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

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Submitted via email to: ██████████

Review of consumer protections for future energy services: Options for reform of the National Energy Customer Framework – Tango Energy submission

Tango Energy thanks the Australian Energy Regulator (AER) for the opportunity to comment on this options paper relating to the review of consumer protections for future energy services.

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 November 2022. While our customer base is predominantly in Victoria, Tango Energy also recently started selling to small customers in New South Wales, Queensland, and South Australia and expects to grow our presence in those jurisdictions.

Question one: What are your views on the policy positions and assumptions outlined for Model 1?

Tango Energy agrees with the position of the AER that all customers, regardless of whether they are embedded network customers, should be given equal customer protections under the NECF.

Tango Energy also agrees with the proposal to expand the NECF to allow for coverage of future energy products and services, however Tango Energy recommends that the AER takes further consideration on the structure of this proposed avenue. Currently these new products, such as virtual power plants (VPP), are only in their infancy in development and will likely change and mold the business model to adapt to any further changes that may occur. The NECF is a prescriptive framework that currently regulates a simple, mature product, i.e. the on-selling of electricity purchased from the wholesale electricity market. If the NECF is applied to these products, it would ensure that they do not sway too far away from their intended aim or purpose.

However, this may be at cross purposes with the goal of encouraging innovation, and there needs to be some leeway given for the innovation of these products in order to ensure that their growth is not stunted by overregulation. By restricting the scope of these products too early

there is a risk of these products not meeting the changing needs of energy consumers, but instead meeting what the NECF wishes to see them become. This also may restrict future products in which the intention and purpose are unknown, meaning that this restrictive approach would end up fixing an issue where the issue itself is unknown.

Further clarification is needed in relation to the proposed conditional authorization framework which would allow the AER to impose various conditions onto energy retailers. The AER has stated that by imposing ongoing conditions, such as capping the number of customers a retailer could have or additional compliance requirements, customers will be at less risk of detriment, however no further information has been provided to support this claim meaning it is difficult to assess its viability. Furthermore, by imposing conditions around capping retailer customers this weakens the ability to compete and has the potential to stall further innovation within the market through this inhibition of competition. In order to adequately assess this position, the AER will need to provide further clarification on these conditions and whether it has the potential to extend to new as well as current retailers in the market.

Question three: Do you have any comments on the AER's suggested principles for expanding the jurisdiction of the NECF as outlined in Model 1? Please provide details of any suggested additional or alternate principles.

Under the implementation of this model the AER have made note that a number of changes are needed to the National Energy Retail Law in order for the proposal to be successfully implemented, with one of these changes being to move some obligations from the NERL to the National Energy Retail Rules to allow for simpler amendment in the future. While allowing for changes in the relevant regulations to accommodate and cater for future energy products is crucial for the continued development of the NECF, further issues do arise where obligations are transferred from one legislative instrument to another for the purposes of simpler amendment processes.

Legislative governance arrangements and due processes exist to ensure that regulation is well thought through and considered before being implemented. Any watering down of these governance arrangements may appear to be seen as the AER attempting to implement excessive regulation onto energy providers through a 'backdoor process' as it is unclear of the scope of how many obligations would be transferred, hindering any ability of these new products to develop further. The AER will need to consult with retailers as to any obligations they intend to transfer to the NERR and involve retailers into the process to gather their insight and opinions.

Question five: What are your views on the policy positions and assumptions outlined for Model 2?

The AER has identified under model 2 that a future regulatory framework must be flexible and be minimally prescriptive, as prescriptive legislation is difficult to adjust for future changes. While we agree that prescription does bind energy providers to legislation and places specific

requirements with little to no flexibility, allowing for a completely flexible framework raises potential issues in itself and risks as to the clarity of the regulations themselves. The outcome of flexibility is that it gives energy providers the ability to develop and implement new energy products through a legislative framework that allows them to innovate free of a set prescriptive process. The issue is where there is less prescription there is less clarity, meaning where retailers are unsure of their own regulatory requirements they may need to seek further clarification in which it poses a risk of the AER needing to implement ad hoc legislation that both ends up being prescriptive in nature and lessens this intended flexibility. This results in a significant amount of investment risk, as there is no certainty about any additional regulations or changes (which, based on prior experience, often come into place at short notice and with little opportunity for consultation) to the model that are factored into the investment decision.

The AER should seek a balance between prescriptive and non-prescriptive legislation to ensure that the framework can cater for specific market changes, but is not susceptible to consistent knee jerk reactions and sudden changes to regulation when perceived uncertainty arises in the market.

Question seven: Are there any advantages or disadvantages to a principles-based energy framework that we have not explored here? Would a less prescriptive principles-based framework support innovation or would it create regulatory uncertainty and why?

Under the pros for model 2 the AER have identified that a positive for this proposed model is that a majority of the regulatory details would be made under regulatory guidelines as it is simpler for the AER to implement and change guidelines for retailers rather than through the rule change process of the NERL or NERR. We do not agree with the position of the AER that having regulatory guidelines in place as a means of adapting to changes in the energy market is a preferential method to altering the regulations through the relevant rule change process. Alternatively, giving the AER the ability to establish quasi legislation through guidelines that have no consultation process or energy provider insight creates a larger issue as the AER could seek to implement legislation whenever they see fit on a 'change as they go' basis. This approach, while well-intended has often led to confusion from all parties, high implementation costs arising from the added requirement to interpret regulation made "on-the-run", and often results subsequently in inadvertently poorer outcomes for consumers. Regulatory guidelines should be used as a means to clarify regulations where they may be ambiguity or inconsistencies to ensure energy providers understand the relevant regulations, rather than a means of the AER to circumvent rule change processes in order to implement new laws whenever it pleases them.

Question eight: What are your views on the policy positions and assumptions outlined for Model 3?

The AER has stated that the onus on assisting customers to navigate the new market lies with the service providers given they have chosen to participate in the market. While energy retailers play a part in clarifying to customers on how the energy market works, the onus should not

solely be on them to aid customers to navigate the new market, as retailers are not able to control the making of rules and guidelines that apply to the market and as competitive businesses, can only speak for their own businesses. In addition, over the years, consumers have been convinced by regulators and consumer advocates that trust in industry should be low, meaning that any information provided by retailers is often ignored; for example, information on how the wider market operates would be deemed to be in its own interests. This often results in regulatory bodies and Governments providing their own sets of information, and often results in an information overload to customers (with the retailer often taking the blame for providing mandated information that is perceived to be confusing).

We therefore consider that there should be a balance between retailer-initiated assistance and the regulator to ensure that customers are provided with clear and easy access to further information. Retailers can use any additional information or knowledge as a competitive advantage to win customers, rather than creating any mandated obligations to do so.

Question nine: How practical and effective do you think an outcomes-based framework would be?

Although model 3 puts forward a proposal to adjust the framework to fix the new market changes, the proposal is a drastic change and would be impractical as it is looking to base itself of a change which is unknown.

Further to this the AER has proposed for retailers to have a regulatory compliance plan that would demonstrate how they would achieve compliance, which would need to be approved by the AER. This proposal does not seem plausible under this model. A compliance plan will require retailers to set out the obligations they will be required to conform with as well as how they will achieve overall compliance, however the current regulatory reporting guideline published by the AER sufficiently captures the ability to assess whether a retailer is compliant with the regulations and allows retailers to self-report any instances of non-compliance.

Furthermore, if the models purpose is to be flexible and adaptive to the new markets changes then the compliance plan submitted by retailers would also need to change consistently to meet these new obligations. This raises even further issues that in order to successfully introduce compliance plans the AER will need to provide energy providers with a template of what should be included in the plans, which will result in a prescriptive requirement that removes any notion of flexibility and is inconsistent with the model itself.

Preferred model

Tango Energy concludes that model 1 would be the preferable model given that this is closest to what the current NECF framework is and, as future energy products are developed throughout the market, it will be the least problematic for these future innovations. Although we believe this to be the preferred model the AER will need to provide further information in to how the tiered authorisation structure will work in order to understand the full scope of how these changes will work.

Following this the AER could seek to introduce some of the aspects from model 2, such as the principles around customer protections, into the proposal for model 1 to further strengthen its approach. If the AER does indeed look at this as a potential avenue they will need to be cautious with regards to any proposal to transfer any regulatory rule change flexibility put forward in the model 2 proposal, including the increased use of regulatory guidelines, as this will cause model 1 to detract further from its overall purpose and intention. While we believe that model 3 puts forward some points that may have a positive effect on the NECF, this proposal is quite a drastic change from the current framework and a stronger understanding as to how this model will cater for new energy products before an informed decision as to its practicality can be made.

If you would like to discuss this submission in detail, please contact me at the details provided with the submission.

Yours sincerely,

Matthew Frost
Legal Counsel, Risk and Compliance
Tango Energy Pty Ltd