



10 June 2013

Leah Phillips
Energy Markets Unit
Infrastructure Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: ESCsecretariat@treasury.gov.au

Dear Ms Phillips

Australian Securities and Investments Commission Amendment Regulation 2013 (No.1)

Alinta Energy welcomes the opportunity to make a submission in response to the Australian Securities and Investments Commission Amendment Regulation 2013 exposure draft, released by Treasury.

Alinta Energy is an active investor in the energy retail, wholesale and generation markets across Australia. Alinta Energy has over 2500MW of generation facilities in Australia (and New Zealand), and a growing customer base of approximately 700,000 retail energy customers in Western Australia and across the National Electricity Market (NEM).

Based on the information contained with the exposure draft paper, Alinta Energy expects to be directly impacted by the proposed changes. The purpose of this submission is to outline the associated risks arising from such changes.

Proposed Amendment Undermines Confidentiality

Alinta Energy understands that the purpose of the proposed amendment is to allow the sharing of information between the Australian Securities and Investments Commission (ASIC) and the Energy Security Council (ESC). Alinta Energy does not support the proposed amendment.

Alinta Energy understands that market participants hold significant confidentiality concerns related to this amendment and as such, it is surprising this issue, and the associated risks, have not been identified within the exposure draft.

Given the lack of prior consultation, the proposed amendment runs the risk of undermining current information disclosure arrangements, potentially leading to less market information being provided to ASIC in the future.

Alinta Energy recently completed ASIC's Over the Counter Derivatives Survey, which was voluntarily completed in direct consultation with ASIC. Such information was provided in good faith on the understanding that it would be used for the purposes in which it was intended. Alinta Energy is not comfortable with this voluntary information being used as would likely occur should the proposal be progressed.

If the proposed amendment were passed, it would also call into question how information currently compulsorily provided to ASIC is treated. For example, as part of the application for an Australian Financial Services Licence, commercially confidential and market sensitive information is provided to ASIC including:

- cash flow information;
- balance sheets;
- revenue projections;
- personal information and qualifications of responsible managers;
- sources of business income and growth expectations; and
- information on typical client types.

Whilst acknowledging the limited likelihood that such information will be passed onto the ESC by ASIC, Alinta Energy is uncomfortable with the implications of the proposal and the potential for additional unsupported disclosure.

Alinta Energy understands significant industry apprehension exists in this area, and as such the practical consequences of the proposed amendment should be explicitly outlined to participants with a view to maintaining a high degree of integrity and market confidence.

Alinta Energy would welcome further consultation in this area.

Energy Security Council

Alinta Energy understands the ESC is a non-statutory body established with the purpose of providing advice to the Treasurer.

It is unclear in the exposure draft what, if any, specific basis the ESC requires the confidential information held by ASIC in order to achieve their charter. If there is a valid reason, it should be explicitly outlined to participants as part of industry engagement.

Similarly, there is no detail outlined in the exposure draft which suggests that ASIC providing the ESC with such information would contribute to ASIC accomplishing its current functions. As such, the fundamental need for this regulation is unclear.

Furthermore, Alinta Energy is concerned the provision of confidential information and data, without an accompanying detailed description, can have the negative effect of being ambiguous, leading to imperfect conclusions being drawn by third parties.

To conclude, Alinta Energy does not support the proposed amendment. Further, should the ESC identify a need to access further confidential participant data to meet its objectives, then it should seek this data directly from participants.

Potential Duplication with Existing Bodies

Alinta Energy understands the ESC functions pertain to:

- assessing applications for generator assistance and providing advice to the Treasurer;
- providing assurance about contingency planning;
- assisting in crisis management; and
- considering potential risks to energy security in energy markets.

Alinta Energy understands the ESC was formed whilst there was considerable uncertainty regarding the introduction of wide reaching energy policy changes in Australia, including the expansion of the Renewable Energy Target, the implementation of a carbon price on top of various government initiated energy efficiency schemes.

Given the ESC has overseen this transitional period without incident; there is an open question as to the need for the ESC going forward.

Alinta Energy understands there exists several overlapping duties in some of ESC's defined functions, and many of those are already undertaken by existing bodies at a state and federal level.

Given that reducing overlapping and fragmented duplication of services, is becoming both a market and budgetary priority, further analysis in this area is welcomed.

Conclusion

Alinta Energy appreciates the work undertaken by Treasury, ASIC and the ESC, but is convinced that the disclosure of information, as outlined, infringes on the good faith in which that information was provided. There is a lack of analysis within the exposure draft which has revealed a major case justifying this amendment.

If such an amendment is approved, Alinta Energy would be reluctant to participate in ASIC surveys in the future, perversely hindering transparency and information sharing in the market place, achieving the opposite of the intended outcome.

Should you have any queries in relation to this submission, please do not hesitate to contact me on, telephone, 02 9372 2633, or Anders Sangkuhl on, telephone, 02 9375 0962.

Yours sincerely,



Jamie Lowe
Manager, Market Regulation