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22 December 2016

Mr John Pierce
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth St
Sydney NSW 2000

Submitted electronically

Dear Mr Pierce,

Re: Improving the accuracy of customer transfers (ERC0195)

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Australian Energy Market Commission (the Commission) on the Improving the Accuracy of Customer Transfers Draft Determination (the draft determination).

Red and Lumo do not support the draft rule developed by the Commission to improve the accuracy of customer transfers. We support the underlying principle that retailers should take responsibility for erroneous transfers occurring largely outside the control of impacted customers. However we strongly consider elements of the rule developed will not achieve the objectives the Commission intends, resulting in significant costs for limited benefit.

Red and Lumo constantly strive to improve the experience of our customers. We are continuing to refine robust processes to ensure that the right site is transferred, and should errors occur for the matter to be rectified at the least inconvenience to those affected. We are incentivised to act efficiently and effectively to resolve issues. Retailers who perform poorly will not only lose customers, but as noted in the draft determination will ultimately receive high numbers of costly ombudsman complaints. The significant nationwide decreases in transfer related ombudsmen matters[1] prove that these process improvements are irrefutably translating into better experiences for customers without the need for regulatory intervention. We are concerned that the draft rule does not take into account how transfers are undertaken in the market, and disregards the fact that, in practice, sites rather than customers are transferred. We believe this misinterpretation will lead to poor customer outcomes, eroding the refinements retailers have undertaken in recent years to improve them.

The proposed 'more preferable' rule

Red and Lumo note that the Commission's draft determination is to make a more preferable rule than the initial proposal by the COAG Energy Council. This more preferable rule expands the scope from transfers in error, to include also transfers without explicit informed consent (EIC). We agree that the expanded scope of rule 57A is necessary to reflect the practical application of the National Energy Retail Rules.

[1] The Energy and Water Ombudsmen of NSW, SA, and QLD reported decreases in transfers related complaints from 2014/15 to 2015/16 of 32%, 22%, and 46% respectively.
http://www.ewon.com.au/content/Document/Annual%20Reports/EWON-annual-report-web-2015-2016.pdf pg 30
http://www.ewosa.com.au/images/ewosa/PDFs/EWOSA_AnnualReport_2015-2016.pdf pg 22
http://www.ewoq.com.au/userfiles/files/Energy%20and%20Water%20Ombudsman%20Queensland%20Annual%20Report%202015-2016%20WEB.pdf pg 21

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However, we are concerned that draft rule 116 may not resolve the issues discussed in the rule change request. The practical application of draft rule 116 will result in all types of transfer consent being checked, not just those transfers that may have been erroneous. As explained below, accurate EIC will be unable to be ascertained for transfers that are erroneous, with the rule only having application in scenarios where the correct customer was transferred, albeit with defective consent.

Retailer obligations in relation to correction of transfers without consent

Red and Lumo do not consider the draft rule proposed in 57A is sufficiently robust to deal with the practicalities of erroneous transfers. As stated above, we strongly support a view that retailers should effectively and efficiently resolve customer issues regarding transfers without consent, however do not believe the draft rule is the best mechanism to achieve this.

We understand the intention of draft rule 57A is to require:

- any retailer who receives advice from the small customer that they have been transferred in error to notify the previous and the new retailer of the potentially erroneous transfer within three business days
- the new retailer must then within ten business days confirm whether EIC has been recorded for the small customer
- if EIC is recorded, the new retailer contacts the previous retailer and the customer advising that EIC has been obtained
- if no EIC is recorded, and it has been less than 12 months since the transfer occurred, the new retailer contacts the previous retailer and advises them to initiate a transfer as of the earliest date allowed in the market systems
- the customer is then notified by the previous retailer once the transfer back to the previous retailer is complete.

We consider this process would be plausible in some simple scenarios, however would not achieve the desired result in any scenario that is more complex.

The cause of our concern arises from the draft rule's expectation that 'customers' are erroneously transferred, rather than 'sites'. Whilst we understand the NERL refers to the EIC of customers, we consider that the draft rule does not align with operational processes. In practice, there is a disconnect between the market systems and the NERL. Sites are transferred based on the National Meter Identifier (NMI) which is related to a site and not a customer. As a retailer, if we are notified that there may be an incorrect customer related to a transferred site, an investigation must be undertaken not only to allow us to resolve the customer's issue, but importantly to rectify any data errors that caused an erroneous transfer.

This issue is highlighted by the following simple scenario: *Customer A and Customer B live together at 1 John St. If Customer A contacts Red Energy (as their previous retailer) and advises that Lumo Energy has incorrectly transferred their site, the draft rule would require Lumo to ascertain if EIC has been obtained for Customer A. Lumo in fact obtained and recorded valid EIC for Customer B.* Under draft rule 57A(3) Lumo would be required to notify Red that the transfer is a void transfer, and Red must submit a retrospective transfer for the loss date.

Essentially the draft rule requires retailers to assume the customer is correct in their assertion that they have been transferred without EIC. The draft rule does not allow

Red to take action to determine the correct occupant of the site unless an investigation can be completed within 10 business days. It is important to note that the Privacy Act prohibits retailers sharing the personal details of any customer related to a site.

Draft rule 57A(1)

We note draft rule 57A(1) requires *any* retailer contacted by a small customer and advised they have been transferred without EIC to contact the new retailer and request they comply with subrule (3). We question this requirement, in particular given the inability of an unrelated retailer to determine in the market systems who the new retailer is.

The draft rule, in practice, mandates an unrelated retailer to send out a blanket request to all other retailers in the market requesting they check their systems for a small customer's details so as they can comply with subrule (3). We do not consider this outcome to be efficient, and will undoubtedly lead to poor customer outcomes. We strongly suggest any rule made is strictly limited to the customer contacting either the new or previous retailer.

Necessary amendments to the draft rule

Red and Lumo consider a number of amendments are necessary to draft rule 57A to make it actionable in practice. Broadly, the key elements of the rule should be:

1. to place obligations on only the new retailer and the previous retailer, irrespective of which party the customer contacts
2. to require the contacted retailer to obtain sufficient site information from the customer to provide the other retailer confidence the request is accurate
3. to require the new retailer to determine if it has a valid EIC record for the site in question
4. based on the outcome of element 3, to require the new retailer to determine it did in fact transfer the site erroneously
5. if it is determined that the actual site was not transferred based on valid EIC, to notify the previous retailer that the transfer was void
6. to require the previous retailer to raise a retrospective transfer for the loss date and return the customer to their previous contract terms

We consider the currently drafted rule to not effectively resolve the issues raised in the rule change request, and in fact could lead to further negative outcomes for customers. Our suggested amendments retain the critical elements of the rule change, however allow flexibility, understanding that these issues are not always as straightforward in practice.

Our letter to the Commission on this rule change dated 26 August 2016[2] noted that despite the shortcomings of the current processes to update an address in the market systems, the requirements ensure the information the customer is advising is correct and is critical to maintaining the integrity of the MSATS. This principle holds true when erroneous transfers are discussed. While it may seem in the customer's best interests to assume they are correct with regard to their site, we consider it is incumbent on retailers to validate these assertions to protect consumers in the long term.

[2] Letter from Red Energy and Lumo Energy to the Commission dated 26 August 2016, as quoted page 41 of the Draft Determination

We are very concerned the draft rule does not allow retailers to determine the validity of a customer request, and may result in perpetuating an incorrect transfer. This is especially likely in an ongoing crossed meter scenario, as the draft rule gives the retailer no ability to determine whether there is an issue at the site or not, nor ultimately rectify this issue.

Draft rule 116(j)

Red and Lumo strongly oppose the inclusion in the draft determination of draft rule 116(j), introducing an additional limitation on disconnection. The reasoning behind draft rule 116(j) is unclear, however maintaining supply until the retrospective transfer to the original retailer is completed is noted[3]. If we assume that this is the intent of the Commission in making the Rule, then we do not consider the rule made meets this intent.

Rule 116(j) is extremely broad in scope. It effectively requires that a retailer undertakes a check for valid EIC before any disconnection occurs, not just one that may be impacted by an erroneous transfer. Red and Lumo contend that there are two different categories of erroneous transfers that would be impacted by the Rule. These two categories are:

1. Site is erroneously transferred resulting from an inaccurate transfer request
2. Site is transferred based on defective EIC of a particular customer

As noted above, retailers do not incorrectly transfer sites intentionally. Therefore, for a category 1 erroneous transfer to occur, the retailer will have intended to transfer an alternate customer. This means that the retailer will in fact have a 'valid' consent record for the incorrect customer, and the site will still be disconnected following a check for compliance with rule 116. Moreover, the 'defective' EIC record can only be determined *after* the compliance breach occurs.

Red and Lumo consider that a category 1 erroneous transfer was the type of error the Proponents intended to rectify in their rule change request.

On the other hand, draft rule 116(j) could increase protection for category 2 erroneously transferred customers. For example, a customer transferred following misleading or deceptive conduct by the retailer may fall into this category. It is plausible that the EIC check in draft rule 116(j) would allow the retailer to determine a previous breach of section 53 of the NERL or the Australian Consumer Law. While this could be of value, we do not consider that this scenario was what the Proponents intended to rectify with their rule change request.

Costs of compliance with draft rule 116(j)

Given the relatively limited benefit of draft rule 116(j) in the context of erroneous transfers, we are very concerned about the costs of compliance. We do not believe the numbers of customers determined to have transferred with defective EIC will be significant enough to warrant mandating a retailer run a process to comply with the rule.

Understanding the issues highlighted by a category 1 erroneous transfer discussed above, we are also particularly concerned with the development of a rule that a retailer is unable to build processes to comply with. That is, retailers will not know whether they are non-compliant until they are non-compliant.

[3] Page 26 of the Draft Determination

The energy regulatory regime relies primarily on self-reporting, and rules made must have sufficient certainty to allow compliance. We determine compliance breaches based on failed internal procedures, or a customer alerting us to an issue that we extrapolate and determine broader impact. We are unable to undertake either of these processes to comply with draft rule 116(j). This is of particular concern as rule 116 is a civil penalty provision.

A better alternative to draft rule 116(j)
Red and Lumo believe that for the Commission to achieve the objective assumed in the Draft Determination, any restriction on disconnection should be limited to circumstances in which the retailer has been notified by a small customer of a possible erroneous transfer. A rule framed in this manner would result in minimal costs to retailers, and provide significant benefit to customers who have been erroneously transferred in either a category 1 or category 2 manner. These customers would be protected from disconnection until the error is resolved and they are returned to their preferred retailer.

No rule made on address standards
Red and Lumo strongly support the Commissions draft determination not to make a rule on an address standard. We agree that the proposed rule would be very costly and complex to implement in the short term, and given the importance of accuracy and integrity of data in the market systems, may put consumers at risk in the long term.

About Red and Lumo
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.

Red and Lumo thank the Commission for the opportunity to respond to this draft determination. Should you have any further enquiries regarding this submission, please call Ben Barnes, Regulatory Manager on 03 9425 0530.

Yours sincerely

Ramy Soussou
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