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

Submitted electronically

Dear Dr Ben-David,

### **Re: Fixed Benefit Periods - Notification obligations for energy retailers**

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Essential Services Commission (the Commission) on the Notification obligations for energy retailers Draft Decision (the draft decision).

#### **The proposed rule 47A**

In principle, Red and Lumo are comfortable with the draft decision of the Commission to harmonise the obligations in the Energy Retail Code (ERC) with those in the National Energy Retail Rules (NERR). However, the timing for harmonisation is very tight. The Commission has stated an intention to publish a final decision in late December or early January, before the new rule commencing on 1 February 2018. In normal circumstances a timeframe of this short duration would be unacceptable.

However, as rule 47A is identical to the rule being implemented into the NERR, we are comfortable supporting a fast track with a caveat - our support is conditional on the final decision not differing in any manner from the draft decision. If the Commission determines to implement the draft decision, it is crucial that the wording is not changed - even in a manner it considers immaterial.

If the Commission intends to make any changes, implementation must be delayed to allow for a proper assessment of the implications of the rule on retail contracts and offers to be undertaken.

#### **Unintended consequences caused by a fast tracked process**

The timeframe proposed under the draft decision does not allow proper consultation to occur - potentially increasing the risk of unintended consequences. The environment in Victoria is not identical to that in the other states. For this reason, impact assessments completed in other jurisdictions have historically not been assumed by the Commission to be relevant in Victoria.

The most notable difference between Victoria and other states at this time is the uncertainty regarding the Victorian Government's response to the recommendations made in the Independent Review of the Electricity and Gas Retail Markets in Victoria (the Thwaites Review). The Thwaites Review made a number of recommendations that may impact the application of this proposed rule, in particular recommendation 4B, which stated:

*Require retailers to clearly disclose to customers the length of time any offered prices will be available without change.*

Despite the title of the draft decision suggesting otherwise, the proposed amendments to the ERC would require retailers to advise customers in any market retail contract that the benefits to which they signed up to are changing. This rule is not limited to fixed benefit period contracts.



It is important to note that the rule proposed to the Australian Energy Market Commission (AEMC) by the Minister for the Environment and Energy, the Honourable Josh Frydenberg, was expressly limited to contracts containing fixed benefit periods. While the AEMC stated that no persuasive evidence was presented that suggested the costs of complying outweighed the benefits, it cannot be dismissed that retailers were asked to make comment on the proposed rule applying only to a discrete group of customers, with the final rule expanded to apply to all customers. Retailers were not given the opportunity to comment on the cost implications of the broader application.

### **The impact of the Thwaites recommendations on the proposed rule**

The definition of benefit change requires that any feature set for minimum period will be covered by the rule.

Should the Government decide to implement recommendation 4B, retailers would be required to set a date in which they will change the price in any variable price contract. If this is the case, the definition of benefit change in the draft decision would require rule 47A to be complied with for every price change in Victoria.

This does not seem to be the intention of the rule as the ERC already requires retailers to notify customers of price changes either as soon as practicable or no later than the next bill, and represents a material difference in operation not present under the NERR.

Given the above complicating factors present only in Victoria, we consider it reasonable for the Commission to delay implementation of the draft decision until after the Government advises their response to the Thwaites review. This will allow the rule to be implemented in such a manner that will not unnecessarily impose costs on Victorian consumers, through two sets of changes being made. Should the response have no impact on the proposed rule, we would be comfortable with a short implementation period to replicate the requirements in the NERR as detailed in the draft decision.

We consider the benefits of a short delay to allow proper process outweigh the potential costs to consumers resulting from a rushed implementation.

### **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 Ben Barnes, Regulatory Manager

Yours sincerely

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