October 2023, p 14.

The Issues Paper does not specify the level of granularity or frequency of information collection, so we assume, based on the information provided, that the AER will be in possession of a large amount of highly confidential, commercial information.

Since the Issues Paper does not address the checks and balances that will be in place to ensure confidential information does not inadvertently enter the public domain, we are concerned that published data, even when anonymised or aggregated, may disclose (to those in the know) market positions or other commercial and confidential information.

For example, a small amount of aggregated data from many market participants may provide information on market trends whilst effectively shielding participants' commercial and market positions than say, a significant volume of aggregated information sourced from only two market participants.

To assure the market that information of a commercially sensitive and confidential nature will not place market participants at a competitive disadvantage, nor distort the market, we ask the AER to provide further clarification about the data rules it intends to apply before deciding whether it is appropriate to publish data (even when data has been aggregated or anonymised).

Disclosure of confidential information and data protection

Disclosure of confidential information

The Amendment Act proposes that information provided to the AER under a MMIN or MMIO is automatically deemed to be given in confidence. The additional contract information the AER seeks (as outlined in Appendix C of the Issues Paper) is as noted above, of a highly confidential, commercial-in-confidence nature, and unless otherwise compelled by law, would not otherwise be disclosed by market participants outside their respective organisations.

The NEL then provides that while information obtained under general information gathering powers is also taken to be provided in confidence, there are provisions in the NEL that allow for the AER to disclose the confidential information it holds, or that it has received in compliance with a regulatory instrument.¹⁶

While the Issues Paper briefly overviews the processes the AER would follow prior to disclosing confidential information, we suggest a more fulsome explanation of the disclosure process in the Guidelines, along with any response, redress, or right of refusal processes afforded to the information owners. In our view this would support greater procedural fairness.

Information security

A March 2024 Rule change request notes that the energy sector is considered a “high value target” facing a known and increasing risk to cyber security.¹⁷ Generally, cyber vulnerabilities pose significant corporate risks that include business interruption, financial losses,¹⁸ loss of commercially sensitive information, and in the case of the energy sector, a cyber security threat or attack will likely impact system security, thereby increasing costs associated with the provision and supply of energy and energy resources.

With this in mind, we ask the AER to provide assurance to the market that robust systems, process and protocols are in place to withstand interference, unauthorised access, loss,

¹⁶ *National Electricity (South Australia) Act 1996* ss 280B, 28W, 28X – 28ZAB inclusive, 28ZB.

¹⁷ Australian Government, Department of Climate Change, Energy, the Environment and Water, Rule Change Request: *Australian Energy Market Operator – Cyber Security Role* March 2024 p. 2.

¹⁸ Sheehan et al. 2019 *Connected and autonomous vehicles: A cyber-risk classification framework*. Transportation Research Part a: Policy and Practice.

misuse, unauthorised modification, or inadvertent disclosure of the information it intends to collect and store.

We also suggest the Guidelines outline the intended data retention timeframe, method of data storage (including the country of storage), other data usages beyond reporting, the method the AER will employ for securely sharing or transferring data between entities, and what rights of access data owners will have over their information once provided or obtained by the AER,¹⁹ including the notification policy and processes for data destruction and data breach.

Conclusion

While we are supportive of the AER's efforts to engage with the market on the development of the Guidelines, Stanwell does not support the very broad approach proposed for the use of the AER's enhanced market monitoring and information gathering powers, including the proposed broad approach to the Guideline. In our view the approach is far too general and will result in the AER acquiring a large amount of unnecessary, highly confidential information.

The Issues Paper does not provide any indication of how the enhanced information gathering powers will inform reporting, or the necessary assurances that appropriate, or indeed any policy, process and practice guardrails are in place prior to determining information usages.

Stanwell would like to see further detail on the actual intended use of the additional data, whether through an outlined plan or further engagement with market participants who have the industry knowledge and expertise to inform the AER's reporting efforts. This may also provide the benefit of narrowing the scope of information requested to fit a more targeted monitoring and reporting purpose, thereby increasing the likelihood that genuine benefits can be gained by the market, the AER, and energy consumers.

Further assurances should also be provided that appropriate protections are in place to safeguard the large quantities of confidential data once in the possession of the AER, thereby providing comfort to the market that the AER has indeed considered the responsibility associated with the breadth and scope of the information it proposes to collect.

Stanwell welcomes the opportunity to further discuss the matters outlined in this submission with the AER. Please refer any enquiries to Lya McTaggart via email at lya.mctaggart@stanwell.com.

Your sincerely



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¹⁹ Privacy Act 1998 (Cth) s 2A.