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14 July 2020

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

Submitted electronically

Dear Ms Symons,

Re: Draft decision - Supporting energy customers through the coronavirus pandemic

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 a draft decision to introduce additional support measures for energy customers through the coronavirus pandemic (the draft decision). Our view is that additional measures are not necessary at this time as there is no evidence that current forms of support are inadequate.

In addition to the current economic climate due to the pandemic, the draft decision will further alter retailers' risk profile and impose additional costs. This is due to higher operating costs and a contribution to bad and doubtful debts. Furthermore, the prescriptive nature proposed in the draft decision for small business will interfere with the assistance that retailers are currently providing both voluntarily and in line with regulatory expectations. The draft decision will force retailers to offer support in a very specific way - in terms of triggers and duration, for example - and in situations where it is not justified.

As a general point, we do not see any obvious deficiency in current forms of support that governments (both Federal and State) and retailers are providing to either residential or small business consumers. Retailers are also coordinating under an Australian Competition and Consumer Commission (ACCC) interim authorisation and working with key stakeholders to continue to deliver effective ongoing support to these consumers.

An important element of this process is that retailers will continue to find ways to communicate with all consumers - including those that have not previously sought assistance - to let them know that their retailer will help them, if they face payment difficulties. Retailers have adapted to rapidly changing circumstances and made changes to the support they offer. A flexible framework allows retailers to offer assistance at the right time and in the right form and this must be both retailers' and the Commission's focus. In contrast, the Commission's draft decision removes this flexibility.

This flexibility is also called for by Victoria's Consumer Policy Research Centre, who recently recommended that *'evolving consumer protections and supports need to be based on evidence of consumers' lived experience in markets. Government, regulators and businesses can now collectively build and deepen their understanding of how support for vulnerable consumers is performing – both for those who are receiving it and, importantly, for those who are excluded or not able to access it.'*¹

The Commission must appreciate the consequences of its draft decision, if it decides to proceed particularly in its current form. The quid pro quo of such regulatory proposals is that they add to retailers' costs. This needs to be acknowledged and accounted for in regulated pricing determinations; otherwise, some retailers may face threats to their ongoing viability.

Assistance for residential customers

The Commission proposes a guideline that would require retailers to assist customers to fill out the Utility Relief Grants (URGs) online application form over the phone and lodge the form online on behalf of the customer, unless the customer requests otherwise. It is not sound regulatory practice to address this issue through an additional regulatory obligation on retailers. As the Commission will appreciate the complexity of the URGs application process is a direct function of the requirements of the Department of Health and Human Services (DHHS).

The obvious solution to this is for DHHS to streamline the process and make it more customer friendly. Examples might be changes to eligibility criteria or the documents that consumers need to provide to support an application. The Commission's proposal should, at best, be nothing more than a temporary measure until this reform occurs.

Retailers currently take their lead from customers about how much assistance they should provide, particularly as these applications involve financials which is a sensitive topic for many customers. Red and Lumo already assist our customers with these applications upon request as it is an important element of the support we provide to our customers who are in need.

Under the draft guideline, a retailer must assist the customer to complete the form, unless the customer requests otherwise. It will be required to demonstrate compliance with this requirement so this will result in scripted language. An unintended consequence of mandating that retailers must assist customers to complete the form, instead of placing an obligation to ask if the customer would like assistance, is likely to create a poor customer experience and reduce trust in the energy sector. A retailer will need access to customer details to complete the form, including to sensitive information. Some customers could find some enquiries or offers of assistance intrusive.

The Commission's comparison between competitive energy retailers with water businesses and the (apparently) more comprehensive assistance they provide to consumers experiencing

¹ Consumer Policy Research Centre (2020), *COVID-19 and Consumers: from crisis to recovery*, page 61

payment difficulty is not valid. In terms of costs, water businesses are regulated monopolies, who do not have the same incentive to reduce their operating costs. While retailers receive a fee for each application they generate, water businesses will have full cost recovery. DHHS must reassess its process taking into account the experience of retailers and their customers. Otherwise, DHHS must revisit the fee and the Commission account for the change in regulatory obligation in the retail operating cost component of the VDO.

Tariff checks for residential consumers

In the draft decision, the Commission has proposed that retailers conduct tariff checks for residential customers due to the current environment. We understand that the Commission in their draft decision used the words 'tariff check' to mean assess whether the customer is on the best offer. Noting that customers already receive the best offer notifications on their bills, it is relatively simple for a customer to choose to take up the best offer.

As the Commission will be aware that the consumption profile of many consumers has changed substantially in recent months. This is the case for both residential consumers (many of whom are working from home) and small businesses (whose consumption has reduced sharply as a result of the pandemic). This means current consumption patterns that reflect immediate concerns - such as loss of employment - may not reflect future consumption patterns that better reflect improved macroeconomic conditions. As a result, best offer calculations will continue to reflect the usage available to the retailer, and provide an existing, simple process to implement.

However, should the Commission wish for a different 'tariff check' process to apply, we urge the Commission to engage with retailers to ensure that the assistance considered can be implemented in an efficient and reasonable timeframe.

Assistance for small business

The case for standardising the assistance that retailers must provide to small business is less compelling and more complex than for residential customers. This is a business to business relationship and it has never been the primary role for retailers to assist business customers to remain viable when there are so many other relevant factors, such as the demand for the product or service they produce.

Retailers have, and continue to, provide support where a business customer has a clear need. Retailers have a commercial incentive to ensure that their small business customer remains viable, can pay for the energy they use, and will encourage this through tailored support. They can do this because assistance provided to business customers isn't mandated in a particular form or over an extended period of time.

Similarly, the argument for consistency should automatically apply for small business. Their experiences are vastly different and any challenges they have to meet energy payments are highly dependent on factors specific to that business and the sector in which it operates. In

many instances, challenges in paying energy bills are not solely a function of the pandemic and it is not a retailers' role to lend support to businesses that will not remain viable. Rather, this is the role of the banking sector and of government. At the same time, retailers will differ in their financial capacity to absorb the costs associated with offering prescribed assistance to small businesses.

The Commission will be aware of the various forms of assistance that Federal and State Governments are providing to small businesses. These are more appropriate and don't distort energy markets by altering retailers' risk profile. We are also mindful of our obligations under the Corporations Act that prevent us from offering support to insolvent businesses.

Within this context, the draft decision proposing retailers offer payment flexibility for small businesses anticipating financial stress - and importantly, who contacts a retailer - is a reasonable response, only if limited to apply for a period of 6 months. This measure encourages a small business to contact a retailer at an early stage and offers immediate assistance. It would also prompt a discussion about the customers' circumstances and what other form of assistance might be necessary. 6 months strikes the right balance between assistance and allowing a retailer to understand and manage any longer term cashflow risks.

On the other hand, we do not support the proposal to offer automatic payment assistance to all small businesses that miss a bill due date and for a retailer to be obligated to accept repayment proposals that meet prescribed criteria.

Retailers already bear the risk of non-payment for all participants across the supply chain and this is exacerbated by the Commission's proposal. The 2 year maximum timeframe far exceeds anything that we expect any retailer would currently offer to a small business so this will substantially increase bad and doubtful debts for this customer segment. This seems to be a disproportionately long time for the repayment of a single bill if retailers are obligated to offer this support to every small business customer.

It is difficult to estimate in advance what the incremental contribution to the cost of bad and doubtful debt of this proposed measure would be but we expect it to be material and will only become apparent over time. This will need to be accounted for in the Victorian Default Offer for 2021.

The Commission suggests that retailers and small businesses will generally agree to a shorter timeframe.² This may be the case but no one can be sure how this will work in practice, particularly in the context of the broader economic conditions. At the very least, the Commission must take a balanced view and reduce the maximum timeframe for repayment from 2 years to 6 months.

² Essential Services Commission (2020), *Draft Decision: Supporting energy customers through the coronavirus pandemic*, page 32

Understanding the tight timeframes in this draft decision, we welcome the opportunity to present to the Commission the impact of the application of the Payment Difficulties Framework on Red and Lumo's residential customers. While this information is commercially sensitive, it may assist the Commission to understand the possible impact of extending this support to small business in terms of the impact on the size of debt and the period over which it will be recovered.

As an alternative, we would recommend a less prescriptive model for assistance that does not mandate a particular trigger or maximum timeframe for assistance. Retailers should retain the incentive and flexibility to provide temporary assistance to businesses that they expect will remain viable over the longer term. Small businesses should retain the incentive to contact their retailer to discuss their circumstances and to agree on a path forward that satisfies both parties.

We have worked with the Australian Energy Council and its members to propose alternative wording that outlines the various forms of assistance that small businesses can expect from their retailers - such as a payment plan, deferral or practical advice - but which enables the two parties to agree on what is most suitable for their specific circumstances.

In terms of the obligation to undertake a 'tariff check', noting the points above, the challenges with undertaking a meaningful comparison that we referred to above are even more pronounced for businesses whose energy consumption will vary substantially for a range of reasons. We note that these consumers are receiving best offer messages on their bills and already have a powerful commercial incentive to reduce their operating costs, including those due to energy consumption.

Other matters

The draft decision indicates that the Commission will retain the discretion to extend these short term measures but does not include any substantial discussion of how it might reach this decision. This is not appropriate, and we consider that the Commission must be transparent in its deliberation and decision making processes. Our preference would be for the Commission to clearly state that these are short term measures that apply only for a 6 month period and that it would only extend these measures following further consultation and detailed cost-benefit analysis of their impact before deciding to extend. This reflects the likely contribution of these measures to retailers' costs and the need to account for the broader context. It is also consistent with the Australian Energy Market Commission's recent draft decision to require the Australian Energy Regulator to propose a further rule change if it wants to extend the temporary deferral of network charges by some retailers.

Uncertainty about the duration of these measures, particularly those to assist small business, also creates uncertainty for retailers about their future cashflows.

In terms of potential forms of network support options, the majority of options that policymakers and regulators are looking at involve the deferral of costs, rather than a reduction. Retailers will need to reimburse networks for these costs at some future point. Deferrals, in practice only offer

short term cashflow relief, and will not offer support to retailers who face serious challenges to their viability due to the pandemic. Neither will it offer any benefit to consumers.

These retailers will still need to take action to secure their longer term financial viability, such as seek additional funds from their bank, shareholders or some other source, or renegotiate contracts with counterparties such as large customers. The Commission should avoid implementing options that offer short term relief but discourage a retailer from taking more fundamental action to stay viable.

A further aspect of any network support package is that it must be consistent and easy to implement. To date, voluntary network relief packages have offered what is best described as modest benefit to a small set of small business customers. Red and Lumo welcome the opportunity to work with networks to provide targeted assistance to a broader set of customers.

About Red and Lumo

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

Red and Lumo thank the Commission for the opportunity to comment on the draft decision. Should you wish to discuss or 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 stylized with loops and a long horizontal stroke at the end.

Ramy Soussou
General Manager, Regulatory Affairs & Stakeholder Relations
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