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5 October 2018

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

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

Dear Dr Ben-David,

Re: Draft Decision - Building trust through new customer entitlements in the retail energy market

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Essential Services Commission's (the Commission) Draft Decision to implement recommendations 3F to 3H of the Independent Review into the Electricity and Gas Retail Markets (the Thwaites Review).

It is clear from the Draft Decision that the Commission is keen to implement measures to improve engagement in the market and increase transparency of the variety of energy products and services available to them. We consider that the Commission's desire to place good consumer outcomes at the centre of its regulatory framework is meaningful and consistent with the intent of the Thwaites recommendations. Many of the original recommendations will complement the competitive retail market.

We recognise that the Commission has been given direction to implement specific recommendations within a prescribed timeframe. Unfortunately, this prevents a more detailed assessment of the precise impact of the recommendations including their likely costs and dynamic effects. It also precludes the Commission from investigating other options to meet the objectives of the recommendations in a manner that promotes good consumer outcomes, in an efficient and cost effective manner, and consistent with our experience on the upcoming implementation of the payment difficulties framework.

The Commission has gone some way in assessing potential actions that consumers may take on receipt of the notification of a potential better offer through a defined set of parameters tested by applying behavioural economics. As a result, the Draft Decision claims that Victorian consumers will participate in the energy market with greater trust and confidence. Our customers have all participated in the market, and have made an active decision to choose either Red or Lumo as the retailer to meet their energy needs. Our customers chose to stay with us for a variety of reasons including our award winning customer service and/or our competitive products. We are concerned that as currently drafted, implementation of these recommendations will be costly and will impact the customer experience of Victorian consumers. While it may be the case that some Victorian consumers will act on the new changes, we are not confident that these intangible benefits identified in the behavioural assessment will outweigh the significant costs across industry. It is unfortunate that the Commission's process does not allow for this more comprehensive evaluation to avoid any unintended consequences of a stringent application of the recommendations.

Retailer obligations and customer expectations

Red and Lumo firmly believe that Victorian consumers benefit substantially from effective competition, and that the Energy Retail Code (the Code) should apply obligations on retailers to increase consumers' experience with and confidence in the Victorian energy market. The drafting of the Code in the Draft Decision largely does not place obligations on retailers to achieve these outcomes.

We are concerned that the Draft Decision creates an environment where the compliance status of a retailer's conduct is uncertain or that breaches are only apparent after the event. An example is the notion of the most suitable offer for a customer and whether a retailer has offered sufficient assistance (particularly if a customer has been advised they can expect to receive highly specific savings on the cost of their energy usage). Should a customer have any cause for complaint and is a retailer exposed to regulatory action if that customer feels - for whatever reason - that they are not on the most suitable offer? It is highly unlikely that a customer would actually realise the estimated savings even if they switch offers, despite a retailer's efforts to assist. This could be due to changes in their usage, payment behaviour or circumstances, all of which are outside a retailer's direct control. We are concerned that imposing obligations on retailers that are not measurable is not in the best interests of consumers or will increase transparency and confidence in the energy market. Particularly when there are additional risks that a retailer may be seen as misleading a customer with the potential savings available to a customer as the estimated annualised savings is just that—an estimate. The draft Code obliges retailers to include all savings, including any conditional benefits that the customer may not be able to meet.

Red and Lumo remain most concerned with the linkage in the draft Code between the clear advice entitlement and the obligation on a retailer to obtain the customer's explicit informed consent. Energy consumers have the existing safeguard of a prescribed cooling off period that gives sufficient time for them to undertake a measured and considered analysis of an energy contract, many of which are entirely consistent with model contract terms recommended by the Commission in the Code. At 10 business days, the length of the cooling off period exceeds that for other significant purchases, notably the absence of a cooling off period for a house purchase at auction. This safeguard allows a consumer to consider the financial implications of the best offer and any competing offers (including their lower profile terms), ask questions of the retailer and also the chance to seek advice from other parties, such as financial counsellors, friends or legal counsel if the consumer desires.

Proposed considerations by the Commission

Whilst understanding that the Commission is working within very stringent timeframes and terms of reference, we consider it prudent for the Commission to satisfy itself of the following prior to making a final decision:

- All regulated messaging is simple and clear to a customer, to reduce any potential for a poor customer experience or inhibiting their ability to participate in the market.
- The final version of the Code is clear that the definition and application of the provision of the annualised best offer savings to a customer will not be constituted as misleading and deceptive conduct under Australian Consumer Law – especially if the message is described in the Code as “you are paying \$X more than you need to”.
- Obligations in the Code can be provided to a consumer in a technology agnostic manner, and take into account potential innovations in energy pricing structures and products.
- All permutations of retail offers are considered and covered in the Code, particularly dual fuel offers.

- Implementation will not reduce the amount or variation in the offers made available to consumers in the market, including the number of active retailers able to make competitive offers.
- Timeframes for implementation are prioritised in a manner to deliver the greatest benefit to consumers while reducing implementation costs, which will ultimately be borne by consumers.

Finally, we strongly urge the Commission to engage with the implementation of the ACCC recommendations, as we are very concerned that there are likely to be inconsistent obligations being placed on retailers. Regulatory outcomes implemented under the Thwaites Review must take into account the national arrangements in order to avoid poor customer outcomes and unintended consequences of Victorian specific legislation.

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 and South Australia to over 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to the 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 read "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ramy Soussou

General Manager Regulatory Affairs & Stakeholder Relations

Red Energy Pty Ltd

Lumo Energy (Australia) Pty Ltd