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17 January 2022

Ms Kate Symons  
Chairperson  
Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne VIC 3000

Submitted electronically: [energyreform@esc.vic.gov.au](mailto:energyreform@esc.vic.gov.au)

Dear Ms Symons,

**Re: Energy Retail Code of Practice Exposure Draft**

Red Energy and Lumo Energy (Red and Lumo) thank the Essential Services Commission's (the Commission's) for providing the opportunity for further consultation on the exposure draft of the Energy Retail Code of Practice (the exposure draft).

In our initial review of the Energy Retail Code of Practice, we identified a number of amendments that needed to be made to ensure that there were no changes to the obligations or policy intent. We appreciate that the Commission has largely accepted our suggestions.

We have further reviewed the exposure draft to ensure that there are no new or significant changes to the initial version. Unfortunately, it is not the case as the Commission has added three new obligations on energy retailers that did not previously exist. These changes are outside the scope of this consultation that was designed to be an administrative consultation to transform the Energy Retail Code to a Code of Practice. We urge the Commission to remove the new obligations and commence a new consultation should it wish to review obligations relating to consumers in embedded networks supplied by licensed retailers. If this does not occur, the likely unintended consequence of these changes is that retailers will choose not to compete for these consumers. This will deny them the benefits that the competitive market offers, not just with respect to price but in additional, non-financial benefits and superior service standards.

Similar to the first submission, Red and Lumo have provided a detailed table attached to this submission with minor amendments required to the exposure draft before the Commission makes the final Code of Practice.

## **Introduction of a price cap on market retail contracts offered to embedded network customers**

The Commission notes in their final decision that no changes to the obligations or policy intent will occur in the exposure draft. This is not the case in relation to clause 26A and as such it should be removed.

The additional clause 26A imposes new obligations on retailers who are selling market offers to small customers within an embedded network that previously did not exist. We agree that the General Exemptions Order precludes exempt persons from charging customers more than the relevant maximum price. However, this requirement does not extend to licensed retailers.

We understand the intent of this obligation in the General Exemptions Order was established because off-market customers within an embedded network are effectively a captive audience with no ability to select a market or even a standing offer from a licensed retailer. Considering that the exempt person is a monopoly retailer, the Victorian Government decided to set a price cap of the Victorian Default Offer and/or the maximum price set by the Commission to protect these consumers.

Conversely, licensed retailers do not operate under a price cap. Licensed retailers have an obligation to offer standing offers and can choose to offer market retail contracts that are above or below the Victorian Default Offer and/or the maximum price set by the Commission. Small customers and on-market embedded network customers, have the protections of the clear advice entitlement, whereby should a licensed retailer wish to offer above the Victorian Default Offer they must advise the customer. Customers on a market retail contract will also receive best offer notifications on their energy bills and price change notifications in line with the existing obligations within the Energy Retail Code of Practice.

On-market customers chose to take up market retail contracts from a licensed retailer by making an active choice to be an on-market customer, usually at some cost to exit the embedded network arrangement by establishing the appropriate metering in order to receive the benefits of the competitive market, instead of remaining with their exempt retailer.

Red and Lumo strongly object to clause 26A being included in the Energy Retail Code of Practice. We strongly suggest that the Commission consult on this change through the embedded networks review and any subsequent embedded network consultations.

## **Introduction of an obligation to supply off-market customers in embedded networks in certain circumstances**

Red and Lumo strongly recommend that clause 28A be removed from the final version of the Energy Retail Code of Practice as this is also beyond the scope of an administrative only change and creates substantive obligations on licensed retailers.



The new clause 28A appears to impose an obligation on a licensed retailer to supply an off-market customer where there is some arrangement between the licensed retailer and the embedded network distributor or owner of the embedded network.

Licensed retailers already have an obligation to supply to on-market customers, under the existing regulatory framework. This obligation to supply applies in two parts, for greenfield sites the local retailer has the obligation to supply and for existing sites the current retailer also has an obligation to supply. In an embedded network, it is the exempt person that has an obligation to supply all off-market customers. On-market customers, those with a NMI, the obligation to supply would rest with the current, licensed retailer.

Licensed retailers, in order to supply a customer, must obtain their consent to enter into a contract (alongside meeting all the other requirements in the Energy Retail Code of Practice) and then initiate a retail transfer under the MSATS Procedures. The ability to initiate a transfer rests with the customer having a NMI.

The current definition of an off-market customer in the Energy Retail Code of Practice, is that it is a small customer that has not been assigned a NMI. As such, it would be impractical, even impossible in the current market framework for a licensed retailer to become the financially responsible retailer for an off-market customer.

Ensuring that all customers have a supplier of energy is important. As such, we consider that the Commission should consider this new obligation within a separate consultation to determine the appropriate regulatory framework and market procedures for ensuring supply to embedded network customers. This additional clause is clearly out of scope of this consultation, given the parameters of the consultation were administrative only and were not intended to include any new obligations. Red and Lumo strongly urge the Commission to remove clause 28A from the Energy Retail Code of Practice.

### **Disconnection of embedded network customers**

Consistent with the additional clauses of 26A and 28A, this new clause 188(1) appears to extend protections to customers in an embedded network that are supplied by a licensed retailer. It is unclear why this clause is added to the Energy Retail Code of Practice. As outlined above, a small customer that selects a market retail contract or standard retail contract, irrespective of who owns their electricity network, are afforded the protections under that contract. It is not abundantly evident what the intent of clause 188(1) is, and we consider that this clause too should be subject to a broader review of how embedded network customers are afforded protections under the new legislative framework rather than being shoehorned into this consultation process.

### **Further consultation required**

The exposure draft has highlighted a subset of areas that the Commission needs to consider in terms of managing embedded networks under the new legislative framework. We welcome a

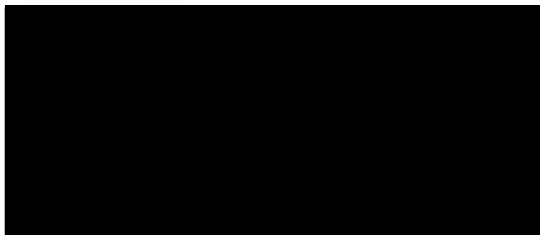
fulsome consultation on this and the implementation of the recommendations from the Expert Panel who have just provided their final report to the Victorian Government on how to ban embedded networks. When this consultation is undertaken by the Commission, we recommend that the scope is expanded to ensure that consistent protections provided to electricity customers in embedded networks are also extended to existing gas embedded network customers.

### **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, South Australia and in the ACT to over 1.1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to its consultation paper. Should you wish to discuss or have any further enquiries regarding this submission, please feel free to contact me.

Yours sincerely



**Red Energy Pty Ltd**  
**Lumo Energy (Australia) Pty Ltd**

**Attachment - Amendments required to the Energy Retail Code of Practice**

<b>ERCOP Clause</b>	<b>Required Amendment</b>	<b>Commentary</b>
Definition: <i>additional retail charge</i>	Remove clause 77 Replace with clause 77(3)	Pointing to wrong clause
Definition: <i>bill change alert</i>	Remove clause 106 Replace with clause 106(3)	Pointing to wrong clause
Definition: <i>cooling off period</i>	Remove clause 97 Replace with clause 97(2)	Pointing to wrong clause
Definition: <i>distributor</i>	Review clause 1.3.5	The definition points to clause 1.3.5 which no longer exists under the consequential changes made by the Commission to the Electricity Distribution Code.
Definition: <i>feed-in tariff agreement</i>	Italicise the following term in the definition: retailer	Typographical amendment
Definition: <i>Gas Distribution System Code</i>	Remove the “,”	Typographical amendment
Definition: <i>life support customer</i>	Mirror the legislation.  Remove existing and replace with: <b><i>life support customer</i></b> means— (a) a <i>relevant customer</i> who is a <i>life support resident</i> ; or (b) a <i>relevant customer</i> at whose premises a <i>life support resident</i> (who is not the <i>relevant customer</i> ) resides or intends to reside;	In the final decision document, the Commission refused to make amendments suggested by retailers to the life support provisions in the Code on the basis that it must reflect the legislation. However, this definition still fails to reflect the legislation, and changes the scope of whether the customer is a “customer” or a “relevant customer”. Recommend that the Commission mirror the legislation if this is its intent.
Definition: <i>life support customer details</i>	Mirror the legislation.  Remove existing and replace	As above



	<p>with:</p> <p><b><i>life support customer details</i></b>, in relation to a <i>relevant customer</i>, means—</p> <p>(a) information that evidences that the <i>relevant customer</i> is a <i>life support customer</i>; and</p> <p>(b) the personal details of each <i>life support resident</i> residing or intending to reside at the premises of the <i>life support customer</i>; and</p> <p>(c) the date from which <i>life support equipment</i> is required at the premises of the <i>life support customer</i> by each <i>life support resident</i>;</p>	
Definition: <i>termination notice</i>	Remove bold text after definition.	Typographical amendment
Definition: <i>small renewable energy generation facility</i>	Remove note after definition, as this relates to the previous definition of 'small retail customer' which has been removed.	Typographical amendment
Clause 7(2)(c)	<p>Note after clause points to wrong requirements.</p> <p>Replace:</p> <ul style="list-style-type: none"> <li>• 57(1) with 57(1)(a)(iii) and 57(1)(b)(iv)</li> <li>• 72(3) with 72(3)(b)</li> <li>• 113(1) with 113(1)(b)</li> <li>• 166(7) with 166(7)(b)</li> <li>• 171(6) with 171(6)(b)</li> </ul>	Pointing to wrong clause/subclause
Clause 26A	Remove clause as out of scope.	See submission above.
Clause 28A	Remove clause as out of scope.	See submission above.

Clause 42	Duplicated note under both the heading and under clause 42. Remove from under 'Division 5' heading.	Duplicated note to be removed.
Clause 45(1)	Remove added words "subject to clause 7" as clause 7 already applies to a retail marketer. It is unclear how this clause is <i>subject to</i> clause 7.	Remove additional words.
Clause 59(13)	Add in clause "57(2)" after 'without affecting clause'	Missing cross reference.
Clause 65	Title needs to be amended to add MRC: (SRC, MRC and EPA)	Missing cross reference in the header.
Clause 67	The sub-clauses are in italics.	Typographical amendment.
Clause 69(6)	Remove clause 69(5) Replace with clause 59(5)	Pointing to wrong clause
Clause 75(7)	Remove bold	Typographical amendment.
Clause 76	Remove clause 191 Replace with clause 190.	Once the Commission removes the additional clause 188, the Note must reinstate the original cross reference.
Clause 80(1)	Remove subclause (a)	By the time the Code of Practice is made, payments relating to before June 2021 will no longer be relevant.
Clause 82	The sub-clauses are in italics.	Typographical amendment.
Clause 96	Remove extra spacing	Formatting.
Clause 105	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 105(1)(b)(ii)	Remove 'and' at end of subclause for consistency	Typographical amendment.

Clause 106(7)(d)	Term 'small customer' to be italicised	Formatting.
Clause 107(3)(e)	Capitalise and italicise the word "Commission" in line with the definition	Typographical amendment
Clause 110(4)(a)	Remove italics to word "and"	Formatting
Clause 118	Remove (1)(a) after clause 7. It is unclear why the clause needs to be limited to (1)(a) when the remainder of clause 7 should continue to apply which is consistent with the current obligations.	Pointing to wrong clause.
Clause 121	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 122	Add clause (1) and (2) to be consistent with formatting of Code of Practice.	Formatting.
Clause 124	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 126	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 127	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 128	Commence with (1) not (6)	Typographical amendment
Clause 128(e)	Remove "may be" Reinstate "is" The change in language assumes that all customers could be eligible for URGS need a form added, even if the customer and/or retailer	Changing obligations on retailers.



	knows that they are not eligible.	
Clause 128(f)(i)	Remove 'and' at end of subclause for consistency	Typographical amendment.
Clause 128(f)(ii)	Remove 'and' at end of subclause for consistency	Typographical amendment.
Clause 128(f)(iii)	Add 'and' at end of subclause for consistency	Typographical amendment.
Clause 128(g)(i)	Remove 'and' at end of subclause for consistency	Typographical amendment.
Clause 131	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 141	Spacing to be amended	Formatting
Clause 142(2)	Remove bold	Formatting
Clause 72(2) and clause 146(1)	Clause 72(2) refers to a small customer opting to pay by Centrepay, whereas clause 146(1) refers to a residential customer paying by Centrepay. Please clarify.	Correct 'customer' definition to be applied
Clause 161	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 163(1)	Add bold to word 'relevant'	Formatting
Clause 163(5)	Review numbering for consistency	Formatting
Clause 166(7)	Review numbering for accuracy and consistency.	Typographical amendment.
Clause 175	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.

Clause 179	Add clause (1) to be consistent with formatting of Code of Practice.	Formatting.
Clause 184	Review the contents of this clause in line with the legislation, as the requirements of communications to customers appear to have changed.	Changing obligations on retailers.
Clause 188 (1)	Remove	See submission
Schedule 1	Review clause numbers following removal of 26A, 28A and 188(1)	Formatting.
Schedule 5	Add the date of commencement.	Typographical amendment
Table of contents	Reinstate the formatting associated with the existing ERC in the Code of Practice.	Formatting.