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18 October 2018

Ms Kate Wild  
Senior Adviser  
Australian Energy Market Commission  
Level 5, 201 Elizabeth St  
Sydney NSW 2000

Submitted electronically

Dear Ms Wild,

**Re: Draft Determination - Strengthening protections for customers in hardship**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Draft Determination on strengthening protections for customers in hardship as published by the Australian Energy Market Commission (the Commission).

Red and Lumo support clear and effective hardship policies and procedures, and regulatory obligations on retailers to have processes in place to assist customers who are experiencing financial difficulties. The National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) outline a framework whereby retailers must assist customers in hardship, offer that assistance in a particular way and take specific factors into account. The framework also places obligations on retailers to develop hardship policies and sets out what they must include. This means consumers and their representatives can be assured they have access to a minimum level of assistance, even though retailers currently have some flexibility in the assistance they provide.

We acknowledge concerns raised by the Australian Energy Regulator (AER) and the Commission about the lack of consistency between retailers in the assistance they offer and the content of their hardship policies. We agree that consumers should have access to information about the specific assistance they will receive from their retailer. As such, we support rules that require retailers to provide clearer information in their hardship policies. As the AER suggested in its rule change proposal, the absence of such information could discourage some consumers from seeking assistance.<sup>1</sup>

However, Red and Lumo also welcome the flexibility that the current framework offers. In our view, it encourages more effective support for customers facing payment difficulties.

We are not a policy-driven organisation but rather, we tailor our assistance to each customer's specific circumstances. Our programs are focused on identifying customers in hardship as early as possible when debts are low and working with our customers to reduce their energy consumption to a level they can afford. We find this approach, which relies on customer engagement and active participation, to be the most effective way of addressing payment difficulty and long-term sustainably.

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<sup>1</sup> Australian Energy Regulator (2018), *Request for rule change – strengthening protections in the National Energy Retail Rules for customers in financial hardship*, page 17

While it was released almost 12 months ago, the AER's most recent Annual Report on Compliance and Performance of the Retail Energy Market found that both Red and Lumo are industry leaders in the early identification of payment difficulty. It found that 84% and 83% respectively of customers entering our hardship programs held debts of less than \$500.<sup>2</sup>

Ongoing assistance should be a collaborative process, with a customer participating in discussions and agreeing to or proposing an arrangement that they can meet. Payment plans and the underlying retail contract should reflect each customer's individual circumstances.

The move towards a more prescriptive or Pro-forma type approach to the regulation of hardship potentially comes at a cost to consumers and retailers. In our view, retailers could be limited in how they address hardship or have less flexibility to adapt their processes and policies to changing circumstances. For example, a retailer might be compelled to offer assistance in a form and/or at a time that doesn't suit their customers' preferences. Retailers may also find that some forms of support are more effective than others or that customers like to receive information about the support they can access and how they are personally tracking in a particular way. This is why we support the current approach and we encourage the Commission to take this potential trade-off into account as it finalises the rule.

All retailers should be able to offer a minimum level of support consistent with the objectives of the NERL and NERR and in a form that aligns with their broader practices and strategies. We consider that it is consistency in the application of support to customers, irrespective of the wording of the hardship policy that must be a key objective of regulatory policy in this space. Consistent wording across policies may simply shift the AER's monitoring and enforcement costs to retailers, who have to make significant changes to systems and processes to comply with a prescribed approach.

### **Standard statements**

We welcome the Commission's decision not to include '*any matter that the AER considers necessary for inclusion in the customer hardship policy guidelines*' in the draft rule, which the AER initially requested. However, the draft determination picks up the AER's proposal to rely on standardised statements.

We argued in our submission to the consultation paper that we do not support the AER having discretionary powers to determine *how* retailers must comply and this seems the likely consequence of including standard statements. We continue to hold this view, particularly with the release of the first draft of the AER's standard statements.

The draft statements prescribe how retailers will admit consumers to their hardship programs, how a retailer will engage with a consumer once admitted, and the basis for payment plans. Greater prescription through these statements implies more of a top-down approach where a consumer is relatively passive and could just step through the prescribed forms of assistance. This includes immediate referral to a retailer's hardship team if certain events occur. Some consumers may strongly object to this and it could discourage, rather than promote engagement.

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<sup>2</sup> Australian Energy Regulator (2017), *Annual Report on Compliance and Performance of the Retail Energy Market 2016-17*, page 37

To illustrate, the first draft of the standard statements identifies a 'significant increase in energy usage for your household size' as a reason to immediately refer a consumer to a hardship team. However, this could simply be due to a change in a customer's personal circumstances (e.g. expanded family size) or installation of an appliance such as a pool pump or air conditioner.

Similarly, payment of an energy bill with a government-funded concession is not prima facie evidence of hardship or payment difficulty. In Queensland, for example, electricity and gas rebates are not means tested.

This model is a significant departure from the current framework and in our view, would not set customers on a sustainable path with respect to their energy payments (for the reasons discussed above).

As noted, the AER and Commission also suggest that greater prescription - through standardised statements - is necessary for it to administer the hardship framework more effectively and efficiently. This is important but shouldn't be the starting point for establishing an effective hardship framework, particularly as it could come at the cost of less effective assistance.

Further, we note that the AER and Commission are hardwiring the requirement for every hardship policy to contain 'standard statements'. These statements are currently untested and may result in unintended consequences in the future that might have a negative impact on consumers. We do not support locking in a very prescriptive and rigid regulatory model for hardship support. This approach binds the AER to standard statements and it would need to propose a rule change if it wanted to move away from a more prescriptive model if it found that it does not produce better customer outcomes.

We recommend the Commission reconsider the drafting of rule 75A(2)(b) to remove or limit the reference to standard statements. This wouldn't prevent the AER from being more prescriptive or requiring more detail from retailers in its forthcoming Hardship Guideline. Options include:

- A more general requirement in the NERR or Hardship Guideline for retailers to include more detail in their hardship policies for the purpose of allowing the AER to assess compliance and to inform customers of their rights and entitlements.
  - This could take the form of the Australian Energy Council's suggestion for retailers to make clear and actionable statements in their hardship policies.
  - Alternatively, rule 75A(2)(b) could make direct reference to information that is required for retailers to meet their obligations under rule 75B(1)(b).
- Australian Energy Council's suggestion to limit the scope of standard statements to areas where retailers' obligations in the NERL are administrative or straightforward, rather than where the NERL places the obligation on the retailers use their discretion to determine the level of assistance they will offer.

## **Other matters**

### *The inclusion of indicators in the hardship guideline*

We welcome the Commission's decision not to expand rule 75 to include indicators in the proposed hardship guideline. We agree with the Commission that section 287 of the NERL gives the AER powers to determine and publish hardship indicators in accordance with the NERR. Separating hardship indicators from the performance reporting guideline will add complexity for no apparent benefit.

### *Civil penalties*

As we argued in our submission to the consultation paper, the AER already has access to extensive civil penalties with respect to retailers' hardship policies. The Commission is concerned that the retailer's existing hardship policy is not required to comply with the new guideline under a civil penalty provision if the hardship guideline is amended. However, the AER could use its power under s43(3) of the NERL to require (shortly after an amendment to the hardship guideline) the retailer to review and submit its hardship policy to reflect the amended hardship guidelines. The retailer would need to comply or else would be in breach of the existing civil penalty provision.

## **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, South Australia and Queensland to approximately 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to the draft determination. 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 at the end.

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