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29 January 2018

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

Submitted electronically

Dear Dr Ben-David,

### **Re: Draft charter of consultation and regulatory practice**

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to contribute to the Essential Services Commission's (the Commission) consultation process to update its Charter of Consultation (the Draft Charter). Not only is effective consultation a key element of regulatory accountability, genuine engagement with regulated businesses and other stakeholders has proven to result in better outcomes for consumers.

As an example, we observed significant improvements in the process and form of the Commission's engagement on the Payment Difficulties Framework. As it began to work more closely with retailers to finalise the framework, the Commission proposed options and explained how they related to its objectives, which allowed retailers to explain how they might operate in practice, identify operational challenges and propose amendments. We believe this approach has produced a better framework for consumers and for regulated businesses than would have occurred under a less collaborative or more adversarial model of engagement.

We welcome the Commission's commitment (as apparent in the Consultation Paper's discussion of consultation versus engagement) to develop an ongoing relationship with regulated businesses to facilitate greater understanding of respective positions. We will be able to better understand what the Commission is trying to achieve and what it views as acceptable market conduct, while the Commission can better understand retailers' operations and cost structures, and their activities and strategies in a competitive retail market.

Red and Lumo also welcome the Commission's commitment to *'provide adequate time for meaningful engagement with people affected by our decisions'*. Consultation processes should be sufficiently flexible to allow the Commission to explore issues in more detail or to seek additional information, rather than truncated in order to meet predetermined deadlines.

### **Commission's proposed approach to regulatory practice**

Despite some positive elements, we see some scope for improvement in the Commission's Draft Charter, particularly in the discussion of its approach to regulatory practice.

Both the Draft Charter and Consultation Paper appear to suggest that consultation is a process for the Commission to explain its decisions rather than an essential mechanism for better understanding regulated industries.

While clarity around the Commission's thinking is always welcome, consultation provides an opportunity to gain insight into the nature and extent of the problem it is seeking to address, the impact of different regulatory options and to ultimately select an option that achieves its objectives in the most efficient and effective manner. It can reveal unforeseen economic impacts – on innovation, operating costs, cost of capital and risk management, for example – and in the case of engagement following implementation, unintended consequences and opportunities for regulatory reform.

The Commission refers to a principles based approach and lists five principles to guide engagement and consultation. These are worthy but the accompanying discussion is more about how the Commission will conduct consultation – for example, in a transparent way, using clear language, and reporting on performance through its annual report, website and sector newsletter – rather than recognising that businesses' perspectives should be a key input to regulatory determinations.

### **Economic regulation of the retail energy market**

Unlike some other sectors in which the Commission has responsibilities, retail energy is a competitive market. The regulatory framework should retain incentives for retailers to compete with each other on the basis of price and service quality. Misguided or ill-informed regulation in this sector will not only add cost but can undermine such incentives, discouraging innovation and new entry (or encouraging exit). This is not in consumers' long-term interests.

Similarly, the Consultation Paper states that the Commission understands that its work '*can have an impact the cost of doing business*'. As noted, we see the impact of regulatory decisions as being broader than the cost of doing business as they can fundamentally alter the evolution of a competitive market. Moreover, the Paper then states that the Commission's communication will focus on helping the government, businesses and the public to understand its roles, responsibilities and objectives as a regulator, rather than ensuring it is better able to identify regulatory options for which benefits outweigh costs.

There are very few references in the Draft Charter to consultation - and obtaining input from regulated businesses more specifically - as a mechanism for improving regulatory outcomes. We also note there are very few references to *economic* regulation and how the Commission as an economic regulator draws on economic analysis (theory and practice) to better understand the immediate and longer term consequences of its decisions.

### **Greater emphasis on impact assessment**

In our view, the Commission should make greater reference to effective consultation with regulated business in its revised Charter, the specific purpose of which is to improve regulatory outcomes. This means retaining some elements of the Commission's current Charter, which emphasises concepts of cost-benefit analysis and economic impact assessment more prominently.

As an example, we note that under the current Charter, the Commission commits to be:

- Efficient by minimising the costs of our regulatory activities and seeking to ensure that the costs of regulation do not exceed the benefits.
- Active in engaging with government agencies, regulatory bodies and industry and consumer advocates, to better inform our regulatory approach, especially on emerging issues
- Active in working with regulated businesses to achieve efficient regulatory outcomes that ultimately benefit consumers.

In addition, the current Charter states a commitment to implementing best practice regulatory approaches consistent with the *Victorian Guide to Regulation*. This document refers to the importance of carefully defining the nature and extent of a problem and to directly target that problem through a proportionate regulatory response. It also refers to the importance of an evaluation framework, noting that actual outcomes may not always conform to expected outcomes.

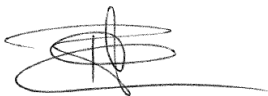
The potential for harmful unintended consequences in the competitive retail energy market is significant. Therefore, we encourage the Commission to place greater emphasis on this aspect of the consultative process and retain these commitments in its revised Charter.

### **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 and South Australia and electricity in Queensland to approximately 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to this draft decision. Should you have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, appearing to be "Ramy Soussou", written over a horizontal line.

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