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Australian Energy Regulator



Submitted via email: ContractMarketMonitoring@aer.gov.au

Draft Wholesale Market Monitoring Guidelines

The Australian Financial Markets Association (AFMA) is responding to the Australian Energy Regulator's (AER) consultation on its Draft Wholesale Market Monitoring and Reporting Guidelines.

AFMA is the leading financial markets industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 130 of Australia's leading financial market participants, including many energy firms who are key participants in the east coast gas and electricity markets.

Key Points

- **The draft guidelines are broadly appropriate but are a high-level document that provides limited guidance about participants reporting obligations**
- **The AER should prioritise detailed consultation on the reporting requirements to allow participants to prepare for the start of reporting**

AFMA appreciates the AER's open and cooperative approach to developing its wholesale market monitoring function. The publication of the draft guidelines is an important step in the development of the wholesale market monitoring function. Our members are increasingly focused on the challenge of implementing the new reporting requirements. As a result, while there are some areas where we feel the guidelines could be improved, we think that at this stage, the AER's main focus should be on helping participants navigate the implementation process.

1. The Draft Guidelines

AFMA considers that the draft guidelines are broadly appropriate and particularly wants to note where the AER has responded to AFMA's members concerns regarding:

- The collection of information regarding pre-contractual negotiations
- Adoption of minimum thresholds for gas contracts
- The need for data about contracts with regulated network businesses

Despite this, there remain a number of areas where our members would appreciate additional direction about the AER's approach to information collection and we question the need for some of the data you are proposing to collect. By their nature the guidelines are high level document and we consider market participants are likely to remain anxious about the scope of the AER's information gathering powers until they have clarity about the actual data. We therefore encourage you to commence consultation on the detailed data requirements as soon as possible.

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1.1. Overlap with ACCC's Gas Inquiry

The overlap between the ACCC's gas inquiry and the AER's functions remains a key issue of concern for our members. We appreciate that the guidelines provide some guidance about how the AER and ACCC will manage the overlap, but members remain concerned about the potential for increased costs as a result of similar, but not identical, data requests from the AER and ACCC. Ultimately, we do not think this concern can be resolved until participants have clarity about the actual data that each regulator will request and encourage the AER to begin consulting on the detailed data requirements as soon as possible.

AFMA continues to think that resolving any regulatory issues that prevent the exchange of information between the AER and ACCC should be a priority. We consider that the proposed approach of both regulators making separate identical data requests to participants is a practical work around but do not consider that it is viable in the long term and are keen for a more efficient process to be put in place before a less efficient one becomes embedded. We also caution that deviations between the regulators data requests will greatly increase costs for respondents and increase the compliance burden.

1.2. Data

1.2.1. Minimum gas thresholds

While AFMA welcomes the AER's decision to include minimum thresholds for gas transactions we suggest that the thresholds should aligned with used for the ACCC's gas inquiry. The ACCC sets a minimum threshold for reporting of greater than 500TJ and a requirement that the contract be for at least 3 months or longer. We are concerned that your proposed 1TJ a day threshold will capture a large number of smaller deals that are not reported to the ACCC and will require participants to put in place additional processes to collect different sets of data for each regulator. We therefore encourage you to align your requirements with the ACCC's.

1.2.2. ASX Data

The consultation paper indicates that the ASX futures market data the AER has reviewed is not adequate for your purposes, as it does not identify the counterparty to the transaction. AFMA understands that the AER has looked at the data feed the ASX provides to ASIC, which does not contain counterparty information. AFMA is aware that the ASX can provide other data feeds that may address the AER's concerns. Particularly, we are aware that ASX currently provides a data feed to the NZ Electricity Authority for the purpose of its Electricity Hedge Disclosure function which includes counterparty names.

Our members' preference is for the AER to obtain futures market information directly from the ASX, and other exchanges, and we encourage you to explore options to obtain appropriate data with the exchanges with a view to adopting a harmonised approach. AFMA is happy to facilitate these discussions if helpful.

1.2.3. ASIC OTC data

The paper identifies that ASIC's OTC data is not appropriate for your purposes as ASIC does not collect data regarding electricity derivatives. However, ASIC does collect a range of OTC data that we think is relevant to the AER, including in relation to gas, environmental products, and weather linked derivatives. We encourage the AER to utilise ASIC's data, where available, rather than asking participants to provide this data to reduce associated costs and burden to industry.

1.2.4. Generator fuel costs

In our previous submission we argued that there was limited value in the AER collecting data regarding generator fuel costs.¹ Our view remains that the fuels used by generators are tradable commodities with easily observable prices and we do not think individual firm's supply contracts would provide enough value to warrant collection of the data. We therefore think the AER should not collect data about generator fuel costs and should rely on publicly available prices.

AFMA Recommendations

- i. The AER, ACCC and the Commonwealth should work to resolve any regulatory issues preventing the exchange of information between the AER and ACCC.
- ii. Minimum thresholds for reporting gas transactions should be aligned with those used by the ACCC.
- iii. The AER should explore obtaining futures market data directly from the exchanges with ASX and FEX.
- iv. The AER should use all relevant OTC derivative data collected by ASIC.
- v. The AER should not collect information about the cost of fuel for generators.

2. Detailed reporting requirements

AFMA considers that it is critical for the AER to begin consulting on the detailed reporting requirements as soon as possible. The detailed reporting requirements are necessary to allow participants to begin planning to implement the reporting requirements. Additionally, we consider that providing detail about the data that is going to be required is the only way to address our members' concerns about the scope of the reporting requirements and the resourcing that will be required to respond to them.

Some of the requirements our members would like to see more detail on include:

- What pieces of data they will have to provide, including how overlaps with data provided to other bodies will be managed
- How frequently data will have to be provided
- The templates that will be used to collect the data, including data fields and formats
- The extent to which the AER will request historic data

AFMA considers that it would be beneficial to all parties to begin consultation on the detailed data requirements as soon as possible.

AFMA Recommendations

- vi. The AER should commence consultation on the detailed reporting requirements as soon as possible.

3. Implementation

Implementation of the wholesale market monitoring framework will be a key challenge for the energy industry. As discussed above, our members consider that clarifying the data requirements is critical to facilitating implementation but they also consider that it is important for the AER to provide clarity about when the information gathering instruments will be finalised and the amount

¹ [https://afma.com.au/getattachment/Policy/Submissions/2024/R01-22-AGD-Privacy-Review-Consultation-\(25\)/R26-24-Wholesale-Market-Monitoring-Guidelines.pdf?lang=en-AU&ext=.pdf](https://afma.com.au/getattachment/Policy/Submissions/2024/R01-22-AGD-Privacy-Review-Consultation-(25)/R26-24-Wholesale-Market-Monitoring-Guidelines.pdf?lang=en-AU&ext=.pdf)

of time participants will have between the finalisation of the instruments and the first obligation to provide data.

In your consultation paper you propose that the instruments will be finalised in Q1 2025 and that participants will be required to provide data from Q2 2025. While it is difficult to comment on the practicality of this timeframe without knowing what data will have to be required, our initial reaction is that it is unnecessarily ambitious. We consider that, if the information instruments are finalised by the end of Q1, a first reporting date no earlier than 31 July may be more appropriate to give participants a reasonable window to understand the initial information instruments and prepare the data. This will be particularly important for the first round of data collection which is likely to be the most difficult for all parties.

Our members would also appreciate additional information about how data will have to be provided to the AER, and what arrangements will be in place to ensure the security of their data. Particularly, they would like to know if they will be required to undertake IT builds to transfers files to the AER or, at the other end of the complexity spectrum, if the AER expects them to transfer commercially sensitive information via email. Providing information about how the AER expects to collect data will be of great assistance in allowing participants to prepare for the new obligations and address their concerns about data security.

AFMA Recommendations

- vii. The AER should provide clarity about:
 - a. When the information instruments will be finalised and when participants first reporting obligations will occur
 - b. The mechanism participants will use to provide data

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact me at lgamble@afma.com.au or 02 9776 7994.

Yours sincerely,



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