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24 September 2019

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Submitted electronically

Dear Mr Pierce,

**Re: Regulating conditional discounting - RRC0028**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Australian Energy Market Commission (the Commission)'s Consultation Paper on a rule change proposal by the Minister for Energy & Emissions Reduction on the regulation of conditional discounts.

**Nature and extent of the problem**

Red and Lumo support regulatory measures that provide greater clarity for consumers about available market offers, particularly those with conditional discounts. This helps consumers to better assess the suitability of these offers. In the past, Red and Lumo advertised simple products that included pay on time discounts off a customer's entire bill, rather than just the usage component. We adopted a simple pricing strategy as a way to differentiate ourselves from other retailers. In the absence of a common reference point, conditional discounting was not used as an incentive to pay on time but rather as a marketing tool to increase the perceived value of an offer. The Federal Government has since established a common reference point for retailers to discount from, through the implementation of the Default Market Offer (DMO).

The Commission would be aware that the DMO Code prescribes how retailers present their offers and prohibits them from presenting the conditional component of an offer as the most prominent element of an advertisement or offer to supply. Advertising discounts in the same way as before is no longer possible under the DMO. Retailers must find different ways to provide a simple offer to enable greater choice and competition. Amendments were made to the Retail Pricing Information Guideline in 2018, with the Australian Energy Regulator (AER) undertaking further research and analysis to improve the Energy Made Easy comparator website. This will ensure the site conveys relevant information to consumers more effectively and allow for easier comparisons. Therefore, all this ongoing work is effective in delivering the benefits of competition to consumers.

## Management of vulnerable customers

Red and Lumo have always strived to ensure that all of our customers - especially those who are experiencing, or may experience, payment difficulties - are on contracts and payment arrangements that are best suited to their circumstances. This includes advice at the point they enter a contract, and then over its course, about different offers and whether the conditions of those offers better suit their situation. We recognise that customers' circumstances can vary substantially over time and are therefore committed to providing ongoing information.

The Commission will be aware that retailers must revise their hardship policies to comply with the AER's new binding Hardship Guideline from 2 October 2019. Retailers are obligated to identify customers experiencing payment difficulties due to hardship and assist them to better manage their energy bills on an ongoing basis. Retailers must also include standardised statements in their policies, one of which is: that a retailer will tell customers in hardship programs if 'you are on the right energy plan or if there is a better plan for you'. This would always cover any conditional element of a contract and whether the customer felt it suited their needs.

The AER will soon be able to take more effective enforcement action against retailers who fail to comply with their obligations. A likely example of behaviour that we expect the AER would penalise under the new framework, is where a customer on a high conditional discount product and continually fails to meet the conditions, and the retailer makes no attempt to discuss a more suitable offer. This would potentially signal payment difficulties and flag that a high conditional discount is clearly not a suitable product for them.

## Timing of regulatory response

In our view, this suite of regulatory measures targets many of the problems that the Australian Competition and Consumer Commission (ACCC) identified. We agree with the AER and ACCC, that it is too soon to conclude with any confidence what the precise impact of the 1 July regulatory initiatives has been. However, the Commission will be aware of these regulators' recent market analysis. Of particular note are the following statements:

- *'Retailers are moving away from advertising conditional discounts based on inflated and inconsistent base rates, enabling customers to more easily identify a better deal for their circumstances and reap the benefits of competition.'*<sup>1</sup>
- *'Across the board there was a significant reduction in the prevalence of offers with conditional discounts (those where a customer must take some action to receive the discount – such as paying on time), for residential and small business offers. The number of retailers who had at least one residential offer with a conditional discount fell between 23 to 33 per cent (depending on the zone) following the introduction of the DMO compared to October 2018. Business offers showed similar trends.'*<sup>2</sup>

<sup>1</sup> Australian Competition and Consumer Commission (2019), *Inquiry into the National Electricity Market, August 2019 Report*, page 4

<sup>2</sup> Australian Energy Regulator (2019), *Affordability in Retail Energy Markets*, page 44

Even though the DMO does not apply to gas, the AER also found that the proportion of gas offers with conditional discounts fell across all National Electricity Market (NEM) regions.

We expect that retailers are still reviewing their competitive strategies in the evolving regulatory environment. The DMO and the obligations to present retail offers in a very specific way has fundamentally altered retailers' competitive strategies. In the past, Red and Lumo advertised simple products that included pay on time discounts off a customer's entire bill, rather than just the usage component. We adopted a simple pricing strategy as a way to differentiate ourselves from other retailers. Consumers had a clear choice.

This is no longer possible under the DMO, but we remain focused on providing products that suit consumers' needs within the highly prescriptive regulations.

Retailers across the NEM will be reviewing the effect of this apparent change in discounting strategies and in particular, will assess whether fewer customers pay their bills on time as a consequence. Some may find it necessary to develop other mechanisms for encouraging their customers to pay their bills on time.

The changing nature of the market complicates retailers' responses to the Commission's data request as part of Question 3 in the consultation paper. Any historic data that retailers provide will not give the Commission with an accurate picture of how the market is developing under the revised framework.

With this in mind, we encourage the Commission to take a proportionate approach to addressing the issues that the rule change proposal seeks to address. It would seem reasonable for the Commission to await and assess further analysis by the AER and ACCC of the evolution of the competitive energy market before making a final determination.

A key milestone would be the release of the ACCC's next six-monthly report to the Treasurer as part of its inquiry into the prices, profits and margins in the supply of electricity in the NEM.

This would allow the Commission to fully understand the nature and extent of the problem the proposal is seeking to address, consider numerous feasible options and identify a solution that delivers the greatest benefit for consumers.

### **Preferred option**

Unfortunately, the way in which offers are now required to be described relative to the common benchmark has made any form of conditional discount unworkable when a simple, easy to understand customer proposition is required. In our view, this may be detrimental to consumers as removal of any discount as an incentive for customers to pay on time may result in increased costs from late payments across industry and therefore increase prices in the long run. As a result of the unworkability of conditional discounting in the DMO Code, we consider that there is little need for the Commission to make a rule.

Should the Commission determine there is a need to amend the National Energy Retail Rules (NERR) at this time, however, our strong preference is Option 4 (limit conditional discounts to reasonable costs to retailers). Furthermore, we support the Commission's suggestion of a light handed approach. The concept of reasonable costs could exist in the NERR but rather than producing a guideline, the AER could monitor conditional discounts and request information from retailers when they appear to exceed reasonable costs. The AER would also have access to the ACCC's six-monthly reports to the Treasurer.

More interventionist policies could prevent retailers from offering some products that consumers might value highly and which involve conditions of some kind. This could be a requirement to pay on time or through a mechanism such as direct debit to receive a credit or a discount. In our experience, many consumers are willing to enter into such contracts. We still hold the view that they remain a legitimate way for retailers to manage their debt exposure by encouraging the timely payment of bills, while also offering benefits to consumers, provided they fully understand all terms and conditions.

### **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, Queensland and South Australia and electricity in the ACT to over 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to its issues paper. Should you wish to discuss aspects 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 be "Ramy Soussou". The signature is fluid and cursive, 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**