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23 May 2016

Ms Jenessa Rabone
Australian Energy Market Commission
PO Box A2249
Sydney South NSW 1235

Submitted electronically

Dear Ms Rabone,

Re: Draft Determination: Updating the electricity B2B framework (ERC0197)

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Australian Energy Market Commission (the Commission) on the Updating the Electricity B2B Framework Draft Rule Determination (Draft Determination).

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 electricity in South Australia and Queensland to approximately 1 million customers.

The Commission have proposed a more preferable rule in the Draft Determination. Red and Lumo welcome certain aspects of the more preferable draft rule, such as the ability for any party to raise a change to the B2B Procedures, the limitation on AEMO's veto powers and the requirement for all parties to comply with the B2B Procedures.

However, there are some aspects of the more preferable draft rule that we strongly oppose. In particular, the revised membership of the Information Exchange Committee (the IEC) and the decision not to introduce more stringent nomination and voting restrictions as proposed in our rule change request.

Red and Lumo consider that the more preferable draft rule in the Draft Determination only in part meets, or is likely to contribute to the achievement of the National Electricity Objective (NEO). With further amendments to the draft rule, the benefits can be maximised, efficiency gains made, and an opportunity to provide a B2B framework that is in the long term interests of consumers is achievable.

Please find attached Red and Lumo's recommendations on each of the key areas contained within the Draft Determination. Should you have any further enquiries regarding this submission, please call Stefanie Macri, Regulatory Manager on 03 9976 5604.

Yours sincerely

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
Lumo Energy Australia Pty Ltd

Red Energy and Lumo Energy’s positions on the Draft Determination

IEC Membership

Red and Lumo welcome the Commission’s decision to retain industry governance over the B2B Procedures; however, we believe that the governance structure in the Draft Determination is unworkable and unacceptable.

The Commission have proposed an impractical governance arrangement, with all participants of any industry category being represented by just one member. This is intended to be the bare minimum representatives, with the IEC required to have at least two, but not more than four, discretionary representatives as appointed by AEMO to be functional.

Red and Lumo agree with the Commission that there needs to be flexibility in the governance arrangements within the bounds of the Rules to cater for new parties that are not currently within the market but may choose to provide services to customers via the B2B e-Hub. This flexibility is catered for both in the proposed framework and Red and Lumo’s suggested structure, with all new business models to be classed as a ‘third party B2B participant’, unless an additional role is created in the market. Should any additional roles be created in the market that will use the B2B e-Hub, we recommend that the B2B governance arrangement be revisited at that time.

We strongly believe that given the current array of business models and jurisdictions represented within each class of participant, it is near impossible that one representative will accurately and effectively represent their class of participant.

It is for these key reasons that Red and Lumo proposes the following change to the Commission’s draft rule below.

Commission’s alternative structure	Red and Lumo’s suggested structure
AEMO member (chairperson)	AEMO member (chairperson)
1 retailer member	2 retailer members
1 DNSP member	2 DNSP members
1 metering member	2 metering members
Up to 1 third party B2B participant	Up to 2 third party B2B participants
1 consumer member	1 consumer member
2 - 4 discretionary members	Up to 2 discretionary members
Total: Up to 10 members	Total: Up to 12 members

Red and Lumo’s revised proposal extends the membership of each industry class to two members. We consider that this allows for a more accurate representation of existing participants, but also allows any new and emerging participants the same voting rights as other participant classes. The justification for our recommendation is outlined below.

- AEMO Chairperson

Red and Lumo agree with the Commission's assessment in their Draft Determination, and consider that it is appropriate for AEMO to chair the meeting. We agree that this allows for a stronger link between the IEC and the AEMO Board which in the past may have been tenuous.

- Distribution Network Services Provider (DNSP) Members

We understand that it was the intent of the Commission that from the commencement of the new governance arrangements, there would be two DNSP members; however one of these would be a discretionary member. It is appropriate that there are two DNSP members on the IEC; however both must be permanent members.

Red and Lumo believe it is appropriate that there are two DNSP members, from different jurisdictions, representing their class of participant. As the B2B Procedures will cover all existing physical transactions, such as the removal of fuses and connections to the network, DNSPs will maintain an ongoing B2B role irrespective of new and emerging services and technologies.

We recommend that the final rules include provisions requiring the two DNSP members participating in the IEC to be from different jurisdictions, to ensure consumers across the NEM are provided the most efficient and cost-effective solutions to the delivery of physical and infrastructure services. This should provide the impetus for DNSPs to manage their costs and drive efficient solutions, so as to minimise their cost impost, as they are likely to contribute to through participant fees.

- Retailer Members

Red and Lumo strongly oppose the Commission's decision to have only one retailer member on the IEC. Similar to the DNSP member, we understand that the Commission considers that more than one retailer will be elected to the IEC; however it will be a discretionary decision, not a permanent position for a retailer.

The Draft Determination notes that the Commission considered the possibility of specifying a sub-class of participant to better reflect the mix of retailers that there are in the market, such as one local retailer and one non-local retailer. Red and Lumo agree that there needs to be a mix of retail representation on the IEC, however it may not be appropriate that it is one large and one small retailer into the future. As such, we propose that there are two retailer members that are not bound by any sub-categorisation in the Rules. This will provide for the different types of retailer (large and small, or those with a metering business and those without, or existing players and new entrants) to be proposed and managed through the nomination and voting processes.

Commission staff expressed views at the forum on 29 April that the intent was for the discretionary position to encompass the variation in classes. However, it suggests that retailers are unwilling or unable to manage the representation themselves. By appointing two members, Red and Lumo consider that retailers will elect participants from whichever business models or business type that will best represent their views, irrespective of the organisation they are from.

- Metering Members

Consistent with the rationale for having two retailer and two DNSP members, we consider it appropriate that there are two permanent metering members. This will cater for the different business models, and potentially also allow one Metering Coordinator and one Metering Data Provider or Meter Provider, to be appointed covering the different roles in the market.

- Third Party B2B Participant Members

As the third party B2B participants will be parties that are not retailers, DNSPs, metering coordinators, metering data providers or metering providers, this group is expected to cover embedded network managers and other new entrant parties that provide services to consumers through B2B. We understand that the use of the discretionary members proposed by the Commission is to cover off any other parties that are not already represented by the single third party B2B participant member, however given the varying business models that may fall under this class of participant it is prudent to provide up to two permanent positions. Red and Lumo consider that additional roles could be incorporated with the use of additional discretionary members in the future, should there be a need to cover business models that are not currently envisaged. This provides the IEC with the appropriate amount of future-proofing and flexibility, whilst ensuring that all parties have adequate representation on the IEC.

- Consumer Member

Red and Lumo are comfortable with the Commission's draft position in relation to appointing a consumer member to the IEC. However, we propose that the drafting of the appointment is consistent with that of a third party B2B participant, to cater for an outcome where there are no consumer representatives that wish to be a part of the IEC.

- Discretionary Members

Red and Lumo have proposed two additional discretionary members, on the basis that the IEC should not be too large. However, we are not opposed to the Commission retaining a range of between two and four discretionary members to provide the scope for additional parties to be added at a later date without the need for a rule change.

We agree that discretionary members provide the IEC with flexibility, whilst ensuring that all parties have adequate representation on the IEC. It is not appropriate that AEMO appoint the discretionary members directly, as proposed by the Commission. Nor is it appropriate that discretionary members are appointed without the ability for the parties in that class of participant being able to vote on their representative. We urge the Commission to revisit their draft decision.

We consider that the Commission providing flexibility and future-proofing in the B2B governance framework only adds value where the IEC has the benefit of appointing these parties either upon recommendation from AEMO or directly by a class of participant. The process for defining how the discretionary members will

be nominated and elected will be subject to the IEC Election Manual, as such we consider that the Commission add a test to that decision consistent with an IEC Recommendation whereby the B2B factors, B2B principles, and the NEO need to be met. This will ensure that all IEC members are not acting in self-interest and are focused on the best outcome for industry. We implore the Commission to ensure that the IEC has this discretion, to ensure the future viability of this framework.

Further, we consider that any discretionary member be representative (and therefore elected) by the participants they will represent, rather than AEMO. This is critical to adequate representation, as AEMO selecting the discretionary members is not appropriate. This too can be addressed in the final rules by ensuring that the IEC Election Procedures and IEC Operating Manual include a provision for addressing the appointment of discretionary members.

Election and Appointment of IEC Members

Red and Lumo are generally supportive of the election and appointment process as set out in the draft rules, except for the AEMO appointment of discretionary members and the ability for there to be multiple members from one parent organisation.

For the reasons set out above, Red and Lumo consider that AEMO should have the ability to recommend a nominee of a discretionary member, however that nominee should be voted in by the participants in their member class. This will ensure that the nominee is the most appropriate representative for that particular category of participant. As such, we have recommended some drafting changes below.

Our rule change request recommended that there be restrictions placed on related bodies' corporate obtaining more than one member seat on the IEC. Red and Lumo continue to have serious concerns that should one entity obtain more than one member position on the IEC they will be able to use it to their advantage (to the detriment of other participants). We understand that IEC members are elected to represent their class of participant, and are not to use their membership for their (personal or corporate) benefit, however, being able to monitor compliance with this rule is near impossible.

We agree that for each voter category, irrespective of how many participant IDs (or ABNs) a party has, they should only have one vote for each entity. For example, Red and Lumo under the current IEC have 5 votes and under the draft rules would only have one vote. We consider it inequitable that under the draft rules an entity could have more than one member seat. For example, under the draft rules, AGL Energy could nominate and potentially be elected as a retailer member (AGL Retail), a metering member (Active Stream), and a third party B2B Participant (assuming AGL Solar had an agreement with a metering coordinator for services and proposed to receive these services through the B2B e-Hub).

The Draft Determination suggests that each member from a related body corporate is elected by the eligible voters in each voter category. Whilst this may be the case, in order to provide ability for participants to understand the ramifications of their vote the Commission may consider whether there are open and transparent voting processes included in the IEC Election Procedures.

Should the Commission retain their position on multiple members from related bodies corporate, Red and Lumo specifically request the Commission to provide clear justification how allowing this into the final rules meets the NEO.

IEC Meetings

Red and Lumo support the positions put forward by the Commission in their Draft Determination in relation to quorums, voting on IEC decisions, changing the IEC Election Procedures and IEC Operating Manual. However, we recommend the Commission revisit the drafting to incorporate the additional participants in line with the Red and Lumo revised proposal above.

Content of B2B Procedures

Red and Lumo are comfortable with draft rule 7.17.3 and the scope of the content of the B2B Procedures. We consider it provides the flexibility of allowing future services into the B2B Procedures, whilst maintaining an adequate minimum to be incorporated. We have proposed some amendments to the drafting below to ensure clarity in the framework.

Process for making an IEC recommendation

The Commission has not significantly altered the process for making an IEC recommendation, nor considered Red and Lumo's suggestion of streamlining the drafting of the Rules in line with the AEMO process. The Draft Determination notes that there is no issue with the existing process that requires amendment. Red and Lumo consider that this rule change is the opportunity for the Commission to streamline regulatory requirements and ensure efficiency in the operation of the governance arrangements. As such, we request that the Commission reconsider their position to streamline the IEC process for making a recommendation to make it as consistent as possible with the AEMO process (with the exception of the decision making). We consider that this will reduce confusion regarding the variances to the processes for making a B2B Procedure change in comparison to any other procedure made under Chapter 7 of the Rules.

B2B Factors and B2B Principles

We support the inclusion of the NEO as a consideration for the IEC.

AEMO's role in making B2B Procedures

Red and Lumo would like to note that our rule change request contained a drafting error, and we did not intend to extend AEMO's veto powers but for AEMO to provide advice on any inconsistencies between the AEMO retail market procedures and the B2B Procedures. This remains our position.

We consider that rule 7.17.4(i)(2)(i) should be extended to allow AEMO to provide advice on whether or not there are conflicts with the AEMO governed retail market procedures made under Chapter 7 of the Rules. This will provide the IEC with the comfort that they are not creating uncertainty or adding further ambiguity in an already complex regulatory environment.

The Commission's more preferable rule proposes to limit the AEMO veto power to only on the basis of a conflict with the Market Settlement and Transfer Solution

(MSATS) Procedures. We support this amendment, as well articulated by the Commission, as the MSATS Procedures are required to support the settlement of the wholesale and retail markets, and to enable competition between retailers. As such, it is appropriate that AEMO has a limited veto power relating to a B2B Procedure that can conflict with these important market operation functions.

Dispute Resolution

There are two proposed changes to the dispute resolution processes in the Commission's draft rule. Firstly, the B2B parties and B2B change parties will be able to apply for a review of an IEC decision. Secondly, it expands the application process to cover off both an IEC decision to proceed and not to proceed.

Red and Lumo query the benefit of amending the framework to allow a non-B2B party to dispute a decision made by the IEC, as it is very unlikely to be used. Whilst we are not opposed to the amendment, we doubt whether its inclusion adds any value given the potential regulatory burden that it creates should a non-B2B party raise a request and potentially object to a decision, without the burden of financial implications of participating in the B2B.

However, we support the Commission's determination that a B2B party can apply for a review of a decision of the IEC, irrespective of whether it is one to proceed or not proceed. We consider that this will provide further rigor to the decision making process and provide recourse should a substandard decision be made.

B2B e-Hub

Red and Lumo are comfortable with the drafting of the B2B e-Hub (draft rule 7.17.1). As noted in our rule change request, AEMO can (and must) commence their consultation with industry on the upgrade or changing of technology used for the B2B e-Hub immediately.

As industry broadly will constitute the IEC, in whatever model determined by the Commission in its final decision, AEMO should continue their consultation with a view to making a decision on what changes to the B2B e-Hub are required. This decision must not be dependent on the IEC, as the IEC will be a representative group of industry. Therefore, AEMO can progress this, and obtain cost recovery for the B2B e-Hub independent from this rule change.

Red and Lumo strongly urge the Commission to ensure that AEMO progress this work independently from the rule change process.

Complying with the B2B Procedures and using the B2B e-Hub

We support the Commission's position as described in the Draft Determination.

Accreditation

We support the Commission's position as described in the Draft Determination.

Cost Recovery

Red and Lumo support the Commission's position as described in the Draft Determination. In particular, we strongly support the Commission's determination that

a user pays approach is unlikely to be feasible for the B2B framework. We have also suggested drafting clarification below.

Implementation

The Draft Determination proposes a commencement date of 1 December 2017. Red and Lumo strongly support the Commission's determination on this matter. We consider that the B2B Procedures and B2B e-Hub must be ready to support the competition in metering and other rule changes that will occur from this date.

The Commission have described a series of amendments to Chapter 7 and 8 in order to support the 1 December 2017 commencement. In general, we are supportive of these recommendations, with the following clarifications:

- As the current IEC will cease to exist, no new B2B Procedures can be made between the final rule and 1 December 2017. Red and Lumo would like the Commission to clarify whether there is opportunity for jurisdictions to place obligations into the current B2B Procedures.
- Will the new IEC be able to make multiple determinations that commence on 1 December 2017? Or will this be once off? We consider that it may be necessary that multiple consultations are required, as the first set of B2B Procedures may contain some errors (which are often uncovered during an IT build and testing) that will require a further consultation for the ultimate set of B2B Procedures to commence on 1 December 2017.
- In relation to excluding the dispute mechanism between the final rule and 1 December 2017, does the Commission intend that an AEMO decision on the IEC Election Procedures and IEC Operating Manual be included or excluded from dispute provisions?
- Whilst we agree that the new IEC should not be required to respond to additional B2B Procedure change requests for the 1 December 2017 B2B Procedures, there has been no defined scope for the 1 December 2017 B2B Procedures. On that basis, we do not consider that the inclusion of such an obligation into the final rules will add further complexity, not clarity.
- We strongly support the Commission's position that there should not be two IEC's operating in parallel.

Transitional Requirements

We provide the following comments in relation to the Commission's proposed transitional requirements:

- By 1 August 2016, AEMO must develop and publish new IEC Election Procedures and IEC Operating Manual consistent with the draft rule.

Red and Lumo support AEMO developing the IEC Election Procedures and IEC Operating Manual, however, these documents should be consistent with the final rules.

Additionally, in order for the new IEC to focus on delivering the new B2B Procedures, we strongly recommend that these documents are put to a vote of all existing participants (we understand that there will not be any metering coordinators or embedded network managers able to vote). This will ensure that the new IEC is considered to have a mandate from the parties which they are elected by, and that industry remains focused on delivering the new B2B Procedures instead of the governance of the IEC and whether or not it is consistent with the drafting of the IEC Operating Manual.

Red and Lumo understand that this poses a risk to industry should the documents require further amendment. However, this risk should be minimal if AEMO consult widely and appropriately on the development of these documents, such that industry will provide their support.

- By 1 September 2016, AEMO must establish the new IEC.

We consider that this transitional provision should be drafted such that the new IEC must be established within 5 weeks of the IEC Election Procedures being published. This will allow time for nominations, voting and establishment of the new members. This will also place additional burden on industry and AEMO to agree the terms of reference on the IEC Election Procedures and IEC Operating Manual, to be clear and reflective of the requirements of the new IEC.

- By 1 May 2017, the new IEC must make an IEC recommendation to change the B2B Procedures to be consistent with the draft rules.

Red and Lumo recommend that the Commission provide the IEC with an ability to expedite the timing in the rules consultation procedure in order to bring the date forward. We would be comfortable with two rounds of consultation with a shorter timeframe for consultation, rather than commencing with a draft determination.

Ideally, a decision will be made by the new IEC by December 2016 for a 1 December 2017 date; however, we understand that the timing in the rules consultation procedure takes approximately 4 months to complete. Therefore, in order to achieve a 1 December 2016 publication, there must be an agreed scope of the B2B Procedures, understanding of the new B2B e-Hub and the structure of the B2B Communications, as well as the establishment of the new governance arrangements before August. It is for these reasons we support a shortened consultation process and the ability for a second (or third) consultation to correct or amend any matters for 1 December 2017.

- By 1 June 2017, AEMO must publish the new B2B Procedures.

We recommend that AEMO have a timing obligation that is directly equivalent to the IEC's. As such, we recommend that the Commission in the final rule provide AEMO 1 month from the date that the IEC make an IEC recommendation, that AEMO must publish the new B2B Procedures. Whilst in practice an AEMO decision within a month is likely to be the outcome, should the timing miss an AEMO Board meeting, it would be prudent not to have industry wait for a final decision on the basis that it is allowed in the rules.

- On 1 December 2017, the new B2B Procedures commence and the redeveloped B2B e-Hub will be operational.

Red and Lumo strongly recommend that the IEC is provided with the option of completing more than one consultation for the B2B Procedures to commence on 1 December 2017.

Additionally, we recommend that the Commission allow for the revised B2B e-Hub to be operational on or before 1 December 2017 to allow for an orderly commencement of the IT systems. This may include allowing parties to confirm their accreditation and certification requirements on the new B2B e-Hub and completion of any bulk changes that need to be managed in the lead up to 1 December 2017.

Drafting Matters

The following are a list of comments on the drafting, with reference to clause numbers as they appear in the draft rule.

- Rule 7.17.1(e) and 7.17.1(f) and Rule 7.2A.2(a) and 7.2A.2(b)
These two rules contain the same obligations. We recommend that obligations are rationalised, so they only appear once.
- Rule 7.17.3(a)(2)
We consider that this rule should be redrafted to add more clarity on whether other B2B Communications can be additional to matters contemplated by the Rules or whether they are only in accordance with the Rules.
- Rule 7.17.11(d)
Recommend changing this clause to read as follows:

(d) *AEMO* must ensure than ~~an appointee~~ a nominee for a *Discretionary Member* or an appointee for the Consumer Member: ...
- Rule 7.17.13(b)
We recommend adding clarity to this subclause as to whether the AEMO Chairperson is considered a 'Member' in terms of the IEC costs being borne by AEMO.
- We recommend that the terminology used in all transitional provisions is not "by" a date, but "on or before" to stress that it could take place before the date specified (with the exception of the B2B Procedures, which would commence on 1 December 2017).