



SHELL AUSTRALIA

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Daniel Boardman
General Manager (A/g), Market Surveillance Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Submitted via email: ContractMarketMonitoring@aer.gov.au

Dear Mr Boardman

RE: Enhanced Wholesale Market Monitoring and Reporting Draft 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.

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

We appreciate that the Australian Energy Regulator (AER) considered the feedback provided to the Enhanced Wholesale Market Monitoring and Reporting Guidelines Issues Paper (Issues Paper). Shell Australia welcomes the opportunity to now provide feedback on the Draft Guidelines.

In particular, Shell Australia supports harmonisation of information requests where there is alignment in timing and form, or where the information requests are identical to information previously supplied to other agencies, as a positive step towards reducing regulatory burden on participants. We also support the minimum threshold requirements aligning with that used by the Australian Competition and Consumer Commission (ACCC), as recommended in our submission to the Issues Paper. To this point, Shell Australia suggests that the threshold could be expanded so that the proposal is not restricted to bilateral trading agreements from a retailer only.

As set out in our previous submission, we would like to restate the importance of consistency of information requests, especially when these are at a high frequency. Changing requests even slightly would constitute a completely new response from participants. Shell Australia considers that maintaining consistency is a positive way in which the AER can reduce unnecessary burden on participants.



Further clarity in the AER's objective

In our submission to the Issues Paper, Shell Australia advocated for the AER to clearly articulate its objective in carrying out its wholesale market monitoring (WMM) powers. We considered that the AER's purpose would be delineated from the ACCC and would be clearer to market participants if the objective the AER sought to achieve in collecting this information was in relation to a clear purpose or outcome.

Shell Australia would be supportive of a process which is more aligned to the now discontinued Australian Financial Markets Association (AFMA) electricity market survey. This survey had a clear purpose – to evaluate market conditions using the criteria of market liquidity, market transparency, operational processes, and regulation – and produced a high-level overview which was an appropriate insight on the state of the market. The AFMA survey was also low-cost for participants to implement and would better represent the objectives and outputs the AER is seeking.

To reiterate the point we raised in our previous submission, we consider that the objective should describe the 'why' behind the enforcement of the AER's powers under the Draft Guideline. Where there is not a clear objective which the WMM seeks to achieve, particularly outside of existing functions, the AER is at risk of its process being perceived as duplicative, burdensome, and not borne out of a genuine need for the powers to be utilised. Considering the significant investment required from industry in complying with these powers, it should be of critical concern for the AER to demonstrate that this is not the case.

In considering the Draft Guidelines and accompanying Explanatory Statement, there does not appear to be a clearly presented objective that speaks to the intent of the WMM powers beyond what is described in the National Energy Laws (NEL) or National Gas Law (NGL). It is understood that the monitoring and reporting will look to support the efficient operation of wholesale markets, however it can be argued that there are existing processes in place across the electricity and gas markets which already perform this function. For instance, the ACCC gas inquiry or data currently collected and monitored through the ASX and ASIC are examples of this which are expanded on in the section below.

Distinction between AER and existing reporting functions

Shell Australia acknowledges that the AER has provided commentary on the distinction between its functions and that of the ACCC in the Explanatory Statement. We appreciate the effort which has gone into providing this distinction as a response to stakeholder feedback. Shell Australia also supports the AER undertaking a full review of existing reporting, though we note that until an objective clarifies the purpose of the AER's monitoring under the Draft Guidelines, there will continue to be resistance from industry where there is obvious duplication without cause. It is for this reason that Shell Australia supports harmonisation of identical requests where this duplication does occur, as mentioned above.

Section 3.4.1 of the Explanatory Statement advises that the AER does not anticipate any significant overlap between the additional work undertaken in performing the enhanced wholesale electricity market monitoring and reporting, and the ACCC functions. We consider that this is incorrect and that there will be significant overlap in the monitoring the AER does under the WMM powers, the information already collected through other areas of the AER itself, as well as that conducted by other agencies and regulators. For instance, over the past few years the ACCC has, and currently still can, produce electricity enquiry data requests which require the same or similar information to that which the AER are now empowered to collect. This indicates that significant overlap does currently and will continue to exist where both bodies seek the same information.

Section 3.4.2 of the Explanatory Statement in relation to gas lacks a clear objective for why the AER will collect and report on the same information as the ACCC. While we appreciate that the AER is conscious of the overlap between the two bodies here, we reiterate our previous concerns around duplication and the administrative burden that this places on industry participants. In particular, 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 or interpretations.

Regarding Financial Risk Management Products, we note in Appendix A of the Draft Guidelines that that AER will collect "qualitative information... to ascertain participants' risk appetite, risk management strategies, trading



strategies and investment consideration in the context of the energy transition". We understand that qualitative information does not include transactional trade-level data, and we welcome this if it is indeed the case.

Such transactional trade-level data is available from, and monitored by, other agencies and regulators. For example, exchange-traded data is available at the source at ASX's end; and both the ASX and ASIC regulate trading activities on exchanges. In addition, the majority of trade-level OTC derivatives data (with the exception of OTC electricity derivatives) is collected by ASIC under the OTC derivatives reporting regime. The regime was implemented to enable ASIC to regulate and monitor OTC derivatives markets by requiring transparency through reporting of OTC derivatives data to trade repositories.

For ASIC Reporting Entities, any duplication in information requests with existing information collected by other agencies and regulators would be a significant administrative burden. Shell Australia would encourage the AER to collect information from other parties such as the ASX or ASIC that are already collecting the same information to avoid duplication and participant burden.

Further, while it is understood that the AER is required to monitor and review the performance of the electricity and wholesale gas markets, wholesale gas is inherently different from electricity in that there is not a wholesale exchange in which participants must comply with a codified set of rules, aside from the legislation which requires certain conduct. The regulated parts of wholesale gas largely pertain to the Gas Supply Hub, Short Term Trading Market, and the Declared Wholesale Gas Market, and each of these sections have their own conduct provisions which govern participant behaviour. The AER currently regulates and reports on these markets under existing powers, and so we again query what purpose further monitoring and reporting of these segments under WMM powers would achieve.

Data Security

Shell Australia recognises the Draft Guidelines have sought to address stakeholder concerns in relation to confidentiality, use, and disclosure of information. While it is clear that the AER will seek to take all reasonable measures to protect information which is received in confidence, we consider that there are still outstanding concerns which the Draft Guidelines have not addressed.

Shell Australia has had instances in the past where highly confidential and commercially sensitive information has been made available to competitors through a regulator's channels. This has largely occurred due to human error. The Draft Guidelines do not appropriately mitigate against this risk - in particular, Section 4.5 does not allow for password protecting or encrypting files, which is concerning from a market participant perspective, considering previous experience. Further information on this breach is available on request.

The most simple and effective way to mitigate the risk of accidental disclosure of confidential and commercially sensitive information is to allow market participants to password-protect information prior to provision to the AER. In Shell Australia's experience, the act of password protecting documents has previously successfully mitigated this risk, which is the practice for information provided to the ACCC Gas inquiry 2017 - 30.

In our previous submission, Shell Australia sought cyber security protocols consistent with Security of Critical Infrastructure requirements, and we maintain this position now. Alternatively, we would support uploading password-protected information to a one-way portal for which the AER has sole access. We consider that this would mitigate the margin for human error in that there is no risk of other parties having access to a server which contains competitors' confidential information, nor should staff be able to reply or forward attachments to an email addressed to the wrong recipient.

In its previous submission, Shell Australia also raised significant concerns related to the publication of information, and the impact this could have on market integrity. In particular, that the information published (even in aggregated form) could be used to identify certain parties and strategies which could impact, or damage, competitive positions within the market. We consider that this risk is still live and recommend that the AER engage in robust consultation with market participants prior to the publication of any data.



Secondary Use

The AER says that once collected under the proposed guidelines, information provided could be used for a secondary purpose, including compliance and enforcement. However, we consider that this would diminish participant confidence in this process. As evidenced in Appendix B of the Explanatory Statement, this view is overwhelmingly echoed by several other industry bodies and participants.

The AER has separate powers and functions to carry out enforcement, which would be the appropriate avenue for such actions to occur.

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 Shelby.macfarlanehill@shellenergy.com.au.

Thanks,

Shell Australia