



AGL Energy Limited

T 02 9921 2999

agl.com.au

ABN: 74 115 061 375

Level 24, 200 George St

Sydney NSW 2000

Locked Bag 14120 MCMC

Melbourne VIC 8001

Energy Security Board

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Response Data Strategy Initial Reforms Consultation Paper July 2022

AGL Energy (AGL) welcomes the opportunity to comment on the Energy Security Board's (ESB) Data Strategy Initial Reforms Consultation Paper (Consultation Paper) released in July 2022.

We recognise the importance of data in an energy market undergoing significant transformation driven by climate change and the growth of the digital economy. Access to data is crucial in supporting informed decision-making for consumers, policymakers, and businesses. In all reforms being pursued under the Data Strategy there is an opportunity to utilise the New Energy Data Principles to ensure a clear and consistent approach for data sharing is taken and access is aligned to statutory functions of the identified trusted bodies.

AGL supports the intent of these initial reforms is to make it easier for the Australian Energy Market Operator (AEMO) to share useful data securely and confidently with trusted bodies to provide the most immediate benefits for consumers in supporting planning and policy development. We support the expansion of data access to 'Class A' bodies as there is a clear link to support their statutory functions in planning and policy development, as well as reducing costs for all stakeholders by removing the need for tailor-made data sharing agreements. The same case cannot be made for 'Class B' bodies. It is not clear how the introduction of data sharing arrangements with 'Class B' bodies would present immediate benefits for consumers in supporting the planning and policy development of the energy market transition.

We recommend that further work be undertaken, and clear structures and controls to be built into these initial reforms. An analysis of what data is currently already accessible and where the gaps exist will aid in understanding what market failure these reforms are looking to solve. There are key aspects of the proposal to be reconsidered that are outlined below, such as what additional provisions will be required to provide assurance that data is shared in an appropriate, cost effective and efficient manner.

If you have any queries about this submission please contact Emily Gadaleta, Regulatory Strategy Manager at egadaleta@agl.com.au.

Yours sincerely,

Chris Streets

General Manager (a/g), Policy, Markets Regulations and Sustainability



The basis for reform

In all reforms being pursued under the Data Strategy there is an opportunity to utilise the New Energy Data Principles to ensure a clear and consistent approach for data sharing is taken and access is aligned to statutory functions. We recommend that throughout this initial reform process and moving forward with the implementation of recommendations under the Data Strategy, all reforms be assessed against the principles. These assessments should be clearly outlined and shared with stakeholders in consultation and issues papers. AGL supports the Australian Energy Council's proposal of developing indicators or checkpoints underneath each principle to understand how each principle is being tested and implemented.

The proposed reforms have been noted by the ESB that they are intended to streamline and standardise data access arrangements and increase certainty and efficiencies in data access in the planning and policy development process. However, clarity is required on what gaps in data this reform is looking to solve, what datasets are being considered, what criteria there is for disclosure to any category of organisation and a clear understanding of the operation of the data service capability that will underpin this reform proposal.

Definition and disclosure to 'Class A' and 'Class B' bodies

We support the expansion of prescribed bodies to 'Class A' bodies as there is a clear link to support their statutory functions in planning and policy development. The ESB notes that disclosure of protected information to 'Class A' bodies can be carried out confidently due to an obligation they hold to preserve the confidentiality of the information obtained from AEMO, even if no conditions are attached to the disclosure.

However, we suggest a more thorough examination and analysis of all organisations listed under 'Class A' bodies be carried out and shared with stakeholders. The Consultation Paper notes that Commonwealth public servants must comply with the APS Code of Conduct and have a duty not to disclose information. However, organisations such as Energy Consumers Australia and/or state government bodies may not have the same obligations. This analysis should outline what confidentiality protections and obligations each organisation would be held to in obtaining AEMO's protection information. If these bodies have the same level of protections as Commonwealth agencies, only then should they be given access.

The proposed reforms have been outlined by the ESB to expand data access where appropriate. The appropriateness of disclosing protected information with 'Class B' bodies is unclear. It is unclear how providing access will work towards the aim of the reform to streamline and standardise data access arrangements, increase certainty and efficiencies and provide immediate consumer benefits in planning and policy development processes.

Disclosure framework

(a) Define datasets

Prior to expanding access to AEMO's protected information to new bodies, an assessment should be undertaken on what datasets stakeholders already have access to and where the gaps exist. By assessing where the data gaps exist, we can then understand what mechanisms are required to fill those gaps, who should be granted access and under what conditions should be placed on them. Then consideration can be given to what datasets should be included in these reforms, or how different datasets should be treated.

The Consultation Paper loosely suggests that available data includes all 'protected information' as held by AEMO as defined under the National Electricity Law (NEL) and the National Gas Law (NGL).¹ There is an opportunity to define which datasets are included in this reform by emulating the process that was

¹ See section 54(2) and (3) of the NEL and section 91G(2) and (3) of the NGL.



undertaken in the development of the Consumer Data Right (CDR) for the energy sector. Within the legislative reform process clarity was provided on which datasets would be designated by the Commonwealth Treasurer for the purposes of the CDR. Transparency is required by the ESB to understand what datasets are being included in these reforms and if different datasets should be required to be shared with different safeguards. Principles developed by HoustonKemp within the CDR reform process could be reutilised when considering which AEMO datasets should be shared. The considerations that were applied were:

- whether the dataset supports a use case that promotes the interests of consumers;
- the availability or need to access other data to support the use case; and
- the case of providing the data in accordance with the technical standards, which includes a consideration of the cost of satisfying the technical standards.²

(b) Create a legislative framework

AGL recommends that the ESB consider adding a new section of the NEL and NGL which specifies certain conditions or principles that all bodies must follow when they receive protected information from AEMO. When these conditions/principles are written into law, it may be appropriate for a designated regulator to produce guidelines. These guidelines will not only assist them in understanding their rights and obligations in respect of the protected information, but also provide guidance on any other industry best practice advice, such as cyber security standards and education for the industry on best practice tools and processes when utilising protected information. An existing regulator would be favourable over the creation of a new regulator. The Australian Competition and Consumer Commission seems to be a natural fit due to their existing role and responsibilities in the energy sector.

Developing AEMO's data service capability

An additional reform process that may help to provide direction to the Data Strategy are the structures embedded within the *Data Availability and Transparency Act 2022* (DAT Act). The DAT Act requires data custodians and accredited data entities to comply with the rules made by the Minister and data codes made by the National Data Commissioner. Additionally, they must remain in accordance with their data sharing agreements that align with the data sharing principles. These structures embedded within the DAT Act provide confidence in the data sharing frameworks and provide a model to consider against the lack of structure within the current framework for the ESB's Data Strategy initial reforms.

Under the Data Scheme established under the DAT Act, data custodians have no duty to share data, but must respond to all data sharing requests they receive within a reasonable timeframe. Data custodians must maintain a record of data sharing requests received and reasons for agreement or refusal to share. We recommend a similar process be followed for data sharing under these initial reforms, where AEMO keeps a transparency data log of all requests. This data log should be available to the public and should outline who made the data request, the data they requested, the purpose of the data request and if it was accepted or rejected by AEMO. The designated regulator could provide some guidance around for what purpose data can be requested, as well as for what purposes the request could be accepted or refused.

The ESB should consider additional safeguards when sharing commercially sensitive data. There remains a risk of commercially sensitive information being shared and the need to introduce additional protective measures to mitigate commercial risks posed by sharing with additional bodies. The data principle in cl 16(8) of the DAT Bill states that 'only the data reasonably necessary to achieve the applicable data sharing purpose' should be shared. The Explanatory Memorandum notes that the data principle requires data

² Open consumer energy data – Applying a consumer data right in the energy sector, HoustonKemp (June 2018), available at <https://obpr.pmc.gov.au/sites/default/files/posts/2021/11/HoustonKemp%20Consumer%20Energy%20Data%20report.docx>



custodians to consider 'whether to provide an entire dataset or a customised extract of particular variables, and the level of detail of (and any treatments applied to) that data.'

AGL recommends that a similar lens be undertaken in the sharing of data within these initial reforms. For example, where data requests are made for certain datasets relating to information from the B2B platform, the data is shared with de-identified information and the participant ID removed. In addition, a mechanism could flag a request if the requested data only relates to a single market participant. The data requestor would then have to provide sufficient reason for the requested data and the market participant it concerns should have a right to contest the sharing of this data if it is commercially sensitive. An independent appeals process should also be made available if a market participant does not agree to the sharing of commercially sensitive data. Additionally, consideration should be given to if data is requested by a prescribed body that has a conflict of interest, such as if the prescribed body is a customer of a market participant. These prescribed bodies shouldn't have access to data other customers do not have access to. Consideration of these additional safeguards are crucial in considering and allowing greater sharing of protected information to ensure the immediate consumer benefit in supporting of planning and policy development remains paramount.

A final and additional point for the ESB to consider would be to improve access to data for technology trials to support the market transition is a clear goal of the reforms proposed. The Consultation Paper mentions commercially interested parties would not be considered under 'Class A' or 'Class B' bodies and thereby not entitled to receive protected information under the proposed reforms. The ESB should consider how this first phase of initial reforms could include market participants in data sharing arrangements for the purposes of effective planning and policy development when carrying out trials. For example, data sharing could enhance the conducting of technology trials and support the initial phases of implementation for new energy reforms. Effective testing of new and innovative policies would build consumer confidence in the energy transition and improve consumer outcomes for when new products and services come onto the market. Therefore, a key focus of the initial reforms moving forward should be on how AEMO data sharing could enhance the planning and policy development of new energy reforms across market participants. For example, under the CDR implementation phase AEMO is sharing 'masked' DER register data with energy retailers to test the CDR ecosystem system. This means the testing environment will be different to the production environment and therefore increasing the risk that unknown errors occur in production. The Data Strategy should enable AEMO to share 'production quality' data with market participants in testing phase to enable testing of new reforms.