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Ms Anna Collyer
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By e-mail: info@esb.org.au

Data Strategy – Initial Consultation Paper

Alinta Energy welcomes the opportunity to respond to the Energy Security Board's consultation paper on its initial reforms in relation to the Data Strategy.

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of over 3,300MW and more than one million electricity and gas customers. The development of an efficient and effective data strategy will influence the transition of the energy market to a lower carbon future and we recognise the Data Strategy is part of the broader reforms underway across the National Electricity Market.

While we are generally supportive of the Data Strategy, we are concerned that it is being developed in an environment of related reforms (such as the Consumer Data Right) and duplicate, historical data access and use provisions remain in place within the regulatory framework. As part of the development of the Data Strategy, Alinta Energy would strongly encourage an audit of existing regulation around access to data and obligations on market bodies (such as the Australian Energy Market Operator) and market participants (such as retailers) to eliminate inefficient overlap and duplication as the Strategy evolves.

We believe it is important that the need and intended use of data sourced from AEMO (or other data holders) should be clearly articulated, cost effective and be subject to a positive cost benefit test. Gathering data for data's sake is unlikely to be in the long-term interest of consumers or coherent policy development.

In relation to the initial reforms set out in the consultation paper, we support access to data with appropriate privacy and data security safeguards for Class A bodies. However, we note that within Class A bodies there are varying degrees of sophistication in relation to data storage and protection and that the list of bodies could grow under this category materially over time. We recommend that both Class A Bodies are independently audited for compliance with the Australian Privacy Law and have achieved a level of Cyber Security maturity as measured using a recognised standard such as AESCSF and that a maturity level of at least MIL:2 is achieved.

While we see value in research of protected information and data from AEMO, we think it is premature at this stage to legislate access to data for Class B Bodies. The scope and number of

Class B bodies may be significant and their systems for receiving and securely storing and managing data unclear, running the risk that personal and sensitive data may be inappropriately accessed or shared.

In identifying the list of Class A Bodies with rights to access data from AEMO, we believe this should be set out in legislation and subsequent changes amended through regulation, rather than through Ministerial Order.

We respond to questions set out in the consultation paper below and welcome further discussion and engagement with the ESB as it refines its initial Data Strategy reforms.

If you wish to discuss any part of our response further, please contact David Calder (David.Calder@alintaenergy.com.au) in the first instance.

Yours sincerely

Graeme Hamilton
General Manager, Regulatory & Government Affairs

Key Questions

Section 5.4: Definition of Class A Bodies

1. What is the appropriate scope for Class A Bodies?
2. Should Class A Bodies include entities that already have their own data collection powers?
3. Should Class A Bodies have a right to make subsequent disclosure?
4. Do you have any concerns with disclosure to Class A Bodies that have not been considered above?

The definition of additional Class A Bodies described in section 5.4 of the consultation paper are appropriate. While the ESB considers that:

> "…there is a high level of confidence in the recipient [Class A Bodies] as to the security and protection of the data being disclosed"[1]

The ESB should propose legislative changes to ensure such confidence that data from AEMO disclosed to such Bodies, *is* secure and protected.

Where Class A Bodies already have data collection powers, these should be streamlined with any changes to the National Electricity and Gas Regulations to avoid duplication where possible – if existing powers are unused, it is unclear what value they add.

The scope of any subsequent disclosure by Class A Bodies needs to be carefully managed, if this means that unrelated/non-Class A Bodies are to receive information from them. In general, subsequent data sharing of protection information to non-Class A bodies following receipt of such information from AEMO to a Class A Body should not be permitted.

Section 5.5: Definition of Class B Bodies

5. What is the appropriate scope for Class B Bodies?
6. Is it appropriate to require that Class B Bodies conduct (or propose to conduct) research related to "energy"?
7. When is it appropriate for AEMO to disclose data to Class B Bodies?

As discussed above, Alinta Energy does not believe Class B Bodies should have a right to access AEMO protected data at this time. Their inclusion at a minimum is likely to create additional administrative burden on AEMO and the cost of providing data securely and ensuring this security of its provision and storage (and auditing such security) is likely to outweigh any benefit at this time.

Section 5.6: Amendment by Ministerial Order

8. Should the regulations making power to prescribe additional bodies as Class A Bodies or Class B Bodies be replaced with a Ministerial Order process?

As discussed above, the determination of additional Bodies able to access AEMO data should be through amending regulation rather than Ministerial Order.

[1] ESB (2022), *Data Strategy – Initial reforms Consultation paper*, page 9.

Section 5.7: Disclosure to Class A and B Bodies

9. Which disclosure option, if any, has the most merit? In particular:

(a) Who should be responsible for setting the conditions on disclosure?
(b) What should those conditions be?
(c) Who should be responsible for enforcement of those conditions?
(d) If a regulator is required for monitoring data sharing agreements, what existing body could or should play this role?
(e) What are the appropriate consequences for non-compliance with those conditions? What amount is appropriate for a civil penalty?
(f) Should Option 2 or Option 3 also apply to Class A Bodies?
(g) Are there any related considerations in resourcing these activities, where the development and enforcement of data transfer conditions would require an expansion of a nominated regulators and/or AEMO's functions?

Option 2 or 3 would be preferred to Option 1. AEMO should not be expected to regulate the evaluation and administration of disclosure of data to Class B Bodies. As noted above, these options themselves demonstrate the cost and complexity of Class B Bodies accessing protected information. We reiterate at this stage, the initial reforms should not consider the inclusion of Class B Bodies until a better understanding of data and privacy protections is available, and the use cases and net benefit of data access for Class B Bodies is demonstrated.

Option 2 and 3 could apply to Class A Bodies to incentives the correct and compliant handling of data received from AEMO.

Section 5.8: Liability

10. Is it necessary and appropriate to clarify that authorised Class A and B recipients are responsible and liable for their own and any further us or disclosure of protected information?

Again, we do not believe the net benefits of creating a Class B Body to receive protection information from AEMO are clear or has been demonstrated. We believe it is appropriate that Class A recipients are responsible and liable for their own and further use or disclosure of protected information.

11. Is it necessary and appropriate to expand AEMO's statutory functions to include disclosure of information in accordance with the law and/or enforcement of conditions imposed in accordance with section 54C(4) of the NEL and 91GC(4) of the NGL?

Cost recovery should be allocated where possible to the Class A Body seeking information rather than recovering this via market participant fees, unless there is a demonstrable public benefit associated with data provision from AEMO.

Alinta Energy agrees that if disclosure options 2 or 3 are adopted (which we prefer), AEMO will not require statutory enforcement functions.

12. Are there any other improvements on the status quo that we should be considering? (Noting that wider concerns could also be considers as part of more in depth design of the new fit-for-purpose regime)
13. The current intention is to only amend AEMO's data provisions. We are not amending AEMC's or AER's data related provisions, as they involve legislation outside the national energy regime. Is this narrow approach appropriate?

As noted above, Alinta Energy believes a review of duplicate and existing information provision requirements in the NEM and for relevant gas markets should be undertaken ahead of significantly advancing the Data Strategy.

The focused scope adopted at present is appropriate given the uncertainty associated with the benefits of increasing access to protected data from AEMO and the absence of example use cases and the benefits these will bring to consumers.