EnergyAustralia
LIGHT THE WAY

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EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Commissioners
Essential Services Commission
GPO Box 2605
Adelaide SA 5001

Lodged electronically: escosa@escosa.sa.gov.au

Dear Commissioners,

Retailer Energy Productivity Scheme (REPS) Code Review – Draft Decision

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

We welcome the opportunity to provide this submission on the Retailer Energy Productivity Scheme (REPS) Code Review 2021 Draft decision (Draft Code).

We discuss a few of the proposed amendments in the Draft Code below.

1. Information Statement – changes to identify the obliged Retailer

The Commission proposes to require that the Retailer be named on the Information Statement. This would require Activity Providers to allocate activities to Retailers before they are performed and before they are submitted in the REPS portal.

We understand that the Commission proposes this requirement so that customers can lodge complaints with the identified Retailer should they have any upfront issues. We also understand that there was a problem where an Activity Provider was over-scheduling activities and then cancelling them which would have been a very poor customer experience. In either case, the Commission's reasons for proposing the new requirement seem to attempt to solve for poor conduct by Activity Providers via indirect regulation of Retailers.

The better and more direct approach to resolving these issues would be to regulate Activity Providers directly. We agree with the views of Ecovantage which propose that the Commission make a Code of conduct for Activity Providers through which the Commission would directly place obligations on Activity Providers.

This Code of conduct could impose complaint handling requirements on Activity Providers, which would mean customers could raise the complaint directly with the business best placed to manage their complaint and the business they have had contact with. This appears to be the stronger alternative then having the customer complain to an Energy Retailer in circumstances where they

may have never dealt with the Retailer i.e. where the customer is not an electricity or gas customer with the Energy Retailer.

The Code of Conduct could also require Activity Providers to only schedule activities which they reasonably consider they will perform which would address the over scheduling concern.

While a Code of conduct for Activity Providers might not be possible now and may require changes to the relevant regulations or legislation, it appears to be the most effective way to regulate the REPS in the longer term. This would provide a means for the Commission to directly enforce obligations and strongly deter poor conduct by Activity Providers, in addition to Retailers managing Activity Providers via commercial contracts as they currently do. Direct enforcement and strong deterrence is appropriate given Activity Providers are in close contact with customers and are completing activities which could pose a safety risk to customers if not performed compliantly. It might take time to pursue a Code of Conduct for Activity Providers (including requiring changes to the legislative framework to enable a Code), but ultimately it is a clearly better regulatory solution.

Another reason to not adopt the upfront identification of the Energy Retailer for an activity is that it will fundamentally change the practical operation of the REPS and is likely to have unintended consequences. The REPS operates efficiently with flexibility to promptly match the supply of activities with the demand of customers. If there is a requirement to identify or effectively allocate activities to Energy Retailers before the activity commences, this introduces another factor to manage outside matching supply with customer demand. It will impose an additional check undermining the flexibility of the scheme, particularly where an installer may want to do an initial engagement with the customer and the install of the activity in the one visit.

Provided Activity Providers manage and can sell the activity to one of their Retailers, even after the activity is completed, we see this as supporting the effective and efficient operation of the scheme.

Introducing upfront identification of the Energy Retailer will also introduce additional administrative costs and time taken by Activity Providers and Energy Retailers in continuously monitoring and confirming the allocation of the activities to the Retailer.

It is difficult to predict all the potential adverse impacts from this proposal which is a further reason for the Commission to adopt a conservative approach and not adopt this change in the final Code.

2. Information Statement – changes to timing around provision

We generally agree with the amendment to require the written information statement be provided to the customer "prior to the date of commencement of the Retailer Energy Productivity Scheme activity". However, we suggest a small change to "prior to **or on** the date of commencement". This would allow for the Information Statement to be provided on the day of delivery of activities at the customer's premises. This is again important for activities which are low involvement decisions for customers where the installer does the initial engagement with the customer and install of the activity in the one visit.

3. Changes to record keeping to require possession

The Commission appears to be removing the ability for Retailers to retain legal control only and to require physical possession of Activity Records by Retailers. This is because some retailers have not adequately monitored third parties leading to lost records and compliance breaches.

Actual physical possession raises a number of issues. It will lead to increased data or privacy risk as it will require Activity Providers to send documents to Retailers and this transmission of documents may not be secure. Activity records have personal details such as name, address, telephone number and payment details which is high risk data. Making transmission of documents sufficiently secure will raise costs for Retailers and Activity Providers.

Duplicating records across Activity Provider and Retailer systems will also incur indirect costs in requiring additional management of processes for exchanging records and storing them. Duplicating records is also not aligned with general records keeping practices of having one master record.

The Commission's particular concern could be addressed by reinforcing the requirement to have records "kept readily accessible" by adding that the records should be able to be produced to the

Commission within a specified timeframe e.g. 5 business days. This would also bring the requirement in line with other requirements on evidence and record keeping in the REPS Code.

The requirement could be further enhanced by explicitly imposing a requirement for Retailers to take reasonable steps to ensure records are kept readily accessible, including via annual sample audits. These measures would appear to address the Commission's concerns without raising new issues around duplicating records and associated costs.

4. Insufficient time to implement changes to the Record keeping and Complaint handling and dispute resolution changes

The Commission states that it will release its final decision in February 2022 and that the Code will apply from that time. This does not provide any notice of the final requirements so Retailers will only have the option to start preparing for the requirements set out in the Draft Code. Even if Retailers were to start that now, with the holiday period, this likely leaves less than a month for Retailers to implement the new requirements. This will also result in unnecessary work where there are changes between the Draft and final REPS code.

In addition, Retailers are likely to need more time to implement the changes to processes and systems to establish record keeping in compliance with the Draft Code (discussed in section 3). This includes working with the Activity Providers to agree on how to transmit the documents and a process to identify and store the documents securely and ensure adequate storage. We estimate this will take about 3 months.

For Retailers unfamiliar with the Australian Standards for Complaints handling, revising their complaints handling and dispute resolution procedure and obtaining any internal approvals could take up to a month.

5. Fit and proper persons

We support the Commission further clarifying what is required to ensure that a person is a fit and proper person to conduct activities at or in respect of a customer's premises.

Subsection (a) of section 6.6.2, "whether the person has the required knowledge, skill and capacity to undertake the energy productivity activities", is a verifiable requirement. Retailers could check training records and appropriate licences etc.

However, subsection (b) and (c) which go to "sufficient honesty and integrity" and that the person can be "trusted to act appropriately" will be difficult to verify or assess beyond a police check which Activity Providers already perform. We ask the Commission to provide some examples of how Retailers will be able to evidence that they have considered the matters in subsections (b) and (c), especially where a Retailer may not have any direct contact with the persons that conduct activities.

6. Mandatory safety training requirements – timing

We support the requirement that *new* persons are trained prior to the person performing any REPS activities.

If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 9060 0761)

Yours sincerely,

Selena Liu
Regulatory Affairs Lead