



PO Box 4136
East Richmond VIC 3121
T 131 806
F 1300 661 086
W redenergy.com.au

PO Box 4136
East Richmond VIC 3121
T 1300 115 866
F 1300 136 891
W lumoenergy.com.au



1 September 2023

Ms Anna Collyer
Chairperson
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Submitted electronically

Dear,

Re: Billing Transparency Consultation Paper

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Australian Energy Market Commission (the Commission) on the Energy Security Board's (ESB) Billing Transparency Consultation Paper (the consultation paper).

One of the ESB's central conclusions is that there is insufficient data available to policymakers and regulators and unreasonable limitations on its use. As a consequence, the ESB concludes that energy policy is deficient. We do not share this view and see little benefit to consumers from the substantial increase in reporting obligations—and associated cost—that the ESB proposes. More fundamentally, we do not see any obvious or significant problem with the current arrangements.

The consultation paper notes the extensive powers that regulators have to collect data from retailers, which they have used to inform a range of regulatory measures in recent years. This is supplemented by the established rule making process whereby anyone can propose a rule change and the Commission undertakes a comprehensive process to understand the nature and extent of any problem and to identify an appropriate regulatory response.

Most notably, the Australian Competition and Consumer Commission (ACCC) also has broad powers to collect and analyse energy data arising from its Retail Electricity Pricing Inquiry (REPI) in 2018 and this has been a key input to policy development since that time. The ACCC's most recent 95ZK notice includes a detailed request for retailers to provide a breakdown of all retail prices, price setting processes, and non price elements of retail offers. On the retail prices alone, retailers have been asked to provide more than 50 data points on the specific make up of each offering in the market as well as the numbers of customers on each offer. Importantly, there is almost no limit to the data that the ACCC can collect and it can tailor its requests depending on specific areas of policy focus or in response to perceived problems with market outcomes.

The Australian Energy Regulator (AER) also has extensive powers to collect information from the energy sector and produces regular reports, namely its State of the Market and quarterly retail energy market performance reports.

If governments and other stakeholders are concerned with the ACCC's and AER's reports—or the outputs of state based regulators with similar powers of data collection—the appropriate response is for them to instruct these regulators to consider issues in more detail or reconsider how they undertake their role. If there are concerns about the ability of the ACCC to share data due to any regulatory restrictions, this can be addressed through necessary changes to the legislation as appropriate rather than introducing additional reporting obligations on retailers.

Reporting obligations on retailers

The consultation paper acknowledges the volume of retailers' existing reporting obligations and states that the current approach is 'inconsistent and duplicative, imposing unnecessarily high costs on retailers.' It also warns that some retailers receive 'around 10 different requests for data per year, which require manual consideration and cost over \$1 million per year to respond to.'¹ Although the paper acknowledges this major issue and talks about a streamlined approach it also notes that it 'is not proposed to change jurisdictional roles in jurisdictional analysis and reporting and jurisdictions are proposed to retain power for price monitoring responsibility.'² This is reasonable as we do not think that jurisdictional regulators would be willing to relinquish their data collection powers.

This means the ESB's proposals will not provide any benefits to retailers or to consumers by streamlining jurisdictional reporting obligations or removing duplications and inefficiencies. Instead, we only see potential for these proposals to lead to more cumbersome and expensive reporting obligations. The costs of building, maintaining and providing further data, particularly under some of the models that the ESB has proposed, will be incurred by retailers and eventually by consumers.

Costs of the approaches

Red and Lumo are concerned that the consultation paper has not given appropriate consideration of the large costs the proposed options will inevitably generate.

Although option 2 appears to be simply a movement of the reporting function from the ACCC to the AER the associated costs could be substantial. The ACCC has built the capability to handle large amounts of data that retailers provide as part of its monitoring function. It has also developed the skills and understanding to process this information and produce the reports required. Moving this capability from one authority to another is not a simple process.

¹ Energy Security Board, Billing Transparency, Consultation Paper, July 2023, p8

² Ibid, p65

It could also prompt the AER to develop new IT infrastructure and systems to support the collection and secure retention of data. It also remains unclear why the AER is a better authority to receive the information or produce reports than the ACCC which already has the skills and knowledge in its corporate structure.

Similarly, options 3 and 4 would essentially require a rebuild of data sharing capabilities comparable to retailers' efforts to develop and implement the Consumer Data Right (CDR). The consultation paper appears to assume that CDR can be simply repurposed to accommodate the new reporting requirements; however this reflects a misunderstanding of the capabilities and design of CDR. There is no aggregate basis to use CDR to facilitate regulatory reporting as it was not designed or built for this purpose. Red and Lumo are also concerned that the costs of this duplication and rebuild of CDR will only increase substantially over time if regulators sought new and more complex data sets.

More generally, the proposals for AEMO or the AER to collect reporting data automatically through new data sharing platforms will require a complete redesign of not only retailers' reporting systems but also AEMO systems (or a complete system build in the case of the AER). This is not only expensive to develop in the first instance but also costly to amend to accommodate new data requests as reporting data is generally hard coded in systems.

As a comparison, we note that AEMO's capital costs of the CDR declared NEM project are estimated at approximately \$5 million, along with ongoing expenditure from 1 July 2023 of approximately \$410,000 per annum³, while the costs for 5 Minute Settlement (5MS) were approximately \$121 million. This does not include costs that industry incurred; some estimates of the total costs of 5MS exceed \$300 million. Importantly as the AER has no existing data capability the costs for building this from scratch would likely be substantially higher.

Any of these options proposed will incur substantial costs for both the recipients and providers of data comparable with these projects with budget overruns almost inevitable and the Commission should be concerned that the Consultation paper appears to downplay these costs while overstating the potential benefits.

Data sharing

The restrictions on the ACCC's ability to share data with other parties are an intentional design feature of the *Competition and Consumer Act*. Importantly however the Act does grant exemptions allowing the Chairperson to provide information to the Department of Climate Change, Energy, the Environment and Water (and the Consultation Paper notes it has been shared previously with the AER). The choice to have these restrictions reflect concerns about how the sharing of confidential information such as pricing would potentially

³ Australian Energy Market Operator, Structure of Participant Fees for the CDR NEM Declared Project, Consultation Paper, p3

impact the competitive market and limit the sharing of data to those entities that have a specific role in the energy sector. Red and Lumo are concerned that the consultation paper fails to explain how it would overcome these issues and why an organisation like AEMO for example is better suited to manage this sensitive information and the risks associated with it.

We are not convinced that the consultation paper has sufficiently identified which policy decisions would have been improved or changed by an increase in consumer billing data or how sharing of this data would address poor policy decisions. The consultation paper expresses general concerns about policy development but this can be addressed by adhering to principles of good regulatory practice. This involves a clear definition of the nature and extent of a problem, the evaluation of feasible options, impact assessment that draws on effective stakeholder consultation, and ex post evaluation. There is nothing in the current framework that prevents this.

ACCC reporting

In reviewing the options put forward in the consultation paper, Red and Lumo's preferred option is to extend the ACCC's formal monitoring function for a further three years. As stated if there is a need for improvements to the reports produced by the ACCC these should be put directly to the organisation or the relevant Minister. Alternatively if there is a concern around the ability of the ACCC to share data due to restrictions in the *Competition and Consumer Act* then this should be addressed through legislative amendments as is appropriate.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in New South Wales, Queensland, South Australia, Victoria and in the ACT to over 1.2 million customers.

Red and Lumo thank the Commission for the opportunity to comment on the consultation paper. Should you wish to discuss or have any further enquiries regarding this submission, please call Stephen White, Regulatory Manager on 0404 819 143.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. Hargreaves".

Geoff Hargreaves

Manager - Regulatory Affairs

Red Energy Pty Ltd

Lumo Energy (Australia) Pty Ltd