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23 September 2021

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

Submitted electronically

Dear Ms Collyer

Re: Rule change request – Family Violence Protections for Energy Customers

Red Energy and Lumo Energy (Red and Lumo) submit the attached rule change proposal in accordance with the National Energy Retail Law. Red and Lumo propose to amend the National Energy Retail Rules (NERR) to place a requirement on energy retailers to provide assistance and support to consumers who are affected by family violence.

Family violence affects a large number of Australians and can occur in any range of circumstances across cultures and communities. It can take many forms, including physical, sexual, social, emotional, and financial abuse, as well as a wide range of coercive and intimidating behaviour. In our experience of implementing family violence protections in Victoria, we have seen the devastating impact family violence can have not only on affected customers but on family members and the wider community.

Energy retailers play a crucial role in providing support to customers affected by family violence. Red and Lumo note that family violence is an ongoing societal problem that requires an evolving approach to be regularly maintained to ensure best practice for affected customers. We consider that these rules should apply to all energy consumers, and recommend that the Commission consider how such protections will also apply to customers of embedded networks.

We have consulted with consumer advocates, retailers and other key stakeholders in the development of this rule change request. It has been designed to take into account the Australian Energy Regulator's Strategic Plan, which has committed to protect vulnerable consumers, while enabling consumers to participate in energy markets along with the release of an overarching Consumer Vulnerability Strategy. Red and Lumo expect that as family violence is a key driver of vulnerability, there may be linkages between this rule change request and the Australian Energy Regulator's work.

About Red and Lumo

Red and Lumo are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in South Australia, New South Wales, Queensland, the ACT and Victoria to over 1.1 million customers. Please contact Stefanie Monaco, Manager - Regulatory Affairs on 0481 009 645 to discuss this rule change request.

Yours sincerely

Iain Graham

Retail CEO

Red Energy Pty Ltd

Lumo Energy (Australia) Pty Ltd



Request to change the National Energy Retail Rules: Family Violence Protections for Energy Customers

Name and address of the person making the request

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Red Energy and Lumo Energy (Red and Lumo)
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Cremorne VIC 3121

Description of the proposed rules

Red and Lumo propose to amend the National Energy Retail Rules (NERR) and place a requirement on energy retailers to provide assistance and support to consumers who are affected by family violence.

As part of these proposed changes energy retailers will be required to:

- provide consumers affected by family violence with safe, supportive and flexible assistance in managing their personal and financial security;
- establish a family violence policy which is publicly available on their website outlining the support available for affected customers;
- keep the contact information and personal details of customers affected by family violence secure; and
- require that energy retailers recognise family violence as a potential cause of payment difficulty.

This rule change would ensure that affected customers of family violence are kept safe and provided with adequate support. To this end, the family violence provisions would empower energy retailers to ensure that safety of the customer is the paramount priority when dealing with a customer affected by family violence.

Noting that we consider that these rules should apply to all affected customers, irrespective of where they live and how they obtain their energy supply. We consider these protections should apply equally to gas and electricity through an authorised retailer or those holding an exemption from the Australian Energy Regulator.

A retailer would be required under our proposal to establish a Family Violence Policy in line with the rules and would outline the support and protections for customers who are affected by family violence. This would be publicly available via the retailer's website and be reviewed no less than every two years.

One key feature of the proposal is to ensure that where a retailer places the safety of a customer affected by family violence in a position that is not compliant with other rules in the NERR, retailers would not be in breach of their contract with the customer or these Rules.

We consider that changing the NERR in this way will enable retailers to confidently and comfortably assist customers who are affected by family violence. Further, it requires retailers to provide a secure process designed to avoid the need for an affected customer to repeatedly disclose or refer to their experience of family violence. This has been found to help encourage engagement from consumers and improve support for consumers but also to lessen the trauma by avoiding having to repeatedly go through the experience.



Our experience offering these protections, to date, suggest that the main example of instances where retailers will need to prioritise the needs of the affected customer over strict compliance with the NERR relates to communication. By way of example, instances where an affected customer's entitlement for communications to be in accordance with their preferred method of communication identified would take precedence over any other entitlement or obligations in the NERR to communicate with a customer in a particular way.

These communications include:

- Establishing the customer contract / pricing schedule
- Issuing bills
- Price and tariff change notices
- Sending a retailer planned interruption notice
- Disconnections and reminder notices
- Establishing or cancelling a direct debit.

However, noting that the experience of family violence is evolving for energy retailers, and society generally, there could be other rules that could be affected into the future.

Nature and scope of the issues with the existing rules

a. Background

Family violence is a major societal issue in Australia which directly threatens the lives of Australians, with reports showing that "on average one woman a week is murdered by her current or former partner."¹

The March 2016 Victorian Royal Commission into Family Violence also found that due to the critical role that essential services (such as electricity and gas) play in daily life they can be used by perpetrators as a form of economic abuse against victims.

The Royal Commission identified that examples of this economic abuse included:

- insisting an account is in a victim's name and refusing to contribute to the cost;
- putting a service in the sole name of the victim without their knowledge or consent;
- holding an account jointly and refusing to contribute to the cost;
- holding the account in their own name and not paying bills, resulting in disconnection; and
- holding the account in their own name and threatening to have the service cut off or having it cut off when they leave the family home".²

b. Issues to be addressed

Energy services can in some instances be used to identify information about an affected customer or victim survivor, where the perpetrator is a joint account holder or is aware of all of the personal details of the customer required to pass a security check under the current rules. The protection of this information is paramount as it poses a risk not only to a customer's location but also potential identity theft by a perpetrator.

¹ Bryant, W. & Bricknall, S. (2017). *Homicide in Australia 2012-2014: National Homicide Monitoring Program report*. Canberra: Australian Institute of Criminology. Retrieved from: <https://aic.gov.au/publications/sr/sr002>

² Essential Services Commission, *Providing family violence support discussion paper*, October 2018, p27



Having implemented family violence protections in Victoria (and for Red and Lumo, nationally), we understand the important role that energy retailers can play both in providing support to affected customers and protecting customers personal information from perpetrators.

We consider that retailers should be able to afford protections to affected customers, without fear of compliance implications, and that the safety of the affected customer must take precedence over other obligations that currently exist in the NERR.

To date, many affected customers have requested that retailers withhold communication (including bills or notices) in instances where that residential customer needs to protect their identity and personal information from a perpetrator. The decision to stop these communications by a retailer or to change the communication method to an unapproved method would be a breach of existing obligations under the NERR.

We are recommending that these proposed changes only apply to jurisdictions that have adopted the NERR and have not identified any specific rules requiring changes in the National Gas Rules or National Electricity Rules. Further, we have suggested that the rule change only applies to residential small customers, and not small business customers. Red and Lumo have concerns around unintended consequences of applying family violence protections to small businesses. Noting that the management and ownership structure of businesses is often complex with communications across multiple owners or registered account holders or contacts. Specifically, there are consequences for retailers to manage requests to exclude a registered business owner from accessing information about their account without more formal legal requests being received.

How the proposed changes would address the issues

The introduction of the family violence provisions in the NERR would ensure that customers affected by family violence would be entitled to safe, supportive and flexible assistance from an energy retailer in managing their personal and financial security.

Retailers will be obliged to ensure they have developed processes that provide for safe and secure engagement between customers and retailers in line with their Family Violence Policy.

The Family Violence Policy will be a publicly available document outlining the protections and assistance available to customers who are affected by Family Violence. This policy will be required to be published on a retailers website and provided to a customer upon request.

The proposed rules will provide retailers with a clear direction that protection of a customer's safety takes precedence over any other obligations under the NERR.

How the proposed changes will contribute to the achievement of the National Energy Retail Objective

a. National Energy Retail Objective (NERO) and the consumer protection test

The NERO states that: "*the objective of this Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.*"³ We note that the Australian Energy Market Commission must also satisfy itself that the rule is "*compatible with the*

³ National Energy Retail Law, section 13



*development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers."*⁴

The implementation of the family violence provisions on 1 January 2020 has highlighted the limited protections for affected customers in the NERR. We therefore consider that protections must be afforded to those energy consumers that fall under the NERR. This will not only benefit consumers with improved protection to customers affected by family violence but will also meet the NERO and the consumer protection test by providing retailers with a framework to confidently offer protections to affected customers in jurisdictions governed by the NERR. We note that our proposal draws on and utilises many of the systems and processes introduced in Victoria under the Energy Retail Code (ERC).

Under our proposed rule change, the new family violence protections will ensure that customers who are affected by family violence will be granted protections in relation to their financial and personal security. These changes will enhance the consumer protections for customers who have been affected by family violence and will directly contribute to meeting the consumer protection requirements of the NERO. Furthermore, as the proposed rule directly notes that retailers must recognise family violence as a potential cause of payment difficulty, this directly contributes to the consumer protections test. Many affected customers may fall into the hardship program for a period of time, and our proposal seeks to recognise this.

Given retailers have the primary relationship with their customer, we have not included any other market participants (such as distribution networks, comparison or switching agencies or the Australian Energy Market Operator) to have access to this consumer information.

As highlighted below, the implementation of these changes will be low cost as the vast majority of retailers providing contracts to customers under the NERR, already provide family violence protections under the ERC. We consider that this lower cost implementation will also directly contribute to meeting the NERO.

We strongly encourage the Commission to consider how these protections can also be afforded to customers in embedded networks and/or standalone power systems (when they eventuate).

Expected benefits and costs of the proposed change

a. Benefits

Consumers who are affected by family violence will benefit by:

- Being able to better access support from retailers
- Ensuring processes that provide for safe and secure engagement between customers and retailers.
- Being able to better access currently available financial and payment assistance
- Ensuring that key personal information that has the potential to locate the affected customer is adequately protected from disclosure to any other person without the customer's consent.
- Confidently engage with a retailer knowing that their safety will be the paramount consideration for the retailer

Retailers will benefit by:

- Improved engagement with existing customers who are affected by family violence

⁴ National Energy Retail Law, section 236(2)(b)



- Having confidence in the rules when engaging with an affected customer to ensure consumers safety.

b. Costs

Currently only a small number of energy retailers retail to customers in NECF states exclusively. The vast majority of energy companies operate in Victoria as well as NECF states. These companies have therefore already incurred the cost to meet the Energy Retail Code (ERC) obligations in Victoria including potential system upgrades, meaning implementation costs would only be incurred by a very small group of energy retailers who do not operate in Victoria.

For retailers who do not operate in Victoria the majority of costs will be:

- Development of required family violence policies.
- Development of adequate processes to ensure affected customers are handled appropriately.
- Potential system changes to improve protection of customer details (potentially including the introduction of password protection for accounts) - this has been found to be a crucial step in the protection of customers details.

However, these costs would be heavily outweighed by the wider consumer and societal benefit of these changes.



Proposed rules - Part 3A Assistance for customers affected by family violence

76A Definitions

In this Part:

affected customer means any customer, including a former customer, who is or was a residential customer and who may be affected by family violence.

family violence has the meaning given by section 4AB of the Family Law Act 1975 of the Commonwealth.

76B Family violence policy

A retailer must:

- (1) have a family violence policy containing information on the assistance available for affected customers;
- (2) publish the family violence policy on the retailer's website;
- (3) implement and maintain the family violence policy; and
- (4) review its family violence policy no less than once every two years.

76C Family violence as a potential cause of payment difficulty

A retailer must recognise family violence as a potential cause of payment difficulty.

76D Safety of affected customers prioritised

A retailer must in any dealing with an affected customer have regard firstly to the safety of the customer.

76E Account security

- (1) A retailer must not disclose or provide access to confidential information about an affected customer to any other person without the consent of the affected customer.
- (2) In this clause, the term "confidential information" refers to any information that may be used to identify or locate an affected customer, including information about their whereabouts, contact details, or financial or personal circumstances.
- (3) In this clause, the term "any other person" includes a person who is or has been a joint account holder with an affected customer.
- (4) To identify a safe method of communication with an affected customer, a retailer must:
 - (a) take reasonable steps to elicit the affected customer's preferred method of communication; and
 - (b) offer alternative methods of communication if the affected customer's preferred method of communication identified in paragraph (a) is not practicable.

76F Debt Management

- (1) Before taking action to recover arrears from an affected customer, a retailer must take into account:
 - (a) the potential impact of debt recovery action at that time on the affected customer; and
 - (b) whether other persons are jointly or severally responsible for the energy usage that resulted in the accumulation of those arrears.



- (2) Nothing in this Part prevents a retailer from waiving, suspending or repurchasing the debt of an affected customer.

76G Consistency of market retail contract with family violence policy

- (1) This rule applies if a residential customer who is on a market retail contract is or becomes an affected customer.
- (2) The terms and conditions of the market retail contract have no effect to the extent of any inconsistency with the application of the retailer's family violence policy to that customer.
- (3) The retailer must ensure that the customer may continue to be provided with customer retail services under a customer retail contract in accordance with these Rules.

76H Compliance by retailer

If a retailer is unable to fulfil an obligation under a customer retail contract or these Rules (other than this Part) in complying with this Part, the retailer is not in breach of the contract or these Rules.

76I Evidence

- (1) A retailer may only seek documentary evidence of family violence when considering de-energisation under Division 2 of Part 6.
- (2) Any documentary evidence sought in accordance with subrule (1) must be limited to that which is reasonably required by the retailer for the purposes of considering de-energisation under Division 2 of Part 6.
- (3) A reference in this rule to documentary evidence includes a reference to documentary evidence from a third party acting on behalf of an affected customer.

76J Application of this Part

This Part applies to market retail contracts and standard retail contracts unless otherwise expressly provided.