



5 September 2022

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

Submitted via email: energyministers@industry.gov.au

Dear Energy Ministers Secretariat

Amending the AER Wholesale Market Monitoring and Reporting Framework – Consultation Paper

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on Energy Senior Officials' Consultation Paper on Amending the Australian Energy Regulator (AER) Wholesale Market Monitoring and Reporting Framework.

Origin recognises the intent of the proposed amendments is to ensure the AER has the information it needs to fulfil its market monitoring and reporting functions, and to broaden these functions. However, given the large suite of reporting and market monitoring requirements already in place, it is imperative that any expansion of the AER's functions is appropriately targeted. To this end, the following refinements should be considered with a view to reducing the compliance costs and confidentiality risks to participants:

- **Clearer articulation of the purposes of the AER's market monitoring function** – participant information could be used to inform the AER's statutory reporting obligations, provide insight on participants' risk management practices or identify misconduct. The type of information required for each purpose will differ. We consider the AER's market monitoring function is currently broad and ambiguous, and unless greater certainty and clarity is provided in relation to its purpose, we believe the provisions in Section 18D of the National Electricity Law (NEL) that limit the use and disclosure of participant data should be retained.
- **If the AER's powers are extended to gas markets, the AER should seek to minimise any duplication as it collects information** – participants currently provide extensive amounts of data on gas prices and offers to the ACCC, as part of the ongoing ACCC Gas Inquiry. In addition, the soon to be implemented Gas Market Transparency reforms will require that detailed information on gas supply agreements (GSAs) is made available for publication on the Gas Bulletin Board (GGB). In collecting gas market data, the AER should look to avoid any overlap with data provided via other processes.
- **If the AER's monitoring function is expanded to include contract markets, opportunities for early industry engagement should be encouraged** – contracts can be highly complex and so can be misinterpreted. We would encourage the AER to engage with industry as it develops its findings.

We expand on these points in Attachment 1.

If you wish to discuss any aspect of this submission further, please contact Thomas Lozanov at thomas.lozanov@originenergy.com.au or on 0400 047 068.

Yours Sincerely,

A handwritten signature in blue ink, consisting of a series of connected loops and a vertical line at the end, resembling a stylized 'S' or 'R'.

Steve Reid
General Manager, Regulatory Policy (Acting)

Chapter 3 – Addressing WMM limitations in the electricity market

Questions	Feedback
<p>1. Do stakeholders have any comments on the proposal to repeal s 18D of the NEL as described above?</p>	<ul style="list-style-type: none"> • Origin advocates for the retention of s 18D in the NEL as there is currently a lack of clarity on the purpose of AER data collection. • It is important that data that is provided to the AER is collected for a specific purpose and only used for that purpose. This enables participants to provide a tailored response to a data request with appropriate context and explanation. The frequency and format of data collection also relies on having a clear purpose for the data. • Requiring the AER to use public information to justify the use of mandatory information gathering powers, helps to ensure investigations are targeted and participants do not incur unnecessary costs. If this requirement was removed, we might see an increase in investigations that are overly broad, and which do not yield anticipated insights. If Senior Officials determine to remove this requirement, it should be replaced with an alternative threshold that the AER needs to satisfy before compelling the production of information and documents.
<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>	<ul style="list-style-type: none"> • The proposed expansion of the WMM framework to include contract markets and gas markets, means the AER will receive an increased amount of commercially sensitive information. • Repealing s 18D could weaken confidentiality protections. We feel there would be benefit in Senior Officials clarifying the circumstances that would prompt the AER to disclose confidential information.
<p>3. Do stakeholders have any concerns with the subsequent use of collected WMM information by the AER, including, for example, in enforcement action? 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 gathering provisions? Please provide clear justification on the need for such constraints.</p>	<ul style="list-style-type: none"> • We do not support the information collected as part of the AER's WMM function being 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. • In addition, the AER, unlike ASIC, does not regulate financial contracts markets so we query how collecting such data fits with its regulatory powers to monitor compliance under national energy laws and rules.

Chapter 4 – Expanding the WMM function to the electricity contract market

Questions	Feedback
<p>1. Do stakeholders have any comments on extending the WMM framework to electricity contract markets?</p>	<ul style="list-style-type: none"> • We appreciate the AER seeking to increase its understanding of contract markets. • We note that OTC contracts are typically bespoke and voluminous and may be difficult to properly assess from a regulatory perspective. And so, Origin questions whether the mass collection of contract data is the most effective way to give the AER the insights it is seeking. Targeted inquiries or periodic requests for reports that summarise participants' overall positions could lead to improved AER understanding. • If the AER's powers are expanded, we would encourage the AER to engage with participants prior to drawing conclusions based on contract data.
<p>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.</p>	<ul style="list-style-type: none"> • Senior Officials are proposing the AER collects contracts relating to the cost of fuel (coal, gas and liquid fuels). These are all tradable commodities with easily observable prices. We do not think individual firms supply contracts would provide enough value to warrant collection of the data. • If the AER's powers are extended to contract markets – we would be in favour of participants only being required to provide information on, or copies of, executed contracts. A requirement on participants to provide all correspondence with counterparties which relates to contractual offers and negotiations would be very onerous. This approach would ensure the AER has key contractual information while also reducing the compliance burden on participants.
<p>3. Do stakeholders have any comments on the indicative drafting in Attachment A?</p>	<ul style="list-style-type: none"> • The proposed definitions of <i>electricity contract</i> and <i>gas contract</i> are broad. (See comment above regarding fuel contracts). • The indicative drafting states that an <i>electricity contract</i> "does not include a contract or arrangement for the supply of electricity to a retail customer". We query whether large C&I customers have been intentionally omitted from this exception.

Chapter 5 – Expanding the NEL WMM function to gas markets

Questions	Feedback
<p>1. Do stakeholders have any general comments on the extension of an AER WMM and reporting function to gas markets?</p>	<ul style="list-style-type: none"> • Our key consideration on the expansion of the AER's monitoring and reporting function to gas markets, is that the new framework should seek to minimise duplication. <ul style="list-style-type: none"> ○ The ACCC, as part of its ongoing inquiry, collects information from gas market participants which includes, prices and quantities offered under GSAs with terms of three months or longer. ○ New GBB reporting obligations, established under the Gas Market Transparency reforms, which begin in December

	<p>2022 will require gas sellers to report the price and key terms¹ associated with short-term GSAs for publication on an anonymised and aggregated basis.</p> <ul style="list-style-type: none"> ○ ASIC collects information on gas derivatives via its existing OTC derivative reporting framework. • Information requests from the AER should avoid duplicating the above processes.
<p>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?</p>	<ul style="list-style-type: none"> • None.
<p>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 not.</p>	<ul style="list-style-type: none"> • None.
<p>4. Do stakeholders have any comments on the indicative drafting in Attachment A?</p>	<ul style="list-style-type: none"> • None.

¹ Non-price terms and conditions to be reported include: total contract/swap quantities; the take or pay quantity; the maximum daily quantity (MDQ); and the location at which the gas must be delivered