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8 May 2025

Ms Anna Collyer
Chairperson
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

Submitted electronically: www.aemc.gov.au

Dear Ms Collyer,

Re: Improving consumer confidence in retail energy plans (RRC0058)

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Australian Energy Market Commission's (the Commission's) draft determination for rule change proposal to improve consumer confidence in retail energy plans.

We acknowledge Energy Ministers' objective to improve the operation of the competitive retail market through a series of regulatory initiatives. Active participation delivers better outcomes for consumers, in terms of pricing and other elements of the retail service offering. This has been the focus of numerous regulatory initiatives in recent years, such as the inclusion of a deemed better offer message on bills. There is already some evidence that this is helping consumers to navigate the competitive market.

These complement other measures that have been in place for some time, such as the Default Market Offer (DMO), which is both a common reference price and a cap for standing offers, and the obligation for retailers to compare offers with the DMO in price-related communications. The competitive market is also delivering a range of mechanisms to improve how consumers can access better offers.

While we see the potential for some consumers to benefit from the Commission's proposed measures, we still hold some concerns about their broader impact. For example, limitations on retailers' flexibility to manage costs has the potential to increase retail prices, while restrictions on the pass through of some fees and charges may increase costs for other consumers. Furthermore, the draft determination to extend the advance notification of price changes from five business days to 20 business days creates significant operational challenges and compliance risks. We explore these concerns in further detail below.

The context for this draft determination is also worth noting. The Commission could consider a more conservative approach with its final determination, noting numerous related reviews that are currently underway or will commence later in 2025. These reviews cover many of

the same issues that this consultation is considering and are a further opportunity to carefully consider the nature and extent of the problem that the rule change proposal is addressing and to identify targeted, proportionate and coordinated policy responses.

The Commission will be aware of the Australian Energy Regulator's (the AER's) ongoing review of payment difficulty protections in the National Energy Consumer Framework and the Department of Climate Change, Energy, the Environment and Water's *Better Energy Customer Experiences* review. The AER has also announced it will review each of the *Benefit Change Notice*, *Better Bills*, *Hardship* and *Retail Pricing Information Guidelines*. These reviews will assess the effectiveness of current notifications and other mechanisms for conveying information to consumers about the retail market, including their form and timing.

Limiting price increases and advance notification

We understand the Commission's concerns about unexpected price increases shortly after contract commencement. Where possible, we maintain stable pricing for some period of time following customer sign-up, subject to any regulatory obligations (e.g. to comply with DMO pricing) or to notify them of impending price changes.

However, the proposed obligation to extend the advance notification period for price changes from five to 20 business days will be very challenging to achieve and will likely lead to a range of unintended consequences for consumers and for retailers. Numerous inputs to and elements of the price change process are beyond retailers' control so the extension of this notice period creates risks that retailers cannot easily manage. The longer timeframe also creates operational challenges and a potential compliance risk if a retailer must provide 20 days' notice and implement standing offer prices on 1 July in line with a revised DMO.

Furthermore, the 20 day notice period means that a retailer would likely separate changes to standing offers from changes to market offers. This means there would be two separate updates to Energy Made Easy pricing: one on 1 July to align with the DMO and another later in July for market offer pricing. This is onerous for retailers but also for the AER as the administrator of Energy Made Easy. We have included a confidential attachment to this submission that outlines the steps we take to implement a price change.

We note the timing of the AER's regulatory determinations such as the DMO (which occurs in late May each year) and the annual distribution network tariff resets. Retailers have a short period of time to analyse and understand the costs and risks they face, develop pricing strategies and then implement price changes. This includes the preparation of prescribed communications that compare prices with the DMO and updates to prices displayed through Energy Made Easy.

One consequence of limiting retailers' flexibility to adjust prices to a single month to account for the costs they face, particularly network costs, might be higher prices that incorporate an

additional risk premium. This is a particular risk at the start of the five year regulatory periods for distribution networks.

A further point is the precise definition of a 'price change'. For example, the overall price impact of a change may be neutral or even lower under a DMO calculation if peak charges decrease but off-peak charges increase. However, some consumers could still experience a net increase. It is important that the rule change proposal accounts for price impacts at this individual consumer level.

Removing unreasonable conditional discounts

Various regulatory measures, such as the deemed better offer message on bills and reference to the DMO on price change letters, provide information to consumers about the position of their current offer in the market. We also note that the Australian Competition and Consumer Commission (ACCC) found that the proportion of consumers paying annual prices above the DMO has declined. As such, we recommend the Commission consider a less interventionist approach than the retrospective application of a regulation that requires a retailer to vary the terms and conditions of an existing contract. This may cause disruption and confusion for consumers who have chosen to remain on their current contract. The ACCC also found that approximately 90 percent of residential consumers were meeting the conditions for discounts attached to their offers.[1] This suggests the scale of the perceived problem is relatively small (and declining) and the Commission should adopt a proportionate approach.

Our preference is to maintain Explicit Informed Consent provisions that ensure a consumer engages with their retailer before a variation of the terms and condition of their retail contract. This is an opportunity for a retailer to discuss other offers, including those with different pricing structures, and to (potentially) identify a need for support with payment difficulty. The hardship and other obligations in the NECF that require retailers to actively identify and offer support to consumers who may be experiencing payment difficulty are the appropriate mechanism for addressing consumers about the impact of legacy conditional discounts on vulnerable consumers. These obligations ensure that retailers discuss more suitable offers.

Ensuring energy plan benefits last the length of the contract

The Commission's draft determination is a reasonable and proportionate response to the perceived problem of what occurs at the end of a benefit period. Retailers will retain the flexibility to offer benefits for a defined period. This maintains an important aspect of the competitive market and allows retailers to develop products that reflect consumer needs. It also avoids some of the practical challenges in defining the benefits to which the rule relates

[1] Australian Competition and Consumer Commission (2024), Inquiry into the National Electricity Market: December 2024 report, page 31

and the potential uncertainty where a retailer might adjust prices towards the DMO in stages after some fixed period (a scenario that we identified in our submission to the Commission's consultation paper).

The AER will also consider the form, coverage and timing of the benefit change notice (and its effectiveness in supporting market participation) in its forthcoming review of Guideline later in 2025.

Removing fees and charges

Explicit prohibitions on the pass through of fees and charges means retailers must recover costs through other mechanisms and in many instances, from consumers whose actions have not directly generated those costs. Furthermore, the AER would need to account for these costs in their DMO determinations.

The prohibition on the pass through of some fees and charges to vulnerable consumers is reasonable and a common approach across the retail sector. However, the Commission should develop a more precise definition of 'vulnerable consumers' to provide clarity to consumers and to retailers. For example, many consumers receive concessions but do not always meet the AER's vulnerable and hardship consumer classifications under the NECF not all meet vulnerability criteria.

However, we continue to see a distinction between minor fees and charges, such as credit card and other fees for payment, and more significant charges that are subject to regulation. Therefore, we do not agree that retailers should recover the cost of special meter reads for move-in/outs from all consumers, particularly as they may arise from a consumer's refusal of a smart meter. This fee is material and set at an efficient level by the AER and it is reasonable to apply the user pays principle in this instance.

We also recommend the Commission reconsider the term 'ancillary' as it relates to this rule change. This is a term that already denotes services managed by AEMO for power system safety and reliability. Furthermore, 'ancillary fee' lacks a precise definition, serving as a broad term for various charges. A specific, consistent definition would provide clarity.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail electricity and gas in New South Wales, Queensland, South Australia, Victoria and the ACT to over 1.5 million customers.

Red and Lumo thank the Commission for the opportunity to comment on the draft determination. Should you wish to discuss or have any further enquiries regarding this submission, please call Thakshila Gunaratna, Regulatory Manager, on 0461 338 686.

Yours sincerely

Geoff Hargreaves
Manager - Regulatory Affairs
Red Energy Pty Ltd
Lumo Energy (Australia) Pty Ltd

Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and sections 223 and 268 of the National Energy Retail Law.