



PO Box 4136  
East Richmond VIC 3121  
T 131 806  
F 1300 661 086  
W [redenergy.com.au](http://redenergy.com.au)

PO Box 4136  
East Richmond VIC 3121  
T 1300 115 866  
F 1300 136 891  
W [lumoenery.com.au](http://lumoenery.com.au)



31 May 2022

Ms Sarah Sheppard  
Executive Director, Energy  
Essential Services Commission  
Level 8, 570 Bourke Street  
Melbourne VIC 3000

Submitted electronically: [licences@esc.vic.gov.au](mailto:licences@esc.vic.gov.au)

Dear Ms Sheppard,

**Re: Electricity and gas licences for Red Energy and Lumo Energy**

Further to our letter on 25 May, Red Energy and Lumo Energy (Red and Lumo) have completed our review of the material provided by the Essential Services Commission's (the Commission) on 27 April regarding the proposal vary each licences issued to us in accordance with section 29 of the Electricity Industry Act 2000 and section 38 of the Gas Industry Act 2001.

We thank the Commission for understanding that we required additional time to undertake a fulsome review and provide the following response to the proposed changes.

**Revocation of licence**

Red and Lumo oppose the decision to remove clause 6.2 of the Template Electricity Retail Licence and simply state that the Commission may revoke a licence at any time "in accordance with the Act." While the Act specifies that the revocation of a licence must be carried out in accordance with the procedures in the licence conditions, it does not provide any specifics or limitations on what would justify revocation by the Commission, further increasing uncertainty for retailers.

Red and Lumo had previously raised questions about the inclusion of clause 6.2(ii) and reiterate that the majority of clause 6.2 should be retained to allow retailers confidence to operate in the market knowing the circumstances in which the Commission may seek to revoke their licence. Clause 6.2(ii) should be narrowed to specify that the Commission may revoke a licence if a Licensee fails to comply with an enforcement action as it proposes (and which remains appropriate) but amended to clarify that revocation may also occur in the event that a breach of a licence condition is causing 'serious and immediate detriment to customers'. We welcome the opportunity for further consultation on the proposed drafting of clause 6 or failing that, on the drafting of guidance on the circumstances in which the Commission may exercise this power.

## **Ongoing financial viability**

Red and Lumo question the need for this clause given the obligations retailers face under the Corporations Act and Directors Duties which ensure that we are unable to continue operating if we are not financially viable. Retailers also already have financial viability obligations through the National Electricity Rules and National Gas Rules, and must manage financial viability via the Australian Energy Market Operator (AEMO) prudential and settlement processes. If a retailer is not financially viable they will be unable to meet their settlement obligations with AEMO and would face suspension and/or deregistration under the National Electricity Rules and National Gas Rules.

We furthermore question how the Commission expects to manage this obligation noting that they are not qualified financial auditors and how they would expect to interpret this obligation in a practical sense? If the Commission was to access financial information about a retailer how would it judge "financial viability." Red and Lumo oppose the inclusion of this clause without a clear explanation of how the Commission would assess and determine the financial viability of a retailer. Further we query why this clause is necessary given a retailer's existing legislative and energy regulatory obligations?

## **Compliance with regulatory instruments**

Red and Lumo only support the drafting of clause 6.1 of the Standard Electricity Licence Conditions (SELC) and clause 7.1 of the Standard Gas Licence Conditions (SGLC) if the Commission has a positive obligation to inform retailers that a guideline or Code of Practice falls under this condition. This obligation should have a minimum time frame assigned to it (e.g. 2 weeks) before the instrument comes into effect.

This avoids potential confusion from retailers on the operation of the clause in relation to any guidelines or codes and their role in the licence conditions.

## **Additional technical capacity requirement**

In the response to licensee feedback, the Commission stated that "in the revised SELC and SGLC this clause has been removed" however clause 3 'Ongoing technical capacity' still appears in the standard templates released for consultation. As per the original response to licensee feedback we propose that the Commission remove this clause completely. Red and Lumo continue to oppose clause 3.1(ii) in the proposed SELC, which states that a licence must have 'such additional technical capacity as is reasonably required to enable it to meet and utilise technological advances in the electricity industry'.

## **Other conditions**

We continue to recommend the Commission remove references to Use of System Agreements in gas licences. Retailers enter into Use of System Agreements with electricity distributors and the Commission has developed a default use of system agreement document. However, the concept of a Use of System Agreement does not exist for gas, as the retailers and distributors enter into Terms and Conditions that form part of the distributor's Gas Access Agreement.



Red and Lumo also request that the Commission provides for a transitional period of 60 business days to allow our internal processes to reflect the new licence, once agreed.

### **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 1.1 million customers.

Thank you for the opportunity to respond to the Commission's licensing review. Please contact me on [REDACTED] if you have any further queries or wish to discuss this submission in more detail.

Yours sincerely



Manager - Regulatory Affairs  
**Red Energy Pty Ltd**  
**Lumo Energy (Australia) Pty Ltd**