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

Copy to: Energy Senior Officials

Dear Energy Ministers' Secretariat

Re: Amending the Australian Energy Regulator Wholesale Market Monitoring and Reporting (WMMR) Framework – draft legislation and consultation paper

The Australian Energy Regulator (AER) strongly supports the proposed changes to extend the wholesale energy market monitoring and reporting functions in the electricity and gas contract markets as outlined in the consultation paper, with some points for consideration. The proposed changes will greatly enhance the AER's ability to assess performance, competition and efficiency in the wholesale energy markets and ensure consumers are not unduly impacted by high energy prices due to an uncompetitive market.

To ensure consumers and policy makers have confidence in our energy system, it is vital to understand the drivers and impact of participant behaviour and subsequent market outcomes. In electricity for example, participant behaviour can be influenced by a variety of factors, including their portfolio of technologies, prevailing market conditions, weather, fuel availability, and particularly their risk management strategies and positions. Every megawatt hour of electricity is traded multiple times in the secondary markets, and the cumulative value of this trade is worth many multiples of the settled spot market price. Participants also use a range of additional contract products to manage wholesale market risk such as fuel contracts, power purchase agreements, weather derivatives, and carbon abatement contracts. In gas markets, gas traded bilaterally can be used for the same purposes as gas traded in the AEMO-operated wholesale markets. Gas users, suppliers and intermediaries look to trade efficiently and often combine different forms of trading into a portfolio of market activity.

The combination of transactions in these secondary and bilateral markets determine the overall incentives driving each market participant's behaviour across and between gas and electricity markets, and thus are important factors in assessing the performance of energy markets and outcomes for consumers.

With these new powers the AER will be able to identify and investigate issues in a timely and well-informed manner to assess whether gas and electricity markets are operating competitively and efficiently, monitor the progress of energy markets through Australia's energy transition, and inform more targeted and effective long-term policy and regulatory reform. We aim to fulfil these purposes in three key ways:

1. **Regular monitoring:** This will enable the AER to develop a clear and current understanding of contract markets and their impact on spot market outcomes, which will facilitate timely advice and reporting, as well as build a comprehensive base of analysis for longer term reporting. This includes monitoring facets of the market identified by energy ministers in the consultation process for the development of this bill:
 - a. The volumes of energy traded through contracts
 - b. Market liquidity
 - c. The forms of contracts being traded
 - d. Price discovery of electricity traded and the spread between bids and offers
2. **Biennial reviews of gas and electricity wholesale market performance:** Building upon regular monitoring, these long-term reviews are a key output to identifying potential harms in the market and protecting consumers from high prices as the result of uncompetitive behaviour or inefficient market design. They are a comprehensive assessment of the structure, conduct and performance of the wholesale markets, and enable us to identify impediments to competition and efficiency and better inform policy makers on where further reform may be needed.
3. **Investigation of complex issues and behaviour of concern:** Where we identify an issue through our regular monitoring and reporting that require deeper or more intensive consideration, we intend to investigate further as needed. This includes examination of whether participants are operating in accordance with the rules and law.

Overall, the AER considers these functions to be a core part of our role as energy regulator. We will be working with the Department of Climate Change, Energy, the Environment and Water to facilitate appropriate resources to ensure we can deliver the outcomes sought by ministers.

1. Do the proposed changes to extend the AER's WMMR function to electricity contract markets achieve the intent of giving the AER greater visibility over contract markets and an ability to assess competition in those markets?

The AER generally supports the introduction and use of the new definitions of *monitored markets*, *financial risk management products*, *electricity contract* and *relevant agreement*. The definitions are generally effective in specifying the pertinent contracts, including covering indirect contract types which are important inputs into understanding market dynamics. However, there are some categories of contracts that will be needed to fulfil our functions, and explicit inclusion in the definitions would provide clarity for stakeholders. In particular:

- **Emissions-related contracts:** Emissions contracts which relate to wholesale electricity markets should explicitly be in scope of these functions. Emissions-related contracts can directly impact participant behaviour and performance of the wholesale electricity market, as they can influence which technology types in a portfolio a participant would choose to offer and at what cost. In addition, with the proposed integration of emissions reduction into the National Electricity Objective, the AER will have a role in

assessing whether there are features of the market that detrimentally impact the achievement of relevant emissions reduction targets.

- **Demand response:** While the current definition of electricity contract refers to the *supply, purchase, or for the transmission or distribution of electricity*, demand response services should also be explicitly included in this definition. Demand response and other consumer energy resources are an important growth area of the electricity and ancillary services markets, and a key element of a future market with flexible demand.¹ We have observed demand response in particular gaining market share and influencing outcomes in ancillary services markets, and the ability to monitor this sector of the market will be important to fulfil the AER's functions.

Limiting the collection of information to within 5 years of enactment of the Bill is the appropriate scope to enable effective insights without placing an undue burden on market participants. By having the ability to access contract market information, the AER will have a more comprehensive picture of behaviour in electricity markets, and therefore an increased ability to identify and report on competition issues and protect consumers from an uncompetitive or inefficient market.

2. Does the draft Bill bring appropriate elements of the gas market into the scope of the AER's WMM function?

The proposed changes will allow the AER to examine whether gas is priced efficiently and is reliably supplied to its highest value use. The AER will also be able to gain insights into the risks faced by market participants and whether those risks can be adequately managed to facilitate trading. For example, the AER will be able to understand trading between markets during periods of scarcity to see if price differentials are being efficiently arbitrated, including the linkages between gas and electricity markets. The reforms will also give the AER the capacity to investigate whether markets offer enough physical and financial flexibility to participants to allow them to manage their contract positions using spot and derivatives markets.

The AER supports the introduction and use of the new definitions of *wholesale gas market*, *wholesale gas market participant*, *bilateral trading agreement*, *financial risk management products*, *gas contract* and *relevant agreement*. As with electricity, the definitions are generally effective in specifying the pertinent contracts. However explicit inclusion of additional categories would provide clarity to stakeholders about the scope of these functions. In particular:

- **Capacity auction:** While the current definition of *wholesale gas market* refers to a *declared wholesale gas market, short term trading market or a gas trading exchange*, capacity auctions should also be explicitly included in this definition. The existing capacity auction (sometimes referred to as the Day Ahead Auction) is a wholesale market for gas transport monitored by the AER. Outcomes in this market affect the transport of gas between the AEMO-operated wholesale gas markets, and influence participation and the balance of supply and demand in the gas markets.
- **Emissions-related contracts:** As with electricity, emissions contracts which relate to wholesale gas markets should explicitly be in scope of these functions. As with electricity, the inclusion of emissions reduction into the National Gas Objective, with the new gas reporting function the AER will have a role in assessing whether there

¹ Energy Security Board, Integration of consumer energy resources (CER) and flexible demand, <https://esb-post2025-market-design.aemc.gov.au/integration-of-distributed-energy-resources-der-and-flexible-demand>

are features of the market that detrimentally impact the achievement of relevant emissions reduction targets.

As with electricity, limiting the collection of information to within 5 years of enactment of the Bill is the appropriate scope to enable effective insights without placing an undue burden on market participants. The additional monitoring role as well as the ability to access contract market information in gas markets mean the AER will have a more comprehensive picture of behaviour in the market, and therefore an increased ability to identify and report on competition issues and protect consumers from an uncompetitive or inefficient market.

3. Are the information gathering powers provided to the AER sufficient and appropriate for its new gas WMM function?

To effectively undertake the wholesale market monitoring functions for both gas and electricity, it is crucial that the AER must be able to regularly collect and monitor contract market information to inform short and long term reporting, as well as undertake bespoke investigations when appropriate. The AER strongly supports an information collection mechanism that minimises compliance costs for participants, maintains transparency, accountability and confidentiality, and enables efficient use of resources by the AER.

The current draft wholesale market monitoring framework relies on the AER's powers under section 28 of the National Electricity Law (NEL) and section 42 of the National Gas Law (NGL) to obtain information. Gathering information in this manner is typically onerous, on both market participants and the AER, and are generally used for an investigatory purpose rather than market monitoring. Section 28 notices are typically issued ad hoc, retrospectively, directly only to a specific named participant, for information about a specified time period prior to the date of the notice. These notices are therefore generally less suited to regular and routine requests, which is a necessity under the AER's market monitoring remit.

While the AER would endeavour to provide a routine framework for information provision under regular section 28 or section 42 notices, feedback from market participants on recent similar information collection has highlighted the burden from the AER's use of similar powers under the Competition and Consumer Act to collect information for the Default Market Offer. Market participants reported that even if notices are issued periodically and with foreshadowing of their content, the inherent nature of these notices creates uncertainty and compliance costs for participants. Consistency and clear predictability in reporting requirements and timing of reporting enables participants to manage their resources most efficiently.

Based off this feedback, it is likely to be more efficient for market participants to put routine data collection and record keeping processes in place for collection of information relating to wholesale market monitoring, than to respond to an ongoing series of section 28 or section 42 notices. In addition, a well-established process for providing this information would enable the AER to obtain it more quickly – that is, with less of a lag between the end of the time period to which the information relates and the date on which the information is provided to the AER. These features would enable the AER to understand and inform policymakers and the community on market performance and impacts on competition and efficiency much more quickly and at lowest burden to participants.

There are several alternative processes that may be more efficient and that are capable of being used to provide more clarity to stakeholders when providing information to the AER.

One approach could be adapting the core functions of a Regulatory Information Notice (RIN) or a Regulatory Information Order (RIO), which include authority for the AER to require information to be prepared, maintained and kept by a particular entity and its related entities,

(or by a member of a class of entities) in a particular way. Under the NEL and NGL, these orders currently apply to provision of contributing services (i.e. electricity network services or pipeline services), but a similar approach may provide benefit in the wholesale market monitoring function. These notices are issued in advance, for a specified period of time, to either specific participants (RINs) or a class of participants (RIOs). Under current legislation, before serving a RIN the AER must notify recipients in writing, and provide a draft of the RIN. This provides respondents with the benefit of advance notice of what information is required to be reported, and on what time frame. For a RIO the AER must consult with the public in relation to the general RIO it proposes to make before it makes that order, and orders must be published on the website as soon as practicable after they are made. These processes would mirror the guideline and consultation requirements currently specified in the draft Bill.

Another similar approach is adapting a framework similar to the retail reporting function under the National Energy Retail Law (NERL). Under this function the AER requires regulated entities to submit information and data required by the AER Performance Reporting Procedures and Guidelines. The use of the retail reporting procedure and guideline under the NERL allows the AER to set up a specific set of reporting requirements on a regular basis (for example quarterly) that facilitate certainty and clarity for parties required to provide information.

We consider that some adaptation of these mechanisms would meet government and stakeholder requirements, while also more effectively minimising burden to market participants and the AER. This would leave Section 28 and Section 42 to be used for purposes that are in line with the nature of those powers, including obtaining information if and when a particular issue arose that required more detailed or intensive consideration by the AER.

4. Will the proposed accountability and transparency measures be effective in minimising compliance costs, promoting transparency of compliance obligations, protecting confidential information, and ensuring the AER consults appropriately in carrying out its WMMR functions?

The AER is supportive of the measures as drafted, and believes the current drafting meets stakeholder concerns in a practical way to minimise compliance costs, promote transparency and protect confidential information. As noted in our previous submission, the AER is mindful of stakeholder concerns, and we consider these reforms to the AER's market monitoring and reporting roles as outlined in the consultation paper are critical to provide confidence that wholesale electricity and gas markets are operating in the interests of energy consumers. We fully support the proposed accountability and transparency measures, and we will work with market participants to develop systems for reporting and information collection that minimise potential costs and administrative burden.

We understand that stakeholders value predictability and transparency, and want to minimise compliance costs, and the guideline is an important way of providing this. We will work closely with stakeholders in development of a guideline to ensure needs of all parties are integrated.

As stated in the consultation paper, the consultation procedures require publication of a consultation document, and draft document, and a final document, a process that typically takes longer than six months. The AER is supportive of transitional provisions or rules to allow the AER to commence its consultation process on the Wholesale Market Monitoring Guidelines before legislative changes to the NEL and the NGL are enacted. These provisions are critical in delivering the guidance in a timely way with appropriate stakeholder consultation.

5. Are there further amendments to the NEL and the NGL that would allow the AER to streamline information gathering for its WMMR functions?

In summary, the AER is strongly supportive of the current drafting of the Bill, noting the key areas where further amendments may be required:

1. Explicit inclusion of relevant electricity contracts related to emissions and demand response
2. Explicit inclusion of relevant gas contracts related to emissions and AEMO-operated capacity auctions
3. An alternative information collection mechanism which would minimise compliance costs and provide clarity for participants while maintaining accountability and transparency for the AER

Beyond these points, the AER does not identify any additional amendments to the NEL and NGL.

Yours sincerely

A handwritten signature in black ink, appearing to be 'CS', with a long horizontal flourish extending to the right.

Clare Savage
Chair
Australian Energy Regulator

Sent by email on: 10.05.2023