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15 August 2017

Mr Chris Pattas
General Manager, Network Regulation
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submitted electronically

Dear Mr Pattas,

Re: Amended Ring-fencing Guideline - July 2017

Background

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Australian Energy Regulator's (AER) consultation on the draft amendments to the Electricity Distribution Ring-fencing Guideline (Guideline).

Distribution Network Service Providers (DNSPs) have until 1 January 2018 to comply fully with the Guideline that the AER published on 1 December 2016. As a result, both the AER and the DNSPs have been working together on the steps needed to ensure compliance. During this time, the AER has identified and received suggestions that changes to the Guideline would be desirable.

The Explanatory Statement made by the AER claims that these changes are necessary to improve the clarity of the Guideline and to mitigate any unintended consequences. However, the AER does not make any case for justifying changes to the Guideline. While we support the typographical amendments proposed by the AER, in general, we consider that the AER should only amend the Guideline when it is absolutely necessary. We consider that the re-opening of this Guideline for amendments that are not typographical raises regulatory risks.

In light of these comments, we provide commentary on the proposed changes for the AER's consideration.

Proposed changes

Revised definition of the "Related Electricity Service Provider" (RESP)

Red and Lumo do not object to the proposed amendments to the definition of a RESP. As currently drafted, the definition of RESP would capture the parts of an affiliated DNSP that provide direct control services or prescribed or negotiated transmission services.

The revised definition of a RESP would exclude the part of the affiliated DNSP that provides direct control services or prescribed and/or negotiated transmission services. The revised definition would alter the definition so that a RESP only includes those parts of the DNSP or an affiliate that offer contestable electricity services. This change is consistent with the Guideline's intention to separate the parts of the DNSP that offer contestable electricity services with the parts of a DNSP affiliate that offers contestable electricity services.

Branding

Revision to clause 4.2.3(a)

Red and Lumo strongly object to the proposal to revise clause 4.2.3(a) of the Guideline, by adding additional references to "contestable electricity services."

It was intended that the Guideline would prevent a DNSP from using its regulated brand name to offer contestable electricity services. However, as written, the AER argues the provision unintentionally extends the restriction to all services offered by an affiliate of the DNSP, not just electricity services.

The proposed amendment would prevent an affiliate from using a DNSP logo for the supply of other services that are not deemed "contestable electricity services". Allowing an affiliate that supplies other services to use the DNSP's regulated branding has the potential to give the DNSP-affiliate a tacit advantage in supplying their "contestable electricity services" by associating itself with the regulated entity to the supply of their other services.

AER Shared Asset Guideline and revisions to clause 4.2.3(b)

Red and Lumo firmly object to DNSPs using their branding for shared assets. Based on the Guideline, we believe that the AER needs to make consequential amendments to the Shared Asset Guideline and the Cost Allocation Guideline to ensure that regulated business branding is not used for the purposes of contestable services or shared assets.

Shared assets are those assets that make simultaneous use of assets in the Regulatory Asset Base to generate both regulated and unregulated revenues (as contemplated in the shared asset provisions in clause 6.4.4 of the NER).

The cost allocation guidelines in combination with the shared asset guidelines allow shared assets to earn both regulated and nonregulated revenue with shared costs being allocated to the relevant business units based on the historic use of the assets.

If both of these regulatory guidelines are applied as they were intended, then the risk of contestable energy services being cross subsidised as a result of a DNSP use of a shared asset would be minimal.

However, in their current form, these regulatory guidelines do not work as intended. Therefore, they cannot guarantee that shared costs for these assets would be attributed to their relevant business units based on their historic use. As a result, we cannot be confident that they will prevent the cross subsidisation of contestable energy services for the benefit of DNSPs.

Therefore, we do not support the inclusion of an additional provision as described in the new clause 4.2.3(b)iii in the Guideline, as the branding requirements of the Guideline do not prevent the use of the DNSPs direct control service brand for shared assets.

We believe that the current practice of allowing a DNSP to use shared assets to earn both regulated and unregulated revenues must not be permitted and the cost allocation and shared asset guidelines are reviewed and revised accordingly.

Information disclosure

Red and Lumo have serious concerns with this amendment. The provisions regarding the disclosure of information by a DNSP were intended to include exceptions in certain specific circumstances, such as where there is a necessity for disclosure (e.g. a legal obligation) or where explicit and informed consent has been obtained from a customer.

In relation to the specific amendments that apply to information disclosure, we:

- strongly object to the provision of confidential information for the purposes of contestable services. A regulated DNSP receives information for the purposes of their regulated activities, and therefore, an explicit exclusion for the sharing of information for contestable services must remain.
- would only support the disclosure of confidential information from an intermediary or developer to a DNSP to facilitate that DNSP in providing its services where that customer had given its explicit and informed consent for the release of that information to the DNSP.
- do not support the release of confidential information to any person or a RESP for the purposes of responding to severe weather events beyond a DNSP's control. We are not clear of the circumstances in which it would be necessary for a DNSP to release commercial and confidential information to a RESP or any other person for the purposes of an emergency.
- do not support the release of confidential information to any person or a RESP for research purposes. We are not clear why confidential information would need to be released for research purposes unclear. Further, should a related entity of the DNSP wish to undertake research, it should be incumbent on that entity to obtain the consent of the participant who is partaking in the research.

The AER's Explanatory Statement does not provide any justification for the inclusion of this amendment. We urge the AER to reconsider these amendments.

Sharing of information

Further to the position above on information disclosure, Red and Lumo firmly object to these amendments. With respect to information registers, clause 4.3.5 requires a DNSP to include all legal entities (including RESPs) who request access to confidential information shared with a RESP on their information register.

The amendment would exclude affiliates of a DNSP who are legal entities but not RESPs and therefore do not provide contestable electricity services. This clause would apply only to DNSPs that are competing in relation to the provision of contestable services. As such, the proposed amendment is not required.

Staff sharing registers

Red and Lumo object to the proposed exemption from the Guideline to the corporate positions that can potentially be shared between the regulated and unregulated business.

The AER argues that some shared corporate positions are relatively intuitive from the obligations to separate staff involved in regulated services from those in contestable

electricity services. In fact, the AER argues they are well understood as a matter of commercial practice. We do not agree with this position.

Section 4.2 of the Guideline amendments include the sharing of regulatory staff. However, in order for regulatory staff to be highly effective, they must understand the business implications and commercial objectives in line with the regulatory instruments of the issue. Therefore, it is incumbent on the AER to remove any reference to regulatory staff being shared between regulated and unregulated businesses.

Obligations on DNSP's service providers

It is obvious that it is intended for this change to apply to the provision of contracts between DNSP and external contractors in relation to the supply of direct control services.

In general, a prudent contract manager will include a change of law clause in all contracts, therefore, not only new or varied agreements, but all existing agreements between the DNSP and their service providers should be made on the basis of the revised Guideline as published on 1 December 2016. As such, we do not consider the proposed change to be necessary as steps should be underway to ensure compliance by 1 January 2018.

We do not consider that this amendment is warranted.

Emergency response

The AER propose to include an additional provision (new clause 4.2.3(b)iv) in the Guideline so that the Guideline's branding requirements do not restrict cooperation between DNSPs in emergencies. Red and Lumo are comfortable with this amendment, as we do not wish to constrain DNSPs supporting each other and customers, during emergency scenarios or times of significant network outages.

About Red and Lumo

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

For any further enquiries regarding this submission, please call Con Noutso, Regulatory Manager on 03 9976 5701.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou".

Ramy Soussou

General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
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