



25 August 2022

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

## **RE: Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting Framework**

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to the Department of Climate Change, Energy, the Environment and Water's consultation on expanding the Australian Energy Regulator's (AER) wholesale market monitoring powers.

### **About Shell Energy in Australia**

Shell Energy is Shell's renewables and energy solutions business in Australia, helping its customers to decarbonise and reduce their environmental footprint.

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 more than 185,000 households and small business customers in Australia.

As the second largest electricity provider to commercial and industrial businesses in Australia<sup>1</sup>, Shell Energy offers integrated solutions and market-leading<sup>2</sup> customer satisfaction, built on industry expertise and personalised relationships. The company's generation assets include 662 megawatts of gas-fired peaking power stations in Western Australia and Queensland, supporting the transition to renewables, and the 120 megawatt Gangarri solar energy development in Queensland.

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

### **Expanding the Wholesale Market Monitoring function to electricity contract markets**

The question of whether regulators should have greater access to electricity contract market data has arisen several times over the past few years. The Australian Competition and Consumer Commission's (ACCC) Retail Electricity Pricing Inquiry set out two recommendations for delivering greater visibility over contract market activity.<sup>3</sup> Prior to that, in 2012, the electricity market was given an exemption from over-the-counter (OTC) contract reporting as part of Australia's G20 commitments. Now, ten years after that exemption was granted, the issue of reporting on contract market data is again being examined.

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<sup>1</sup>By load, based on Shell Energy 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 Energy) by independent research company NTF Group in 2011-2021.

<sup>3</sup> ACCC, Retail Electricity Pricing Inquiry - Final Report, July 2018.



Shell Energy understands the desire to access more information around electricity market contracts. Deep and liquid contract markets are an essential part of delivering efficient retail pricing to end users in the National Electricity Market (NEM). As Australia's second-largest electricity provider to commercial and industrial businesses in Australia, we are an active participant in contract markets in order to manage our exposure to the NEM's highly variable spot price. We consider there are several important considerations Energy Ministers must bear in mind as they assess the potential expansion of the AER's wholesale market monitoring role to include electricity contract markets.

Firstly, there is a regulatory burden involved in responding to information requests from regulators on top of the existing requirements that retailers must already comply with such as breach reporting, and reporting on customer numbers, hardship policies and more. This proposal would likely add further compliance costs in what is currently a very difficult economic environment. Based on the consultation paper, we do not see how additional reporting on hedging contracts would provide meaningful benefits that would outweigh the costs and risks.

There is significant detail in electricity market contracts, particularly over-the-counter (OTC) contracts which can be bespoke in nature. Absent from the consultation paper is clarity around what details participants would be required to report to the AER. Some details such as strike price, volume, dates (and times), and region appear to be quite obvious in terms of what is necessary. However, there are many other potential sources of data in an electricity market contract that do not, in our view, appear relevant to the AER and its aims. Issues such as credit levels and payment terms for instance, would not seem to be necessary given what the AER intends to deliver. The more detail that participants are required to supply the AER, the more costly the reporting obligation becomes.

The Retailer Reliability Obligation offers an example of the data that in our view would be relevant to the AER in the context of its wholesale market monitoring role. Clause 4.A.E.3 of the National Electricity Rules sets out the principle that are used to determine the firmness of a contract. These are: the volume covered, the exposure to spot prices, the variability and profile of the contract, and the extent to which the contract covers the gap periods (analogous to the times and dates of the contract). Shell Energy does not see a case to require much information, if any, beyond this.

Notwithstanding these points, it is likely many participants are currently reporting entities for the purposes of the OTC derivative reporting requirements overseen by ASIC and as such, have established systems and processes for general OTC derivative reporting. If this proposal was to be introduced, the AER should consult heavily with industry on the operational design and consider, where appropriate, alignment with the ASIC framework to reduce the overall burden on reporting parties. This includes the use of data repositories, informational fields and potentially reporting timeframes.

In previous consultations on the topic of contract market transparency in 2018 and 2019, we argued that a trade repository should leverage off existing structures, such as the Australian Financial Markets Association (AFMA) survey.<sup>4</sup> We recognise the argument that as the AFMA survey is voluntary it may not cover all participants and that participants could withdraw from the survey. While the voluntary nature of the AFMA survey may be an unsustainable barrier for Energy Ministers in accessing contract market information, we argue that using a similar structure as the AFMA survey could help to minimise the regulatory burden on participants. Any new regulatory requirement imposes costs in participants. Given the current environment of high wholesale market prices, as well as increasing costs from the Australian Energy Market Operator (AEMO), we hope that the AER can find a way

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<sup>4</sup> Shell Australia and ERM Power submissions to the Energy Security Board (ESB) Consultation on ACCC Recommendations 1 and 41, March 2019; ERM Power submission to the ESB on OTC Transparency in the NEM, October 2018.



to minimise the cost burden on participants. Such that a contract reporting requirement creates costs for market participants, these costs are likely to be passed on to end users.

We also urged caution around granting the AER access to details of exchange-traded contracts that would allow it to determine the buyer and seller. The National Electricity market (NEM) has a relatively small number of participants, most of whom have very sophisticated analytical capabilities. It is highly likely that the more granular the data available, the more likely it is for trades to be back-solved to identify the buyers and sellers. This is extremely likely when there is a change of ownership or a new generation facility opens, and in certain smaller NEM regions where only one or two participants are capable of making some volumes of trade available. This risks revealing commercially sensitive information to other parts of the market, which may have detrimental impacts on competition. We recommend that the AER consider this in designing its approach to accessing contracts market details.

In addition, the AER will need to consider whether it will want to access trade-by-trade or aggregated data on contract markets from participants. In assessing this, and indeed, as it analyses the data it may receive, Shell Energy notes that bespoke trades can be complicated and nuanced, aiming to meet the unique requirements of both the buyer and seller. They are not necessarily reflective of underlying market trends that are relevant to pricing residential and most commercial and industrial customers.

For instance, new generators may seek to sign a limited number of 'foundational' contracts with counterparties in order to shore up financing of a project. These kinds of trades may not be indicative of the wider market. If these were reported it could distort impressions of what is occurring in the OTC market. As discussed above, it may also be possible to back-solve these trades to determine who has made the trades, thereby exposing commercial-in-confidence data. We recommend the AER bear these issues in mind as it undertakes its wholesale market monitoring role.

Finally, Shell Energy opposes the complete repeal of section 18D of the National Electricity Law. We recognise that Energy Minister believes the Australian Energy Regulator (AER) cannot effectively perform its current wholesale market monitoring role under the current law. However, there are several elements of section 18D that we believe should be maintained. Most notably, we recommend retaining the clause that information provided to the AER for its wholesale market monitoring role is only used for that purpose. There may be a case to allow information provided under these new requirements to be used if it could replace another existing reporting requirement. This would help to alleviate some of the regulatory burden. Shell Energy does not support information provided for the AER's wholesale market monitoring role potentially being used for enforcement purposes. There are already clear pathways for the AER to access information for enforcement reasons, which remain the appropriate means for the AER to access such information.

### **Expanding the wholesale market monitoring function to gas markets**

The consultation paper also enquires about extending the AER's wholesale market monitoring powers to the gas market. Shell Energy considers that more discussion on this extension is warranted given the differences between the electricity and gas markets, and in particular their respective contracts markets. (i.e. gas market is not fully centrally cleared).

Shell Energy notes the proposed coverage of the requirements on gas market participants would extend to encompass the short-term trading markets in Sydney, Brisbane and Adelaide; the Victorian Domestic Wholesale Gas Market and gas trading exchanges such as the Wallumbilla Gas Supply Hub. We consider that more consideration of this scope may be needed. There is a risk that should certain markets be excluded from coverage it could create perverse incentives to operate, or not, in certain parts of the market to avoid being captured by this new requirement. We encourage Energy Ministers to carefully assess how they define the coverage of these new requirements.



Furthermore, there is already a substantial amount of work underway to increase transparency in the east coast gas markets, alongside existing requirements to provide information to various regulators. Some gas market participants already provide contract data to the Australian Securities and Investments Commission (ASIC), as well as additional information requests from the Australian Competition and Consumer Commission (ACCC) as part of its 2017-2025 East Coast Gas Market Inquiry. The South Australian Parliament recently passed gas market transparency reforms that apply to the National Gas Law. Gas producers are also developing a code of conduct to increase transparency and certainty to gas customers when negotiating supply contracts. Shell Energy considers that Energy Ministers should wait to analyse the results of these reforms and inquiries rather than rushing to introduce a parallel wholesale market monitoring requirement for gas markets. An additional requirement on gas market participants could add to compliance costs without delivering any new information to regulators.

Should Energy Ministers decide that the AER should be able to access gas market contract data, then Shell Energy recommends any requirement should align with ASIC's requirements in order to minimise the additional regulatory burden.

The consultation paper asks about the contractual instruments that either should or should not fall within the scope of the AER's wholesale market monitoring powers. Shell Energy considers that contracts between related bodies corporate, consistent with the definition in section 50 of the Corporations Act 2001, should be excluded.

## **Conclusion**

Electricity and gas markets, while heavily linked, have their own particularities which may mean that each market needs its own specific approach. However, it is important that whatever approach is taken, that Energy Ministers are mindful of the impact of additional reporting burdens in terms of compliance cost.

To the greatest extent possible we recommend that any approach should avoid unnecessary duplication or differential reporting. For example, gas market contracts are already reported to ASIC and we recommend that any requirement to report gas market contracts to the AER aligns with ASIC's requirements.

We also consider that Energy Ministers should wait to see the results of the ACCC's ongoing gas market transparency inquiry before committing to a specific approach for the gas market.

For more detail on this submission, please contact Ben Pryor, Regulatory Affairs Policy Adviser (0437 305 547 or [ben.pryor@shellenergy.com.au](mailto:ben.pryor@shellenergy.com.au)).

Yours sincerely

[signed]

Libby Hawker  
GM Regulatory Affairs & Compliance