

Australian Energy Regulator (AER)

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## **AER Enhanced Wholesale Market Monitoring and Reporting Guideline – Draft Guideline and Explanatory Statement**

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the AER's Enhanced Wholesale Market Monitoring and Reporting Guideline – Draft Guideline and Explanatory Statement.

The Australian Energy Council is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

### **Approach**

The AEC is disappointed to see that the AER will collect gas contracts starting at 1TJ/day which does not align with the ACCC's approach. The Explanatory Statement claims to align with the ACCC but it doesn't.<sup>1</sup> The 1TJ/day threshold (with no duration restriction) means many small short-term deals could be captured. For example, a one-month deal total contracted quantity only needs to be 30TJ to be captured in the reporting. This means industry will have to spend time and money adjusting processes that have been in place for years.

In contrast the ACCC's standard Gas Inquiry Notices have a reporting threshold for contracts of:

- 500TJ ACQ or greater; and
- With a term of three months or longer. have a contract threshold greater than 500TJ and 12months or longer).

The proposed 1TJ/day threshold is too low and will add significantly to the cost of compliance which is ultimately borne by consumers. Of more concern for the AEC is that at this early stage the proposed guidelines are not aligning with existing information gathering processes. This conflicts with the Efficient Provision of Information outlined in the previous consultation and the Explanatory Statement.<sup>2</sup> This misalignment also raises the question as to why does the AER need this level of detail whereas the ACCC does not.

### **Collection of information**

The AEC maintains its position that the AER (and the ACCC), quickly develop agreed reporting templates that remain unchanged over time unless there is a major need to alter them. This means the same templates can be used repeatedly by participants without them having to adapt to constantly changing templates. As part of this process the AEC believes it would be beneficial with respect to efficiency, administrative burden and efficacy, if the AER works closely with participants in template development.

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<sup>1</sup> Explanatory Statement, p.25 and Draft reporting Guideline, Appendix B.

<sup>2</sup> Explanatory Statement, p.11.

With respect to the AER's collection of historical contract information, the Explanatory Statement mentions it but does not set a time limit. AEC believes this should be limited to the previous two years and a number of other stakeholders stated this in their submissions.<sup>3</sup> It is disappointing that the AER has not provided any clarification on this issue. Two years would include 2023 and 2024 based on the Issues paper that states consultation on MMIOs and MMINs is expected to commence in the second half of 2024.<sup>4</sup> Any years prior to this will merely be historical artefacts and of little utility for the AER. This is because the market has changed since 2022 when there was extreme volatility due primarily to exogenous factors. Further the Gas Market Code was not in place then. Hence, the previous two years are likely to provide the best information to assist the AER in its understanding of current market conditions.

### **Use of the information**

The Explanatory Statement says the AER "will consult where appropriate to understand the provided information."<sup>5</sup> We believe this should be specifically addressed in the guidelines as a requirement on the AER.

While we understand that the Wholesale Market Monitoring (WMM) Bill removes the prohibition on the AER using information obtained for the purpose of performing its WMM functions for any other purpose (which was previously contained in s18D (3) of the NEL). The Explanatory Statement states that the AER will utilise collected information for compliance and enforcement as well as other AER decisions including the DMO. In our view this is another example of excessive regulation and the erosion of procedural fairness for market participants. It increases compliance costs and increases barriers to entry for new entrants and existing small participants. This ultimately flows through to higher costs for consumers with little in the way of any discernable benefits.

We remain of the view that information collected as part of the AER's WMM function should be used for that function, rather than as a back-door to compliance or for other enforcement purposes. Market monitoring is more appropriately used to address market outcomes, rather than a means of enforcing national energy laws and rules against individual participants. The removal of the previous explicit prohibition of such use (s 18D(3) of the NEL) should not be read as requiring or encouraging such use.

### **Capacity Investment Scheme (CIS)**

Many stakeholders have raised concerns that the CIS has the potential to distort the wholesale market. This could take the form of spot prices not accurately reflecting the supply and demand balance which will ultimately manifest in forward markets. The CIS may also distort the economics at the plant level in that the CIS recipients are not fully exposed to economic market dynamics. In addition to this, the CIS could insulate projects from an appropriate level of market risk, which would reduce efficient wholesale market operations and diminish contract market liquidity. The AEC has outlined the key CIS risks to wholesale markets in submissions to DCCEEW.<sup>6</sup>

With all these enhanced powers we believe the AER should conduct thorough and ongoing assessments of the impacts (if any) of the CIS on markets. Further, to the extent the CIS is

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<sup>3</sup> Explanatory Statement, pp 30-31.

<sup>4</sup> Issues paper, p7.

<sup>5</sup> Explanatory Statement, p.30.

<sup>6</sup> <https://www.energycouncil.com.au/media/mrcny0i3/20240325-capacity-investment-scheme-aec-submission-v1-0.pdf>

impacting the efficient operation of wholesale markets, the AER should utilise its wholesale market monitoring data to pro-actively advise Government.

Questions about this submission should be addressed to Peter Brook, by email to [peter.brook@energycouncil.com.au](mailto:peter.brook@energycouncil.com.au)

Yours sincerely,

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