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Charter of Consultation and Regulatory Practice

Thank you for the opportunity to provide a submission on the Charter of Consultation and Regulatory Practice.

Momentum Energy is a 100% Australian-owned and operated energy retailer. We pride ourselves on competitive pricing, innovation and outstanding customer service. We retail electricity in Victoria, New South Wales, South Australia, Queensland, the ACT, and on the Bass Strait Islands. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services. We also retail natural gas to Victorian customers.

Momentum Energy is owned by Hydro Tasmania, Australia's largest producer of renewable energy.

Momentum Energy welcomes the review of the ESC's consultation charter, a review required in light of the confusing and disjointed process conducted to develop the Payment Difficulty Framework (PDF).

While there are certain elements of the current charter which are unnecessary and could be culled to reduce its 54 page length, Momentum Energy is uncomfortable with the move to a more principles based approach. We are concerned that such a move may lead to a consultative process where the stakeholders concerns and issues raised will not be adequately respected. Consequently, important issues and perspectives will not be fed into the decision making process leading to sub-optimal regulatory outcomes.

Our concerns on this front stem from the less than ideal consultative processes relating to the energy sector in recent times, and are compounded by the fact that as far as we are aware, energy retailers were not formally notified of this process and instead became aware of the proposed changes via social media. While this may have been a simple oversight, it does little to restore the industry's faith in the ESC's consultative practices and its ability to acknowledge and work with its stakeholders.

Given the range of policy considerations regarding our essential services, it is vital that all stakeholders have access to a transparent process to ensure that their views and expertise

are heard. Additionally, it is crucial that processes be designed to facilitate stakeholders whose interests may seem to be competing, coming together to resolve differences and agree on an approach which will further the ESC's objectives on all counts. While this could potentially be achieved through a principles based charter of consultation, Momentum Energy is disappointed that this has not occurred in a number of recent, high profile consultations under the current Charter and are consequently concerned about such a move, instead advocating that the requirements for consultation should be more rather than less prescriptive.

During the PDF process, stakeholders and the ESC disagreed as to how the consultation process should progress, to the extent that is debateable whether the ESC was in fact following its own charter. This resulted in an initial draft decision which was widely derided by retailers and consumers alike and meant that nearly four years will have elapsed from the beginning of the process to the time that the final decision will be implemented. It is obvious that such a process has not been in the best interests of consumers as it has led to sustained period of uncertainty and inactivity when urgent action was required to assist consumers.

In order to improve the standard of regulation in Victoria and avoid repeats of the flawed process outlined above, we consider that the following elements be expressly outlined in the charter.

Commitment to defined timeframes for consultation (or transparent process for circumstances here these timeframes may be inappropriate).

While we recognise that in some cases, urgent action is required, (a fairly recent example being the treatment of standing offer pricing to reflect Carbon repeal), appropriate consultation can take time. We consider that the Charter of Consultation should not only include the steps to be undertaken for each consultation, but also detail the minimum timeframes to be associated with each stage of consultation.

Such timeframes should apply not only to the amount of time provided for comment in each stage of the consultation, but a commitment from the ESC to release papers on time or, if delays do occur do to issues being more complex than initial contemplated, adequately communicating new timeframes to stakeholders and revising other milestones as appropriate. The PDF process was beset by periods of multiple months of silence from the ESC as stakeholders awaited for an indication of the next steps.

Similarly, with regard to the issue of timeframes, we believe that the Charter should be explicit in indicating that the ESC will liaise with stakeholders, including other regulators, to determine the appropriate time to run non-urgent consultations. While the ESC advises industry of its work plan, we believe that this plan does not adequately consider the demands on industry from other regulators or show an adequate understanding of retailer operational timeframes. For example, at the commencement of the PDF process, retailers expressed concern that the amendments were to come into effect around the same time as the Power of Choice reforms, one of the most significant national reforms in recent times. This would have caused significant issues for retailers and increased the risk of both reforms

being implemented badly. The risks to both reforms were only averted because the overall dysfunctionality of the PDF consultation led to lengthy delays.

Similarly, retailers have indicated to the ESC the importance of ensuring that solar feed in tariff determinations are delivered in sufficient time for smooth implementation. While the ESC has a legislative requirement to issue determinations by 28 Feb each year, they are not bound to wait until this time and could make these determinations earlier to allow retailers sufficient lead time to ensure that changes can be properly tested by retailers before becoming effective. While we are unsure whether other regulated sectors experience similar issues, we feel that adequate engagement with stakeholders to understand business practices, timings and competing regulatory priorities would result in better outcomes for consumers.

Commitment to determine appropriate form of consultation in discussion with stakeholders.

In previous processes, stakeholders have disagreed with the ESC about the most appropriate manner in which to consult. In the formative stages of the PDF process energy retailers and consumer representatives were subject to separate discussions. Both stakeholder groups were concerned about this, and these concerns were proven when the initial draft decision on the Framework was met with universal disapproval from its stakeholders. A commitment from the ESC to establish the terms of engagement would have avoided this problem and consequently we believe that such a commitment should be included in the Charter.

We do not believe that including such a step would add significant time to consultative processes and believe that any additional time required is justified to ensure a good regulatory outcome. In the case of the example cited above, such a discussion at the start of the process would in fact have truncated the process by up to two years.

Commitment to implement best practice regulatory approaches consistent with the Victorian Guide to Regulation.

The current Charter commits the ESC to following best practice by adhering to the Victorian Guide to Regulation. We consider it vital to maintain this reference in order to demonstrate the standard which will be used to ensure that all decisions will be made in the best interest of stakeholders and community.

Momentum Energy considered that stricter adherence to the Guide, would have substantially improved recent process, particularly in relation to cost benefit processes.

Grievance process for stakeholders

As has been outlined at length in this submission, occasions have arisen where stakeholders and the ESC have disagreed with elements of how particular consultation processes have been conducted and in some cases whether the Terms of Reference for a particular process have been appropriately followed or interpreted. Concerns have been raised not to frustrate the achievement of outcomes for consumers, but conversely to ensure the process

will deliver the appropriate outcomes. Momentum Energy consider that the Charter should outline a grievance process to address any future instances where disagreement may arise. The existence of a robust, independent process for raising concerns with how a consultation conducted is required to ensure that decisions are made in a transparent manner and should hold all parties to account; the ESC on the basis process and compliance with the Victorian Guide to Regulation and relevant legislation (eg, the ESC Act, or the Subordinate Legislation Act) and the complainant to ensure they are acting in good faith and not raising frivolous disputes.

Cross Sectoral Comparison

Although the PDF consultation was beset by a number of issues, one positive aspect was the participation of water industry representatives. While it is not clear whether these parties participated at the request of ESC staff or whether they proactively involved themselves in the process, we consider this a beneficial outcome from an otherwise difficult experience. Relationships between energy and water businesses have been strengthened as a result of their participation in the PDF process and we look forward to working with other industries to share best practice approaches to a range of issues.

We contend that a cross sectoral comparison be undertaken near the beginning of any formal regulatory reform to analyse how similar issues are managed in other sectors which come under the ESC's purview. Such an approach would lead to increased efficiency in consultation processes as it would provide the ESC to benchmark community expectations across essential services and allow for lessons learned within one sector to be applied to ensure that the best consumer outcome is reached.

It is clear that not every reform process within a sector will have a direct parallel in other sectors regulated by the ESC, however we believe that including the need to assess this as a formal step in each process would lead to greater consistency in the regulatory framework as it applies to all essential services and consequently a uniform set of consumer rights.

Public consultation

While the ESC currently invite the general public to participate, it is a concern that public participation in consultation processes is not greater. Open forums on regulatory issues sometimes attract only a handful of members of the public and although this likely reflects a lack of consumer willingness to engage rather than any failing on the part of the ESC, we consider that revised Charter should give additional consideration to raising direct consumer participation.

We note that the ESC has become more active on social media in recent times and clearly has this issue in mind however we would be keen to see an explicit statement of the ESC's plans to ensure that the voices of ordinary consumers are represented rather than simply those of the regulated entities or consumer advocates who speak on their behalf.

Summary

We believe that recent consultation processes in the energy sector demonstrate that it is an appropriate time to revisit the Charter of Consultation. We are concerned however, that the ESC are proposing a more principles based approach to consultation. We believe it would be more appropriate to publish a charter which places clear accountabilities on the ESC to ensure that the regulatory outcomes which eventuate cannot be questioned.

The confluence of competing objectives, including economic, social and environmental considerations when regulating essential services, requires full transparency in decision making in order to maintain credibility. Consequently, a defined, step by step consultation processes would demonstrate that all of these factors have been considered and eliminate potential criticisms of regulatory outcomes.

Momentum Energy is not opposed to a more Principles based approach however, we consider that the ESC can perhaps look to work towards this in a future iteration of the Charter. We consider that Victorian consumers will be better served if the ESC is able to repair its relationship with the Victorian Energy Industry which was undeniably damaged throughout the course of the previous 3 years and believe that the Charter which demonstrates the ESC's accountabilities is a necessary first step.

If you require any further information with regard to these issues, please contact me on (03) 8651 3565 or email joe.kremzer@momentum.com.au.

Yours sincerely

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