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

Alinta Energy welcomes the opportunity to provide a submission to the Essential Services Commission of South Australia (**the Commission**) on its Retailer Energy Productivity Scheme (REPS) Code Review – Draft Decision (**the Draft Decision**).

Alinta Energy is an active investor in energy markets across Australia with an owned and contracted generation portfolio of over 3,300MW, including 1,700MW of gas-fired generation facilities and around 750MW of contracted coal-fired generation facilities. Alinta Energy has over 1 million electricity and gas customers including around 610,000 in east coast markets.

Alinta Energy's position relating to the amendments in the Draft Decision are outlined below.

1. Line of sight between obliged retailers and customers

The Commission proposes to require the name of the obliged retailer, on whose behalf an activity is undertaken, to be provided to the consumer at the time the activity is delivered as part of the information statement (the provision of which is already a requirement under the Code).

This amendment is proposed to resolve two issues identified through the administration of the REES and REPS:

- activities being undertaken by third parties with no existing arrangement with an obliged retailer; and
- instances where consumers and the Commission have no evidence of which obliged retailer an activity has been undertaken on behalf of, until the activity has been reported to the Commission, which can be months after the activity occurred.

Response

Alinta Energy has multiple concerns regarding this amendment as detailed below.

Conflating REPS and non-REPS activities

There are instances where REPS and non-REPS activities are completed at a single address during the same timeframe. Confusion is likely to arise in trying to have consumers understand that only part of the activities is allocated to the obliged retailer. A service risk may arise when consumers contact an obliged retailer to resolve matters that are not allocated to the obliged retailer. This could cause unnecessary frustration to consumers, thereby subverting the intent of this amendment and undermining the integrity of the REPS program with constituents.

Contractors Avoiding Activities or Performing Activities for Multiple Retailers

Complications may arise where some energy productivity activities will be avoided by contractors because they are too large to fit into a third-party contractor's REPS target allocation from a single retailer. This could lead to third-party contractors conducting REPS activities on behalf of multiple retailers on the same site, leading to similar customer confusion as discussed above.

Alternatively, contractors might avoid sites with large productivity improvement potential because the sites will not fit within the target allocated to the contractor by a single retailer. This risk increases towards the end of a calendar year, where high-quality third-party contractors with good customer service reputations have almost fulfilled their allocated energy productivity quotas for each retailer. Third-party contractors turning down consumers could lead to a poor customer experience, potentially driving these consumers to seek out alternative contractors who have less effective governance over their REPS compliance processes. This poses a risk to the consumers' ability to access consumer protections.

Ensuring contractors have flexibility to reallocate and rebalance activities between different retailers after the activities are complete, is essential in reducing consumer confusion and encouraging large productivity improvement activities.

Consumer Protection

As noted in the Draft Decision, one of the driving factors for the proposed amendment is to strengthen consumer protections where:

- consumers have been unable to reach satisfactory resolutions through discussions with the relevant contractors or
- consumers have been unable to establish contact with the contractors after co-contributions have already been made

Therefore, the root cause appears to be misleading, deceptive, or unconscionable conduct of contractors. Where these contractors are already behaving in this way, we can foresee ways that they could circumvent the intent of the new amendment. For example, they may ignore the requirement to nominate a retailer in the information statement, or intentionally or unintentionally include the wrong obliged retailer.

The new requirements will impose an additional burden and cost to those contractors and obliged retailers who already behave with integrity and in accordance with the spirit of the Code.

Influence and Control Over Contractor Policies and Procedures

With third-party contractors performing activities across a range of obliged retailers, there is a risk of conflicting policies and procedures being communicated to third-party contractors. This limits our ability to introduce and implement health, safety, privacy, and other policies with contractors. There is a significant risk that practices which are accepted by contractors are seen by customers as being endorsed by Alinta Energy, creating a risk to our brand reputation which is impractical to mitigate.

Effective Date of Changes

Noting that we are still in the consultation phase in December 2021 and the effective date of the changes is planned for February 2022, Alinta Energy has serious concerns about the limited timeframe to implement appropriate procedures to ensure continued compliance with the requirements of the Code.

Limited time availability will affect the following:

1. As detailed above, there is the possibility of conflicting retailer policies influencing contractors and the potential for these to affect Alinta Energy. This may require a more comprehensive and time-consuming review and negotiation of contractor policies if the contractor is seen to be representing Alinta Energy while performing the activities.
2. New training material for call centre operators will need to be developed and rolled out in a very short timeframe and may lead to a poor customer experience if there is insufficient time.
3. If third-party contractors are seen to be representing Alinta Energy, there may be insurance implications that will require additional negotiation time between Alinta Energy, insurers, and third-party contractors.

Given the time-consuming nature of these potential consultations and reviews, there is a risk that we will not be able to finalise the engagement of contractors until well into the compliance year. If contractors cannot commence the activities until the contracts are finalised, then there is a risk of Alinta Energy and other obliged retailers falling short of targets due to inadequate time.

In addition to time considerations, higher compliance costs (due to insurance considerations, and coordinating the range of policies followed by contractors) are also likely to be passed through to consumers.

Preferred Alternative

As a compromise to this amendment, Alinta Energy proposes that:

- Third-party contractors only complete REPS activities when they have contracts in place with obliged retailers that equals or exceeds the actual energy productivity

improvement activities. This meets the requirements of the South Australia Electricity (General) (Retailer Energy Productivity Scheme) Variation Regulations 2020 (**Regulations**) in that activities would be undertaken by third parties only when there is an existing arrangement with an obliged retailer.

- Obligated retailers are not included on the information statement to ensure contractors have allocation flexibility and provides the most efficient process for REPS compliance and consumer experience.
- To improve consumer protections, we recommend that the Commission considers the possibility of publishing the number of complaints that it received, and the number of investigations that needed to be conducted, in relation to each contractor. This would assist obliged retailers in deciding which contractors to engage with, and would also serve to discourage misleading, deceptive, or unconscionable conduct by contractors.

2. Clarifying fit and proper person obligations

To mitigate the risk of harm to members of the public, the Commission has included within the existing Code a requirement for obliged retailers to ensure that persons undertaking activities on their behalf have been assessed, by the relevant retailer, as being 'fit and proper'.

Given the importance of this protection, to give retailers more clarity and certainty in their application of that assessment and, critically, to further mitigate the risk of harm to members of the public caused by inappropriate behaviour, the Commission proposes to include minimum standards applicable to the application of 'fit and proper' person assessments by those retailers.

Response

Alinta Energy supports the decision to improve the clarity and certainty around 'fit and proper' person assessments. The amendments to the REPS Code in clauses 6.6.2 and 6.6.3 outline the philosophy that must be followed to ensure a person is 'fit and proper'; however, they do not specify what evidence the Commission would consider satisfactory under 6.6.3. Alinta Energy requests clarity around the exact documentation that would be considered satisfactory evidence in this regard, for example criminal record checks and specific training certificates.

3. Record keeping obligations

Currently, the REPS Code requires retailers to retain 'possession or control' over REPS activity records. This allows for retailers to retain legal control over the records but leave physical possession of the records with third parties.

The Commission has encountered several instances where this arrangement has led to lost records and compliance breaches, due to retailers not adequately monitoring third parties and providers for the required length of record retention. Accordingly, the Commission proposes to require retailers to retain actual possession of all its REPS activities records, and in a format it has ready access to (whether physical or electronic format).

Acknowledging, however, that there is a cost associated with record keeping, the Commission also proposes to reduce the current timing requirement for record keeping from a period of at least five years following the expiry of Part 4 of the Electricity (General) Regulations 2012 and Part 4 of the Gas Regulations 2012 down to a period of five years after the completion of an activity.

Response

Alinta Energy supports the clarification of record keeping requirements such that obliged retailers must retain actual possession of all activity records for a period of five years following the completion of the activity. However, given that it is impractical for obliged retailers to comprehensively review activity records of all activities allocated to us by contractors, Alinta Energy suggests that retailers are required to have demonstrated reasonable processes in ensuring all records are provided to them. Such steps may be outlined in the annual Compliance Plan.

4. Provision of information to customers

Clause 6.1 outlines the expectations for the provision of information to customers about REPS activities undertaken. It is stated in 6.1.1 that an obliged retailer must ensure that each person conducting an energy productivity activity at a customer's premises for the purposes of REPS provides a written information statement, containing the matters required under clause 6.1.2, to the customer at the time that the activity is performed.

In a prior submission, Green Energy Trading suggested that the requirement, 'the time the activity is performed', is somewhat ambiguous – particularly for activities that are not of a one-off nature or which take a long time from commencement to completion.

The Commission accepts that argument and proposes to make the change to clause 6.1.1 accordingly, recognising that the date of commencement would provide more certainty and offer customers more protections by having the required information available upfront.

Response

Alinta Energy supports the proposal to require the provision of information to customers at the commencement of the REPS activity (rather than at the time it is performed).

5. REPS customer co-payment

Under the Minister's REPS Activities General Specification, for some REPS activities customers are required to make a minimum co-payment, with the payment being a minimum of \$33 (including GST). Priority group households and certain activities are exempt from this co-payment.

Payment of a co-payment is a new requirement under REPS that did not exist under the REES. As such, the Commission considers that retailers and activity providers should be communicating to customers, prior to a customer agreeing to the conduct of an activity, any

requirement for a co-payment. On that basis, to facilitate customers making adequately informed decisions as to whether or not to pursue a REPS activity based on the existence or amount of a co-payment, the Commission proposes two amendments to the Code.

First, the existence and amount of any co-payment must be clearly communicated to the customer at the time of booking; second, those same matters must be clearly set out on the information statement.

Response

Alinta Energy supports the proposal that the existence and amount of any co-payment must be clearly communicated to the customer at the time of booking a REPS activity, and the existence and amount of any co-payment must be clearly set out on the information statement.

6. Other administrative variations

Energy Australia submitted that obligations to undertake activities under REPS should not be limited to activities undertaken 'at a premises' but, should also cover activities not performed at the premises. Energy Australia suggested this change is called for as, under REPS, not all activities are performed 'at the premises' – such as switching to a Time of Use energy plan.

The Commission accepts this suggestion and proposes to amend references in the REPS Code to 'at or in respect of a customer's premises', in recognition of the need to ensure that customers should have access to a retailer's customer protections, irrespective of whether those activities were performed at the customer's premises, or externally but in respect of those premises.

In addition, the Commission has taken the opportunity to propose other minor administrative variations to the REPS Code to update terminology, clarify obligations, remove duplication, correct typographical and/or grammatical errors and update outdated references.

Response

Alinta Energy supports the rewording of 'at the premises' to 'at or in respect of a customer's premises' as suggested by Energy Australia. Alinta Energy has the following comments on other administrative variations.

Effective Date of Proposed Changes

While we do not agree with proposed amendment 1 (Line of sight between obliged retailers and customers), if it is required, Alinta Energy requests that the effective date for this change is postponed to compliance year 2023. This is to ensure there is sufficient time for the concerns raised in the corresponding section of the paper above to be adequately addressed.

Deletion of Clauses 2.2, 3.1, 3.2, and 3.4

Deletion of clauses 2.2, 3.1, 3.2, and 3.4 is likely to cause confusion around how to determine if an entity is an obliged retailer, how the retailer's target is calculated, and how the retailer

will be notified of shortfalls. Alinta Energy suggests that the Code should, at a minimum, reference that these matters are dealt with in accordance with the relevant regulations. It is also important to explicitly state in the Code that the Commission will determine this liability (clause 3.2.1). As other state schemes require the retailer to determine their own liability and submit it to the regulator, this information will assist with clarity.

Clause 3.3 (Obligation to Achieve Energy Productivity Targets)

After the removal of clause 3.2.1, this clause could be misunderstood. The reference to clause 5.1 implies that obliged retailers must cause sufficient energy productivity activities only after they are notified if they have achieved the target. In practice, energy productivity activities must be caused prior to clause 5.1. Alinta Energy recommends retaining clause 3.2.1 and referring to it in clause 3.3 (amended to clause 3.1 in the draft Code) as worded in the current version of the Code. Alternatively, more clarity is required regarding the new intent of this paragraph.

Schedule 3

Alinta Energy recommends inserting a statement in the first paragraph of Schedule 3 stating that REPS bulletins are "interpretations and advice" (as per the 'Bulletins' page of the Commission's website) that reflect the Commission's views but are not enforceable in and of themselves. This will add clarity around what documentation must be collected by the retailer, that is, Schedule 3 and information in the energy productivity activity specifications, but not the bulletins.

Conclusion

Alinta Energy looks forward to participating in the ongoing consultation process and would encourage consideration of the points raised above, particularly under amendment 1. If you have any queries in relation to this submission, please contact Mike Searles.

Yours sincerely,



Mike Searles
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