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Amending the Australian Energy Regulator wholesale market monitoring framework

Submission via email - WMMR@dcceew.gov.au

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AGL Response to Amending the Australian Energy Regulator wholesale market monitoring framework consultation paper

AGL Energy (**AGL**) welcomes the opportunity to comment on Amending the Australian Energy Regulator wholesale market monitoring framework consultation paper (**consultation paper**).

AGL is a leading integrated essential service provider, with a proud 184-year history of innovation and a passionate belief in progress – human and technological. We deliver 4.2 million gas, electricity, and telecommunications services to our residential, small and large business, and wholesale customers across Australia. We operate Australia's largest electricity generation portfolio, with an operated generation capacity of 11,208 MW, which accounts for approximately 20% of the total generation capacity within Australia's National Electricity Market.

The draft Bill seeks to broaden the scope of the existing wholesale market monitoring function and expand the AER's information gathering powers to carry out this function. The proposed changes will include removing the public information requirement and expanding the scope of the monitoring function to include contract markets and regulated gas markets.

We broadly support the proposed guideline and additional transparency measures outlined in the consultation paper. However, we remain concerned that the s28 power is not the appropriate framework for broadening the AER's functions. Set out below is our response to this issue.

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?

To carry out the WMMR function, the AER will likely require information from market participants for the regular monitoring of, and reporting on the gas and electricity wholesale markets. This will likely require that participants report information on an ongoing basis to develop a consistent data set that will show industry changes over time.

The s28 power is clearly appropriate for focused, and potentially one-off, lines of enquiry. However, the purpose of ongoing information requirements requires a significantly more robust information gathering framework to ensure a consistent and predictable information gathering approach.

Whilst we support the intention of the proposed guideline to provide greater certainty and transparency by largely mirroring the cl 8.7 of the National Electricity Rules (NER) consultation requirements, the guidelines will not constrain the AER Board in exercising the s28 information gathering power.



As is the case with cl 8.7 of the NEL information monitoring powers and the Regulatory Information Notices (under Division 4 of the NEL), the industry consultation and subsequent guidelines form a binding requirement not only on the participant, but also the regulator in how the information gathering power can be carried out. This in turn places a significant incentive for the regulator and interested parties to set out in the guideline, in as much detail as possible, the information requirements.

Without this, the regulator may prefer to keep the guidance as high level as possible to provide maximum flexibility in carrying out the information gathering powers for the WMMR function, particularly if one off lines of inquiry are necessary.

A more desirable administrative approach would be, once the guideline is in place, for the AER to automatically exercise information powers for pre-defined persons, or class of persons, in accordance with the WMMR guideline. This approach has the additional benefit of also providing industry certainty in how the power is exercised and alleviates potential risks of inconsistent information requirements over time due to the notices being considered by the AER Board on each occasion the notices are issued.

As noted above, this different approach will require a separate framework similar to cl 8.7 of the NEL or Division 4 of the NEL. Importantly this separate framework would not preclude the AER from exercising the s28 information gathering power in the appropriate circumstances.

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?

We are very concerned that the proposed changes extend the AER's powers well beyond what is required for the AER's WMMR function and are therefore inconsistent with the national electricity objective. Specifically, we are concerned that the proposed changes could result in the AER imposing significant and unnecessary costs on market participants. In particular:

- The proposed definitions of 'electricity contract' and 'financial risk management product' extend far beyond what is required to enable the AER to monitor the 'monitored markets' and instead appears to envisage the AER seeking to monitor large swathes of the business operations of registered participants who compete in those 'monitored markets', including the conduct of those participants in other markets. The potential costs associated with a regulator seeking to obtain and analyse information about such broad ranging topics are significant and would not be consistent with the national electricity objective or an efficient use of regulatory resources.
- Proposed s18A defines 'general information gathering powers' as the powers under section 28. This should be limited to the powers under ss28(1), 28(2)(a) and 28(2)(b). We do not consider the power in s28(2)(c) is necessary for the purposes of WMMR functions.
- Proposed section 18E (a) contains a limitation in respect of 'information' but does not contain the same limitation in respect of 'agreements', which are referred to by proposed s18D(1)(a)(i), and presumably by s28(2)(b) of the NEL. For the avoidance of doubt, s18E(a) should expressly be expanded to cover such 'agreements'.
- Proposed section 18E(b) does not in fact provide any comfort as to cost minimisation. Specifically, although that provision requires the AER to consider whether there is an alternative means of obtaining particular information, it does not, as currently drafted, require the AER to obtain information in the most efficient, or least costly way, for market participants. Accordingly, the proposed Bill would enable the AER to obtain information in a manner that may be convenient for the AER but would impose an inordinate cost on market participants.



If you have any queries about this submission, please contact Kyle Auret on (03) 8633 6854 or KAuret@agl.com.au.

Yours sincerely,

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