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8 February 2019

Dr Ron Ben-David  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

Submitted via email to: [compliance.reporting@esc.vic.gov.au](mailto:compliance.reporting@esc.vic.gov.au)

Dear Dr Ben-David,

### **Re: Compliance and Enforcement Policy Draft Decision**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide feedback to the Essential Services Commission (the Commission) on the revised draft Compliance and Enforcement Policy (the draft Policy).

Red and Lumo have always believed in the importance of effective compliance processes and policies in the business. We believe that compliance and enforcement should be both efficient and effective and we provide this feedback in an aim of continuing to support best compliance practice in the Victorian market.

Red and Lumo support the stated goal of the draft Policy to streamline and bring the draft Policy in line with the current Australian Energy Regulator (AER) Statement, "including identifying the tools we may use to promote self-compliance with our energy regulatory framework." We believe that there are extensive benefits in bringing a more streamlined approach to compliance, and as an energy company which operates across the NEM, we believe that aligning these processes will provide better outcomes for both consumers as well as the broader industry.

### **The Draft Decision**

The draft Policy has elected to remove the "preliminary assessment" stage from the existing compliance and enforcement policy. We believe that this was an important stage of the compliance and enforcement pathway which allowed the Commission "to make a preliminary finding on whether or not a breach occurred."

Moving to a risk based approach appears to be a positive step for the Commission, in line with the stated goals of streamlining the process and aligning this with the AER. However, the draft Policy does not give clear detail of how this approach will work in relation to recent regulatory changes in Victoria.

Additionally, the draft Policy does not mention any potential review of existing reporting requirements on energy retailers around compliance. Currently, there are a wide range of reporting requirements which exist for energy businesses, while there has been no indication of how these requirements would be affected by this draft Policy.

Furthermore, the Victorian Energy Market Snapshot advised that the Commission was seeking to move towards "responsibility based regulation", however, we note that this was not mentioned in the draft Policy nor the draft decision and the Commission has not provided clear information on how this draft Policy would operate in relation to this.

Red and Lumo have serious concerns about the timing of this expected change in the draft Policy. The timeframe between the release of the draft Policy, the deadline for submissions and the indicated timeframe for the final decision appears to be too short to allow for a full and thorough consultation process.

### **Feedback on the Draft Policy**

We continue to support the Commission's stated guiding principles of responsiveness, proportionality, consistency and accountability. We believe that these principles when applied allow businesses to operate confidently in the Victorian market while continuing to ensure the highest level of compliance and consumer outcomes. We believe that the draft Policy would benefit from having the Commission produce reporting highlighting their success in operating to these goals. We believe this would facilitate not only further confidence from the industry but also greater consumer confidence in the operation of the draft Policy and the Commission.

Red and Lumo firmly believe it is critical that regulatory discretion be exercised appropriately. Regulatory certainty is an important input into our planning, operational and compliance processes.

It is critical that the Commission retaining the Preliminary Assessment stage in the final Policy. We believe that this stage allows for incorrect referrals or if a breach has not occurred to be addressed with little cost or impact on the business or the Commission. While we note the compliance and enforcement factors state, "in deciding whether and how a matter will be investigated" the factors all listed appear to only assess a potential breach and do not clearly factor in the potential for a breach to have not occurred. We believe that retaining the preliminary assessment or a similar stage would allow the clear and quick assessment of if a breach has occurred before progressing further.

We also believe that the draft Policy would benefit from a review of existing reporting requirements on energy retailers in relation to compliance. We believe that the final Policy should seek to streamline these existing reporting requirements to a more risk based approach. We believe the greatest benefits would be in aligning these with the current compliance reporting requirements of the AER.

Red and Lumo request that the Commission also clearly outline how it will seek to assess compliance, seek enforcement against retailers under the aforementioned responsibility based regulation and how this will impact on the draft Policy. There has been a lack of clear information provided on how the draft Policy would be impacted by responsibility based regulation. We seek clear guidance from the Commission on how this regulation noted would impact on the draft Policy and then request time to respond to the Commission as part of a standard consultation process.

The framework should be clear on transitional arrangements in relation to existing enforcement actions. In our view, procedural fairness requires that the previous framework should be grandfathered for existing enforcement actions. We are concerned that the draft Policy does not provide any clear guidance on this, creating a further level of uncertainty for businesses. This date of effectiveness and the grandfathering approach towards existing enforcement actions needs to be clearly articulated in the final Policy.

Red and Lumo also hold strong reservations over the short timeframe for the review of the draft Policy and the implementation of the proposed changes. The Commission released the draft Policy on 18 January with submissions required to be completed three weeks after this date, with the date for final decision slated for March 2019. There is no timeframe listed for further consultation and we have concerns that this is not an adequate time frame for proper consideration of submissions. We also note that a range of steps and timeframes that are listed in the Commission's Stakeholder Engagement Framework appear to have not been undertaken. We believe that proper consultation along with stakeholder engagement is a key part of implementing effective policy change by the Commission. We suggest that the Commission

should review the timeframe for implementation to allow a more substantial consultation process and would also seek information from the Commission on why the specific engagement steps were not taken in this process?

Overall, while Red and Lumo support aligning the draft Policy with the AER compliance framework we hold a range of serious concerns around the lack of detail provided as well as the timing of the draft Policy. Victoria is currently undertaking substantive Government led changes (including the Payment Difficulties Framework and the Thwaites Review) and there has been a lack of detail on how these wide ranging changes will impact on the draft Policy. There is significant risk in amending the draft Policy when there is a change implemented in the regulatory framework, therefore, we recommend that the Commission hold off on this change until it has implemented the redrafted Code.

### **About Red and Lumo**

Red and Lumo are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, South Australia, New South Wales and Queensland to approximately 1 million customers.

Should the Commission wish to discuss or have any enquiries regarding this submission, please contact [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to be "Ramy Soussou", written over a light grey grid background.

**Ramy Soussou**  
General Manager Regulatory Affairs & Stakeholder Relations  
**Red Energy Pty Ltd**  
**Lumo Energy (Australia) Pty Ltd**