



PO Box 4136
East Richmond VIC 3121
T 131 806
F 1300 661 086
W redenergy.com.au

PO Box 4136
East Richmond VIC 3121
T 1300 115 866
F 1300 136 891
W lumoenergy.com.au



4 April 2024

Ben Davis
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

Submitted electronically

Dear Mr Davis,

Re: Draft Report - Review into the arrangements for failed retailers' electricity and gas contracts - RPR0016

Red Energy and Lumo Energy (Red and Lumo) are pleased to make this submission to the Australian Energy Market Commission's (the Commission's) draft report for its review into the arrangements for failed retailers' electricity and gas contracts.

We broadly support the Commission's recommended reforms to the Retailer of Last Resort (RoLR) framework. In our view, the reforms will facilitate an orderly transfer of the customers of failed retailers, while reducing uncertainty, risks and costs for current and prospective RoLRs. This will minimise the impact of retailer failure on energy consumers and enhance market resilience. We encourage the Commission to proceed with these recommendations, subject to some minor clarifications about how they will work in practice, and confirmation that they align with existing insolvency law.

We also support the Commission's decision to maintain different arrangements for the failure of electricity and gas retailers. As the Commission notes, these markets differ significantly and the transfer of gas contracts from a failed retailer to a RoLR is less problematic than is the case for electricity. As we argued in our submission to the Commission's directions paper, it is simply not feasible to transfer electricity contracts to a RoLR and the existence of a gross pool wholesale market means the RoLR will be able to cover the additional unanticipated load, even if it likely to coincide with a period of elevated wholesale prices. This latter issue highlights the importance of a clear and certain framework for RoLR cost recovery and we encourage the Australian Energy Regulator (AER) to commence the process to update the framework as soon as possible.

Recommendations for gas RoLR events

Red and Lumo agree that the recommendations relating to the gas RoLR framework will improve its operation. We do not foresee any negative impact for competition—by creating a barrier to exit, for example—as the transfer of contracts from a failed retailer to a RoLR is already a feature of the framework for gas. Rather, the proposed amendments will give the AER greater flexibility to exercise its directions powers to account for the individual

circumstances of each gas RoLR event, e.g. whether it is isolated failure or a function of broader market challenges / instability. This includes the period over which it can make directions, greater clarity around the treatment of contracts that end or are due to commence or have an extension clause that takes effect during a directions period. We also support the extension of the AER's directions power to include storage contracts, subject to the reasonable valuation of gas.

However, we recommend that the Commission give further consideration to how the requirement for a RoLR to pass on the benefits of any direction to consumers might work in practice. The Commission seems to acknowledge the challenges for the AER in determining factors such as the cost to serve any new customers that a RoLR takes on and how to disentangle the cost of gas for new and existing customers by recommending a principles based approach. There are no restrictions on these new customers switching to another retailer so effective competition should create a strong incentive for the RoLR to pass on any benefits that it receives following a RoLR event.

Recommendations for electricity and gas RoLR events

Red and Lumo support the Commission's recommendation to improve clarity around the cost recovery framework for electricity and gas RoLR events and encourage the AER to commence this process as quickly as possible. In our view, this is the most significant issue for current and prospective RoLRs. It is possible, if not highly likely, that retailer failures (or a series of failures as was observed in 2022) coincide with a period of elevated wholesale prices. In such instances, it is also likely that the cost of covering additional unanticipated load and expanded environmental obligations will exceed regulatory allowances. Furthermore, RoLRs have not had the opportunity to assess incoming customers and account for their particular characteristics, meaning bad and doubtful debt exposure is likely to be higher for this cohort of customers than for the rest of its customer base, and the likelihood of retaining those customers is lower.

These are important issues that influence a retailer's decision about whether it will continue to participate in the RoLR scheme or apply for registration.

We acknowledge the issue that the Commission is trying to address by proposing a civil penalty provision for improper use of the RoLR scheme. However, we encourage the Commission to provide more clarity about what it might consider to be acceptable behaviour prior to a RoLR event to avoid the risk of unintended consequences and creating a barrier to exit. This is due to the potential severity of a civil penalty and because a failure by a retailer to avoid a RoLR event might be due to issues beyond its control, such as emergency circumstances and market / regulatory interventions such as those observed in 2022 or broader macroeconomic factors. This might be difficult to assess. At the very least, the Commission and AER should develop supplementary guidance about what constitutes 'reasonable steps' as suggested in the draft report before it proceeds with this recommendation.

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 in the ACT to over 1.3 million customers.

Red and Lumo thank the Commission for the opportunity to comment on the draft report. Please contact me on 0438 671 750 if you wish to discuss or have any further enquiries regarding this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "G Hargreaves".

Geoff Hargreaves

Manager - Regulatory Affairs

Red Energy Pty Ltd

Lumo Energy (Australia) Pty Ltd