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Dr Ron Ben-David
Chairperson
Essential Services Commission
Level 37, 2 Lonsdale St
Melbourne VIC 3000

Submitted electronically

Dear Dr Ben-David,

Re: Interim Compliance and Performance Reporting Guideline

Red Energy (Red) and Lumo Energy (Lumo) welcome the opportunity to respond to the Essential Services Commission (the Commission) on the Interim Compliance and Performance Reporting Guideline Draft (the Consultation Draft).

Red and Lumo are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria and New South Wales and electricity in South Australia and Queensland to approximately 1 million customers.

This submission highlights Red and Lumo's overarching comments regarding the Consultation Draft. We have included comments regarding specific requirements in the Compliance Reporting Schedule and the Performance Indicator Schedule in Appendix 1 and Appendix 2 respectively.

The Compliance Reporting Framework

Red and Lumo oppose the changes proposed in the Consultation Draft. Given this is an interim guideline, we understand the Commission are unwilling or unable to undertake a comprehensive review at this time. On this basis, we urge the Commission to ensure that the changes implemented are specifically limited to those required under the Energy Legislation Amendment (Consumer Protection) Act 2015 implemented on 1 January 2016.

We are particularly concerned with the re-introduction of the Marketing Code of Conduct into the reporting framework. Previous determinations from the Commission¹ have stated an intent to repeal this Code as its content was generally duplicated in other instruments. We do not believe the Commission has provided sufficient evidence to fast-track its reintroduction in an Interim Guideline. We propose that if the Commission no longer believes its own decision in 2014 to be valid, the re-introduction of the Marketing Code of Conduct into the reporting framework should be properly and thoroughly consulted upon prior to the Final Guideline being implemented in 2017.

¹ See - Essential Services Commission 2014, *Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) Final Decision Paper*, July, pg 3.

Types of breaches

The Commission notes in the Consultation Draft that that Type 1 regulatory obligations are considered to be those that would have a 'critical impact on consumers'. Red and Lumo have struggled to reconcile this principle with the categorisation of breaches in the Compliance Reporting Schedule, particularly given the additional obligation to report on both potential breaches and actual breaches. This concept has been reflected in the Australian Energy Regulator's (the AER) 2014 review into the appropriateness of its own compliance guidelines. The AER amended its reporting requirements by considering the impact on how they ensured compliance of regulated entities, taking into account the other measures undertaken alongside retailer reporting. This process resulted in the Type 1 breaches being limited to the most serious of breaches, such as retailer initiated disconnection of small customer premises and the life support requirements. Red and Lumo consider the AER's approach to be significantly more appropriate than the Commission's proposed requirements, in which the majority of obligations are classified as Type 1. We strongly believe that the vast majority of these requirements would be better served as Type 2 breaches and reported quarterly.

Duplication of obligations in the Consultation Draft

Red and Lumo are concerned that the reporting schedule includes a number of duplicated requirements that place an unnecessary burden on energy retailers without a commensurate benefit to consumers.

Additionally, the requirement to report on instances in which a retailer considers it may have potentially breached the Privacy Act (RB0120) is beyond the remit of the Commission. We strongly believe that placing a reportable requirement on an Act unrelated to the functions of the Commission under Section 10 of the Essential Services Act 2001 is inappropriate. This is highlighted by the fact that the Office of the Australian Information Commissioner who administers the Privacy Act does not require immediate notification.

The Performance Reporting Schedule

Red and Lumo are comfortable that the majority of the new reporting requirements are necessary to understand the implications of the Payment Difficulties Framework currently being implemented. Given the very short timeframe between the expected final determination and the implementation date, we expect the Commission will work with retailers to achieve compliance with the guideline over time to minimise system costs. Red and Lumo note that in some instances, particular performance data may not be readily available until after the Payment Difficulties Framework has been implemented into our systems.

Interpretation of data by the Commission

The Consultation Draft sets out a number of different methods in which data provided by retailers for the newly introduced indicators will be interpreted by the Commission. Of particular concern to Red and Lumo is the intention in some instances to report publically the percentage of a retailer's customer base that falls into a particular category, rather than as a percentage of the industry.

The number of customers receiving feed in tariffs (B021 & B061) or customers receiving debt notices (B150, B160, B170, & B180) by retailer is not in the public interest and accordingly should only be published as a percentage of industry.

Further to this, a number of the payment plan related indicators (D021 & D022) do not state how the Commission intends to interpret the data. Given the fact that these indicators appear to exclusively relate to the new payment difficulties framework and are unrelated in today's framework, Red and Lumo expect these indicators will be for the Commission's use only.

Alignment with the proposed Payment Difficulties Framework

Amendments to the manner in which retailers report debt do not appear to mirror the manner in which debt will be determined under the proposed payment difficulties framework. The amended debt definition in the Consultation Draft appears to suggest that debt is determined on the day the bill for the previous period is issued. As we understand the proposed payment difficulties framework, debt will be determined at the date a customer misses an energy payment, being at the end of the reminder notice period. We request the Commission clarifies this point in its Final Determination.

Red and Lumo thank the Commission for the opportunity to respond to this consultation. Should you have any further enquiries regarding this submission, please call Ben Barnes, Regulatory Manager

Yours sincerely

Ramy Soussou
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