Consumer Data Right Division
Treasury
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Submitted via email to: data@treasury.gov.au

Treasury Consumer Data Right rules amendments (version 4) – Tango Energy response

Tango Energy thanks Treasury for the opportunity to comment on the Consumer Data Right rules amendments (version 4) exposure draft.

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 110,000 small and large customers as of August 2021. 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 expect to grow our presence in those jurisdictions.

Under the currently proposed rules, Tango Energy would be required to assume data holder obligations in October 2023. We are supportive of this staged implementation approach. Our submission states our views and observations on selected items mentioned in the Treasury exposure draft.

Large customers

We acknowledge that the policy intent is for the Consumer Data Right (CDR) to apply "economy-wide" and to be available to all customers. We ask Treasury to consider the following matters of detail.

Commercial and industrial (C&I) customers

As Treasury may be aware, C&I customers are sophisticated corporate businesses with a significant volume of contracted load. In contrast to the energy market for residential and small business customers, the C&I energy market has a relatively smaller number of buyers, considerably higher value and more bespoke contracts, and involves a competitive market of brokers who service these customers. C&I customers have large, complex loads sometimes split over multiple sites, depending on the nature of the customer's operations, and may have dedicated resources, such as an internal team or consultants, to engage in activities to understand their consumption, who may engage brokers to conduct tender activities for the provision of energy supply, large scale demand management, or energy efficiency services. We consider that the information asymmetry issue in this market that the CDR is trying to solve is not as relevant, nor do they fit neatly within the CDR framework.

Furthermore, larger organisations often have complex corporate procurement processes that do not lend themselves easily to the same processes for smaller customers that the CDR is tailored for, for example authentication, consent, and the provision of data through payloads and APIs designed by the Data Standards Body (DSB). For example, a C&I customer's representative negotiating a contract is likely to have to go through several corporate processes such as approvals, procurement policies, and legal review. Where such large customers are participating in demand response activities, they require real-time information from meters, for which they may have created bespoke metering arrangements to be able to participate in the market.

Including C&I customers within the CDR immediately is likely to double implementation costs; most retailers operate C&I billing out of separate systems. In addition, it appears that data standards may have to be amended to reflect the difference in processes. We therefore consider that it is not clear that there is a net benefit in extending the CDR to large customers; with existing energy broker arrangements in place, there is a risk of implementing a change at a large cost for a group of customers that do not need it, while replicating existing arrangements at significant cost to industry which eventually get passed on to end consumers. Notwithstanding this position, we understand from attendance at Treasury forums with stakeholders that there has been anecdotal evidence and concerns raised, and provide our views on the issues below.

Small businesses with high consumption

We strongly support the principle of small businesses being covered under the CDR. However, at the implementation level there is a need to define and understand what is meant by a small business both in the context of the CDR, and the application of CDR to energy. We understand from consultation that concerns have been raised about small, "mum-and-dad businesses" with a high level of consumption that may be caught by "border" situations. As these views or supporting evidence was not published, we are not able to comment on specific scenarios.

As Treasury would be aware, the National Energy Customer Framework (NECF) and Victorian legislation define consumption thresholds for small businesses and large C&I customers and provide additional protections to the former in the respective rules and codes. Furthermore, the consumption thresholds also determine the type of metering arrangement a customer has. In other Commonwealth Government agencies there are several thresholds that are used to determine the level of sophistication in a business, and hence the level of obligations or protections needed. For example, The Australian Tax Office[1] and the Office of the Australian Information Commissioner[2] use turnover, while industrial relations authorities such as WorkSafe[3] or Fair Work Ombudsman[4] set thresholds according to numbers of staff. The Small Business Ombudsman uses both financial and staffing thresholds[5].

[1] https://www.ato.gov.au/business/small-business-entity-concessions/eligibility/
[2] https://www.oaic.gov.au/privacy/privacy-for-organisations/small-business/#:~:text=A%20small%20business%20is%20one,or%20proceeds%20of%20capital%20sales.
[3] https://www.safeworkaustralia.gov.au/small-business
[4] https://www.fairwork.gov.au/find-help-for/small-business
[5] https://www.afca.org.au/news/media-releases/afca-announces-dedicated-small-business-ombudsman

The thresholds are directly relevant to what each entity regulates, and the onus is on the directors of the businesses being regulated, regardless of size, to manage their regulatory and compliance obligations and to determine if they apply to the business. Where situations arise where a business is a small business for the purposes of one regulation but not another, the business determines the regulations they must comply with. Similarly, we consider that in the case where the sophistication and size of the business is unclear and cannot be established, the energy consumption threshold remains the criterion most practical and consistent with policy, and suggest that a consumption threshold of 160 MW per annum (p.a.), consistent with that of the NECF framework (with the exception of South Australia), and AEMO's Metrology Procedure[6], is used to differentiate between small businesses and C&I customers.

Concerns about timeliness

We understand concerns have been anecdotally raised about timeliness of brokers receiving data. While Tango Energy is not aware of any specific complaint, we believe that rather than incurring the costs of building an entire CDR ecosystem to solve a single issue, this could be addressed by the AEMC rule-making test to balance concerns about timeliness, and the need to protect the privacy and security of customer data through authentication and authorisation processes.

Proposal

Given the different characteristics of the C&I market, and the risk of duplicating existing processes at significant cost for limited market benefits, we suggest the following:

- use of an energy consumption threshold of 160MW p.a. to differentiate between large C&I customers and small business customers consistent with the NECF and AEMO's Metrology Procedure, and

- for large C&I customers (as defined above) to be excluded from the CDR, at least in the initial implementation, until the net cost benefit to this specific market is fully understood through specific, open and transparent consultation focusing on this customer market.

We note that any solutions will have to deal with "multi-site" customers where it is beneficial for a large C&I customer with many sites (for example, a large retail chain with many stores) to aggregate their consumption, and also note that there are useful precedents in the NECF and Victorian energy customer frameworks for dealing with these issues. We also note that our proposals above will be consistent with the "product data" arrangements proposed by Treasury where the Government comparator sites provide information on product data for small business customers only.

[6] https://aemo.com.au/-/media/files/electricity/nem/retail_and_metering/load_tables/metrology-procedure-part-a-v605.pdf?la=en

AEMO data - shared responsibility for data and Primary/Secondary data holder framework

Technical complexity

The effect of the Primary and Secondary data holder proposals and the 'shared responsibility' framework will require retailers to, as the Primary data holder, request data from the Secondary data holder, AEMO, for "AEMO data" as defined in the exposure draft. Upon receipt of a CDR request, a retailer will request from AEMO datasets it already holds and obtains in the normal course of its activities, namely NMI standing data and metering data. These are high volume datasets, exacerbated by the introduction of five-minute settlement data[7], and will increase the capacity required to handle the volume of transactions.

This is technically complex and creates what appear to be unnecessary redundancies in the flow of information, which will not only add costs but risks of inconsistencies in the data used by the customer to make a switching decision, and the data used operationally to bill a customer. It is not clear if the benefits will outweigh the costs of any policy justification for such an arrangement, and we seek to understand the intent of the proposed arrangement.

In addition, while we understand that where AEMO refuses a data request, there will be a reason code provided, and that no obligations will apply to the retailer as the Primary data holder, in practice, the complaint is often directed at the retailer, and the retailer bears the costs of both handling an internal complaint, and any Ombudsman costs regardless of whether the complaint is justified. Consistent with how the CDR is supposed to operate, the end customer does not have visibility, or need to have visibility, of the back-end processes between participants. While we support the "no-wrong-door" policy as a positive consumer outcome, we note that retailers generally bear the cost of any complaints as described above, yet do not have control over whether the administration of any escalated complaints behind the scenes by the multiple agencies or parties involved is appropriate or administered correctly.

While AEMO, in its role as Secondary data holder, and as a quasi-governmental body, does not normally have the same level of accountability for complaints, and is unable to take on the same risks of and penalties for not complying with legislative obligations as a private sector participant. However, we note that accredited data recipients (ADR) are private sector participants, and request clarity on how ADR participants will be adequately regulated where there are complaints about the conduct of ADR participants. Overall, we are concerned that this will result in a framework where retailers are required to bear risks that they cannot control, and the cost for these outcomes. We are also concerned that the same level of scrutiny in the complaints framework does not appear to be applied to private sector ADR participants or the Secondary data holder AEMO. We consider that the proposals need to be refined in respect of these considerations, and propose the following:

- Transparency and scrutiny obligations be applied to the administration of the no-wrong-door policy, potentially through an auditing or performance reporting process, and

[7] https://aemo.com.au/en/initiatives/major-programs/nem-five-minute-settlement-program-and-global-settlement

- ADRs and AEMO be subject to the jurisdiction of the “no-wrong-door” policy and complaints framework.

Thank you again for the opportunity to comment. If you wish to discuss this submission, please contact me at the contact details provided with this submission.

Yours sincerely
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