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26 August 2022

Energy Security Board  
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Submitted electronically: [info@esb.org.au](mailto:info@esb.org.au)

## **Re: Consultation paper - Data Strategy: initial reforms**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Energy Security Board's (ESB's) consultation paper on initial reforms for its Data Strategy.

There are considerable benefits in reassessing the legislative regulatory framework for energy information and data and therefore we support the broad intent of the Strategy. For example, data access can lead to improved policy outcomes if implemented effectively and efficiently. It allows for more targeted and proportionate responses based on the nature and extent of problems, rather than assertions or anecdotal evidence.

Similarly, it can streamline regulatory administration. More efficient processes for the collection, use and sharing of data by regulators and policymakers can lower compliance costs for regulated businesses, which will flow through to retail consumers.

However, the benefits that might come from some regulatory agencies being able to share protected information more widely—AEMO in the case of these initial reforms—must be balanced against the potential risks. These include the disclosure and misuse of sensitive information that violates consumer privacy or is commercially sensitive, and any negative impact on the investment strategies of participants in competitive markets. This is also highly relevant for any future ESB proposals that could allow regulators such as the Australian Energy Regulator or Australian Competition and Consumer Commission to share the sensitive information they collect as part of their legislative functions.

The majority of the current restrictions on the use and sharing of information reflect previous policy decisions. The ESB must proceed carefully if it chooses to unwind these controls. The consultation paper refers to digitalisation as a driver of the reassessment of the current framework. While we agree that technological change is increasing the volume of energy data, it does not change the fundamental need to ensure that private, commercially sensitive and proprietary information is not misused.

### **Class A and Class B bodies**

In our view, the guiding principle for the ESB as it considers how to expand access to protected information is whether it is necessary to perform legislative roles and responsibilities. Furthermore, there should be adequate protections once that data has been shared, either

currently in place or introduced as part of these initial reforms. As an example, the ESB notes that employees of Federal and jurisdictional government agencies are bound by codes of conduct, which would include an obligation to handle protected information appropriately.

The ESB proposes an expanded list of Class A bodies to whom AEMO could provide protected data. It should carefully consider these entities' legislative functions and how greater access to data would assist them to undertake more effective regulatory administration. The case for some of these proposed entities to obtain data is clear, but is less clear for others.

Therefore, we also support the ESB's decision to avoid expanding the list of Class A beyond those it has listed in the consultation paper at this time or by including a catch-all provision while it continues to assess the issue.

On the other hand, more analysis is necessary before the ESB extends AEMO's data sharing powers to include the Class B entities it identifies in the consultation paper, namely, *'Australian public universities and other higher education institutions, including research schools and researchers that are part of an Australian public university or other higher education institution'* and a *'prescribed body, that conducts (or proposes to conduct) research related to energy'*.

We do not believe the ESB has made a sufficiently strong case for allowing AEMO to provide protected information to these entities. This is because the energy market is incidental to their core functions and activities. For these entities, AEMO would not be providing information to assist regulatory oversight but instead, for less precise reasons such as 'supporting the energy transition' or to produce 'public good outcomes'. As such, we recommend the ESB retain the presumption of withholding protected information from these entities.

Our concern reflects the potential for data breaches and other unintended consequences. We are not confident that entities under the ESB's definition of Class B bodies will have adequate controls over data and expect that any controls in place are either ad hoc or inconsistent. Furthermore, there is little clarity about avenues for recourse in the event of a data breach. In short, we do not have the same confidence that these entities have the same ability or incentive to maintain the integrity of protected data and avoid inappropriate data use. The consequences could be relatively trivial, such as unsolicited contact by researchers. More significantly, it could lead to the release of commercially sensitive information, or in more extreme instances, to actions that undermine innovation or crowd out commercial and customer focussed solutions to emerging challenges that competitive businesses could otherwise deliver more efficiently.

### **Alternatives to expanded data access to drive the energy transition**

We recommend that the ESB develop a regulatory framework to support the energy transition by leveraging competitive markets. Greater access to some datasets is an important element and there are some current initiatives that directly address this. They are more directly targeted at some of the perceived data gaps and also avoid the risks and unintended consequences associated with sharing protected information.

For example, the ESB will be aware that the Consumer Data Right will apply for the energy sector from November 2022. This is expected to drive significant innovation across the retail market and encourage more informed decisions about investments in distributed energy resources, demand side management and related services.

The ESB will also be aware that the Australian Energy Market Commission (AEMC) has recommenced its review of the regulatory framework for metering services. This is considering how to allow access to the data captured by smart meters and its outcome is likely to further support the energy transition. We note the Australian Energy Regulator's recent letter to the AEMC, which states that *'smart meters should also help facilitate new energy services from retailers and aggregators that enable customers and owners of DER to sell their energy into wholesale markets, system services markets and to provide network services'*.<sup>1</sup>

The ESB Data Strategy and the Distributed Energy Resources workstream also provide an opportunity to revisit how various elements of the regulation of distribution businesses interact and whether they support investment in distributed energy resources. This includes the obligations on distribution networks to release information to the market through their Distribution Annual Planning Reports, and the requirement for them to consider non network solutions to address network constraints, either through the RIT-D or when the Australian Energy Regulator assesses expenditure proposals and networks' procurement processes.

## **About Red and Lumo**

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia and in the ACT to over 1.2 million customers.

We thank the ESB for the opportunity to comment on its proposal. Please contact Geoff Hargreaves, Regulatory Manager on 0438 671 750 if you have any further queries or want to discuss this submission in more detail

Yours sincerely

A handwritten signature in blue ink, appearing to read "Stefanie Monaco".

**Stefanie Monaco**  
Manager Regulatory Affairs  
**Red Energy Pty Ltd**  
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<sup>1</sup> Australian Energy Regulator letter to Australian Energy Market Commission, dated 27 July 2022, available at <https://www.aemc.gov.au/market-reviews-advice/review-regulatory-framework-metering-services>