PO Box 4136
East Richmond VIC 3121
T 131 806
F 1300 661 086
W redenergy.com.au

PO Box 632
Collins St West VIC 8007
T 1300 115 866
F 1300 136 891
W lumoenergy.com.au

16 June 2017

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

Submitted electronically

Dear Dr Ben-David,

Re: Payment Difficulty Framework – New Draft Decision

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Essential Services Commission (the Commission) on the Payment Difficulty Framework (PDF) New Draft Decision (the Draft Decision).

As the Commission is aware, Red and Lumo have actively engaged in this process since the Hardship Inquiry commenced in 2014. We have welcomed the desire to improve the experiences for residential customers facing payment difficulty in Victoria, and the recognition that high customer debt is a driver for ongoing hardship or disconnection. Throughout this process, we have tried to provide the Commission with clear, evidence-based advice and suggested improvements, ensuring that not only are customer debts mitigated where possible, but also that customers are able to achieve consistent, flexible, manageable, and meaningful support when they need it most.

We continue to support the Commission and their objectives. But, Red and Lumo believe the most recent iteration of the Payment Difficulties Framework has fundamental structural problems that will result in inadequate customer outcomes and likely result in higher energy debts. These problems must be resolved for the sake of all Victorian consumers.

We agree that now is not the time to delay unnecessarily in the pursuit of elegant solutions, but we urge the Commission not to rush at this time so as to achieve arbitrary deadlines, at the expense of the same consumers we are trying to protect.

Our recommended solution

The attached submission provides two key sets of recommendations that if implemented together will achieve an appropriate and reasonable balance between mitigating debt and ensuring that disconnection only occurs as a last resort. Our proposed amendments have been carefully considered to be as simple as possible and will not fundamentally impact the intended operation of the framework as presented in the Draft Decision.

Lumo Energy ABN 69 100 528 327 NSW ABN 92 121 155 011 QLD ABN 63 114 356 642 SA ABN 61 114 356 697
Red Energy Pty Ltd ABN 60 107 479 372

Our first set of recommendations aim to resolve the fundamental design issues that will lead to poor customer experiences, inadequate outcomes, and ultimately completely disengaged Victorian consumers.

Our second set of recommendations resolve widely shared concerns that the framework as drafted make it impossible for retailers to mitigate energy debts ultimately leading to increased costs for all Victorian consumers, with insufficient complementary benefits to those facing payment difficulties.

While separate, these issues are intrinsically linked. Customers should be entitled to clear and useful assistance when they need it. They should be able at any point in time to know the payment that is due, the total amount they owe, and what they must do to avoid disconnection. But customers in severe financial difficulties may not always act in their long term interests. A balance must be made to ensure these customers are assisted sustainably, in a manner that does not allow their debt to grow unnecessarily.

About Red and Lumo

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

Red and Lumo thank the Commission for the opportunity to respond to the new 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
Att.

1. Facing payment difficulties

The payment difficulties framework (PDF) is prefaced on providing residential customers with assistance when they are facing payment difficulties. The concept is fundamental to the operation of Part 3, with the purpose stated as setting out the minimum standards of assistance for residential customers anticipating or facing payment difficulties.

This appears to create a scenario in which a residential customer not facing payment difficulties could be disconnected without receiving the assistance included in Part 3.

While undefined in the draft Code, Red and Lumo consider 'facing payment difficulties' could have one of two logical meanings:

1. Residential customers who miss a payment are not necessarily facing payment difficulties.
2. All residential customers who miss a payment must have missed that payment because they are facing payment difficulties.

Based on discussions with Commission staff, we assume definition 2 was the intended definition for the purposes of Part 3. This submission is made based on this assumption. Given this, we consider that the draft Code should amend the concept of 'residential customers facing or anticipating financial difficulty' and it replaced with the defined term 'residential customers'.

2. Fundamental design issues

2.1. Arrears

The concept of arrears performs two distinct purposes in the PDF. It serves as a proxy starting point for the framework, and provides a basis for the minimum standard of assistance a customer is entitled to under each stage. Whilst the term 'arrears' used is the same, these purposes are unrelated. In effect, the framework commences when a customer is 'in arrears', whereas the minimum standard is that a customer is entitled to assistance to repay their 'arrears'. The latter purpose could be redefined as 'debt' with minimal complications, whereas the former could not. For the avoidance of confusion, this submission will distinguish customers as being *'in arrears'* when referring to the proxy starting point, and customers as being *'in debt'* when they have an outstanding balance with their retailer.

2.1.2. Customers 'in arrears'

Red and Lumo strongly consider that the concept of arrears as defined in clause 3 will result in significant negative consequences for both customers and energy retailers.

The Draft Decision defines arrears as the amount payable by the customer under one or more bills that are unpaid as at the bill issue date for the subsequent bill. Arrears has been used as a trigger for tailored assistance (TA) and default assistance (DA), and signals the point in time that a customer is obligated to respond to offers of assistance by their retailer or risk disconnection. For this reason, we characterise a customer being in arrears as the proxy starting point for the PDF, understanding that Standard Assistance (SA) will be available before this point.

This causes at least two issues:

1. Customers who do not engage when they are entitled to assistance will incur significantly more debt than a customer who does not engage under version 11 of the Energy Retail Code (ERC v11).
2. The timing of when a customer is in arrears will create significant confusion for customers, and perversely encourage them to disengage.

2.1.3. Increased debt caused by arrears

Red and Lumo agree that as providers of an essential service we have an obligation to ensure that our customers get the assistance they need to pay their energy bills and to ensure disconnection only occurs as a last resort. We also believe that it is incumbent on us to mitigate unnecessary costs, ensuring energy prices are as affordable as possible for Victorian consumers.

The resulting impact of the arrears definition in the PDF cannot be underestimated. A quarterly billed customer will accumulate at least 6 months of usage before there is any risk of them being disconnected. A delayed disconnection may seem positive, however if we assume an average energy bill of approximately $300 to $400 then this will mean customers will likely accumulate energy debts of close to $1000 before they are required to engage. This has significant flow on impacts to the level of debt energy retailers will be required to hold[1].

Our data shows that customers are significantly less likely to repay higher energy debts than debts that are lower. This means that not only is the cost of holding the debt increased by the higher balance and longer repayment period, the potential for bad debts also increases significantly. These higher costs result in higher energy costs for all customers, including those already facing difficulty paying their bills. We do not consider these additional costs to be once off or that they will decrease over time – costs caused by increased debts will continue to be incurred year on year.

From the perspective of a customer, an increased energy debt is less likely to be manageable, less likely to be repaid with a Utility Relief Grant, and as shown above, more likely to result in default. Defaulted debts have a long term profound impact on vulnerable customers, ultimately reducing opportunities far beyond their ability to maintain access to energy as an essential service for many years.

2.1.4. The distinction between engaged and disengaged customers

Red and Lumo consider the definition of arrears is irrelevant for customers who are willing to engage with us. We expect to make offers of assistance to our customers, and for the majority to respond to those offers, if they need it.

SA will be available, and we will make best endeavours to offer the assistance measures detailed in TA at the point it becomes apparent the customer may be falling into difficulty.

The PDF is rightly designed to assist these engaged customers, and ensure that those who find it difficult to engage might be able to do so. We strongly support these principles.

[1] It must be noted that not all customers currently disconnected by energy retailers are experiencing payment difficulties. It must also be noted that a significant proportion of customers do not engage until they receive a disconnection warning notice or are disconnected. We do not expect these customers to engage with the new PDF either.

But, the PDF should not be designed in a way that it 'over-captures' the disengaged. The Draft Decision protects the disengaged from disconnection so as to ensure those who wish to, or cannot engage are protected. This is a poor outcome. The PDF must be sufficiently targeted, with an appropriate balance between providing consumers with a steadfast entitlement to assistance that suits them, whilst ensuring that these same consumers are not left to pay for the energy debts of those with no intention to ever repay them.

2.1.5. Complexity and confusion resulting from being in arrears

As noted above, a customer can only be in arrears when they have been issued a subsequent bill. This means that however this might be interpreted[2] customers at some point will be in arrears for one amount, despite owing another. For example, a customer who receives their first quarterly bill for $400, and their subsequent quarterly bill for $500, will be in arrears for $400, despite owing $900. This presents obvious issues which are discussed further below in section 2.4, however at the very least will result in the customer receiving regulated notices and offers of assistance for differing outstanding amounts.

This issue is highlighted when an example of a customer not engaging until being offered DA is considered. In the above example, the customer would be entitled to repay $400 over 9 months until the second bill became arrears, at which point the DA entitlement would be to repay $810 over 9 months[3].

2.2. The separation of debt and future consumption

The second critical issue is the focus on debt as the driver for the different types of assistance a customer is entitled to throughout the framework. We agree with the opinion of the Commission that it is the role of a regulator to assist customers in repaying what they owe, however we contend that the PDF is not simply a mechanism to repay debt. The PDF is much more than that, setting out significant obligations on energy retailers to assist customers with all manner of things, including ensuring their future energy use is reduced. Given the apparent willingness of the Commission to expand the traditional regulators remit, we are concerned that practical measures offered by retailers and utilised to great effect by customers over many years are being discredited in the name of 'minimum standards'.

Payment plans designed to repay debt and pay for expected future consumption are at the forefront of Red and Lumo's highly successful assistance programs. This assistance is offered to all customers, regardless of debt, and allows customers to make consistent, regular payments that align with their income. We are very concerned that the Draft Decision considers plans of this nature to be an alternative, with the minimum standard being a plan in which the customer repays their arrears over a set period, and continues to pay their ongoing energy use as each bill falls due.

As noted in our submission to the previous Draft Decision[4], in almost all circumstances plans that disregard ongoing consumption will fail. Customers who need a payment

[2] We consider it unclear when subsequent bill amounts become 'arrears'. For example, a balance of $400 becomes arrears at the date of issue of the next bill (eg, for $500). This $500 bill would not fall due for 13 business days. We understand some stakeholders consider that the $500 would be added to the $300 arrears the day after the bill fell due, whereas others consider the $500 would not become arrears until the third bill is issued and so on. This should be unambiguous in the drafting.

[3] The initial DA entitlement would be to repay $45 per month. Upon the second bill becoming arrears, the balance would be ($400+$500-$45-$45). This balance would then appear to be repaid over a new 9 month period.

[4] Red Energy and Lumo Energy,Submission to ESC Draft Decision, 18 November 2016, pg 7 – discussion on Immediate Assistance

plan to repay their arrears do not find themselves in a situation in which they can afford to repay their future bills as they fall due. We note the Commission has repeatedly stated that there is nothing preventing a retailer offering a customer more; that is, offering a plan that repays debt and consumption as well as a plan that only repays debt. We fundamentally disagree with this proposition. Forcing a customer to choose between making a smaller initial payment or a larger one that might benefit them in the future is not in anybody's interests. This concern is highlighted by the example below, which illustrates the choice of payments that would be offered to a customer who uses approximately $100 of energy per month, with a $300 debt:

	Month 1	**Month 2**	**Month 3**	**Month 4**	**Month 5**	**Month 6**	**Month 7**
Minimum standard	$33	$33	$33+$300 bill	$33	$33	$33+$300 bill	$33
'additional assistance'	$133	$133	$133	$133	$133	$133	$133

Put simply, a customer is being asked to hope that their financial circumstances will improve in just a couple of months and they will be able to afford their next bill when it falls due. This is concerning.

2.3.1. Application to tailored and default assistance

Our concerns regarding the separation of debt and future consumption hold true for both DA and TA. This submission focuses on DA primarily because by its nature it is for customers unable to engage with their retailer, and as such will not be able to receive advice on the consequences of the decision they are making. Customers entitled to TA and engaging with their retailer will at least be able to be advised of the benefits of combining debt and future consumption, however we are concerned that the minimum standard allowing a customer an opportunity to make a smaller initial payment will encourage some to make a choice not in their best interests.

TA also presents an additional concern. Given we will be having a conversation with our customer to determine a manageable payment arrangement, we envisage that the vast majority of (if not all) customers will make an offer to repay their debt and future consumption together. However, if the minimum standard allows a customer to choose a plan that only repays their debt, we must have the ability to deliver that minimum standard in our systems. We will detail the costs of implementing the minimum standard in our response to the Cost Benefit Analysis, however we expect these costs to be extremely high considering the very small minority of consumers who might propose to enter such an arrangement.

2.4. Customer confusion

Red and Lumo are extremely concerned that the design of the PDF will result in customers never being fully aware of their financial position. This concern is caused by the combination of the definition of arrears, the separation of debt and future consumption, the abstract concept of suspended debt, and the variability of assistance based on customer billing cycles.

The pathways mapping technical workshop held by the Commission on 2 June 2017 highlighted this complexity. Commission staff and stakeholders considered what the base case for assistance might look like under the proposed PDF. The resulting 'map' was convoluted at best, with customers being asked to pay different amounts at different times. These expected payments appeared to have no correlation to the total outstanding debt of the customer. This session was enlightening, and appeared to

achieve agreement from all stakeholders present that the PDF as drafted would result in a very poor experience for Victorian consumers. It must be noted that this session focused on the simplest quarterly billing scenario, and didn't account for monthly billing or sporadic engagement. We expect that the experience of these customers will be much worse than disengaged quarterly customers.

We will not go into further detail in this submission regarding the outcomes of this technical workshop, however stress the Commission must clearly process map and understand the outcomes and experiences for consumers as they engage and disengage with the PDF before any final decision is released.

2.5. Our proposed solution

2.5.1. A simple, pragmatic outcome

The Commission has asked that any options proposed to resolve issues with the Draft Decision meets a set of principles[5].

We believe our proposal represents a simple and pragmatic solution to the problems caused by arrears in the Draft Decision. Our solution ensures that disconnection remains a measure of last resort, and importantly, preserves customer agency while providing consistent outcomes irrespective of billing cycle.

Red and Lumo understand the Commission has attempted to balance concerns raised by stakeholders to the previous Draft Decision about the commencement of the framework, and what became known as 'over-capture'. We do not consider our proposed solution recreates these concerns.

When compared to the previous Draft Decision, commencing the framework with a conversation and offer of personalised, *tailored,* assistance is a fundamental departure from commencing the framework with an automatic payment plan that resulted in concerns of lost agency.

2.5.2. Recommendations

1. Remove reference in the PDF to 'customers facing payment difficulties' to avoid excluding customers from being entitled to assistance
2. Remove the concept of being 'in arrears' from the PDF and replace it where necessary with the existing concept of arrears as understood in ERC v11
3. The entitlement to TA should commence at the end of the reminder notice period
4. The entitlement to DA should commence at the point a debt is a 'disconnectable' amount under clause 116(1)(g) in ERC v11
5. Increase the minimum disconnection amount to $300 (inc GST) in line with the minimum amount under the national hardship arrangements
6. Ensure that any minimum standard of assistance under the PDF requires a customer to pay for debt and estimated future consumption combined
7. Amend DA to entitle a customer to repay arrears and future consumption over a set period, irrespective of the length of the original billing cycle

Red and Lumo consider that the concept of arrears is unworkable. Creating a construct that results in customers being in arrears and debt for different amounts has obvious shortcomings. Merely redefining arrears will be unlikely to resolve this issue, given the concept of debt is largely understood by customers and utilised by retailers in their billing systems.

[5] Slide 43, Essential Services Commission, Second Stakeholder Forum, 29 May 2017

We consider a better alternative for the commencement of the PDF would be to separate the 'trigger' for TA and DA, as they serve fundamentally different purposes. TA by its nature, entitles a customer to work with their retailer and propose a tailored amount to repay their debt, whereas DA provides a 'last chance' protection for customers to engage and avoid disconnection.

A customer's entitlement to TA should commence from the point the reminder notice falls due. This ensures that all customers, irrespective of their outstanding balance or billing cycle are offered assistance as soon as possible, when debt is at its lowest and customers are most likely to be able to propose a manageable amount that will repay it.

Given the purpose of DA as a last resort measure, it is appropriate to directly link its trigger to the possibility of disconnection. We consider that the minimum disconnection amount is the best currently used mechanism[6] to codify this link.

The current minimum disconnection amount in Victoria is $120 plus GST. Given the overall intent of the PDF is to ensure customers are only disconnected as a last resort, we do not consider $120 represents a reasonable debt for which a customer should be disconnected from an essential service. Red and Lumo propose that the Commission amend the minimum amount to $300 (inc GST). This amount would align the minimum disconnection amount to that of other states in the NEM, and has recently been consulted upon and reinstated by the Australian Energy Regulator.

Finally, we propose that the minimum standard for all assistance should be for a customer entitlement to a payment plan that will repay both their arrears and expected future consumption. As noted above, very few customers (if any) will be assisted by being entitled to a plan to repay their arrears only, and the costs (to both consumers and retailers) significantly outweigh these benefits. For DA, we consider that plans should not vary in length between billing cycles. Varying the length of the plans adds significant complexity and cost, for little benefit to either party. This will ensure that all customers are treated equally, irrespective of their billing cycle. Red and Lumo are comfortable with a 9 month period being the standard length of DA.

2.5.3. Practical operation of the framework

With Red and Lumo's proposed changes, at a high level the PDF would operate as follows:

- Standard Assistance would be available on request at all times up to the point the reminder notice falls due. SA can be provided to a customer on request at any other point in time as an additional assistance measure.
- Customers would be 'entitled' to TA from the point the reminder notice fell due, however, nothing should prevent a retailer offering it earlier as an additional assistance measure.
- The retailer must use its best endeavours to offer TA to the customer.
- A customer becomes entitled to DA when their outstanding debt is greater than $300. If this is reached on one bill, the process can occur in a linear fashion. If not, as soon as the debt reaches $300, and the retailer has used its best endeavours to offer TA, then an offer of DA can be made which would allow the customer to repay debt and arrears over a 9 month period.

[6] ERC v11 Clause 116(1)(g)

3. Payment plans – the balance between assisting and disadvantaging customers

3.1. The importance of mitigating debt

Red and Lumo supported the focus on mitigating debt in the previous Draft Decision. This focus had been present since the first draft report into the hardship review, which stated that the regulatory framework should "assist consumers to avoid long-term energy debt, and repay debt that does accrue, while wherever possible maintaining access to energy as an essential service."[7] We consider the primary concern with previous versions of the PDF was the prescriptiveness of debt mitigation processes which led to the so-called 'conveyer belt to disconnection', rather than stakeholders fundamentally disagreeing with the concept of mitigating debt.

Understanding this, we are concerned that in the most recent iteration of the PDF the pendulum may have swung too far away from debt mitigation towards avoiding disconnection at any cost.

This is highlighted by the new purpose of the PDF, "to provide customers facing payment difficulty with an entitlement to set of minimum standards of assistance, so that disconnection is a measure of last resort." No mention of debt mitigation is even made. We consider this to be a mistake.

3.1.1. Customer 'proposal' of payment amounts

Nothing highlights the shift from mitigating debt to avoiding disconnection more than the operation of customer proposals dictating payment arrangements[8]. Customer's being given the opportunity to propose a payment plan amount is not new in this iteration of the PDF, however the concept of customers being given unfettered discretion over how much they would like to pay is.

When assisting customers in payment difficulty, Red and Lumo currently undertake a comprehensive capacity to pay assessment to determine an affordable payment plan amount. While we agree to an extent with the Commission's view that 'only the customer can decide what are manageable payments'[9], our experience has shown that in general customers facing payment difficulty have extremely complex circumstances. Energy debts are unlikely to be their only unpaid bills, and as such customers are unable to determine effectively an amount they can afford. With this in mind, and given the ability to propose any amount they like, we anticipate that customers will tend to propose the smallest amount possible based on the information provided to them under clause 79(1)(b).

This leads to further complications in the long term. As noted by the Commission, "customer's financial and personal circumstances will often be fluid[10]". For a customer who has proposed the lowest possible repayment amount, a change in circumstances for the worse may very quickly lead to severe financial difficulty. On the other hand, a customer who has been paying the highest manageable amount under their payment arrangement will be much more likely to be able to work through the change in circumstance with their retailer as their outstanding debt will be much lower.

---

[7] Essential Services Commission 2015, Supporting Customers, Avoiding Labels. Energy Hardship Inquiry Draft Report, September 2015, Pg 18
[8] Clause 80
[9] Draft Decision Pg 93
[10] Draft Decision Pg 45

3.1.2. Customer discretion, and retailer obligation

The Commission has stated in the Draft Decision that the new PDF provides retailers discretion as to how they assist customers in financial difficulty. Red and Lumo disagree with this assessment. The Draft Code provides a broad set of minimum standards, with an ability for retailers to offer extra assistance (in the customer's favour) where they wish. But, this discretion is fundamentally changed by the draft guidance discussed in Chapter 5.

The draft guidance details a set of standards in which retailers will be expected to provide the discretion allowed in the Draft Code. This guidance changes the nature of discretion, in fact, making it an obligation in very broad circumstances. For example, under clause 80(1), a retailer must accept a payment proposal that would allow repayment of debt and future consumption within 2 years. This appears reasonable, however the guidance in the Draft Decision suggests that "retailers would be expected to accept a longer proposal if doing so would assist the customer to make regular repayments"[11]. This is an extremely low burden to prove – in fact, we cannot conceive a circumstance in which a customer stated they required longer to pay their arrears than 2 years that a retailer would be able to refuse.

This theme repeats through the Draft Decision, with retailers generally expected to provide the discretion the draft code allows, if doing so would assist the customer[12]. 'Discretion' is clearly not really discretion for a retailer.

3.1.3. Revised proposals

In light of the above two sections, the revised payment proposal clauses in TA cause significant concern. A customer is (rightly) able to contact their retailer during a payment arrangement and make a revised proposal, which a retailer must accept if it would repay the debt and future consumption within the original two year period. This is reasonable.

But, this is not how the PDF will operate according to the Draft Decision. A customer who misses a payment is able to make a revised payment proposal under clause 80(1). If the proposal is to repay the debt and arrears over a period of longer than the original 2 year period the retailer must accept it, if it is reasonable taking into account the circumstances of the customer. A customer who originally proposed the lowest possible repayment amount before missing a payment would likely require more than 2 years if they couldn't maintain their previous payment arrangements. The retailer would have no ability to refuse this, as they know the customer was unable to repay the bare minimum amount, and given the missed payment the bare minimum amount would now be higher.

This situation is made worse by the draft guidance. If a customer who initially proposes the bare minimum repayment misses a payment, and they make a revised proposal that does not cover the cost of their likely energy use, the retailer is obliged to provide them with a 6 month period in which their arrears are on hold. At the conclusion of this period, the customer again is entitled to two years to repay their arrears. Again, we cannot foresee a circumstance in which a retailer would be able to enforce a two year repayment period. This would make the customer's situation worse as their debt will continue to rise.

This is a significant design flaw. If retailers have no ability to mitigate a customer's energy debt then not only will customers be able to accumulate debts they ultimately

[11] Draft Decision Pg 96
[12] Clauses 76(2)(c), 79(4), 80(1), 81(2), 82

will be unable to repay, but a retailer's cost of operation will increase significantly. As the Commission is undoubtedly aware, this will cause an increase in energy prices. The benefits of assisting customers in financial difficulty must not come at the undue expense of all Victorian consumers.

3.1.4. Suspension of repayment of arrears

The Draft Decision entitles customers unable to pay for their ongoing energy use a period of 6 months where repayment of their arrears is suspended. Our submission[13] to the previous Draft Decision highlighted the need to support customers unable to afford their ongoing usage with a short term temporary payment plan. We agreed with the Commission that a three month period was a beneficial starting point for this temporary arrangement, with the ability to extend it if doing so would benefit the customer.

We are concerned the Commission has characterised our support for three month temporary arrangements that can be extended on a case by case basis as a reason to implement a 6 month under consumption arrangement with an apparent 'right' to an extension.

To be clear, a customer who cannot even afford their ongoing consumption is in acute hardship. These customers must be closely managed, and they must be aware of the consequences of the length of time in which their debts are accumulating. They cannot be allowed to accumulate large debts unchecked.

The shift from retailers setting payment amounts that customers can afford to customers proposing amounts that retailers must accept is a significant change from ERC v11. Our support for this shift over recent years has been prefaced on previous iterations of the PDF placing obligations on all parties. Retailers had to provide a certain level of support, while customers were unable to accrue significant debts. The current PDF does not have this balance.

When this imbalance is considered in the context of under consumption payment arrangements in the Draft Decision, the shift is alarming. We have moved from a position in the previous PDF where customers were required to pay 66% of their ongoing consumption for three months or face disconnection, to a place where customers can pay anything they propose for 6 months, with an extension to a year likely. This shift will clearly result in customers who are unable to repay their arrears[14] over a 2 year period. We do not consider this to be a good outcome for consumers.

3.1.5. "The hamster wheel of repetition"

Many stakeholders have discussed the concept of the hamster wheel. The manner in which the term is used differs, but in general it highlights a concern that the framework appears to create a never ending loop. We support flexibility, encouraging customers who foresee a change in circumstances to work with us to discuss amending their arrangements when they might miss a payment. We do not support placing customers in endless loops where debts accumulate.

Red and Lumo are particularly concerned with the interaction between TA and DA. When a TA plan is broken, a customer becomes entitled to DA under clause 84. This requires the retailer to make an offer of DA, with the first payment due no earlier than two weeks after the offer is made. This is reasonable in the first instance. But, the

[13] Red Energy and Lumo Energy,Submission to ESC Draft Decision, 18 November 2016, pg 10
[14] A customer's arrears in this scenario will now be the amount of their initial arrears, plus up to a year (or maybe more) of unpaid usage added to the initial arrears under clause 81(4)

problem arises when a customer contacts the retailer after DA is offered. In this scenario (which ACIL Allen predict will happen 20% of the time[15]) the customer will be offered TA. Upon breaking the arrangement, the customer again becomes entitled to DA under clause 84 and so the cycle continues into perpetuity potentially with no payments ever being made by the customer. This is obviously unsatisfactory for all involved.

Further, this creates an unintended consequence. A customer who complies with the DA offer rather than contacting the retailer has less protections than one who does.

3.1.6. Off ramps

The Commission has stated that retailers are protected from the above scenario by what it has characterised as 'off ramps'. Off ramps are intended to allow retailers to refuse a customer's prima facie entitlement to assistance.

As noted at the stakeholder forum on 29 May 2017, the Commission considers clauses 79(4) and 81 in concert, clause 81(3), and clause 91(c) provide mechanisms to avoid a customer deferring repayment or accruing arrears indefinitely[16]. Red and Lumo consider these mechanisms may work when a customer is truly non-compliant with the intent of the assistance they are entitled to, but there are many likely scenarios in which a retailer will have no ability to mitigate debt accrual. We discuss these below.

Clauses 79(4) and 81: Extension of assistance

Clause 81 details the entitlement of a customer who is not paying the expected future cost of their consumption. The clause further details the obligations on the retailer should the customer not make a payment or not meet their responsibility to implement practical assistance. Clause 79(4) appears to allow retailer discretion upon the conclusion of a 6 month period under clause 91. As noted in the Draft Guidance, a retailer is expected to extend the period of under consumption payments if the customer is making progress towards reducing the cost of their energy consumption. This clause is broad – a customer could be consuming $100 per month and paying $5 per month for the initial period under clause 81, and during the period reduce their ongoing consumption to $90 per month. This customer would be entitled to an additional 6 month period where their debt will continue to sharply increase.

Clause 81(3): Customer obligation to implement practical assistance

Clause 81(3) entitles a retailer to contact a customer it has reason to believe is not implementing the practical assistance the retailer provides. If contact is made, the retailer and customer must work together to identify a timeframe to rectify the situation. We agree that a customer clearly increasing their usage might suggest a failure to implement the practical assistance provided to them, however in most instances it will not be this clear. It can be difficult to identify the exact cause of changes in usage – in these circumstances we consider this clause will provide little protection.

Clause 91(c): No payment difficulty

Red and Lumo consider use of the mechanism contained in clause 91(c) is unfeasible.

As noted above, 'facing payment difficulties' is undefined in the Draft Code. Given the onus of showing that a customer is not in fact anticipating or facing payment difficulty is on the retailer, this definition is crucial. Even if we assume a suitable definition is developed, or the reference to residential customers experiencing payment difficulty in

[15] ACIL Allen Consulting, New Framework For Customers Facing Payment Difficulties – Preliminary assessment of retailers' costs, 8 May 2017, pg 19

[16] Slide 19, Essential Services Commission, Second Stakeholder Forum, 29 May 2017

the framework is removed entirely, we consider the evidence required would be impossible to obtain.

Being in payment difficulty is an individual notion. What is payment difficulty for one customer is not necessarily payment difficulty for another. Payment difficulty can be caused by factors either within or outside a customer's control – some are in payment difficulty because their income is too low, while others are in difficulty because they spend too much. It is up to the Commission to determine who should be protected under the framework, balancing the overall costs and benefits. Without this determination, this clause is inadequate.

3.2. Possible solutions

The issues raised above are critical factors that must be properly understood when assessing the costs and benefits of the PDF.

Red and Lumo are concerned that the methodology published to date by ACIL Allen appears to disregard any notion that the PDF may not work exactly as intended, or that customers may fall in and out of assistance. This is a mistake. Customer's continually engage and disengage with their energy retailer. Customer's make payments and miss payments, they have ups and downs. The PDF must protect all customers, but it must not be crafted in such a way that a customer who engages erratically is allowed to accumulate more debt and maintain connection for longer than a customer who is actively seeking assistance, as is currently the case.

3.2.1. Recommendations

1. Reconsider guidance that gives the customer complete discretion over the length of assistance under TA
2. Provide guidance clarifying that retailers are able to work with the customer to discuss proposing an amount that repays their debt as soon as possible, rather than merely accepting an arrangement of two (or more) years
3. Amend the initial period where a customer's debt is on hold to 3 months, with the ability for extensions on a case by case basis
4. A customer should be entitled to DA once, only as a last resort assistance measure before disconnection
5. 'Off ramps' must be amended to allow a retailer discretion not to continue or repeat particular assistance if doing so would likely result in a customer accumulating an unreasonable amount of debt

Guidance must not be given by the Commission that results in retailers being forced to accept customer proposals that will diminish their ability to repay their debts in the long term. Just as the customer is best placed to determine a manageable payment amount, their retailer is best placed to determine the likely outcomes of providing additional assistance.

To be clear, Red and Lumo are not recommending discretion to provide the minimum level of assistance detailed in the PDF, rather discretion not to extend assistance when doing so would adversely impact the customer and likely result in debts not being repaid.

As an extension to this, we strongly believe that customers should be encouraged to repay their debts as fast as manageable to allow for circumstance changes in the future. In order to do this, we consider the Commission must give explicit guidance that

a retailer is able to provide advice to the customer about the benefits of repaying a debt as soon as possible, and the risks of attempting to repay a debt over the maximum allowable period. We reiterate the views made in our submission to the previous Draft Decision that retailers should ultimately accept any payment proposal that would repay the debt within 2 years, but further information regarding the benefits and risks of a customer proposal must be encouraged to enable truly customer centric arrangements. We believe this nuanced change would improve customer agency, by empowering customers to make a more informed decision.

As discussed above in section 3.1.4, periods where payments are less than ongoing consumption must be utilised with extreme caution. These periods result in the greatest accrual of debt for customers, even more so than customers who completely disengage. We believe a more appropriate starting point should be a 3 month period where any proposal must be accepted, with any extensions required to take into account the risks of continuing assistance resulting in unreasonable debts.

Our fourth recommendation provides a solution to concerns that customers will be stuck in endless loops caused by the interaction of TA and DA. We consider it reasonable that customers are offered DA should they miss a payment and fail to make a revised proposal, however the intent of this is to provide a last chance offer of assistance before disconnection. If this encourages engagement, its purpose is met and the customer will be empowered to propose a payment arrangement that is manageable. From this point on the onus must be on the customer to maintain their arrangement, or work with their retailer to revise the proposal and make the arrangement manageable. If the customer does not engage, they should not be offered DA again. This represents a reasonable 'end-point' for the framework, with retailers obliged to make one final attempt to contact the customer before they can be disconnected.

This recommendation must be carefully considered together with the resulting costs and benefits of the framework. The costs of allowing debts to accumulate unnecessarily cannot be underestimated, both for a retailer and ultimately the customer. We will provide further insight into these expected costs in our response to ACIL Allen's retailer information request.

Our final recommendation in this section is to include an additional 'off ramp' (or amend clause 91(c)) to allow a retailer discretion to refuse continuing or repeating assistance a customer is entitled to in Part 3, if doing so would likely result in a customer accumulating an unreasonable amount of debt. Red and Lumo do not make this proposal lightly – we fundamentally believe that implementing the Draft Decision as proposed will result in customers being allowed to accumulate irreparable energy debts. This concern is not based on the anticipated actions of a few who might choose to 'game' the system, but based on our experience in dealing with the majority of customers in financial difficulty.

At some point, customers must engage and take responsibility for their energy debts. Retailers must assist them, and with the recommendations proposed by Red and Lumo in this submission, the PDF will provide customers with clear, reasonable support to repay their energy debts sustainably. The onus on providing these protections is rightly on the retailer, but we must also be given discretion when these support measures go far beyond what is necessary to give the community confidence that disconnection really is a last resort.

4. Operational concerns with the PDF

Red and Lumo consider there are a number of areas of the proposed PDF that are unclear and either require amendment or further guidance. We outline these below.

4.1. Standard Assistance

Clause 76(2)(a): Equal payments

We support the assistance enabled by this clause, and offer a successful product we believe would comply to our customers today. We are unsure why the Commission has chosen to provide guidance stating that assistance for customers on Standard Retail Contracts (SRC) under this clause must comply with the bill smoothing clauses in the ERC v11. We consider that clause 23 would continue to apply where bill smoothing was offered, but do not understand why the Commission would preclude SRC customers access to an opt-in assistance measure assumed to assist customers on market contracts. We recommend this preclusion be removed – if it remained Red and Lumo would simply decline offering this type of assistance to SRC customers, potentially to their detriment.

Clause 76(2)(b): Payment intervals

Red and Lumo are unclear what assistance under this clause might entail. It appears that the clause merely allows a customer to choose to make more frequent payments, irrespective of their billing arrangements. The clause and guidance appears flexible enough to allow retailers to merely allow payments to be made into the customer's account prior to the bill being issued, with any payments made appearing as a credit on the bill once issued.

Red and Lumo request further guidance is made by the Commission if this characterisation is incorrect.

Clause 76(2)(d): Payment in advance

Similar to clause (b) above, this clause appears to be flexible enough to allow payments to be made into the customer's account prior to the bill being issued, to pay for the energy 'in advance'. We see no practical difference between clause (b) and (d).

4.2. Other provisions

Clause 89(4): Written communications

We consider the requirement for a retailer to take steps to ensure that communication relating to disconnection is delivered within 24 hours after it is sent is impractical. Even using express post, retailers cannot guarantee delivery within 24 hours to all parts of Victoria, with only 80% of Australian addresses covered by Australia Post's national next day delivery network[17]. We question the value of including a specific time requirement, and suggest instead including a requirement that all written correspondence relating to disconnection to be sent using the Priority Letters service, ensuring delivery within 1-2 business days if sent from inside Victoria[18].

Clause 96: Restriction on transfer

The limitation on transfers causes obvious procedural issues. From 1 December 2017, the timeframe for objecting to transfers in the NEM decreases to 1 business day. Given this, we consider in the vast majority of circumstances, retailers will be required to comply with clause 96(b), and retrospectively have the transfer reversed.

The Commission must issue guidance regarding how this clause will be complied with. Are retailers expected to obtain consent from the customer before requesting for the

[17] https://auspost.com.au/parcels-mail/sending-in-australia/delivery-areas-within-australia
[18] https://auspost.com.au/parcels-mail/sending-in-australia/domestic-letters/priority-letters

retrospective transfer to take place? What happens if the customer refuses? Will the customer be returned to the same tariff and contract terms they were on prior to the transfer taking place?

We strongly recommend the Commission undertake consultation with industry and the Australian Energy Market Operator before providing this guidance. Issues similar to this were recently consulted on by the Australian Energy Market Commission in making the Improving the Accuracy of Customer Transfers Rule Change[19]. This Rule change highlighted that matters impacting transfers are complex, and solutions require a holistic approach given the multiple parties involved.

Clause 111A : Disconnection as a last resort

Red and Lumo seek clarity from the Commission regarding the application of this clause. Clause 111A(a) sets the obligations on a retailer that must be complied with before arranging disconnection of a residential customer facing payment difficulties. The obligations do not appear to be required sequentially.

The problems in this clause reiterate problems with other clauses discussed in this submission. The Draft Decision assumes the PDF will apply perfectly, with customers either assisted or not. It appears to assume that only customers who completely disengage will be disconnected, and no customers receiving assistance will stop engaging. This is not the case. As noted above and from our experience, customers continually move between periods of engagement and disengagement.

Given clause 111A(a) is not sequential, a customer could be issued a reminder notice and disconnection warning notice before engaging when the retailer uses their best endeavours to contact them prior to disconnection. If that customer then stopped engaging, the retailer would be able to disconnect them immediately without warning of disconnection. This does not appear to be intended.

We note this unintended consequence to highlight practical issues with the operation of the framework. We consider there is much work to be done to ensure common scenarios such as this one do not lead to poor outcomes for customers, nor lead to retailers being unable to mitigate debt accrual. It is important the Commission does not simply 'resolve' the problems highlighted by the above example by making clause 111A(a) sequential. This will not resolve the issue, but rather prolong the debt cycle even further for no benefit.

This matter needs thorough investigation, with a clear understanding as to what the Commission intended in drafting the PDF as a whole, and what stakeholders consider to be a fair balance between mitigating debt accumulation and ensuring disconnection only occurs as a last resort.

Clause 108 – Reminder notice period

Red and Lumo see no purpose to including two separate definitions for the reminder notice period. The intent of the period remains the same, with nothing gained from codifying two separate notice periods for different types of small customers.

5. Implementation timelines

Red and Lumo are unable to provide guidance to the Commission at this stage as to the expected timeframes for implementation, nor any recommendations as to what should be included in a staged implementation approach.

[19] http://www.aemc.gov.au/Rule-Changes/Improving-the-accuracy-of-the-customer-transfer-pr

As noted in this submission, the problems identified by Red and Lumo are fundamental, and without amendment will require substantial reform of our systems and processes. Until we see the Final Decision, we are unable to commit to implementing any more than one or two elements of Standard Assistance before 1 January 2018.

We could not implement any part of Tailored Assistance, Default Assistance, or make any changes to our disconnection processes or regulated notices before 1 January 2018. Implementing these elements of the framework will take time, with the scoping, development, testing, and deployment requiring significant resources. These resources are already completely allocated for 2017.