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26 March 2018

Ms Sarea Coates  
Director, Energy Data and Consumer Analysis  
Energy Productivity Branch, Energy Division  
Department of Energy and Environment  
GPO Box 787  
Canberra ACT 2601

Submitted electronically

Dear Ms Coates

### **Re: Facilitating access to consumer electricity data**

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to contribute to the Department of the Environment and Energy's (the Department's) consultation on facilitating access to consumer electricity data.

Red and Lumo support measures to improve consumers' awareness of their energy consumption and how they can manage their energy costs. Access to data is an important mechanism for encouraging engagement and participation in the energy market and with it, brings a range of benefits. Consumers can seek out retail pricing structures that are best suited to their usage profiles and can make more informed investments in distributed energy resources. This also encourages efficient network use, which mitigates the need for additional investment.

We draw on the data we collect to provide advice and assistance to our customers and their representatives - this includes usage data, energy efficiency advice, advice about different pricing structures, and solar and storage solutions. In doing so, we are very mindful of our existing regulatory obligations to prevent the misuse of customer data. This is reinforced by the strong commercial incentive to protect data and avoid any risk of our customers' data being misused. It is difficult to replicate such incentives and protections in a centralised scheme administered by a market operator (as opposed to a consumer protection or privacy regulator). What HoustonKemp refers to as cumbersome and complex verification processes that differ between retailers are entirely reasonable strategies where there is principles-based privacy regulation, other obligations and different views about the commercial, reputational and regulatory implications of data misuse.

We consider that there are many operational issues that need to be resolved before consumers and stakeholders can have confidence in an efficient framework that most importantly, maintains data integrity.

### **Context for this project**

This review is occurring shortly after the implementation of a new mandatory data breach reporting scheme and amendments to the Office of the Australian Information Commissioner's (OAIC's) investigative and enforcement powers. The OAIC has a range of investigative and enforcement powers including the ability to impose civil penalties and to investigate data handling practices. This demonstrates that maintaining the integrity of data remains a high priority for consumers, policymakers and retailers, even as there are calls for existing controls to be relaxed.

The extent to which a centralised accreditation framework will align with these recent amendments is yet to be tested or explained. From our perspective, relying solely on accreditation and administration by the Australian Energy Market Operator (AEMO) would present a significant compliance and reputational risk based on AEMO's current role (this is explored in more detail below).

We note that this project coincides with the Treasury's Open Banking Review and creation of a Consumer Data Right (CDR).

Treasury's Fact Sheet explains that the CDR could eventually be '*an economy-wide right, applied sector-by-sector ... beginning in the banking, energy and telecommunications sectors. Future sectors subject to the CDR would be designated by the Treasurer based on advice from the [Australian Competition and Consumer Commission] and [the Office of the Australian Information Commissioner] on the costs and benefits of including them.*' It also proposes a dual-regulator model, with the ACCC and OAIC responsible for applying the CDR to different sectors, albeit in close collaboration with the designated sectors.

The CDR is based on a model of centralised authorisation and we are fundamentally concerned about the transferability of access rights across different industries and the commensurate risks for the energy sector. We consider that the same oversight and controls must be apportioned to third parties that access energy data as retailers, distribution networks and metering coordinators.

The COAG Energy Council have expressed their intent to improve on the existing consumer access to data arrangements, there is an obvious desire to facilitate greater access to energy data as a priority and the Department has explained that it will make recommendations to the COAG Energy Council in mid-2018. Recommendations made to COAG Energy Council should explain how they align with the Treasury's objectives, process and timeframe to develop its broader framework for data access. The CDR is intended as an economy-wide right and it is unclear whether the HoustonKemp model is consistent with the CDR. We would like to ensure that investments made in the provision of data are efficient, as regulatory compliance costs are ultimately borne by consumers.

As such, we remained concerned that retailers will be obligated to make system and process changes in line with the HoustonKemp model, which might then be superseded should the CDR be extended to the energy sector. We also consider that any recommendations made to the COAG Energy Council should also take into account any overlap or similarities with the Energy Security Board's Consultation Paper on data strategy for the National Electricity Market. Considering these three consultations in tandem is likely to provide efficiencies and remove any unnecessary duplication in both design and implementation.

### **HoustonKemp proposal**

HoustonKemp proposes a centralised accreditation framework for the energy sector to determine who is entitled to customer data and under what circumstances. However, we see significant challenges in incorporating specific energy sector obligations with respect to privacy and data handling in addition to the other factors that energy businesses are increasingly expected to take into account. This includes the responsible use of energy data, as HoustonKemp notes, meter data can be used to identify when customers are away from their homes.

We do not support a scheme that would allow third parties to access customer data on the grounds they have been accredited under a centralised model such as the CDR that does not reflect the energy sector's unique characteristics and our customers' expectations.

#### *AEMO's role in managing data access*

We question whether AEMO can simply act as the lead agency for the energy sector and assume the role that the ACCC will accept in other industries under the CDR. We question its capability - noting its current role as market operator - to effectively assess applications for accreditation and then monitor consumer protection obligations, noting that retailers continue to bear reputational and regulatory risks in the event of data breaches.

To date, as a market operator, AEMO has yet to demonstrate capabilities to develop and administer a consumer protection scheme and we do not agree with HoustonKemp's suggestion that this would be a natural extension of its existing functions.

HoustonKemp states that AEMO has the '*necessary governance arrangements and experience in accrediting market participants. In addition, it would be well placed to monitor and enforce obligations imposed on third parties, given it already provides similar roles in its market operations and settlement roles*'. AEMO registers market participants to operate in the market, its accreditation functions are

limited and most cases does not monitor compliance of the registered or accredited parties, as this is the role of the Australian Energy Regulator (AER). AEMO would appear better placed to deliver a system, supported by procedures consistent with the framework.

It is implied that the agency or regulatory body requires a role in both the initial verification and ongoing administration - for other agencies such as the ACCC and the OAIC as envisaged under the CDR - perhaps the AER is better suited given its existing role. These agencies have clearly defined consumer protection roles and established compliance functions.

Efficient and effective processes that are of least cost across the industry will deliver the most benefit to those consumers who wish to access their energy data. As such, coordination of multiple agencies appears to be complex and time consuming. HoustonKemp and the Department should consider how regulatory agencies would coordinate their efforts (in terms of monitoring activities and information sharing, for example) to ensure the efficiency and effectiveness of regulatory administration. Particularly as this could avoid potential problems such as the duplication of regulatory effort and differences in interpretation and application of regulatory obligations, which would add costs to the overall scheme. This could occur through a Memorandum of Understanding, for example, or some other formal arrangement.

### **Operational aspects of the HoustonKemp model**

The Department will need to consider the terms and conditions of access by third parties. This captures a range of issues, including:

- Whether approval is granted for a single purpose or a finite period.
- Circumstances under which accreditation is rescinded (aside from any compliance breaches) i.e. whether it expires after some fixed period or a significant change to a third party's corporate structure.
- Whether customer and retailers are notified each time a third party accesses their data. The rationale for notifying customers is clear but we also note that retailers are the most common source of data and related advice for the majority of consumers. Retailers provide such information through a range of mechanisms, including apps and web portals, and through direct conversations about retail pricing structures, customers' circumstances and the management of payment difficulty, and energy efficiency. As such, there is merit in retailers knowing when third parties access their customers' data and for what purpose, to ensure they receive consistent messages.

The important issue here is that consumers understand the precise terms and conditions for which they have granted access. Inadequate controls risk data misuse, customer dissatisfaction and distrust in the management of their data and from a retailer's perspective, reputational and regulatory risk. As discussed above, there are clear approval and monitoring arrangements in place at present so the Department should carefully consider the relative merits and trade-offs of relaxing these controls.

As HoustonKemp notes, centralised models also raise issues of the preservation of data integrity, the rigidity of processes to expand the range of data that is retained, and the cost of implementation and ongoing management. The Department will need to carefully consider how to establish an incentive structure to minimise this cost and maintain data security when other entities - retailers in particular - continue to bear commercial, reputational and regulatory risks in the event of data breaches and face the cost of administration.

### *Integration with existing systems and processes*

HoustonKemp states that retailers and distribution businesses will be obligated to comply with the proposed model but we note it must also account for revised market arrangements following implementation of the Power of Choice reforms on 1 December 2017. This means ensuring metering coordinators are also involved in the framework, noting their formal role to collect, process, retain and deliver metering data.

Finally, the Department should not underestimate the time and cost necessary to establish the proposed framework. HoustonKemp states that the central database will store metering data and associated information. However, this involves the integration of systems that service different purposes, as follows:

- MSATS is the administration of National Metering Identifiers (NMIs), site/location of the NMI, and details of the market participants responsible for NMI/metering and detailed metering information associated with each NMI. MSATS is governed and operated by AEMO.
- The e-hub relates to the validation and delivery of B2B transactions between participants, i.e. actions or updates between participants in the market such as network to retailer or retailer to metering coordinator. Customer detail notifications that retailer shares with networks is only provided for outage information, and messages are validated (e.g. CSV headers being correct) and delivered through the e-hub. AEMO is not a recipient and none of the information that filters through the e-hub is stored. AEMO operates the e-hub, however governance of B2B transactions and protocols lies with the Information Exchange Committee. It is an industry representative body made up of retailers, distributors, metering businesses, consumer representatives and is also intended to have third-party B2B accredited representatives (none to date).

Both from a governance perspective and technically, integration between MSATS and B2B would require substantial effort - consultation, testing and deployment, for example - from AEMO and all existing market participants. Existing B2B transactions (such as Customer Details Notifications) and MSATS transactions (such as change of retailer) would need to be modified or new transaction sets created. This has been attempted historically, and to date, amalgamating processes and data has proven to be very difficult to achieve.

#### **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales and South Australia and electricity in Queensland to approximately 1 million customers.

Red and Lumo thank the Department for the opportunity to respond to this consultation. Should you have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou". The signature is stylized with loops and a long horizontal stroke at the end.

**Ramy Soussou**  
General Manager Regulatory Affairs & Stakeholder Relations  
**Red Energy Pty Ltd**  
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