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General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator

Submitted via email: [REDACTED]

Dear Mark

Australian Energy Regulator (AER) Review of Consumer Protections for Future Energy Services - Options for Reform of the National Energy Customer Framework.

Thank-you for the opportunity to provide a submission in response to the release of the consultation paper titled Review of Consumer Protections for Future Energy Services - Options for Reform of the National Energy Customer Framework (Options Paper)

Momentum Energy Pty Ltd (Momentum) is an Australian operated energy retailer, owned by Hydro Tasmania, Australia's largest producer of renewable energy. We pride ourselves on providing competitive pricing, innovation and outstanding customer service to electricity consumers in Victoria, New South Wales, South Australia, Queensland, the ACT and on the Bass Strait Islands. We also retail natural gas to Victorian customers. We aim to offer competitive rates to both residential and business customers along with a range of innovative energy products and services.

1. Overview

The AER has been tasked by the Energy Security Board (ESB) to undertake a review of the Retailer authorisation and exemptions framework to determine what framework would be suitable for future energy services. This is an extremely difficult task as apart from Consumer Energy Resources (CER), batteries, electric vehicles and behind the meter demand management products, many future energy services are still to be developed. Moreover, the impact that any new product will have on the “essential” supply of electricity is unknown. Therefore, the extent to which such products should be regulated, in addition to the current provisions and protections provided by the Australian Consumer Law (ACL), is arguable.

Following a round of public consultation the AER has developed 3 models for future energy services regulation as follows:

Model 1 - Tiered conditional authorisation framework, with reduced exemption framework. This is similar to the existing framework although it proposes the use of

principles to establish the extent to which National Energy Customer Framework (NECF) regulation will extend beyond the “sale of energy” boundary.

Model 2 - Authorisation framework based on regulatory principles. Principles, to be developed, would control both market entry and exit as well as the level of customer protection for new and future products and services.

Model 3 – Outcomes based regulatory framework which relies upon the service provider to prove they have met decreed regulatory objectives and parameters.

Momentum attended the recent AER industry workshop to further explore the merits of these options and to ascertain how the AER expected to maintain a suitable balance between customer protection and product innovation with these regulatory models. It became apparent that while the AER was keen not to stifle innovation, their primary objective, was to deliver an increased level (over and above the ACL) of customer protection for all future energy services. There was no discussion of the problems that existing future energy services had already caused in the market or why they needed to be burdened with an additional layer of specific regulation. We can only assume that where a product has some impact on or is associated with the supply of electricity it must be subjected to specific regulation.

2. Assessment of the Models

The Options paper provided some explanation on how market entry and customer protections would apply under Model 1 using a tiered structure. The tiered structure is explained using examples of energy sellers to residential, SME and embedded networks which is readily understood. However, the details covering how customer protections and market entry would apply under Models 2 and 3 is somewhat opaque. The proposal suggests establishing principles under Model 2 and outcomes under Model 3 for sellers to ensure regulatory compliance. There was very little detail on how prescriptive these principles and outcomes would be, how they would be imposed or managed nor what level of control was being envisaged.

The Options Paper did state that both Models 2 and 3 would require increased AER resources to monitor and assess sellers’ compliance with these models, which suggests that oversight and monitoring is likely to be quite onerous for providers under these models.

It is Momentum’s view that the AER options paper does not present sufficient information in respect of each of the models for a viable option to be considered, other than Model 1. Model 1 is similar to the existing NECF regulatory framework and therefore we assume the AER would prefer this option as it would allow for more streamlined regulatory compliance management.

We are a little perplexed as to why the AER was given this rule maker task by the ESB, as the AEMC was established as the “rule maker” for energy rules. It is also deemed good

regulatory practice to have a separation of powers between the “rule maker” and the rule compliance manager.

The extract below from the AEMC website¹ further confirms, in our view, that it would be more appropriate for the AEMC to be responsible for this review:

Energy markets are adapting to changing circumstances, such as the transformation of the natural gas sector and growth in renewable and local generation. In accordance with the National Electricity Objectives, the AEMC undertakes reviews and provides advice to governments on improvements to regulatory and energy market arrangements, in order to provide consumers with reliable energy in the most cost efficient way within this changing environment.

3. Summary

Momentum is unable to support any of the three models presented in the Options Paper as there is an extreme risk that selecting a model, at this time, will significantly stifle innovation. We would ask the AER to consider why the ACL would not be suitable to manage customer protection for future energy services as it does for most other consumer products?

We would also welcome discussions on how to ensure that energy retailers (who we believe are best placed to educate and support consumers through the energy transition) can thrive, innovate, develop and deliver new solutions for their customers without being disadvantaged through more onerous regulations than other providers offering similar products and services.

Should you require any further information regarding this submission, please don't hesitate to contact me on [REDACTED] or email [REDACTED]

Yours sincerely

[REDACTED]

Randall Brown
Head of Regulatory Affairs

¹<https://www.aemc.gov.au/about-us>