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Retailer authorisation and exemption review

Tango Energy thanks the Australian Energy Regulator (“AER”) for the opportunity to make this submission on its’ [Retailer authorisation and exemption review](#).

Tango Energy is the wholly owned subsidiary retail arm of Pacific Hydro Australia (“PHA”). PHA was founded in 1992, and is a leading owner, operator and developer of renewable energy assets. It operates a high quality, diversified portfolio of wind, hydro and solar assets with an installed capacity of 665 MW; it also has a development pipeline of substantial projects totaling over 1100 MW of potential capacity, as well as over 300 MW of energy storage solutions.

We are a relatively new and growing retailer with approximately 150,000 small and large customers as of May 2022. While our customer base is predominantly in Victoria, Tango Energy also sells energy to small customers in New South Wales, Queensland, and South Australia and expects to grow our presence in those jurisdictions.

Tango Energy has interests in a number of the new energy products and services discussed in 4.1.1 of the consultation paper. For the purpose of the discussion undertaken in this submission, it should be noted that Tango Energy is involved on both sides of the licencing framework (i.e. both the currently regulated areas, and the non-regulated areas) that are the subject of this consultation paper. In this submission we refer to the regulated services under the current authorisations framework, i.e. the sale and supply of electricity, as “regulated services”, and the areas currently not regulated described in 4.1.1 as “new energy products and services”. It should also be noted that while our comments use the electricity retail markets to illustrate how our proposed framework and principles could operate, these principles can be more broadly applied to energy retail regulation, including gas retail markets.

Overall, and as detailed in the remainder of this submission, we encourage a balanced and sensible approach to considerations of whether to regulate the market for new energy products and services, and the extent to which it should be regulated. The changing nature of the supply of electricity requires re-defining the concept of essentiality, and Tango Energy believes that the way forward requires the AER to balance regulation and innovation while taking into account the essentiality of electricity supply.

As detailed further in this submission, we propose a high level framework that is to have both regulated services and new energy products and services markets at a consistent level of regulation. This would occur by rationalising the National Energy Customer Framework (“NECF”), and taking a different approach to economic regulation matters that is consistent with Australian Consumer Law more generally. This approach would instead see the AER

refocus efforts on offering protections to consumers for matters deemed to be critical to the delivery of the essential service.

We propose that these consumer protections be then applied at the same level for new energy products and services that focus on the key protections to a customer's supply, i.e.:

- interruptions to life support equipment ("vulnerability" as referred to in the AER's consultation paper),
- interruptions to supply, and
- genuine hardship preventing customers from using their appliances.

Implementing such a framework would involve a holistic review of the NECF, which we understand the AER is currently undertaking, and harmonising the regulation of new energy products and services to the same standards, while reconsidering the approach taken to economic regulation matters (i.e. dispute resolution, pricing, marketing/contract terms and information provision) to set it at a level consistent with Australian Consumer Law.

We would be pleased to discuss this in greater detail with the AER on how such a framework would operate.

Essentiality

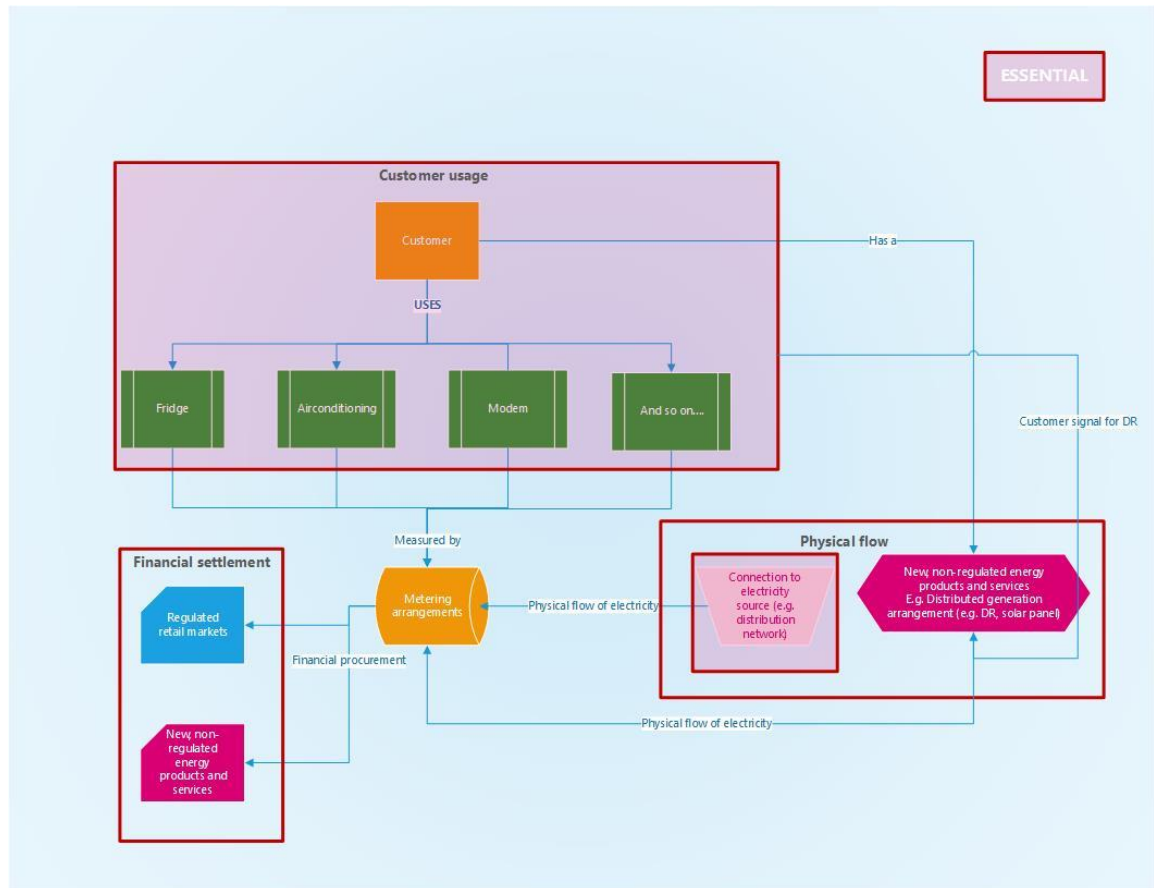
It is critical that a definition of essentiality is agreed upon as the building block of future regulation. It is also important to note that the way essentiality is defined has practical implications on the parties involved in the electricity supply chain (including the consumer), and has impacts on competitive neutrality.

Electrons can not be differentiated – while we understand that AEMO has proposed a pending rule change that will allow differentiating the meters used in its Flexible Trading Arrangements rule change request¹, the metering arrangements are tools for *measuring* the electricity used, rather than differentiating the actual electrons going to each residence or business. What is essential to the customer is the uninterrupted ability to use household appliances that are powered by electricity – e.g. a fridge for storing food, a washing machine for clean clothing, a stove for cooking, and so on.

These areas of "essentiality" are shaded in red boxes in Figure 1 below. The customer does not consume the electricity directly, but rather uses the electricity as an enabler to use those appliances. Therefore, we suggest that there is a focus on the customer's usage of the electricity – i.e. what is the customer using the electricity for, and subsequently suggest a simplified, customer-focused model below to aid in thinking about essentiality in the consumption of electricity below.

¹ https://www.aemc.gov.au/rule-changes/flexible-trading-arrangements-distributed-energy-resources?utm_medium=email&utm_campaign=New-rule-request-template-2&utm_content=aemc.gov.au%2Frule-changes%2Fflexible-trading-arrangements-distributed-energy-resources&utm_source=cust49597.au.v6send.net

Figure 1: Customer-focused Essentiality



The customer’s usage of their appliances is supported by metering arrangements in the yellow box in the middle. These are put in place to measure the use of electricity, so that the long term cost of the electricity infrastructure can be appropriately funded, and so that the customer can have stable and reliable access to electricity in the longer term as markets and central planners utilise this information to match long term demand and supply.

The measurement of electricity so that it can be funded also applies to the fuchsia-coloured boxes, which represent the physical and financial aspects of the new energy product and services on the right and left respectively, as these are used as a tool to aid the customer to fund the use of some sort of appliance, rather than the customer using the electricity generated from the solar panel as an end product².

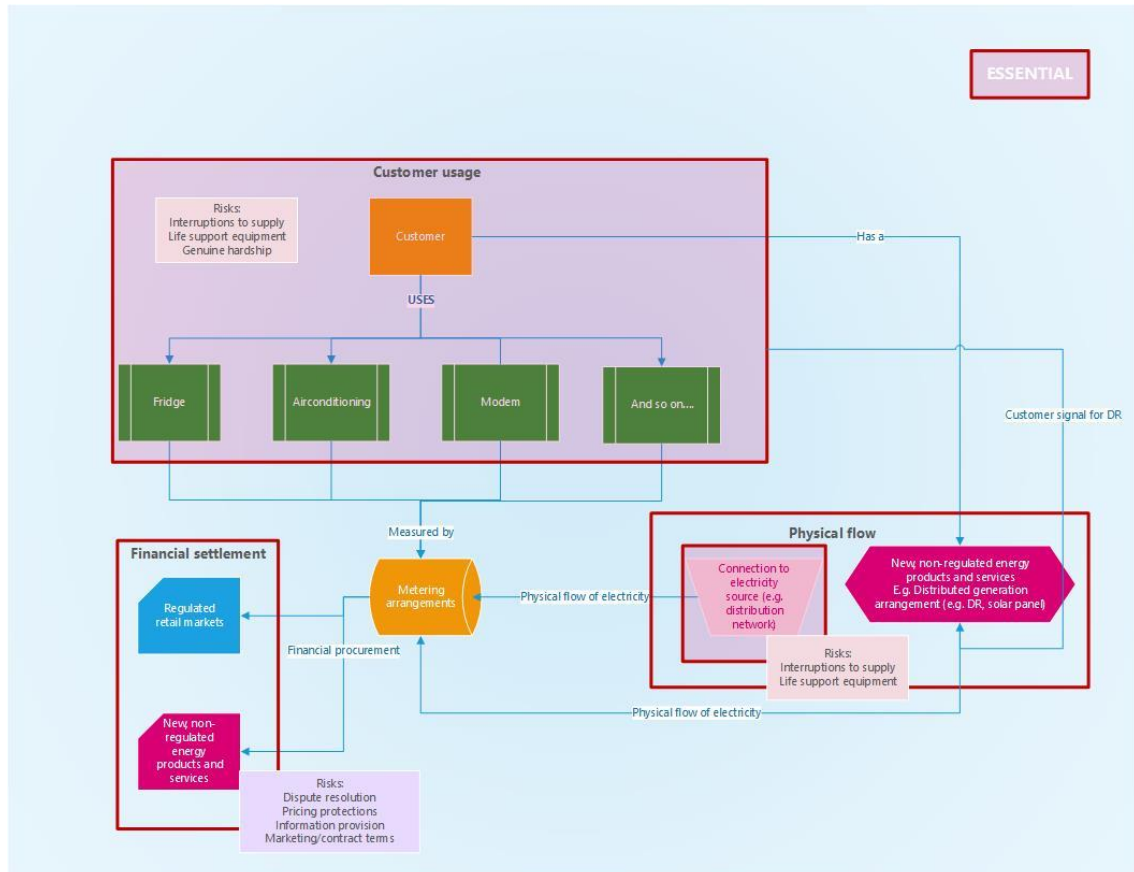
Our view is that it is difficult to separate out the concept of essentiality unless a customer-focused view is taken. Ultimately, a customer wants to be able to use their appliances as and when they need it. The regulated services, and new energy products and services, are the “means to get there”, and there are multiple flows of causation that can not be cleanly separated between the two groups. For example, an increased uptake in the new energy product and service (e.g. increased home solar PV output) can result in decreased reliance on the regulated service (needing to consume less energy from the grid, and subsequently consuming less energy from an energy retailer’s traditional supply arrangements).

² In the case of electric vehicles (“EV”), it could also be argued that the vehicle (and the usage of it to transport the customer) itself is the appliance, and the ability of an EV to provide demand management services is supplementary to the ‘essentiality’.

Current state of regulation

We understand the AER is undertaking further work to rationalise the regulations in the NECF, and support this being a critical input into its review of the authorisation framework. Customer protections should be linked to the concept of essentiality of the service, and the risks to delivering the essential service.

Figure 1.1 – Customer focused essentiality table, and risks



Based on our proposed model of the essentiality of the electricity service above, the risks to the delivery of the essential service are interruptions to life support equipment (vulnerability), interruptions to supply, genuine hardship preventing customers from using their other appliances. In this model, dispute resolution, pricing, marketing/contract terms and information provision are risks to the second component of ensuring that the cost of the electricity infrastructure can be appropriately funded, and to the customer having stable and reliable access to electricity in the longer term, and are classified as “economic regulation” matters for the purposes of our proposal.

Consumers of any good or service require some form of consumer protection that balances the consumers (demand side) and providers (supply side) of the market, and protections such as dispute resolution, pricing, marketing/contract terms and information provision are provided by the Australian Consumer Law and relevant state consumer laws.

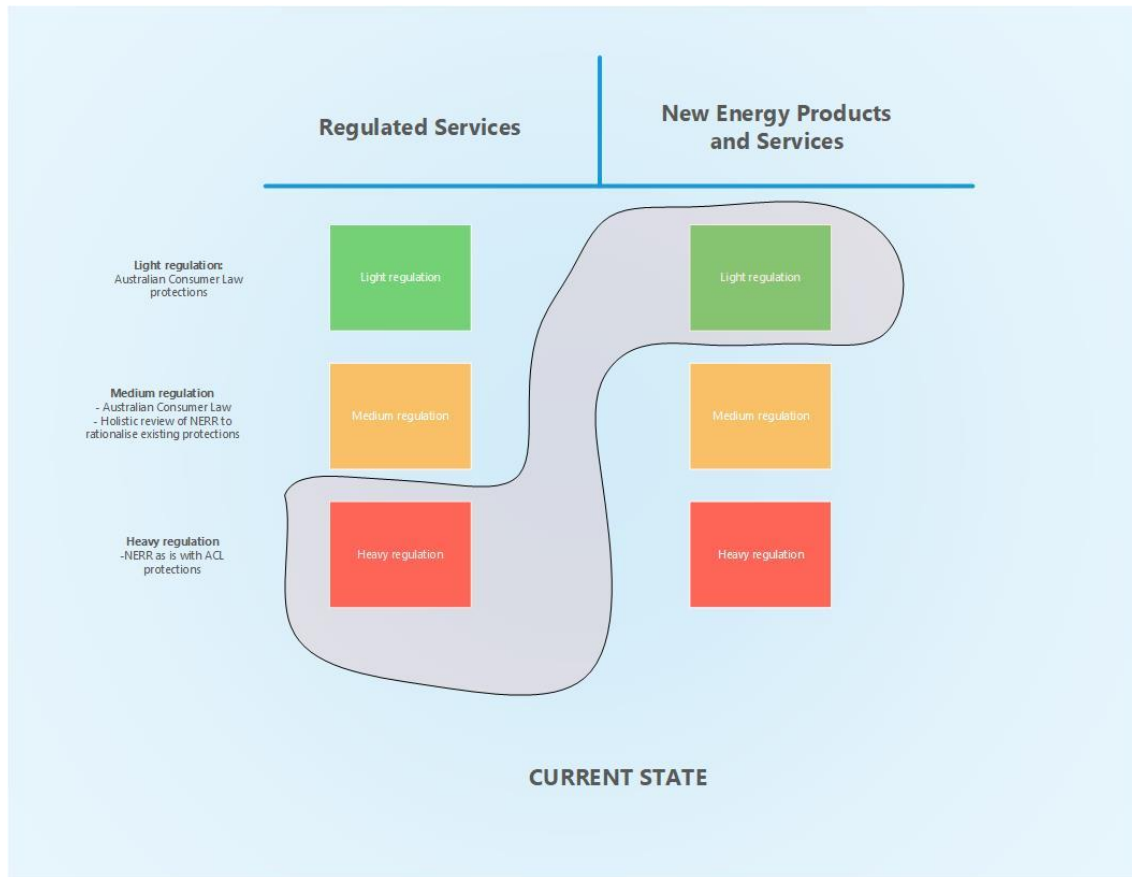
Therefore, we have accordingly created several categories and options to regulation for consideration, and classify them as below for the purposes of our proposed framework and principles:

- **Light regulation:** being Australian Consumer Law (“ACL”), relevant state consumer affairs protections, and technical standards
- **Medium regulation:** being “Light regulation”, plus a rationalised NECF with minimal departures from Australian Consumer Law for dispute resolution, pricing, marketing/contract terms, and information provision
- **Heavy regulation:** Australian Consumer Law (“ACL”), relevant state consumer affairs protections, and the current NECF.

Current arrangements and the need for change – “Heavy-Light” regulation

The current state of regulation applying to both markets is based on heavy regulation of regulated services, and light regulation of new energy products and services. This creates competitive neutrality issues, particularly given the changing relationship between the sources of electricity that a customer utilises to use their appliances.

Figure 2 – Current State of Regulation



Under the current arrangements, in a situation where the customer encounters hardship, this may result in them not being able to upkeep their payments to the new energy product and service (e.g. solar panel instalments). This may result in the new energy product and service being discontinued, and heavier reliance on the regulated services. With current hardship arrangements in the NECF, the customer is also aware that they have a safety net with the provision of the regulated services even if payments are discontinued, but this would not apply to the new energy product and service.

This then results in an outcome where an energy retailer operating solely under the regulated framework offering regulated services is penalised twice due to the market design; prior to the customer encountering hardship, the energy retailer is selling less energy to the customer due to arrangements made under the new energy products and services. When the customer encounters hardship, the retailer then takes on greater obligations in the form of increased load for a customer that may not be able to pay.

Under the current onerous obligations on credit and collection, it is likely that paying an energy bill in this instance becomes the lowest priority for the customer, and any available funds are used for payment of the new energy product and service to avoid breaching contractual terms with the provider. Due to the more balanced application of consumer laws in the new energy product and services market, the service provider is more likely to be able to enforce the terms of their contract to collect revenue or discontinue services. On the other hand, the energy retailer selling regulated services is unlikely to be able to enforce its market retail contract similarly due to significant restrictions from the NECF and the AER's current compliance and enforcement program.

If current arrangements are desirable, then sufficient risk premia needs to be allocated to the the licenced energy retailer responsible for supporting the customer, so that energy retail continues to be a viable business which attracts market entry and exit. Currently, the Default Market Offer set by the AER does not allow recovery of these costs.

Other alternatives

Given the issues with competitive neutrality discussed above with inconsistent regulation across the two markets, we briefly consider a number of alternatives below where regulation is consistent across both the regulated services and new energy product and services markets.

Light-light regulation

In this model, the currently regulated services would be regulated at the same (lesser) level as new energy product and services markets, consistent with Australian Consumer Law protections. While there may be merits to this solution, we have not explored this in detail, as we understand that this is likely to not be desirable as the AER and consumer groups have consistently expressed a preference for greater and more prescriptive regulation. We also acknowledge the negative perceptions and uncertainty that may arise with respect to lesser from consumer group stakeholders, in particular due to the amount of resources already invested in creating entities for administering energy retail regulation. This would also result in a significant winding back and change in the AER's responsibilities in retail energy regulation, and is unlikely to be considered.

Heavy-heavy regulation

This option would see the regulation of new energy product and services markets harmonised with the level of the NECF's detailed and onerous requirements and protections, and the application of the current compliance and enforcement framework by the AER. While the benefit is that this would provide certainty to consumers and provide a level playing field, this may result in the impact of impacting innovation negatively in the new energy products and services market, subsequently leaving consumers worse off with less choice.

Notwithstanding, a comparison of the hypothetical possibilities above illustrate a trade off between the certainty of strong and prescriptive consumer protections, and innovation that would benefit consumers by providing them with greater choice and more efficient outcomes.

Broader stakeholder views should be sought as to the trade off that consumers are willing to accept.

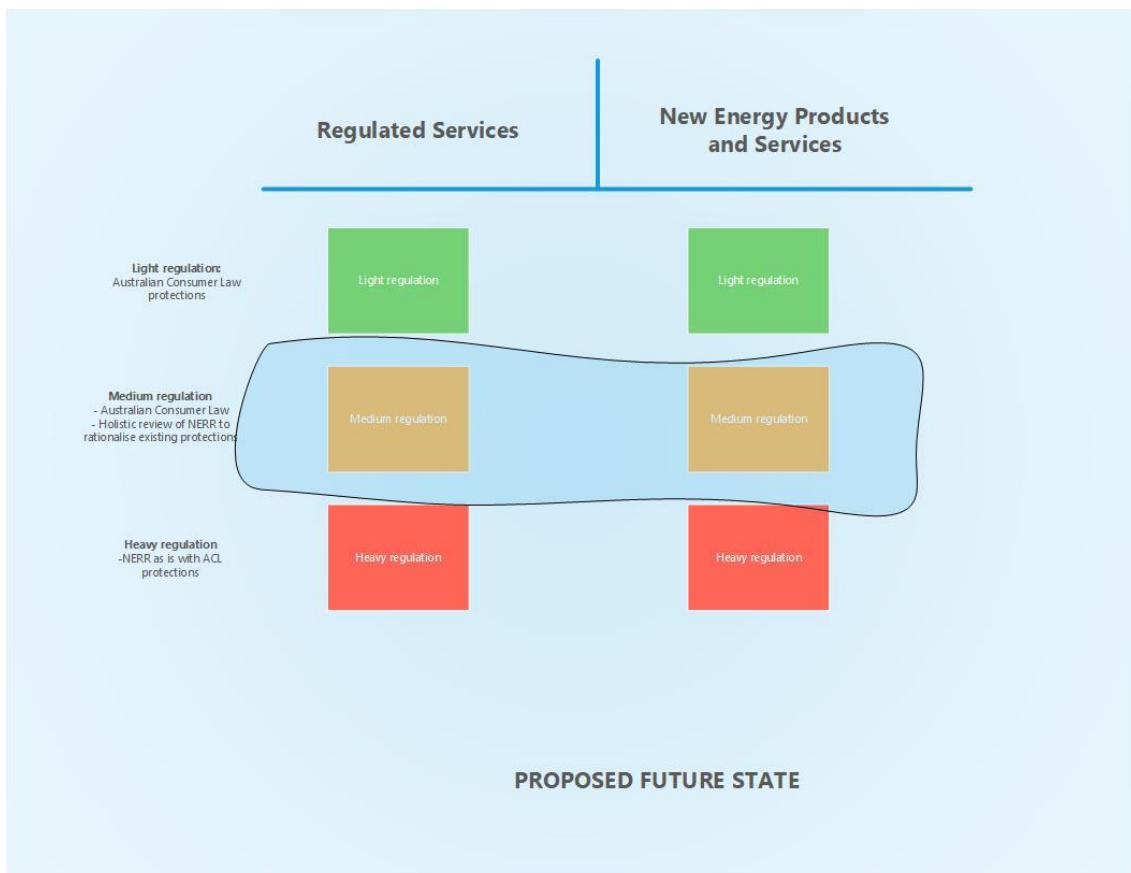
Our proposal – balanced “Medium-Medium” regulation

Tango Energy’s proposal is to have a market that has a consistent level of regulation at the “medium regulation” level, by rationalisation of the NECF (as described above), and offering protections to the delivery of the essential service, at the same level in the new energy products and services. We consider that this conceptual model will allow the AER to balance regulation and innovation while keeping in mind the essentiality of electricity.

This would involve a holistic review of the NECF to refocus it on the risks to delivery of the essential service are (as above), interruptions to life support equipment (vulnerability), interruptions to supply, genuine hardship preventing customers from using their appliances, and harmonising the regulation of new energy products and services to the same level of protections.

In our proposed model, economic regulation matters such as dispute resolution, pricing, marketing/contract terms and information provision would be dealt with under a balanced regime more similar and consistent to current Australian Consumer Law, that focuses on economic regulation as opposed to the current punitive, sanctions focused regime. We understand that the AER is currently undertaking a review of the retail energy regulatory framework, and consider that the review should consider these issues.

Figure 2.1 – Proposed state of regulation



Concluding remarks - To regulate or not?

Regardless of the path chosen, we strongly support the AER's review of the retail energy regulatory framework, and consider that there are significant opportunities to improve the framework for it to remain fit for purpose. We are encouraged that a holistic review is being undertaken, and encourage the AER to also consider how its compliance and enforcement framework fits into its overarching framework, as the compliance and enforcement framework and priorities form a critical part of any overarching regulatory framework.

A compliance and enforcement framework must align with the path chosen by the AER. A harsh, punitive and target-based compliance framework works best with a prescriptive framework and is best suited to a non-complex industry (e.g. enforcement of speeding fines and parking tickets), while a principles based framework that seeks to encourage innovation, is best coupled with an education and risk-based approach to compliance and enforcement where punitive sanctions are seen as a last resort for repeated noncompliance, and is likely to be more suited to the complex and rapidly changing energy industry.

We also encourage the AER to continue to engage across wider stakeholder groups, to confirm an agreed understanding of "essentiality" that is critical in underpinning the current and future retail regulatory framework.

Lastly, in considering whether to regulate or not, we encourage the AER to caution against regulating for the sake of regulating, and to consider the purpose and necessity of regulation. Regulation must be balanced with competition as tools for the overall goal of improving the efficiency of the Australian economy through innovation³, and it is critical to remember the role and purpose of private markets and their application to the energy sector.

Thank you for considering our submission. We would be pleased to discuss the proposal in greater detail at the contact details provided with the submission.

Yours sincerely,

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³ <https://www.accc.gov.au/media-release/privatise-for-efficiency-or-not-at-all>