



8 March 2019

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Energy Security Board
Submitted via e-mail: info@esb.org.au

ACCC Retail Electricity Pricing Inquiry - Recommendation 41

Alinta Energy welcomes the opportunity to provide a submission to the Energy Security Board's **(ESB) ACCC Retail Electricity Pricing Inquiry (the consultation paper)** which addresses recommendation 41 of the ACCC Retail Electricity Pricing Inquiry (June 2018).

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of nearly 3,000MW, including 1,700MW of gas-fired generation facilities and 1,070MW of thermal generation facilities, and more than 1.2 million electricity and gas customers including more than 630,000 in east coast markets.

The diversity of Alinta Energy's portfolio, its investment strategy, product offerings, and first-hand experiences across Australia mean Alinta Energy is well placed to provide informed comment in response to the consultation paper.

Alinta supports increased transparency in the NEM

Alinta Energy has long supported the principle of increased transparency within the NEM and to that end, currently contributes to a wide variety of trade information exchanges, many of which are made available in public wholesale reports as well as to NEM regulators through:

- AFMA's electricity derivative survey;
- AEMO's Electricity Statement of Opportunities;
- ASX trade reporting;
- State jurisdictional bodies;
- the AER's existing monitoring functions; and
- ASIC's existing powers to access information about participants risk processes, futures and OTC positions under existing surveillance and licensing powers.

These processes are well known to Alinta Energy and other participants through normal business operations and act to provide transparency as well as ensuring consistency of observations across the numerous publicly available market reports¹.

¹ It is worth noting that these processes in which Alinta Energy currently contributes to, all incur compliance and participation costs.

Alinta Energy notes that after undertaking stakeholder consultation on recommendation 6, the ESB is not convinced that a trade repository and mandatory reporting of OTC trades is justified on transparency grounds alone, given the expense of establishing and maintaining the repository, as well as the reporting burden on participants.

Given the range of existing transparency mechanisms within the NEM, Alinta Energy concurs with the ESB's findings in relation to recommendation 6 and supports the further assessment of the AER's current monitoring, reporting and compliance framework to confirm they remain fit for purpose.

Existing NEM monitoring regime appears to be functioning adequately

In Alinta Energy's view the existing range of monitoring options available to the AER appear to be functioning adequately. Functional information gathering powers which have been specifically designed to account for precise or localised needs are more efficient and fit for purpose relative to wide ranging information requests which are often time consuming and inefficient for both participants and Regulators.

As noted within the consultation paper, presently the AER has a number of existing information gathering powers under the National Electricity Law (NEL) and National Gas Law (NGL) which are specifically linked to the AER's performance or exercise of functions or powers conferred through existing rules or regulations. This also includes clause 18D(1) of the NEL which provides for the acquisition of information to conduct its wholesale electricity market monitoring functions, if information cannot be gathered from publicly available sources such as those mentioned above.

In addition, ASIC comprehensively regulates financial contracts between bilateral counterparties through existing licencing arrangements, with corresponding compliance related costs for participants.

Given the above, the reforms considered within recommendation 41 arguably constitute a large extension of regulatory power and broadening of scope that departs from existing functional specific practise. Alinta Energy is not aware of any detailed analysis confirming that a discernible gap in the AER's existing monitoring powers currently exists.

In Alinta Energy's view the existing range of information gathering powers available to the AER appear to be functioning adequately, with the existing monitoring regime proving effective. Alinta Energy would welcome the ESB's detailed analysis on this point, if evidence exists confirming that the existing monitoring regime is ineffective it should be clearly articulated to stakeholders through the consultation process.

Compliance Costs and Risks

The reforms considered within the recommendation 41 contain corresponding compliance risks and costs. Alinta Energy would welcome the ESB's analysis and consideration of the following risks:

Identified Risk	Observation
<p>Information Centralisation Risk</p>	<p>Information gathering powers, centralise contractually sensitive information in the form of price, volume and overall contract positioning. Whilst Alinta appreciates that such information is only gathered and intended to inform the AER, the risk of unintentional disclosure and key-personnel risk is a real and non-trivial risk to market participants.</p>
<p>Information Interpretation Risk</p>	<p>There is a risk that commercially sensitive information provided to the AER through broad information gathering powers isn't particularly meaningful without a concurrent and detailed explanation of market participants' physical position, hedge position, trading strategy, corporate structure and future commercial intentions.</p> <p>There is a risk that normal and pro-competitive conduct may inadvertently be misinterpreted as undesirable.</p>
<p>Compliance Culture Risk</p>	<p>Alinta Energy prides itself on maintaining good working relationships with all regulators including the AER, such relationships are best maintained on the basis of informal relationships with the shared aim of maintaining market compliance with the NEL.</p> <p>There is a risk that if the AER's wholesale market monitoring functions are significantly broadened in scope and/or practise, there may be a detrimental impact on these informal relationships which may inhibit information sharing in other areas as relations become more formal. Perversely, the impact may lead to less information being provided to the AER and less productive engagement with industry going forward.</p>
<p>Increased Costs of Compliance</p>	<p>Should the AER's powers be expanded to allow increased information gathering and OTC oversight, the compliance burden on industry and possibly other parties will be substantially expanded, for arguably little to no benefit.</p>

Comparative Regimes

As an aside, Alinta Energy notes the Consultation Paper's discussion on the different information and surveillance regimes currently available to regulators in other jurisdictions relative to those available within the NEM.

Whilst achieving consistency in energy regulation may seem a worthwhile objective, consideration should be given to where points of regulation difference exist, which have been specifically designed to account for localised market conditions. International energy markets have different surveillance regimes, reflecting the individual traits of those markets.

For example, some market settings may give rise to a need for higher civil penalties and increased surveillance given the different potential gains from a deliberate contravention (for example the New Zealand wholesale market has no wholesale market price cap) and thus routine access to contract market data may be warranted in such instances. Nonetheless, in the NEM, such an environment does not exist, and therefore it is hard to draw meaningful comparison for such conclusions without a corresponding comprehensive analysis of the wholistic market context.

Differences between surveillance regimes in international jurisdictions will always exist and may simply be reflection of localised market conditions.

Conclusion

Alinta Energy is of the view that the existing range of information gathering powers available to the AER appear to be functioning adequately, with the existing monitoring regime proving effective. As such, options to broaden the AER's powers under recommendation 41 should not be progressed at this time.

Alinta looks forward to participating in the ESB's ongoing consultation process and would encourage consideration of the points raised above.

Please contact Mr Anders Sangkuhl via email: anders.sangkuhl@alintaenergy.com.au or by phone 02 9375 0992 if you have any queries in relation to this submission.

Yours sincerely,

Anders Sangkuhl

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