

27/08/2020

Australian Competition and Consumer Commission (ACCC)

Submitted online via: <https://consultation.accc.gov.au/consumer-data-right/energy-rules-framework-consultation>

Consumer Data Right : Energy Rules Framework Consultation Paper

Tango Energy thanks the ACCC for the opportunity to make this submission on the ACCC's Consultation Paper on the Consumer Data Right (CDR) energy rules framework.

Tango Energy is a relatively new retailer, with about 90,000 customers predominantly in the residential and small business market in Victoria. Tango Energy entered the NSW residential market in Q1 2020 and has a limited presence in other jurisdictions.

The CDR is a significant and wide-reaching change to the market, comparable in scale to reforms such as Power of Choice (PoC) and Five Minute Settlement (5MS). Tango Energy is supportive of providing customers with greater choice and commends the ACCC for engaging early on what is likely to be a complex change to the market.

Tango Energy generally supports the high-level principles that the ACCC has set out to guide the formation of the CDR rules framework. However, in Tango Energy's opinion there are a number of key policy matters that need to be resolved, as they answer many questions on the design and framework of the Rules. For this reason, we recommend and have adopted a top-down approach, with policy matters forming the first part of our submission and the second part discussing the technical recommendations and issues raised in the first part of our submission.

Part 1 – Policy matters

AEMO's role

The broader policy question of what AEMO's role is to be influences the design of the CDR. Tango Energy believes there is benefit in first determining what AEMO's role is to be in the CDR.

Tango Energy's view is that AEMO's function should be predominantly to act as a 'gateway', and to be a "post-box" of information to facilitate the sharing of data. This 'gateway' function is an extremely important role and is consistent with AEMO's Constitution and its role in the National Electricity Laws to act as market administrator and operator¹. A new privacy assessment would be required if there are to be any further changes to AEMO's role under the CDR regime. In addition, depending on the approach taken by the ACCC in formulating the

¹ Schedule, Part 5, Division 1 section 49(1).

CDR rules, this could have the effect of expanding AEMO's role; we suggest that any expansion of AEMO's role may require further consultation on AEMO's constitution and broader role within the energy regulatory framework.

Where AEMO is designated as the data holder, we agree that AEMO should act as the 'front door' for all consumer data requests under CDR in energy, however AEMO will need to ensure that there are appropriate information barriers and ringfencing of information where it is both data holder and facilitator.

Read write access recommendation by AEMC

Tango Energy also considers that the AEMC recommendation in its retail market review 2020 represents a significant unknown to the design of the CDR. The ability for customers to switch without explicit informed consent (**EIC**), or for customers to be switched based on enduring EIC (i.e. EIC that is "valid" for a period of time) appears inconsistent with the design of existing energy rules.

In the worst case scenario where read write access is provided without the appropriate safeguards, this would create a double tier of regulation and a non-level playing field where heavily regulated licensed entities (i.e. retailers) have strict rules on EIC, while third party ADRs, which are regulated to a lesser extent, have lesser rules, and are able to circumvent the obligations placed on energy retailers. It is also not clear how retailers will operate as an accredited data recipient (ADR) in such a framework, and conflicting obligations would apply.

At a minimum, a mandatory code of conduct for third party ADRs would be needed that is consistent in both drafting (to avoid confusion) and application (i.e. enforcement) with EIC provisions in existing energy regulations. This is, however, a second best solution as inconsistencies in the enforcement of consumer protections would still exist based on the different priorities or resources of regulators.

An alternative could be to review the existing EIC provisions; however, this is likely not to be an efficient use of the ACCC's time as it is likely to be viewed by stakeholders as trying to reduce consumer protections.

In summary, further consideration needs to be given by the ACCC as to what the appropriate balance is between consumer protection and ease of customer switching. We strongly urge the ACCC to hold the same level of EIC consumer protection for ADRs and retailers alike and hold ADRs to the same rules to which retailers currently are being held. We also note that regardless of the decision made in relation to this matter, the privacy impact assessment will have to be updated. In the absence of further information, we will assume status quo for the remainder of our submission.

Role of smaller retailers

There is a significant change to data standards and systems necessary to ensure interoperability of the CDR. Currently, as the data standards are set, these potentially require a retailer to maintain customer information in two separate formats; one for operating in the market (AEMO standards), and one for operating in the CDR environment as determined by the data standards body. There is a limitation on how much these can be harmonised given the fundamental differences in financial services being a person-based service, as compared to energy being a site-based service.

This creates a significant technology cost and barrier to entry for smaller retail entrants. Tango Energy is supportive of staged implementation to minimise cash flow impacts on smaller participants. This is a significant change for the sector and may create further barriers to entry for smaller retailer market entrants. We urge the ACCC to consider what the longer-term role of smaller market participants would be in the CDR, and whether this would have any impact on retailer entry into, and exit from, the retail market.

Tango Energy notes that during the Power of Choice (PoC) reforms in 2017, a manual system was created for smaller participants (the MSATS Browser) to continue to transact in the market. AEMO has gained significant experience and knowledge in these large scale reforms in the energy sector and it is important that this technical experience is utilised in the CDR. We consider that AEMO should have a greater role in determining the technical standards. Specifically, AEMO could take on a role in determining a technical solution that supports an energy-specific tiered approach (such as the one adopted in MSATS Browser).

Part 2 – Practical matters

Definition of eligible CDR consumer

Noting the broad definition of 'CDR consumer' under Part IVB of the *Competition and Consumer Act*, we agree that further rules should be made to define which customers are eligible CDR consumers within the energy sector.

While energy data may not have the same sensitivities as banking data, consideration will need to be given to the implications of releasing data for joint account holders. The rules should be explicit in limiting account holders to those customers to whom energy is sold and who have full permission to act on, or are financially responsible for, the account.

As noted in the Consultation Paper, there is ongoing work in the energy sector to improve protections for customers affected by family violence. The crossover between the CDR and energy rules prohibiting disclosure of information in circumstances of family violence, for example, should also be considered. Otherwise, retailers may have competing regulatory obligations.

The Rules should clarify whether customers may request data which includes their **previous premises**, or which includes the data of **previous residents** residing at the customer's current premises. Our recommendation is that this should not be allowed, as either option raises serious privacy concerns about inadvertent disclosure of another customer's data. Further, the benefit of providing this data would not outweigh the privacy concerns it would raise. Data for a customer's previous premises or for a different resident at the same premises is likely to include different lifestyle factors and consumption patterns which would affect the accuracy of an energy plan comparison through the CDR.

It is also important to consider what is meant by **active or inactive accounts**. Different retailers may have different practices for customers that move house – some retailers close the account and open a new account, whereas some retailers do not; It may be useful to collate information in these submissions to determine if a distinction needs to be made between active and inactive accounts and the multiple scenarios. Our view is that there will be limited use cases for inactive or closed accounts; in most scenarios where a customer moves from one address to another, the distribution tariff (and therefore, pricing) would vary. As for customer personal information and whether this is able to be transferred from a previously inactive account, there may be privacy risks that would need to be further considered. Our

recommendation is that inactive accounts should be excluded from the CDR, at least in its first stages as this may introduce an unnecessary level of complexity for little benefit.

Tango Energy agrees with the ACCC's proposal that **minors** should be excluded from the list of eligible CDR consumers. We note that extending the availability of the CDR to minors may conflict with clause 4.3 of the *Code of Conduct for Marketing Retail Energy* in Victoria, which requires retailers to use reasonable steps to conduct contract negotiations with a person at the premises who has the authority to enter into an electricity contract.

Finally, we submit that **large customers** should not be eligible CDR consumers. As large customers typically enter into tailored energy arrangements with retailers through energy brokers and have greater commercial awareness and resources to protect their interests, we consider that the main benefits of the CDR with respect to comparative services are unlikely to be of great utility to large customers. Further, including large customers as CDR consumers for the purposes of obtaining metering data (as referred to in clause 4.2.3.5 of the Consultation Paper), is unnecessary, as large customers and their authorised representatives are currently entitled to receive their metering data under the National Electricity Rules.²

To ensure consistency with the existing energy framework, we recommend that the definition of a "large customer" for the purposes of the CDR is consistent with the consumption-based definition of a "large customer" in each relevant NEM jurisdiction. Introducing a new distinction between small-medium enterprises with high electricity usage and larger commercial customers as suggested by clause 4.2.3.5 of the Consultation Paper may lead to inconsistencies across industry about how customers are classified.

Data sets

Tango Energy agrees that the types of customer information set out in the Designated Instrument are broad enough to include potentially sensitive information such as customer eligibility for hardship, concessions and life support information. Information about a customer's life support information in particular meets the definition of 'sensitive information' under the *Privacy Act* and should be subject to additional protections.³

We also agree with the ACCC that inclusion of such data in the CDR regime may provide customers with benefits. However, given the privacy concerns around such information, adequate controls are required to protect the data. This could take the form of separate categorisation for these data types or specific express consent requirements around release of any hardship, concession or life support information.

As noted earlier in this submission, common sense exceptions should also be made for specific cases or where retailers have competing obligations such as those under Victorian energy rules requiring retailers not to disclose data for customers experiencing family violence.

Authentication, dashboards and staged implementation

Based on our preference for AEMO to have a minimal role, we consider that **authentication Model 1** is a preferable approach. This will limit the exposure risk of disclosing customer data to additional parties and leverage consumers' ongoing relationship with retailers; customers

² Version 148, rule 7.15.5(d)(1).

³ See *Privacy Act 1988* (Cth) section 6 – 'sensitive information means: (b) health information about an individual'.

may tend to trust retailers with their authentication information more given they would be aware of who they had signed up with (rather than giving it to a third party, e.g. in this case, AEMO). In addition, retailers already have customer-facing authentication processes in place.

Notwithstanding, we note that there will be significant costs associated with developing infrastructure for authentication in accordance with the CDR framework, even where retailers have existing authentication systems in place. This cost to retailers needs to be considered as the phased implementation approach set out in the Consultation Paper considers requiring all retailers to comply with the authentication obligations upon commencement. **Requiring exempt retailers to undertake the CDR authentication process from the start may inadvertently defeat the purpose of staged implementation.**

Similarly, our view and preference is that consumer dashboards should also be managed by the retailer as the customer facing entity in the long term. It appears that **Option 3, retailer to provide dashboard using AEMO-provided authorisation data API**, may offer the most pragmatic long-term approach and balance between providing the customer with a trusted source of information and management of data consent, and a standardised manner in which the authorised information is provided. Tango Energy also supports the ACCC's suggested **use of a combination of options 2 and 3 to support phased implementation.**

If you would like to discuss this submission, please contact me at [REDACTED] or [REDACTED].

Yours sincerely,

Shawn Tan

Assurance and Compliance Manager

Tango Energy Pty Ltd