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31 May 2020

Mr Daniel McAuliffe
Project Lead - Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted electronically: data@treasury.gov.au

Dear Mr McAuliffe,

Re: Consumer Data Right (Energy Sector) Designation 2020

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide this submission to the Treasury's consultation on a draft Consumer Data Right (CDR) designation instrument for the energy sector.

Red and Lumo support the CDR and believe that applying it to the energy sector will potentially generate significant benefits for energy consumers. It will assist them with their energy choices, encourage efficient energy use and provide easy access to data to facilitate the efficient investment in solar, batteries and other distributed energy resources. The potential benefits are wide ranging and include product innovation, reduced energy prices and more efficient use of energy infrastructure.

However, these potential benefits need to be assessed against any risks to consumers' privacy and safety. We are very mindful of community expectations and our regulatory responsibilities with respect to personal information and usage data. This is one of our key areas of focus as the CDR extends to energy.

While the datasets in the draft instrument are appropriate, they include sensitive information that could, if handled inappropriately, breach a consumer's privacy or put their personal safety at risk. Therefore, our support for their designation is contingent on whether there are adequate protections around access to and use of that information. This must either be in the designation instrument or contained in energy-specific CDR Rules. Any entities that can access or transfer sensitive information through the CDR framework - such as accredited data recipients or operators of a gateway - must be subject to the same regulatory obligations as the current energy market participants.

Energy datasets and the protection of consumers' privacy and safety

Red and Lumo urge Treasury to clarify some specific elements of the draft designation instrument.

- *Section 5* - terminology should be aligned with that used in the energy sector. For example, consumers enter into contracts with a retailer (either market or standard retail contract), rather than an arrangement under which energy is sold. Similarly, the instrument should be more precise that a customer is someone who has given explicit informed consent to a retailer to enter into a contract and is financially responsible for an energy account.
- *Section 12* - the draft instrument specifies that both retailers and the Australian Energy Market Operator (AEMO) are specified holders of metering data. It is not clear how this would work in practice. For example, would they face the same CDR obligations? Would a data recipient have a choice between them when seeking access to metering data? Would they provide information to a data recipient through the same mechanism?

In addition, we are concerned with some particularly sensitive consumer data in the draft designation instrument and explanatory statement. The following elements must be handled appropriately in order to protect consumers' privacy under the CDR:

- *7(2)(b) Information relevant to the eligibility of the customer or associate to enter or remain in an arrangement, or take advantage of a feature of an arrangement* - the draft instrument explains that this might include whether the customer or associate is a pensioner, or has essential medical equipment that relies on electricity to operate. This could involve the disclosure of information about an underlying medical condition that warrants life support status and which is classified as 'health information', and therefore 'sensitive information' under the *Privacy Act 1988*.
- *8(2)(b) Metering data that relates to the arrangement, other than metering data for a type 7 metering installation* - meter data has significant privacy implications and should be treated like financial transactions. For example, energy consumption patterns show when people are home or away and can expose the risk of targeted burglary.

In addition to the sensitive nature of some datasets, there is also the issue of how CDR participants use and store that data. An increasingly important issue is the requirement for energy market participants to protect consumers who are experiencing family violence. This is relevant because the draft instrument designates information relating to a customer and their 'associates', as defined by section 318 of the *Income Tax Assessment Act 1936*; this includes a person's relatives such as spouse, children or siblings.

Including an associate in the designation means there can be more than one account holder on an electricity account, and also that the primary account holder can grant access to the account of a

relative or spouse. However, retailers have heightened obligations to protect confidential information relating to a customer affected by family violence. This extends to any information that can be used to identify or locate an affected customer, including information about their whereabouts, contact details, or financial or personal circumstances. This takes precedence over other regulatory obligations in Victoria, and Red and Lumo have extended these measures nationally.

The current version of the CDR Rules allows a holder of designated banking data to refuse to comply with a request if it believes that disclosing information would risk physical harm. This must carry across to the energy sector. It is also appropriate for data recipients and any other parties with a formal CDR role to be obligated to take appropriate steps to protect a consumer if they have reason to believe they may be at risk of family violence or some other threat to their personal safety and financial security.

Role of the Australian Energy Market Operator

We would welcome more clarity about the role of AEMO under the CDR. The designation instrument specifies AEMO as a holder of meter data - in addition to retailers - and as a gateway for customer and billing data.

We are aware that some of the gateway implementation models under consideration involve greater interaction between consumers and AEMO. For example, AEMO could have a role to verify with a consumer that a request for access to data by a third party is genuine and that they have given consent. Moreover, the gateway function itself involves the safe and secure transfer of sensitive consumer information.

This is a significant change to current arrangements. AEMO is a market operator and has no consumer facing role. As a result, consumers have little to no awareness of AEMO and its role in the energy market, so some consumers might be wary of a request for verification that they may not necessarily relate back to their retailer or their accredited third party. Consumers associate this information with their retailer, not with a market operator with which they have no direct dealings.

More fundamentally, we note that AEMO is a system and market operator with legislatively defined roles and responsibilities that do not currently involve the collection and retention of sensitive consumer information or to consumer protection. In short, it is not subject to the same controls and oversight as market participants, such as retailers, and this would need to be addressed before it assumes additional functions under the CDR.

AEMO's B2B e-Hub had been mentioned in the past as a model for a potential gateway tool. However, use of the e-Hub involves the allocation of usernames and plaintext passwords by authorised market participants. We would expect to see a much more sophisticated method for authorisation and allocating access to CDR data given the sensitive nature of the information that AEMO would have control over.

We would also expect independent and verifiable certification of AEMO as a secure and trusted manager of sensitive consumer data, and of any gateway mechanism as a secure and trusted data service.

As a final point about AEMO, the construction of a safe and secure gateway will come at considerable cost. Currently, AEMO's only cost recovery mechanism is through participant fees, which ultimately feed through to retail prices. We note two key considerations for Treasury and AEMO in relation to the costs of providing a gateway:

- Assessment of implementation options needs to account for these costs, noting the likely incremental contribution to retail energy prices.
- Cost recovery should extend to accredited data recipients. This would be a competitively neutral and equitable way of recovering costs, and is consistent with the principle of reciprocity that applies under the CDR (whereby a data recipient becomes a data holder and is subject to the same obligations).

About Red and Lumo

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

Red and Lumo thank the Treasury for the opportunity to comment on the draft designation instrument. Should you wish to discuss aspects or 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".

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
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