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Consumer Data Right Division
Treasury
Langton Cres
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Submitted electronically: data@treasury.gov.au

**Re: Consumer Data Right in the energy sector - rule amendments (version 4)**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Treasury's consultation on extending the Consumer Data Right (CDR) to the energy sector through proposed changes to the CDR Rules (version 4) and Regulations.

We appreciate Treasury's transparent approach to developing the energy CDR rules and its ongoing willingness to adapt the energy specific approach when it is clear that a better option exists. The most significant example of this is the decision to shift from a gateway to peer-to-peer model for the transfer of data, which is a decision we strongly support. We look forward to further productive discussions about CDR for energy as Treasury finalises the Rules, Regulations and data standards.

**Eligible consumers**

Red and Lumo have consistently supported the CDR, including its application to the energy sector as we recognise the likely benefits it will generate for Australian energy consumers. Furthermore, we acknowledge the policy rationale to include business consumers in the CDR, noting the relatively high proportion of small to medium enterprises who remain on standing offers. In its most recent report to the Treasurer, the Australian Competition and Consumer Commission concluded that the proportion of small business standing offer customers remained 'steadily high,' which implies the potential benefits are significant.[1]

However, we strongly oppose the inclusion of large energy customers in the definition of eligible CDR consumers. The market for data, advice and other information services is well developed at the large customer level, so extending the CDR to this consumer segment would simply create new and costly mechanisms where a well functioning and highly competitive market already exists. Large consumers often have direct arrangements with meter data providers or have real time access to information about their usage from their retailer so we reject the suggestion that it can sometimes take weeks for them to receive it.

[1] Australian Competition and Consumer Commission (2021), Inquiry into the National Electricity Market, May 2021 Report, page

Large consumers also run tender processes for their energy contracts through dedicated procurement functions within their business. As a result, retailers already have strong commercial incentives to provide information to current and prospective customers and their representatives, including energy brokers.

Retailers who compete across the entire market tend to align their systems with regulatory thresholds, which reflects the different regulatory requirements between the two broad segments (i.e. large customers and small customers - small business & residential). This includes the coverage of standing offers, requirements ahead of disconnection, life support, support for customers experiencing payment difficulties, hardship management and prescribed notifications. All small consumers are on generally available market retail contracts or standard retail contracts as prescribed in the energy regulations. Whereas, energy contracts for large customers are specifically tailored to their individual needs and bespoke to their tender requests.

A further complication for this large consumer segment is the operation of the secondary user provisions. This includes the definition of secondary user—as someone who has account privileges, meaning they are able to make changes to an account—and the additional requirements that data holders have in relation to secondary users (such as a specific dashboard, as required by Rule 1.15). These provisions do not easily align with the often complex arrangements between retailers and large consumers for account management. This applies where there are numerous people involved in authorising certain actions on an account with different levels of permission or where a large consumer is an aggregation of smaller consumers (as allowed for under the National Energy Retail Rules).

In short, the CDR will not apply easily to this market segment. Therefore, we recommend Treasury undertake further analysis of the likely net benefit of including large consumers and specifically consult with brokers who work closely with these consumers, meter data providers, and with large consumers and their representatives. Red and Lumo would also welcome the opportunity to work with Treasury to provide further details of our experience in this segment of the market.

This analysis must take account of the incremental cost of including large consumers. It is not a matter of creating potential benefits for the same cost since many retailers will need to account for the CDR across multiple billing and operating systems, while retailers who only compete for large customers will incur unnecessary costs. Treasury must consider the cost of implementation across all systems relative to the likely benefits.

The likely costs across all retailers are material enough to provide a *prima facie* case for Treasury to undertake further analysis, with a view to excluding large consumers from the scope of CDR. We will continue to provide Treasury with more details on the likely cost of implementation as the regulatory framework and data standards are finalised.

The relevant question for Treasury then becomes how to draw a distinction in the Rules between small and large consumers. One option is the Australian Energy Council's (AEC's) suggestion to exclude consumers with annual consumption above 160MWh per annum. As the AEC explains, the Australian Energy Market Operator's *Metrology Procedure* prescribes that the majority of NEM jurisdictions place a consumption limit of 160MWh per annum on the type of meter a customer uses. Any customer that exceeds this limit requires a different metering type that is configured by the network to accommodate higher voltage.

An alternative approach is to exempt customers who enter into a contract that is not regulated by the National Energy Retail Rules or the Victorian Energy Retail Code (i.e. not a standing offer or market offer contract).

Our strong preference is to exclude this segment. Otherwise, Treasury should defer commencement for this segment to undertake more analysis and until it can be certain it will deliver a net benefit.

**Role of the Australian Energy Market Operator (AEMO)**

Red and Lumo welcome further explanation from Treasury for the policy decision to exempt AEMO from obligations under four privacy safeguard provisions. As Treasury explains, this means AEMO will not be required to have policies, procedures and systems in place to ensure compliance with the CDR regime, to enable the open and transparent management of CDR data, or to ensure the CDR data they hold is accurate, up to data and complete, nor to disclose corrected data.

This removal of privacy obligations appears to run counter to the policy objectives of the CDR. The proposed rules prohibit retailers from providing meter data directly so they are simply a conduit between AEMO and data recipients for this dataset. Meter data is one of the key datasets and drivers of CDR use cases in the initial stages so there should be strong safeguards in place to ensure its integrity and accuracy. AEMO must have an incentive to ensure the CDR for which it is responsible is accurate and protected.

The proposed exemption undermines the confidence that retailers must have to ensure that meter data is subject to the appropriate safeguards. Furthermore, meter data is sensitive in its own right, even when anonymised, as it shows patterns of use at particular locations, which in turn could provide insights about hours of employment, when a premises is occupied among other things. This is a further reason to be conservative with data management, including retention and transfer between CDR participants.

We also recommend Treasury strengthen obligations in the draft rules on AEMO to respond to retailers' requests for meter data, rather than relying on data standards that are yet to be finalised. The draft rules specify that AEMO can choose to respond to a request but it will not have to explain why it refuses a request; it is only required to keep a record of refusals and their reason, and then provide a report to the ACCC. However, retailers would be expected to explain to a data recipient and CDR consumer why their response to a CDR request is incomplete.

**Staged implementation**

Red and Lumo strongly support Treasury's proposed timeframe for implementation, provided it includes a process to assess the readiness of the key participants—particularly AEMO given its key role to provide meter data—and for delays if they cannot guarantee that readiness. Treasury should have a flexible approach rather than maintaining a firm commitment to commencement on a specific date, irrespective of industry readiness.

Consumers must have confidence that their energy data is protected and that appropriate controls are in place to ensure the safe and secure transfer of accurate data between parties. We would be very concerned if the integrity of consumer data was compromised if data holders and recipients are not given sufficient time to make the necessary changes to processes and systems.

We also support the staged implementation, which will give smaller retailers sufficient time to comply with their obligations. Moreover, applying the CDR to incumbent retailers with the highest proportion of standing offer consumers in the first instance will help to achieve one of the key objectives of the CDR, namely, to assist them to switch to competitive market offers. This also addresses the ACCC's concern about the current operation of the retail market, namely, the proportion of small consumers on standard retail contracts.

**Complaint handling**

Treasury has explained that it will apply a 'no wrong door policy' for complaint handling and external dispute resolution. This means that consumers will be able to raise a complaint with either their jurisdictional energy ombudsman scheme or the Australian Financial Complaints Authority and it will be up to the respective schemes to determine which organisation has the authority to consider the complaint.

While we see the benefit for consumers in this model, it will generate additional costs for the respective complaint handling schemes over and above the incremental cost of expanding their current scope to include CDR complaints. All such costs are recovered from members and, therefore ultimately borne by consumers.

We encourage Treasury to consider ways to reduce these costs as far as possible, perhaps through a broader education campaign for energy consumers about the CDR that includes an explanation of the entities to whom they can direct any complaints.

**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, Queensland, South Australia and in the ACT to over 1 million customers.

Red and Lumo thank the Treasury for the opportunity to respond to the proposed amendments. 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

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