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30 August 2017

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

Submitted electronically

Dear Mr Pattas,

Re: Ring Fencing Waiver Applications - August 2017

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Australian Energy Regulator's (AER) consultation regarding the waiver applications lodged by the Distribution Network Service Providers (DNSPs) under the Electricity Ring-Fencing Guideline (Guideline).

Many DNSPs[1] have lodged waiver applications with the AER under clause 5.2 of the Guideline. In general, the waivers appear to have been lodged under three broad classifications, including:

- reclassification waivers;
- branding time extensions; and
- legal separation.

Red and Lumo do not support these waiver applications because:

- reclassification waivers may not provide the benefits they claim to; they can only be supported if they can demonstrate a "net benefit" backed by robust quantitative or qualitative evidence;
- branding time extensions prejudice the competitiveness of the market for unregulated & negotiated services by allowing DNSPs to continue to promote their brand;
- legal separation waivers create the risk that DNSPs will cross subsidise the contestable energy services with revenue earned from the provision of regulated distribution services.

We firmly believe that compliance with the Guideline should be the norm, not the exception. Should the AER grant the waivers as requested, they will be creating a

With the size of the market for contestable energy services market predicted to grow to in excess of $300 billion dollars by 2050[2], unencumbered competitive delivery of

[1] ActewAGL, AusNet, Ausgrid, CitiPower/Powercor, Endeavour Energy, Energex, Ergon Energy, Essential, Jemena, SA Power Networks, TasNetworks, United Energy
[2] The size of the market in Distributed Energy Resources (DER) alone was highlighted in a recent study by the Energy Networks Association (ENA) and the CSIRO titled the Electricity Network Transformation Roadmap (Roadmap) that indicated that between $225 billion to $340 billion dollars of capital would need to be invested in DER between now and 2050.

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services to these markets is critical. The failure to supply these services competitively will have broader implications for the competitiveness of the macro economy.

Consultation period

Red and Lumo's initial observation is the consultation period provided by the AER for stakeholders to respond to this consultation is insufficient.

Stakeholders have a very short window to consider and respond to a broad range of waiver applications. In the short time frame provided, it is challenging to respond to the specific aspects of each of the waivers.

While the AER argues the expedited consultation process is necessary to ensure the DNSPs comply with the Guideline by 1 January 2018; however the Guideline has been in place since December 2016. These are not new issues. The fact the waivers were not sought in many instances until August 2017 does not circumvent the need for proper and thorough consultation.

DNSP waivers

<u>Reclassification waivers: the reclassification of services from negotiated services and unregulated to alternative control services</u>

Red and Lumo have concerns in relation to the waiver applications submitted by DNSPs for this matter.

In general, the DNSPs lodged waiver applications under section 4.2.5 of the Guideline in response to the general obligations that would apply under section 4.2 including clauses:

- 4.2.1 - physical separation/co-location;
- 4.2.2 - staff sharing; and
- 4.2.3 - branding and cross promotion for the broad range of negotiated and unregulated services described in this waiver application.

The DNSP waiver applications were lodged on the basis that:

- there is a strong probability that both of the negotiated and unclassified services in their waiver applications will be reclassified as alternative control services at the next rate review; and
- the costs of avoiding the development of a new brand, branding materials and the need to relocate staff from the general obligations under section 4.2 of the Guideline to an affiliate company at this time would be greater than the benefit of strict compliance with the Guideline.

All DNSP waiver applications must be justified on the basis of the outcomes of a cost benefit analysis consistent with section 5.3.2(iii) of the Guideline. In general, we prefer quantitative analysis is submitted to demonstrate there will be a net benefit to consumers when approving a waiver.

Finally, the benchmark for the standard of the evidence provided in this regard must be high. The AER must carefully scrutinise the costs submitted by DNSPs in any cost benefit analysis. DNSPs must not be able to overstate claims to avoid seemingly inconvenient separations. Compliance with the Guideline, not waivers, must be the norm.

Branding time extension: the use of DNSP services brand when providing negotiated and unregulated services

Red and Lumo strongly object to DNSP waiver applications for branding time extensions.

Section 4.2.3(a)(i) of the Guideline requires that a DNSP use separate branding for its direct control services from its negotiated and unregulated services provided by its related electricity service provider. Any use of a DNSPs brand by a related electricity service provider is in violation of section 4.2.3(a)(i) of the Guideline.

Currently, DNSPs provide some of their negotiated and unregulated services through their related electricity service provider using the DNSP logo under contract. The DNSPs argue they have contractual obligations that they must comply with, which requires them to continue supplying these services by using their DNSP logo.

The DNSPs have made it clear that they do not intend to renew these contracts. In addition, they have informed the AER that their related service electricity providers that supply the negotiated and unregulated services using a DNSP logo will not advertise or promote their products during these contracts.

Nevertheless, this situation is unacceptable. As long as DNSPs continue to supply negotiated and unregulated services using the DNSP brand through their related electricity service providers their customers will continue to develop brand awareness.

As such, granting these waiver applications will prejudice the competitiveness of the market for unregulated and negotiated services. This will allow DNSPs more time to dominate these markets and promote brand awareness for the long term benefit of their business.

As a result, the AER must immediately prevent the DNSPs from continuing to provide negotiated and unregulated services through their related electricity service providers using their DNSP logo. At the very least, we consider the AER must ensure any branding time waivers granted are only provided for the shortest possible time (less than 6 months).

Legal separation by 1 January 2018

DNSPs must comply with the requirement to separate their monopoly services from their contestable services by 1 January 2018 where they offer services into a competitive market.

Red and Lumo strongly object to these DNSP waiver applications.

Whilst there are some limited circumstances where the AER may be required to grant a waiver, we expect these to be rare.

One of these situations might be where a waiver is required to be granted under law. A key example of this was the AER’s decision on 21 June 2017 to grant South Australia Power Networks (SAPN) a waiver under the Guideline for this temporary generation license under section 4.1, 4.2 & 4.4.1 (a) of the Guideline.

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.

Red and Lumo are members of the Australian Energy Council and support the comments made in their submission.

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

Yours sincerely

Ramy Soussou
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Red Energy Pty Ltd
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