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16 April 2019

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

Submitted via email energy.submissions@esc.vic.gov.au

Dear Dr Ben-David,

Re: Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Draft Decision

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide feedback to the Essential Services Commission (the Commission) on the Draft Decision: Energy Retail Code Changes to Support Family Violence Provisions for Retailers (Draft Decision). Red and Lumo acknowledge the work that has been done by the Commission on this matter and express our ongoing support for efforts to help address this society-wide issue.

Red and Lumo have always put our customers at the centre of our business. We always aim to ensure that our customers are treated with decency and respect for the understanding of their circumstances. As part of this, Red and Lumo have in place a strong Privacy Policy with ongoing training for all employees, along with a highly effective hardship policy, to assist customers who are in financial difficulty.

Monitoring and enforcing compliance

We have concerns about the potential for conflict between retailers obligations under the current Energy Retail Code (ERC) and the Draft Decision's proposed amendments to the ERC (draft Code). Under the current ERC, retailers have a range of communication obligations, for example, issuing bills to a customer. However, under the draft Code, retailers are expected to provide a more flexible approach and be open to all requests from customers who are affected by family violence (affected customers). Specifically, clause 106G(4)(a) requires that retailers must "take reasonable steps to elicit the affected customer's preferred method of communication."¹ This is furthered by the following subclause which states that retailers must offer alternative methods where an affected customer's request is not practicable. This raises a potential for a conflict in retailer obligations, where, for example an affected customer asks for us to stop all communication for a period of time, which places retailers in breach of other obligations under the ERC. We expect that it is not practicable for a retailer to stop sending a customer bills during this time, where they have advised that there is no alternate delivery location or email address that we can send the relevant notice.

The Draft Decision and draft Code is clear on a retailers obligations, however, during presentations by the Commission it has been noted that there are no limitations on the requests from affected customers and an expectation for retailers to go above and beyond the ERC requirements to address a consumer requests and concerns.

Furthermore, the Commission has suggested a retailer should (in the process of meeting an affected consumer's request under the Family Violence Provisions) report a breach of their

¹ Clause 106G(4)(a), Essential Services Commission, Energy Retail Code Changes to Support Family Violence Provisions for Retailers, Draft Decision, Appendix A: Draft code amendment, 19 March 2019, p28

existing obligations under the ERC and report it to the Commission. If the Commission expects that this is a suitable outcome, for a retailer to breach the ERC and commits to withhold enforcement, it must be clearly articulated and compliance with the ERC carved out where the Commission considers it is prudent for a retailer to do so. One outcome of amending the ERC to make it clear where retailers are able to be non-compliant for an affected customer, will be to remove any requirement for retailers to report breaches because of the assistance provided to any affected customers.

Small Business Customers

The draft Code nominates affected customers as “any *customer*, including a former *customer*, who is or was a *small customer* and who may be affected by *family violence*.”² We note that the definition of small customers under Part 1 Division 1 (3)(a) in the ERC is “a domestic or small business customer under section 3 of the Electricity Industry Act or section 3 of the Gas Industry Act.”³ There are likely to be a number of unintended consequences, should the Commission include small businesses within the definition of an affected customer.

It is important to remember that the management and ownership structure of businesses is often complex with communications across multiple owners or registered account holders or contacts. The vast majority of small business accounts are not in an individual's name but are listed under a registered business and are likely to have one or more listed contacts on the account. If multiple contacts (or account holders) on a business account are owners of the business and one contact advises of a Family Violence incident against their business partner, how would retailers manage a request to exclude a registered owner of a business from accessing information about their account when there is no legal order in place?

Alternatively, a situation may occur where the contact on the account is an employee who manages the accounts for the business. This employee may have been having difficulty managing their accounts and their work due to their family violence issues. Would retailers then refuse to provide any information on the account and/or the payment history (if the affected customer has requested) from the owners of the business? The Draft Decision states that retailers are expected to “avoid disclosing the personal and financial circumstances of the customers affected by family violence, including to joint account holders.”⁴ Should this situation arise, it would be expected that retailers place themselves in the situation of the affected customer and would acquiesce to this request thereby locking an account and refusing to provide information to other business contacts about the account.

In order to resolve these unintended consequences, we recommend the Commission amend the draft Code:

affected customer means any *customer*, including a former *customer*, who is or was a ~~small~~ residential *customer* and who may be affected by *family violence*;

Other amendments to the Code

Red and Lumo note that clause 106J can be omitted from the draft Code as it is already a requirement on retailers under clause 89(1)(f) to ensure that customers who may be affected by family violence are entitled to receive assistance under Part 3 of the ERC.

² Amendment 2(1), Essential Services Commission, Energy Retail Code Changes to Support Family Violence Provisions for Retailers, Draft Decision, Appendix A: Draft code amendment, 19 March 2019, p24

³ Essential Services Commission, Energy Retail Code, Version 12, 1 January 2019, p8

⁴ Essential Services Commission, Energy Retail Code Changes to Support Family Violence Provisions for Retailers, Draft Decision, 19 March 2019, p16

Given sensitivities when dealing with affected customers, we support the suggestion raised at the forum on 28 March 2019 to amend the requirement in clause 106K. It was suggested that it may confuse and intimidate affected customers to mandate retailers provide a list of support agencies and instead refer to 000 in life threatening situations or 1800 RESPECT. One alternative is to amalgamate clause 106K into clause 106O of the draft Code, to add a subclause to 106O that retailer can recommend the list of a range of support agencies on to affect customers at the relevant time. We recommend that the Commission combine the clauses as per the amendments below:

106O Provision of information to customers

(1) A *retailer* must ensure that its *family violence* policy is easily accessible on its website in a readily printable form.

(2) A *retailer* must publish on its website and keep up to date a list of external *family violence* support services.


(3) Taking into account information about the *affected customer's* circumstances, a retailer must advise of the availability of information in subclause (1) and subclause (2) at a time and in a manner that is safe, respectful and appropriate.

About Red and Lumo

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

Should the Commission wish to discuss or have any enquiries regarding this submission, please contact Stephen White, Regulatory Manager on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to be "Ramy Soussou", with a long horizontal line extending to the right.

Ramy Soussou

General Manager Regulatory Affairs & Stakeholder Relations

Red Energy Pty Ltd

Lumo Energy (Australia) Pty Ltd