



30 August 2022

Department of Climate Change, Energy, the Environment and Water
GPO Box 858
Canberra, ACT 2601

Attention: Energy Ministers Secretariat

By email: energyministers@industry.gov.au

Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting Framework - Consultation Paper

Alinta Energy welcomes the opportunity to respond to Energy Ministers Secretariat on proposals to amend the wholesale market monitoring (WMM) and reporting framework for electricity and gas markets.

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of over 3,300MW and more than one million electricity and gas customers. The proposed changes to the WMM and reporting framework and extension of information gathering powers by the Australian Energy Regulator will have a material impact on Alinta Energy and other market participants and it is critical that the intent of the reform is effective and efficiently considered.

Recent volatility in the National Electricity Market and east coast Australian gas markets has been driven by a combination of significant disruptive factors – exogeneous impacts, such as the ongoing conflict in Ukraine, ongoing global and local supply chain challenges, local weather events including flooding and wind droughts and the failure of baseload generation plant along with planned outages.

Greater scrutiny and knowledge by the regulator would not have prevented this unprecedented combination of events from occurring or a material short-term policy response to rectify them. These influences are noted by the Secretariat itself in the consultation paper.¹

We understand the agreement by Energy Ministers on 8 June to enable greater market monitoring powers for the AER in response to recent events. However, we consider the scope and purpose of the proposed changes to National Electricity and Gas Law are insufficiently defined and it is unclear how the proposed increase in the AER's information gathering powers will improve insights that justify the significant cost to industry (and ultimately consumers large and small) to implement such broad changes.

¹ Energy Ministers Secretariate (2022), *Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting Framework – Consultation paper*, page 2.

We support improving transparency where there is an identified market failure and the AER as regulator being equipped with relevant and useful information to discharge its functions, but express concern that the scope of the proposed approach is too broad to support the efficient and cost-effective achievement of the objectives the reforms are aimed to support.

The proposed changes require an objects clause to make clear the purposes and uses of any additional information the AER may gather and clear guidelines (and public guidance) provided to explain how contract and other wholesale market information will be used in enforcement and policy development.

We also have concerns about the security and handling of (potentially vast amounts) of commercially sensitive contractual data being provided, stored and destroyed by the regulator and the cyber security maturity levels applied to the management of such data.

Alinta Energy is very interested in working with the Secretariat and AEMO to develop practical guidelines that meet the intent of changes to the NEL and NGL to:

- Ensure reforms are necessary, targeted, efficient and provide information of genuine use to the AER;
- Minimise the administrative, compliance and IT expenditure to deliver on such targeted information gathering, acknowledging the ever-increasing burden on industry associated with separate (and often unaligned and competing) energy reform projects;
- Establish and publish the basis and use of information sourced from market participants;
- Eliminate duplicating existing regulatory obligations (e.g., the Australian Competition and Consumer Commission's Gas Inquiry); and
- Include provision with 24-36 months to review and consider the need to refine (rather than expand) the powers enabled by changes to the NEL and NGR.

We respond to specific issues set out in the consultation paper in the template attached. If you wish to discuss any part of our response further, please contact David Calder (David.Calder@alintaenergy.com.au) in the first instance.

Yours sincerely



Graeme Hamilton
General Manager, Regulatory & Government Affairs

Attachment B - Wholesale Market Monitoring Amendments - Stakeholder feedback template

Submission from Alinta Energy

The template below has been developed to enable stakeholders to provide feedback on proposed amendments to the NEL, NGL and NREL as outlined in the consultation paper *Amending the Australian Energy Regulatory Wholesale Market Monitoring Framework*. ESOM strongly encourages stakeholders to use this template, so that it can have due regard to the views expressed by stakeholders on each issue.

1. Purpose and approach to consultation

Question /Section	Feedback
General	Refer to Alinta Energy's cover letter to this template.

2. Current wholesale market monitoring powers

Question /Section	Feedback
2.3 General information gathering powers	<p>We acknowledge the constraints on the AER's information gathering powers under the current legislation described in section 2 of the consultation paper, but query if the significant proposed increase in these powers would address or would have prevented the combination of factors resulting in the recent suspension of the NEM. Retailer of Last Resort arrangements are already in place to manage the orderly transition of customer accounts and supply in the event of retailer failure.</p> <p>The proposed expansion in monitoring powers will place greater cost and administrative burden on market participants, already managing complex and ever growing (and often uncoordinated) regulatory changes. The extensive regulatory oversight already in place in the energy sector (relative almost any other sector of the Australian economy), itself impacts competition, innovation and diverts the resources of market participants from other activities that inevitably carry opportunity costs. The proposed changes, if extended to all contractual instruments on a frequent basis in gas and electricity markets will have high implementation and ongoing costs. This burden will be challenging for larger participants to manage, let alone smaller second and third-tier participants.</p>

3. Addressing WMM limitations in the electricity market

Question /Section	Feedback
<p>1. Do stakeholders have any comments on the proposal to repeal s18D of the NEL as described above?</p> <p>2. Do stakeholders have any additional comments on the regulatory approach to WMM information gathering in the context of the proposed approach, outlined in sections 5 and 6, to expand the WMM framework to encompass electricity contract markets and gas wholesale and contract markets?</p> <p>3. Do stakeholders have any concerns with the subsequent use of collected WMM information by the AER, including, for example, in enforcement action?</p> <p>a. In what circumstances, if any, should the AER be constrained in the use or disclosure of collected information, beyond any existing protections in the general information gather provisions? Please provide clear justifications on the need for such constraints.</p>	<p>1. The repeal of section 18D of the NEL will remove most of the constraints currently applying to the AER. Recent events, while significant, do not invalidate the reasons these constraints were applied in the first place. As noted by the Secretariat on page 7 of the consultation paper, these include:</p> <ul style="list-style-type: none"> • Minimising the cost of the WMM function; and • Address the sensitivity of commercial information and concerns about its use. <p>The need for the AER to identify a relevant matter before seeking confidential information remains an important test to ensure that data sought by the AER is relevant.</p> <p>We do not believe simply provided access to <i>all</i> confidential contractual information (such as derivative products that may be bespoke in nature and power purchase agreements) will provide the AER with insights to anticipate the collapse of (using the example provided in the consultation paper) a first-tier retailer, and even if it did, what could be done to prevent it (if anything).</p> <p>The lack of concrete examples in the consultation paper of how highly sensitive and commercial in confidence contractual information will be used suggests that some constraint on the AER's wholesale market monitoring powers should remain in place. Alinta Energy would strongly encourage the Secretariat and the AER to work closely with industry to identify the type and frequency required of contractual information for gas and electricity markets to determine the most efficient and least cost approaches to meeting the objectives of enhanced WMM functions.</p> <p>2. With respect to information gathering, we note that the obligation for the AER to return information after a period of 12 months would be removed in amending the NEL and NGL. While the AER may want to retain information to support its monitoring function over the longer term, we have concerns in relation to the storage and security of data given its commercial sensitivity and the maturity level of systems used by the regulator to support cyber security. Industry is required to maintain particular standards (for example under the Security of Critical Infrastructure Act and the Australian Energy Sector Cyber Security Framework). While the AER may use encrypted and secure IT storage and transmission for data collected already, we expect that regulators and government departments accessing wholesale market information of a sensitive and commercial nature would be subject to similar standards as industry.</p> <p>More generally, we anticipate the systems and processes necessary to support the proposed changes to the WMM framework will constitute a significant investment and cost to both industry and the regulator.</p> <p>3. The context information collected by the AER and its proposed additional uses should be made clear to providers of that information. Second-guessing the reasons for the design and features of specific contracts, without further consultation with the market participants providing that information, would be speculative and not consistent with best practice regulation or consulting with regulated businesses in an open and transparent manner. Before information provided is used for</p>

Question /Section	Feedback
	other purposes, the reasons for these alternative uses of data should be made clear to business providing it.

4. Expanding WMM function to electricity contract markets

Question /Section	Feedback
<ol style="list-style-type: none"> 1. Do stakeholders have any comments on extending the WMM framework to electricity contract markets? 2. Do stakeholders have any views on specific contractual instruments that should or should not come within scope of this function? Please provide comprehensive reasons why or why not. 3. Do Stakeholders have any comments on the indicative drafting in Attachment A? 	<ol style="list-style-type: none"> 1. As noted in our cover letter and above, we believe further refinement of the purpose and use of information sought by the AER is required. We strongly encourage alternatives to the provision of mass contract data (for example, cooperative discussion between the AER and impacted market participants) ahead of making any rules or guidelines that would prescribe costly mandatory reporting, with uncertainty over the use, storage, security or disposal of the data provided. 2. Without an understanding of the breadth of information that the AER may require and the uses it would be put to, it is difficult to suggest which contractual instruments should be excluded from any expansion in WMM powers. Alinta Energy believes that close engagement with the Secretariat and the AER is required to identify the types of instruments that may be of use to the AER and the legitimate need for information it seeks. Complex, exotic and bespoke contractual arrangements may require context from the providers of such products to ensure that the AER understands their purpose and use. 3. It is unclear what contracts draft sections 1.1.3 and 1.1.4 may relate to. In electricity, transmission of electricity and gas is regulated by the AER itself. Bespoke connection arrangements may exist for both monopoly services, but at this stage we consider both subclauses unnecessary and requiring further context. The breadth of sub clauses 1.1.1, 1.1.2 and 1.1.5 present concerns relating to the extent of information gathering powers discussed above.

5. Expanding the NEL WMM function to gas markets

Question /Section	Feedback
<ol style="list-style-type: none"> 1. Do stakeholders have any general comments on the extension of an AER WMM and reporting function to gas markets? 2. Do stakeholders have any comments on the potential scope of application of a WMM gas function to the 'regulated' markets discussed above, and the related market participants who would be required to comply with the information disclosure obligations? 3. Do stakeholders have any comments on the contractual instruments that should or should not come within scope of the WMM function? Please provide detailed reasons why or why 	<ol style="list-style-type: none"> 1. We repeat concerns raised elsewhere in this response that the purpose and use of information gathered under expanded WMM powers to gas markets is not articulated or explained in the consultation paper, beyond general monitoring and enforcement powers of the AER and understanding competitive dynamics and the financial dealings of market participants. As with the proposed changes to the electricity WMM function, gathering vast amounts of contract data without context or the provider understanding its purpose will lead to the inefficient provision of data that may be misinterpreted. The expansion of the WMM function to electricity and gas contract markets as proposed in the consultation paper is a significant increase in the regulator's powers, and responsibilities. We reiterate that in developing any expansion of the WMM function, close consultation with market participants will determine:

Question /Section	Feedback
<p>not.</p> <p>4. Do stakeholders have any comments on the indicative drafting in Attachment A?</p>	<ol style="list-style-type: none"> a. If data is actually required and has a purpose; b. If there are optimal and efficient ways of gathering and storing information to reduce the burden and cost for both the AER and participants, which will ultimately impact upon energy costs to consumers; c. Clear objectives articulating how information provided supports the NEO and NGO; d. How data will be managed and protected and the context for its use explained to providers complying with any expanded WMM power. <ol style="list-style-type: none"> 2. No comment. 3. As with section 4 above, we are unable to provide specific comments on (gas) contractual instruments that should not come within the scope of the WMM function without further understanding the purposes information on particular contractual arrangements will be put to. 4. No comment.

6. General feedback on timing and next steps required

Topic	Feedback
<p>Timing and implementation</p>	<p>In making any changes to the NEL and NGL, Alinta Energy again would emphasise the importance of close government (including the Secretariat), AER and industry collaboration in developing a WMM and reporting function that:</p> <ol style="list-style-type: none"> 1. Serves the objectives identified by the regulator and policy makers; 2. Is efficient and optimised to minimise the impact and cost on market participants and the regulator itself; 3. Seeks data based on well understood reasons and if alternative, less costly data provision processes can be identified, should be flexible enough to accommodate these; 4. Has a review period after 36 months post go live to determine if the costs of the expanded WMM powers are exceeded by (quantifiable and demonstrable) benefits; and 5. Provides guarantees that data is protected from cyber incidents with a sufficient, auditable and standardised level of IT maturity.