

Customer S and Lumo Energy – Decision and Reasons

**Application of section 48A of the Gas Industry Act 2001 (Vic) –
Compensation for wrongful disconnection**

19 December 2018

Commissioners:

Ms Kate Symons, Acting Chairperson, and
Mr Richard Clarke, Commissioner

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The complaint

1. In the matter of a referral for decision by the Energy and Water Ombudsman (Victoria) (the ombudsman) to the commission of a complaint by Customer S.
2. The complaint is about the application of section 48A of the Gas Industry Act 2001 (Vic) (the Act) for an alleged wrongful disconnection by Lumo Energy Pty Ltd (Lumo Energy) of Customer S's gas supply at [address redacted] (the premises), from 11:16am on 8 August 2017 to 9:00am on 9 August 2017 (a period of 21 hours and 44 minutes).

Issues for decision

3. The issue for decision by the commission on the complaint is whether or not Lumo Energy has breached a condition of its gas retail licence regarding an obligation to make a prescribed payment to Customer S in circumstances where:

- (a) Lumo Energy disconnected the supply of gas to the premises of Customer S; and
- (b) Lumo Energy failed to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.

If so, then under section 48A(3) of the Act, Lumo Energy was obliged to make the prescribed payment to Customer S as soon as practicable after the supply of gas was reconnected to Customer S's premises.

4. This requires the commission to make findings and reach conclusions regarding the following matters:

- (a) Whether or not Lumo Energy disconnected the supply of gas to the premises of Customer S (see paragraphs 44 and 52 below);
- (b) Was the supply of gas to Customer S's premises reconnected, and if so, when? (see paragraphs 46 and 55 below);
- (c) If Lumo Energy did disconnect the supply of gas to Customer S's premises, for what period of time was the supply to the premises disconnected? (see paragraphs 47 and 56 below);
- (d) What were the terms or conditions of the contract between Lumo Energy and Customer S which specified the circumstances in which Lumo Energy may disconnect the supply of gas to Customer S's premises? (see paragraph 49(c) below);
- (e) Whether or not Lumo Energy failed to comply with those terms and conditions (see paragraph 53 below);
- (f) Was Customer S entitled to receive payment of a prescribed amount because of any wrongful disconnection by Lumo Energy under section 48A of the Act? (see paragraph 57 below);
- (g) If so, when was Lumo Energy obliged to make the payment of the prescribed amount? (see paragraph 57 below);
- (h) Has Lumo Energy made the payment to Customer S in accordance with its deemed licence condition under section 48A of the Act? (see paragraphs 48 and 58 below);

- (i) If Lumo Energy has not made the payment, what are the consequences? (see paragraphs 80 to 83 below).

The ombudsman's submission

5. Through its formal letter of referral and the accompanying memorandum, the ombudsman acknowledged that Lumo Energy had complied with clauses 109, 110 and 111(1)(e) of the Energy Retail Code (version 11) (the code) with respect to the disconnection. However, the ombudsman considered that it was unclear whether Lumo Energy had complied with clauses 111(2) and 72(2)(b) of the code.
6. Regarding clause 111(2) of the code, the ombudsman noted that Lumo Energy had acknowledged that Customer S had identified herself as a customer experiencing payment difficulties. The ombudsman therefore considered that Lumo Energy was required to offer Customer S two payment plans in the 12 months prior to arranging for the disconnection of the supply of gas to Customer S's premises.
7. The ombudsman considered that Lumo Energy had not complied with clause 111(2) of the code, as it had offered Customer S only one payment plan in the 12 months prior to arranging for the disconnection of her gas supply. The ombudsman considered that offer was made on 30 May 2017.
8. The ombudsman considered that Lumo Energy's two earlier attempts to offer Customer S a payment plan may not have constituted valid offers, as each was defective for the following reasons respectively:
 - (a) The first payment plan offered on 23 September 2016 was sent to the wrong address and consequently could not constitute a valid offer made to the customer.
 - (b) The second payment plan offered on 28 November 2016 did not specify a commencement date and therefore may not have complied with clause 72(2)(b) of the code.

Lumo Energy's submission

9. Lumo Energy was invited to provide any information and documents it considered the commission should have regard to in making its decision. Lumo Energy was also invited to make submissions on the complaint for the commission to consider. Lumo Energy made a submission for the commission's consideration.
10. Lumo Energy did not dispute the chronology of events as presented by the ombudsman in its referral memorandum. However, Lumo Energy provided additional details it considered relevant to the commission's assessment of the disconnection. Lumo Energy considered that

the ombudsman had overlooked the payment arrangement that was agreed and entered into by Lumo Energy and Customer S on 7 March 2017.

11. Lumo Energy conceded that its attempt to offer Customer S a payment plan on 23 September 2016 was not a valid offer, as it was sent to the wrong address.
12. In relation to the offer on 28 November 2016, Lumo Energy considered this was not a valid offer as it had been made via the ombudsman rather than directly to the customer.
13. However, Lumo Energy contended that it did offer Customer S two payment plans, and had therefore complied with clause 111(2) of the code prior to arranging to disconnect Customer S's supply of gas.
14. Lumo Energy contended the first payment plan was offered to Customer S by telephone on 7 March 2017 and the second was made by letter on 30 May 2017.
15. Lumo Energy stated that Customer S had, on 7 March 2017, accepted its offer of a payment plan of alternating weekly amounts of \$30 and \$20.
16. Lumo Energy submitted that "Customer S commenced making repayments of \$20 per fortnight from 22 March 2017 and \$30 per fortnight from 29 March 2017, in line with the agreement between Lumo [Energy] and Customer S reached on 7 March 2017. Customer S continued to make the alternating weekly payments until 28 June 2017. By making the repayments as agreed and with those repayments coinciding with the dates stipulated by Customer S, she acted in a way that was consistent with her accepting the payment arrangement."
17. Although Lumo Energy considered a payment plan had been agreed to, Lumo Energy submitted that after the calls on 7 March 2017, it had been unable to engage with Customer S to finalise the agreed payment plan. Accordingly the payment plan was not entered into its system.
18. Lumo Energy submitted that on 30 May 2017, it had sent Customer S an offer of a payment plan in writing. Lumo Energy contended this was a second valid offer of a payment plan.

Relevant facts

19. The commission analysed the ombudsman's request for a decision and sought additional submissions from Lumo Energy. Having assessed the matter and the submissions, the commission makes the factual findings set out below.

Background

20. At all relevant times, Lumo Energy was the licensee responsible for the supply of gas to the premises.
21. In October 2011, Lumo Energy established an account for the supply of gas to the premises of Customer S. The relevant terms of the contract between Lumo Energy and Customer S are set out at paragraph 49(c).
22. Customer S's gas account was combined with an electricity account. The invoices and notices issued to Customer S by Lumo Energy related to the combined accounts.
23. From 19 December 2012 until 29 October 2014, Customer S made regular payments to her account via Centrepay.
24. Between 29 October 2014 and 11 May 2016, Customer S did not make any payments to her account.
25. On 6 May 2016, Customer S's financial counsellor contacted Lumo Energy and requested that it establish a payment plan of \$60 per fortnight for Customer S. Lumo Energy assessed Customer S's capacity to pay and noted her continuing financial difficulties, including that she was a single mother and was currently going through a rehabilitation program. Lumo Energy established a payment plan of \$60 per fortnight for six weeks.
26. Between 11 May 2016 and 31 August 2016, Customer S made nine fortnightly payments of \$60 to Lumo Energy.
27. On 23 September 2016, Lumo Energy attempted to send Customer S a letter offering another payment plan of \$60 per fortnight, however Lumo Energy sent the letter to the wrong address.
28. On 28 November 2016, in order to resolve a previous complaint made by Customer S to the ombudsman, Lumo Energy established a payment plan of \$50 per fortnight for five instalments. Lumo Energy sent Customer S a letter setting out the details of this arrangement. The letter did not specify when the first payment was due, but did specify the

final payment was due on 14 February 2017. The letter also did not specify the number of payments that would be required to pay off Customer S's arrears.

29. Between 31 August 2016 and 22 March 2017, Customer S did not make any payments to her account.

Circumstances leading to the disconnection

30. On 6 March 2017, Lumo Energy called Customer S. Customer S asked Lumo Energy to establish a payment plan of \$35 per fortnight. Lumo Energy explained this amount was inadequate as it would result in the accumulation of more debt. Lumo Energy suggested that \$50 would be enough to cover her usage. Lumo Energy advised it would arrange to call Customer S back to set up a payment plan and discuss the utility relief grant scheme application.
31. On 7 March 2017, Lumo Energy called Customer S and arranged to send out the utility relief grant scheme forms. Lumo Energy also discussed setting up a payment plan, and advised that the required repayment was \$147 per fortnight. Lumo Energy asked Customer S if she could afford that amount, and Customer S said she could not, but indicated that she could afford \$100 per fortnight. Lumo Energy said it could "do that for 12 weeks" but indicated that Customer S would need to increase her payments after that. Lumo Energy and Customer S discussed that the first payment could be made on 15 March 2017. However, at that point Customer S revised her offer to pay down to \$50 per fortnight, and indicated that she needed to terminate the call. Lumo Energy asked Customer S to call back that day so she could be entered into its hardship program. Lumo Energy's contact notes state that it would accept the \$50 per fortnight payment plan.
32. Subsequently on 7 March 2017, Customer S called Lumo Energy to continue the previous discussion and sought to establish a payment plan of \$50 per fortnight. Lumo Energy stated it would accept a payment plan of \$50 per fortnight, with alternating amounts of \$30 one week and \$20 the next. Customer S indicated that she would make the first payment on 15 March 2017. Customer S also subsequently stated that her payments would be cut by \$500 in September when she would be moved from a single parent payment to the Newstart payment, and that "when that happens I can't afford to pay \$50, it's probably going to go down to \$25, but you'll get notified when that happens, I won't just do it". Lumo Energy responded "yeah, right". Towards the end of the call, Customer S asked the agent if "that's all you need to know... there's no disconnection of either gas [or] power now, we're right?" The agent responded, saying "yes, you're fine". However, Lumo Energy's contact notes for this conversation record that Lumo Energy would need to call Customer S back "to complete entry into program as T&C have not been done". This was not specified in the phone call.

33. On 8 March 2017, Lumo Energy attempted to contact Customer S and left a voice message.
34. On 14 March 2017, Customer S called Lumo Energy and provided two centrepay receipt numbers for the payments that would be made to her account. Lumo Energy also asked whether Customer S had received a welcome pack containing the hardship program terms and conditions. Customer S stated that she had not. Lumo Energy advised that it would send those documents to Customer S.
35. On 17 March 2017, Lumo Energy called Customer S. Customer S said she was busy and asked to be called back in 10 minutes. In a second call later that day, Lumo Energy stated that it had failed to read the terms and conditions of the hardship program to Customer S and needed to do that now. Customer S advised she was in a meeting and ended the call. Lumo Energy sent an SMS asking Customer S to call back.
36. Customer S commenced making payments to Lumo Energy on 22 March 2017 and continued to make alternating payments of \$30 and \$20 each fortnight until 5 July 2017, when she reduced the \$30 payments to \$10 per fortnight. On 26 July 2017, Customer S also reduced her \$20 payment to \$10.
37. On 29 March 2017, Lumo Energy issued Customer S a combined invoice for gas and electricity in the amount of \$2,774.83.
38. On 26 April 2017, Lumo Energy sent Customer S a reminder notice in the amount of \$2,674.83, being the amount due on the invoice issued on 29 March 2017, less \$100 that Customer S had paid to Lumo Energy.
39. On 15 May 2017, Lumo Energy sent Customer S a disconnection warning notice in the amount of \$2,594.83, being the amount due on the invoice issued on 29 March 2017, less \$180 that Customer S had paid to Lumo Energy. This letter was sent when Customer S was making, and Lumo Energy was accepting, the regular alternating payments of \$30 and \$20 each fortnight as had been agreed with Lumo Energy on 7 March 2017 (see paragraphs 31 to 36 above).
40. On 23 May 2017, Customer S contacted Lumo Energy regarding the disconnection warning notice and was informed that her account was not scheduled for disconnection. Customer S hung up.
41. On 30 May 2017, Lumo Energy sent Customer S a letter offering her a payment plan of \$50 per fortnight, commencing on 7 June 2017 and terminating one month later. This letter was sent when Customer S was making, and Lumo Energy was accepting, the regular alternating payments of \$30 and \$20 each fortnight as had been agreed with Lumo Energy on 7 March 2017.

Relevant facts

42. On 20 July 2017, Customer S contacted Lumo Energy regarding a disconnection warning notice that was issued to her on 10 July 2017. Customer S was informed she could establish a payment plan to prevent the disconnection. Customer S requested a call back. Lumo Energy attempted to do so on 21 July 2017 and 24 July 2017, but was not able to speak to Customer S.

Disconnection of gas supply to the premises

43. On 26 July 2017, Lumo Energy arranged to disconnect the supply of gas to Customer S's premises on 8 August 2017.
44. On 8 August 2017 at 11:16am, the supply of gas to Customer S's premises was disconnected.
45. On 8 August 2017, Customer S called Lumo Energy and advised that her gas supply had been disconnected. Customer S also raised a complaint with the ombudsman.
46. On 9 August 2017 at 9:00am, the supply of gas to Customer S's premises was reconnected.
47. The gas supply to the premises was disconnected for a period of 21 hours and 44 minutes.
48. As at 19 December 2018, Lumo Energy has not made any wrongful disconnection payment to Customer S.

Relevant obligations

49. In this matter Lumo Energy's relevant obligations arise from the following:

(a) The Act:

- (i) Section 48A(1) of the Act which deems a condition into Lumo Energy's gas retail licence an obligation to make a payment of the prescribed amount to a customer if Lumo Energy fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected; and
- (ii) Sections 48A(3) and (5) which require payment of the prescribed amount as soon as practicable after the supply of gas is reconnected. Since 1 January 2016 the prescribed amount is \$500 for each full day, and a pro rata amount for each part of a day, that the supply of gas is disconnected.

(b) Lumo Energy's gas retail licence:

- (i) Clause 7.1 of the licence which requires Lumo Energy to ensure its contracts for the sale of gas expressly deal with each matter which is the subject of a term or condition of the code.
- (ii) Clause 7.3 which requires each term or condition of Lumo Energy's contracts for the sale of gas to be consistent with each term and condition of the code.
- (iii) Clause 7.4 which requires Lumo Energy to comply with the terms and conditions of any contract for the sale of gas with a relevant customer.

(c) Lumo Energy's contract with Customer S, which contained the following terms and conditions:

- (i) Clause 14.1(a) which states that "Subject to us satisfying the requirements in the Regulatory Requirements, we may arrange for the disconnection of your Premises if: you do not pay your bill by the Due Date and you: fail to comply with the terms of an agreed Payment Plan; or if you are a Residential Customer, do not agree to an offer to pay the bill by instalments, or having agreed, you fail to comply with the instalment arrangement;"
- (ii) Clause 14.3(d) which states that "We will not disconnect you if the Regulatory Requirements prevent us from doing so."
- (iii) Clause 25 which defines 'Regulatory Requirements' as meaning "all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council,

tariffs, proclamations, directions or standards applicable where Your Premises is located that relate to the supply of electricity, gas or both as the case may be, including ... in Victoria: the Energy Retail Code published by the Essential Services Commission of Victoria.”

(d) The code:

- (i) Clauses 107 to 118 deal with and specify the circumstances in which the supply of gas to premises may be disconnected. In particular, the retailer must not arrange for the disconnection of a customer’s premises except in accordance with clauses 111 to 118.
- (ii) Clause 111 of the code sets out conditions under which a customer may be disconnected for failure to pay a bill or to adhere to a payment plan. Clause 111(2) of the code applies where a customer is a hardship customer or where the retailer is informed that the customer is experiencing payment difficulties. In those circumstances, the retailer must not arrange for the disconnection of the customer’s premises unless the retailer has offered the customer two payment plans in the previous 12 months and:
 - A. The customer has agreed to neither of them; or
 - B. The customer has agreed to one but not the other of them but the plan to which the customer agreed has been cancelled due to non-payment by the customer; or
 - C. The customer has agreed to both of them but the plans have been cancelled due to non-payment by the customer.
- (iii) Clause 72(2) of the code identifies the details that a retailer must inform the customer of when offering the customer a payment plan. The required details are:
 - A. the duration of the plan; and
 - B. the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid; and
 - C. the number of instalments to pay the arrears; and
 - D. if the customer is to pay in advance—the basis on which instalments are calculated.

50. Lumo Energy’s obligations are discussed further below in the reasons.

Decision

51. Lumo Energy is in breach of a condition of its gas retail licence, deemed into Lumo Energy's gas retail licence by section 48A of the Act (the deemed licence condition).
52. Lumo Energy disconnected the supply of gas to Customer S's premises at 11:16am on 8 August 2017.
53. Prior to disconnecting the supply of gas to Customer S's premises for non-payment, Lumo Energy failed to comply with the terms and conditions of its contract with Customer S that specified the circumstances in which the supply of gas to her premises could be disconnected.
54. The disconnection was therefore not in accordance with the deemed licence condition.
55. The supply of gas to Customer S's premises was reconnected at 9:00am on 9 August 2017.
56. The supply of gas to Customer S's premises was wrongfully disconnected for a period of 21 hours and 44 minutes.
57. Therefore, under the deemed licence condition, Lumo Energy was obliged to pay to Customer S the prescribed amount of \$453 as soon as practicable after the supply of gas was reconnected to Customer S's premises on 9 August 2017.
58. Lumo Energy has not made any wrongful disconnection payment to Customer S as at 19 December 2018.

Reasons

59. Lumo Energy's gas retail licence requires that:
- (a) Lumo Energy not enter into a contract for the sale of gas with a relevant customer unless the terms and conditions of the contract expressly deal with each matter which is the subject of a term or condition of the code (clause 7.1); and
 - (b) Each term or condition of Lumo Energy's contract for the sale of gas to a relevant customer must not be inconsistent with the terms or conditions of the code (clause 7.3); and
 - (c) Lumo Energy must comply with the terms and conditions of any contract for the sale of gas with a relevant customer (clause 7.4).
60. The deemed licence condition requires Lumo Energy to make a prescribed payment to a customer as soon as practicable after the supply of gas to the customer's premises is reconnected where it:
- (a) Disconnects the supply of gas to the premises of that customer; and
 - (b) Fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.
61. Clause 14.3 of Lumo Energy's contract with Customer S specifies that it will only disconnect the supply of gas to her premises if it has complied with the 'Regulatory Requirements', including the provisions of the code.
62. The commission accepts the ombudsman's view that Lumo Energy complied with the relevant requirements of clauses 109, 110 and 111(1)(e) of the code (see paragraph 5 above). The ombudsman considered that Lumo Energy may not have complied with the provisions of clauses 111(2) and 72(2)(b) of the code.

Was Customer S a hardship customer or experiencing payment difficulties? Clause 111(2) of the code

63. Lumo Energy in its submissions stated that "[it] is not in dispute that Customer S was a customer experiencing payment difficulties." Lumo Energy considered that it was "required to make two payment plan offers to [Customer S]."

Did Lumo Energy offer Customer S two payment plans? Clauses 111(2) and 72(2) of the code

64. Clause 111(2) of the code required Lumo Energy not to arrange for the disconnection of Customer S's premises unless Lumo Energy had offered Customer S two payment plans in the previous 12 months before arranging for the disconnection on 26 July 2017, and:
- (a) Customer S had agreed to neither of them; or
 - (b) Customer S had agreed to one but not the other of them but the plan to which Customer S agreed had been cancelled due to non-payment by Customer S; or
 - (c) Customer S had agreed to both payment plans, but the plans had been cancelled due to non-payment by Customer S.
65. In offering a payment plan to Customer S, Lumo Energy was required by clause 72(2) of the code to specify the elements set out at paragraph 49(d)(iii) above.
66. There are four relevant occasions on which Lumo Energy may have offered Customer S a payment plan that complied with clause 72(2) of the code.

First attempted offer: 23 September 2016 letter sent to the wrong address

67. The written payment plan offer that Lumo Energy attempted to send to Customer S in its letter dated 23 September 2016 was sent to the incorrect address. As the letter was not sent to Customer S, the offer it contained cannot be said to have been made to her, as required by clause 111(2) of the code. Therefore, the letter did not constitute an offer for the purposes of clause 111(2) of the code.

Second attempted offer: 28 November 2016 letter missing required details

68. The written payment plan offer that Lumo Energy sent to Customer S in its letter dated 28 November 2016 failed to specify the date by which each payment was due, including the first payment. For that reason this letter did not comply with clause 72(2)(b) of the code, and therefore did not constitute a valid offer of a payment plan for the purposes of clause 111(2) of the code.

Third attempted offer: 7 March 2017 a valid offer of a payment plan was made to Customer S

69. Across the two calls on 7 March 2017, Lumo Energy and Customer S negotiated the terms of a payment plan, commencing with an offer of a payment plan by Lumo Energy to Customer S requiring payments of \$147 per fortnight. During these negotiations, as required by clause 72(2)(a) of the code, Lumo Energy specified the duration of the payment plan it was offering,

namely that it would last for 12 weeks. Customer S later stated that she would need to reduce her payments in September, indicating that she considered that the payment plan would continue beyond the 12 week period Lumo Energy was offering. Lumo Energy appeared to accept that position.

70. During the course of the negotiations, Customer S specified the amount of each instalment payable under the plan and the frequency of payments, namely \$50 per fortnight in alternating weekly payments of \$30 and \$20. Lumo Energy indicated that it was willing to offer Customer S a payment plan on those terms. Lumo Energy therefore did specify the amount and frequency of instalments as required by clause 72(2)(b) of the code.
71. Lumo Energy did not explicitly specify the date by which each payment must be made as required by clause 72(2)(b) of the code. However, in the circumstances of the 7 March 2017 phone calls, it would have been impracticable for Lumo Energy to specify the exact date on which each payment was due, as Customer S was in a hurry and at times distracted during the conversation. Customer S was aware of the start date of payments (in fact, Customer S and Lumo Energy engaged in a detailed discussion regarding the start date based on Centrepay pay cycles), the frequency of payments and the duration of the payment plan. In addition, the payments would be automatically made via Centrepay. On that basis, Customer S had sufficient information to understand when the payments would be made to Lumo Energy. It would not have added anything to her understanding had Lumo Energy spelled out the exact due date for each payment during the telephone conversation. In these limited circumstances the commission is satisfied that Lumo Energy complied with clause 72(2)(b) of the code. The situation is different with respect to a written offer (discussed below at paragraph 76).
72. During the course of the negotiations Lumo Energy made clear that the payment plan was not going to pay off Customer S's arrears, and that she would need to increase her payments after the payment plan was completed. Accordingly, Lumo Energy complied with clause 72(2)(c) of the code.
73. Over the course of the two telephone conversations on 7 March 2017, Lumo Energy made Customer S aware of all of the information required under clause 72(2) of the code. Accordingly, a valid offer was made for the purposes of clause 111(2) of the code.

Fourth attempted offer: 30 May 2017 letter not a valid offer of a payment plan

74. In the letter sent to Customer S on 30 May 2017, Lumo Energy offered Customer S a payment plan of \$50 per fortnight, commencing on 7 June 2017 and lasting for one month.
75. This offer was sent to Customer S at a time when she was making payments in accordance with the payment plan agreed on 7 March 2017. As Customer S already had an agreed

payment plan in place on 30 May 2017, Lumo Energy could not purport to offer Customer S a second payment plan on similar terms. Accordingly the 30 May 2017 letter is not an offer of a payment plan for the purposes of clause 111(2) of the code.

76. Furthermore, although the letter did inform Customer S of the duration of the payment plan, the amount of each instalment and the frequency of instalments, it did not inform her of the date by which each instalment must be paid, nor did the offer contain any statement regarding the number of instalments to pay off her arrears. Consequently, the offer did not comply with clauses 72(2)(b) and 72(2)(c) of the code, and therefore did not constitute a valid offer of a payment plan for the purposes of clause 111(2) of the code.
77. Unlike the telephone conversation discussed above at paragraph 71, it was not impracticable for Lumo Energy to include in this letter all the details required by clause 72(2)(b) of the code.

Lumo Energy failed to comply with clause 111(2) of the code

78. Lumo Energy only made one valid offer of a payment plan to Customer S in the 12 months prior to arranging for the disconnection of the supply of gas to her premises. Therefore, Lumo Energy failed to comply with clause 111(2) of the code prior to arranging for the disconnection of the supply of gas to Customer S's premises.

Enforcement

79. Lumo Energy has breached its gas retail licence by failing to make a payment of \$453 as soon as practicable after the reconnection of the supply of gas to Customer S's premises on 9 August 2017.
80. Lumo Energy is required to rectify the contravention by making the payment.
81. Lumo Energy should advise the commission in writing when the payment has been made.
82. If Lumo Energy is unable to make the payment it should inform the commission in writing within five business days of receiving this decision.
83. If the payment is not made within five business days of Lumo Energy receiving this decision, the commission may take enforcement action against Lumo Energy under Part 7 of the Essential Services Commission Act 2001 (Vic).

Other observations

84. The commission is concerned that the two telephone calls between Lumo Energy and Customer S on 7 March 2017, discussed at paragraphs 31 to 32 above, created the impression that Lumo Energy would not arrange for the disconnection of the supply of gas to Customer S's premises. Indeed, the agent in the second call told Customer S there was nothing more Customer S needed to do to be protected from disconnection. That was not correct, as Lumo Energy still had to read the terms and conditions of its hardship program to Customer S. Furthermore, despite what it told Customer S, Lumo Energy did not create a payment plan in its system and continued to send disconnection warning notices to Customer S.
85. The commission is also concerned that the written payment plan offer sent to Customer S on 30 May 2017 contained the statement that Lumo Energy had not "received payment for the supply of energy" at Customer S's premises. This was false, as Customer S was continuing to make payments in line with the payment plan agreed on 7 March 2017.
86. The commission expects that retailers will deal with customers, especially those experiencing payment difficulties, in a way that is accurate, clear and unambiguous.