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3 November 2021

Ms Kate Symons
Chairperson
Essential Services Commission
Level 37, 2 Lonsdale Street
Melbourne VIC 3000

Submitted electronically: energyreform@esc.vic.gov.au

Dear Ms Symons,

Re: Making an Energy Retail Code of Practice

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Essential Services Commission's (the Commission's) consultation on Making an Energy Retail Code of Practice (the consultation paper).

Red and Lumo have conducted an in depth analysis of the changes to the Energy Retail Code of Practice. The Commission has altered the structure of Energy Retail Code of Practice while attempting to ensure that there is no change to the obligations or policy intent. We note that this has largely been achieved, however there remain considerable amendments that are required before the new Energy Retail Code of Practice can be formally made.

In addition to our key points below, Red and Lumo have provided a table attached to this submission with detailed amendments that are required for the Commission's consideration.

1 July 2022 commencement and further consultation required

The Commission notes in the consultation paper that it does not intend to revisit the policy intent or alter the obligations in any substantive way. However, in order to implement the new Energy Retail Code of Practice, Red and Lumo will need to update our compliance systems and corresponding reporting systems, review and in some cases update communications to reflect the new instruments.

We consider it appropriate to re-release another draft of the Energy Retail Code of Practice and the Compliance and Performance Reporting Guidelines for consultation before they are finalised. This will provide confidence to participants that these two crucial documents are aligned, enabling all cross references and breach types to be reviewed by participants prior to the commencement of both instruments to allow for smooth transition to the new framework.

It is on this basis that we strongly recommend a 1 July 2022 commencement date for both the Energy Retail Code of Practice and the new Compliance and Performance Reporting Guidelines. This will allow time for systems and processes to be updated, whilst providing a clean commencement at the start of the financial year.

Finally, we note that a 1 July 2022 timeframe will allow for the Commission to review and consult on any Guidance that it has issued in the past. The Commission may additionally consider whether any new Guidance is required, in particular, with the disconnection and life support provisions in both the legislation and the Energy Retail Code of Practice.

Life support

Red and Lumo are concerned about the definition of life support (and the associated obligation to record the specific life support customer details) in the Energy Legislation Amendment (Energy Fairness) Act 2021 and how this obligation has been replicated in the Code of Practice. The proposed drafting in the Energy Retail Code of Practice will constitute a new obligation on retailers which is a substantive change from the requirements of the current Energy Retail Code and will require extensive changes to existing processes and procedures.

Red and Lumo received communication from the Commission and the Department of Environment, Land, Water and Planning (DELWP) advising that a change was not the intention of the revised drafting. We recommend that further clarification is provided by the Commission, in the form of a note to the clause in the Energy Retail Code of Practice or a formalised guidance note to outline that the original obligations and interpretation remains unchanged from the existing Energy Retail Code and retailers are not required to record the details of the specific resident requiring life support equipment, but instead remain obligated to record the retail customer's details.

Marketing Code translating into the Energy Retail Code of Practice

Although the amendments to the Marketing Code generally have been translated well drafted into the Energy Retail Code of Practice, there remain several redundant and duplicate obligations which provide no clear benefit, nor need to remain in the final version. While Red and Lumo understand the intent of the training obligations under the Marketing Code, translating these obligations into the Energy Retail Code of Practice is redundant.

Retailers are required to train all staff in all obligations of the Energy Retail Code of Practice and all other instruments, as a condition of their retail licence. It is therefore redundant to specify that a retailer must train an employee or contractors with specific aspects of the Energy Retail Code of Practice as a retailer would need to do this to ensure they are confidently able to operate in the market without a training obligation specifying the need to train their staff. Furthermore, we note that clause 31 ("Sales to authorised customers") is already covered in the draft Energy

Retail Code of Practice in clauses 7(1)(b) and 7(1)(c) making this clause itself also redundant and not required to be moved (this is noted in the Attachment below).

While these redundant clauses and duplications on the surface appear minor and potentially only a reinforcement of expected behaviours by retailers, their presence is by nature an inefficient outcome requiring retailers to expend extra resources for no clear benefit for consumers.

Use of the term ‘customer’ and ‘small customer’

As outlined in our attachment, the Commission has omitted the word ‘small’ in the context of customers in some instances in the Energy Retail Code of Practice. We note that a *small customer* is a residential or small business customer, whereas the definition of ‘customer’ is used within industry to refer to all consumers of energy, irrespective of size or type.

The Commission sought to assure participants in the consultation paper that they do not intend to revisit the policy intent or alter the obligations in any substantive way. Clause 5(2) in the Energy Retail Code of Practice outlines that the Code only applies to small customers. We strongly encourage the Commission to update the use of the term ‘customer’ and ‘small customer’ in each instance and ensure its applicability, this prior to finalising the instruments.

Use of the term disconnect and de-energise

The Commission has amended the Energy Retail Code of Practice to remove the term ‘de-energise’ and replace it with ‘disconnect’. It is intended to make terminology clearer, however, in practice these two actions are different. De-energisation, in electricity occurs remotely and in gas by wadding a meter, both to prevent the flow of energy. Whereas, disconnection occurs by pulling a fuse or removing a meter in gas. Red and Lumo have reviewed the removal of the additional clause in the context of the Energy Retail Code of Practice, however, these terms are also used in the Advanced Metering Infrastructure Orders in Council, safety regulations produced by Energy Safe Victoria and in subordinate AEMO Procedures.

We strongly recommend that the Commission ensure that there are no unintended consequences to other regulatory instruments through the seemingly simplification of terms. Noting, the same also applies to ‘re-energisation’ and ‘reconnection’.

Application of the ‘simplified outline’ clauses

The Commission has amended the Energy Retail Code of Practice to make it clearer, summarising the contents of each Part with an overarching clause. The Commission notes in the consultation paper that these inclusions are for ease of navigation. Accordingly, we consider that it is prudent for the Commission to add a clarification that the simplified outlines are for



convenience only and do not form part of the Energy Retail Code of Practice or affect its interpretation.

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.

Red and Lumo thank the Commission for the opportunity to respond to its consultation paper. Should you wish to discuss or have any further enquiries regarding this submission, please call

[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

Red Energy Pty Ltd
Lumo Energy (Australia) Pty Ltd

Attachment - Amendments required to the Energy Retail Code of Practice (ERCP)

ERCP Clause	Required Amendment	Commentary
clause 31	Delete clause 31	We note that the Commission has moved this obligation from the Marketing Code into the ERCP. However, this obligation is already covered off in the ERCP in clause 7(1)(b) and 7(1)(c). Clause 7 requires retailers to only obtain explicit informed consent where a customer gives consent and is competent to enter into such a contract. As such, clause 31 is redundant and does not need to be transposed from the Marketing Code into the ERCP.
clause 53	Delete clause 53	As noted in the Annex provided by the Commission, this clause is already an obligation contained within a retailer's licence. Duplication of this obligation is not required.
clause 8(2)(b)	Italicise "retailer" and "small customer"	Typographical
clause 10(1)	Remove "facsimile"	No longer a relevant form of communication.
clause 15	No amendments	This clause is in the wrong spot - this is not a general retailer obligation.
clause 30(3)(b)	Remove box before clause 29(3)	Typographical amendment
clause 35	Missing (1) at the	Typographical amendment

	commencement	
clause 36	Missing (1) at the commencement	Typographical amendment
clause 38(e)	add "small" before customer	Does not mirror v21. Reinstate 'small customer'
clause 38(3)	add "small" before customer	Does not mirror v21. Reinstate 'small customer'
clause 47(1)(f)	Remove 'marketing'	The appropriate definition is 'associate' not 'marketing associate' which is undefined.
clause 49(5), definition of <i>offered prices</i>	Remove clause 35 Replace with clause 49(1)	Pointing to wrong clause
clause 57(1)(b)(iii)	Remove box before clause 59	Typographical amendment
clause 59(3)	Amend as follows: Despite clauses 57, 59(1) ⁴⁴ , 59(2) ⁴² and 63(1)(i) ⁴⁶ , in the case of a smart meter,	Pointing to wrong clauses
clause 59(4)	Remove clause 46 Replace with 63(1)(i)	Pointing to wrong clause
clause 59(13)	Remove clause (2) Replace with clause 57(2)	Pointing to wrong clause
clause 63(4)	Remove subclause (1)(nn) Replace with subclause (1)(o)	Pointing to wrong clause
clause 65	Add: (3) Application of this clause to market retail contracts This clause applies in relation to <i>market retail contracts</i> Renumber existing clause (3) to clause(4)	As the term "pay-by date" is an obligation within clause 63 relating to bill contents, which also applies to market retail contracts, it is an oversight that this clause does not apply to market retail contracts.
clause 85(f)	Remove clause 60	Pointing to wrong clause

	Replace with clause 84	
clause 90(1)(b)	Remove clause 64 Replace with clause 89(1)(b)	Pointing to wrong clause
clause 94(5)	Remove clauses 25 Replace with clauses 26(4)	Pointing to wrong clause
clause 94(7)(b)(ii)(B)	Remove (B)	Typographical amendment
clause 101(5)(b)	Remove subclause (6) Replace with subclause (7)	Pointing to wrong clause
clause 106(3)(f)	Italicise: customer retail contract	Typographical amendment
clause 106(4)(c)	Remove clause 81 Replace with clause 111(4)	Pointing to wrong clause
clause 106(4)(d)	Remove clause 80 Replace with clause 111(3)	Pointing to wrong clause
clause 116(1)(a)	Remove "this Subdivision" Replace with "this Division 7"	Pointing to wrong part
clause 117(1)	Remove "this Subdivision" Replace with "this Division 7"	Pointing to wrong part
Note associated with clause 118	Remove clause 16 from Note Replace with clause 7	Pointing to wrong clause
clause 130(1)	Remove "under clause 87 Part 6 Division 3(1)(g)(i)" Replace with "under clause 128(1)(g)(i)"	Pointing to wrong clause
clause 131(1)	Remove clause 87 Replace with clause 128(1)(g)(i)	Pointing to wrong clause
clause 131(3)	Remove clause 87 Replace with clause 128(1)(g)(i)	Pointing to wrong clause
clause 132(1)(a)	Remove clause 89	Pointing to wrong clause

	Replace with clause 130(6)	
clause 132(1)(b)	Remove clause 90 Replace with clause 131(2)	Pointing to wrong clause
clause 134	Remove	This clause is already covered in clause 135(2). Specific clause not required.
clause 135(1)(b)	Remove clause 90 Replace with clause 132(1)	Pointing to wrong clause
Note associated with clause 135(1)	Remove clause 94 from Note Replace with clause 144	Pointing to wrong clause
clause 136(1)	Review the sections of the EIA and GIA.	Version 21 of the ERC points to section 41 of EIA and section 48G(3) of GIA. Double check appropriate section before republishing
Note associated with clause 138	Remove clause 93 Replace with clause 139(2)	Pointing to wrong clause
clause 140(1)	Remove clause 19 Replace with clause 13	Pointing to wrong clause
clause 163(3)(a)	Remove clause 101 Replace with clause 163	Pointing to wrong clause
clause 166(2)(b)	Remove clause 107 Replace with clause 171	Pointing to wrong clause
clause 166(3)	Remove clause 107 Replace with clause 171	Pointing to wrong clause
clause 166(4)	Remove clause 107 Replace with clause 171	Pointing to wrong clause
clause 182(4)	Replace "customer" with " <i>residential customer</i> "	Substantive amendment. Version 21 of the ERC has this obligation only applying to residential customers. The ERCP extends this obligation, despite the Commission

		noting that it is not intending to make substantive amendments.
clause 189(2)	Replace the error with subclause (2)	Typographical amendment.
clause 190(1)(d)	Italicise 'disconnected'	Typographical amendment.
Schedule 2	Remove (Rule 12) Replace with (Rule 18)	Pointing to wrong clause
Amendments to definitions		
<i>acceptable identification</i>	remove (a) from s40SA in note	Note is pointing to wrong clause of EIA.
<i>advertisement</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
<i>annual reference consumption</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
<i>bill summary</i>	Italicise <i>customer</i> and <i>retailer</i> in clause (a)	Typographical
<i>carry-over customer</i>	Remove "without" at commencement of clause (b)	Typographical
<i>category</i>	Remove "Schedule (6)" Replace with "Schedule (5)"	Pointing to wrong clause
<i>conditional discount</i>	Italicise <i>customer</i> and <i>customer retail contract</i> in clause (b)	Typographical
<i>conditional price</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
<i>confirmation reminder notice</i>	Remove clause 103 Replace with clause 164(1)(b)	Pointing to wrong clause
<i>cooling off period</i>	Remove clause 69 Replace with clause 97(2)	Pointing to wrong clause

<i>customer read estimate</i>	Remove clause o(5) Replace with clause 59(5)	Pointing to wrong clause
<i>energy marketing activity</i>	".. to a <u>small</u> customer"	Add 'small' before customer to mirror previous definition.
<i>explicit informed consent</i>	Remove square before clause number	Typographical amendment
<i>feed-in tariff agreement</i>	Italicise the following terms in the definition: retailer, small renewable energy generation facility	Typographical amendment
<i>feed-in tariff alert</i>	Remove clause 77 Replace with clause 107(3)	Pointing to wrong clause
<i>in-home display</i>	Add following words: <i>in-home display</i> means a device <u>located in a residential customer's premises</u> that displays residential electricity consumption data to residential customers in near real-time;	New definition requires extra clarification to highlight that the display is located within a residential customer's premises.
<i>lowest possible price</i>	Remove square before clause number	Typographical amendment
<i>medical confirmation form</i>	'customer' to be italicised	Typographical amendment
<i>move-in customer</i>	In note: Remove 'e' replace with 'a'	Typographical amendment
<i>negative deemed best offer message</i>	Remove clause 81 Replace with clause 111(4)	Pointing to wrong clause
<i>payment plan</i>	Remove Part 3 Replace with Part 6	Pointing to wrong Part
<i>positive deemed best offer message</i>	Remove clause 80 Replace with clause 111(3)	Pointing to wrong clause
<i>price</i>	Add: <i>price</i> —see clause 49(5)	Definition to be added

<i>proportional discount</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
<i>relevant customer</i>	Recommend to remove definition and replace with term “small customer” as the definitions mean the same thing. However if the definition remains: must remove the squares in the Note and clause 83.	Recommend definition to be removed.
<i>reminder notice</i>	Remove clause 182 Replace with clause 181	Pointing to wrong clause
<i>representative customer</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
<i>responsible person</i>	This definition in electricity has been replaced in the NER with the term ‘metering coordinator’.	Recommend amending the definition to reflect the right definition in the NER.
<i>termination notice</i>	Add: termination notice —see clause 176(1)(a)(i)	Definition to be added
<i>type</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
<i>unconditional price</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause
Utility Relief Grant	Italicise throughout the Code of Practice as is defined term now.	Typographical amendment
<i>VDO price</i>	Remove clause (5) Replace with clause 49(5)	Pointing to wrong clause