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16 January 2025

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

Submitted electronically: www.aemc.gov.au

Dear Ms Collyer,

Re: Delivering more protections for energy consumers: changes to retail energy contracts (RRC0058 / RRC0059 / RRC0061 / RRC0065)

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Australian Energy Market Commission's (the Commission's) consultation paper for a series of rule change proposals by the Hon Chris Bowen MP, Minister for Climate Change and Energy, as Chair of the Energy and Climate Change Ministerial Council that together seek to help households' access cheaper energy deals and deliver more protections for energy consumers.

We acknowledge Energy Ministers' concerns about the capability of some consumers to participate in the market and in particular, whether they can easily seek out better offers. A competitive market delivers benefits for consumers in terms of price and service levels, but this hinges on them being able to identify and access alternatives to their current contract.

This has been the focus of numerous regulatory initiatives in recent years. Notable examples include the extension of the Consumer Data Right to energy, obligations on retailers to reference their prices against the Default Market Offer (DMO) when advertising their offers and in price change letters, and the *Better Bills Guideline*, which includes a deemed better offer message. Another trigger for engagement is the Australian Energy Regulator's Benefit Change Notice. For consumers experiencing payment difficulties and entering a hardship program, retailers must also discuss alternative offers, including those with lower prices, and would generally continue these discussions throughout a customer's participation in the program.

Each of these obligations help consumers to reconsider their current offer by providing important information or a potential trigger to switch offers following a significant event. The Commission is now considering whether consumers require further triggers or whether more substantial measures are warranted.

We see some potential for unintended consequences and other negative impacts of some of the options that the Commission has identified in its consultation paper. These include additional costs for some consumers, limitations on retailers' ability to develop innovative service offerings and customer confusion. The market and consumer response to these measures is highly uncertain. Therefore, we strongly encourage the Commission to carefully consider the nature and extent of the problem it is seeking to address and to develop an appropriate and proportionate response that accounts for existing obligations. It may be that less onerous or disruptive options deliver a better outcome for consumers.

We are seeing some indications that recent regulatory initiatives are having an impact on consumer behaviour. The Australian Competition and Consumer Commission's (ACCC's) report to the Federal Treasurer in late 2023 found that some proportion of consumers remained on legacy contracts above regulated retail prices, even when they met the conditions to receive a discount. This was the basis for Energy Ministers' agreement to consider additional consumer protections.

However, the ACCC's most recent report has found some evidence of a shift and that the proportion of total consumers on such products is declining. The report suggests that deemed better offer messaging may be driving consumers toward these lower price options.[1] It also notes that the proportion of consumers on their retailer's best offer is lowest in Victoria, which introduced the obligation in 2019. This seems to illustrate the effectiveness of deemed better offer messaging but just a potential lag in its impact. The ACCC also proposes some relatively minor measures to assist consumers to participate in the market, including improvements to Energy Made Easy and clarification where a consumer's current offer has the same name as their retailer's best offer but has different pricing.

The remainder of this submission discusses the specific proposals outlined in the consultation paper, with a focus on the problem they intend to address, some potential consequences and alternative solutions that the Commission might consider.

Ensuring energy plan benefits last the length of the contract

It is difficult to predict the market response to the proposal to align benefit periods with the length of a contract, which in turn makes it challenging for the Commission to assess whether it will deliver a net benefit for consumers. One response might be that retailers withdraw certain benefits from the market altogether. One example might be where the benefit involves an arrangement with a third party and there is a risk that a retailer would need to end a retail contract if that arrangement was discontinued. More fundamentally, the proposal limits retailers' flexibility to offer a certain type of product that consumers may value. For example, in the past, we have provided fixed-price guarantees to customers as part of an explicit contractual guarantee, ensuring the price remains unchanged for a set

[1] ACCC, *Inquiry into the National Electricity Market: December 2024 report*, 3 December 2024, p 12.

period. Once the guarantee period expires, customers may transition to a standing offer, which could result in a price that is higher than a price adjustment.

We recommend the Commission consider the following as it undertakes its analysis—the materiality of the issue, the adequacy of existing obligations that apply to contracts with a fixed benefit period and the form of the benefit to which the obligation would apply.

As the Commission's analysis notes, around 17 per cent of residential and small business electricity offers listed on Energy Made Easy in October 2024 featured benefit periods that were shorter than the contract term. This is a relatively small proportion of total offers in the market.

One of the main drivers of this proposal was a concern that some consumers may reach the end of fixed benefit period, fail to engage with their retailer (or in the market more generally) and then revert to a less favourable situation (e.g. a higher price). The Commission will be aware of the numerous obligations currently in place that are intended as a trigger for the consumer to reassess their offer. These include the deemed better offer message on their bills, the reference to the DMO on price change notifications and in the case of fixed benefits, a prescribed letter. A potentially less disruptive solution to Energy Ministers' concerns would be to reassess the adequacy of this prescribed letter, which was enacted through the Benefit Change Notice Guidelines in 2018. The Commission could also recommend a review of Retail Pricing Information Guidelines.

Otherwise, automatic alignment of fixed benefit period with the length of contract means that a retailer must assign any customer who has not contacted them (and provided Explicit Informed Consent) to the Default Market Offer. It is not clear that this would be a better outcome as this will depend on the terms of their initial contract. Accordingly, our preference is for consumers to receive appropriate prompts to engage with their retailer.

A further issue for the Commission to consider is the type of fixed benefit to which this obligation might apply and whether it should differ between price and non price benefits. The market response will differ depending on the scope of the proposal.

Removing unreasonable conditional discounts

The ACCC's recent finding of a reduction in the proportion of consumers paying annual prices above the DMO implies that the number of consumers on legacy contracts with substantial conditional discounts has continued to decline.[2] In any event, these consumers account for a very small proportion of our total customer base and that of most smaller retailers. Even so, we acknowledge that some consumers choose not to actively participate in the market or may find it difficult to participate in the market. As with other problems that this package of rule change proposals is seeking to address, existing measures such as the

[2] ACCC, *Inquiry into the National Electricity Market: December 2024 report*, 3 December 2024.

deemed best offer message and DMO referencing price change notifications appear to be increasingly effective measures.

Given this, we have some challenges with this proposal that the Commission will need to consider. The transition to a new contract that is consistent with the current rules may be confusing for some consumers. They may focus on their reduced discount even if the rates they face are lower. More fundamentally, the proposal has the potential to undermine existing Explicit Informed Consent provisions of the National Electricity Law, which are a core element of the competitive retail market.

Preventing price increases for a fixed period under market retail contracts

We agree that consumers should not experience unexpected price changes shortly after they enter into a new contract. This is a poor customer experience and our typical process is to keep prices constant for an extended period after sign-up. However, prescribing a minimum fixed period that applies in all circumstances will limit retailers' ability to manage risk and could encourage retailers to incorporate an additional risk premium into their pricing. The nature of the uncertainty depends on the external environment. Limiting retailers' ability to manage risk during an event like the energy crisis in 2022 or in the face of significant changes in network costs will clearly have a greater impact.

Therefore, we encourage the Commission to consider various options for addressing the poor customer experience that an unexpected price change creates. The Commission will be aware that Victoria and the ACT have prescribed a clear advice entitlement and this includes an expectation that retailers will notify a consumer if they are aware of an impending price change (e.g. that aligns with changes in regulated retail prices or with changes in network tariffs). A similar obligation in the other NECF jurisdictions may address some of the concerns about consumers' awareness of impending price change events.

Removing fees and charges

Retailers employ different business models to recover costs, with some absorbing certain fees and charges as part of their cost to serve, while others pass them through in some form. Key issues to consider are the nature of the fee or charge, the extent to which retailers have control over it and whether it arises following a customer's request. An example is a special meter read fee, which is a regulated network charge over which the retailer has no control and which is simply passed through. Another example is the fee associated with meter reads where a consumer has refused the installation of a smart meter.

We recommend the Commission carefully consider the consequences of a broad prohibition on fees and charges. The Australian Energy Regulator would need to capture the prohibited fees and charges in its DMO calculations. This means they would apply to all consumers even when a fee is regulated, intended to encourage certain behaviour or where the clear intention is for an individual consumer to bear the cost of the specific service they are requesting. An alternative may be to prohibit mark ups on certain fees and charges, rather than a prohibition.

The Commission will also need to consider the implications of prescribing prohibited fees in the Retail Rules and how it would account for any fees that might arise at some point in the future.

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 the ACT to over 1.4 million customers.

Red and Lumo thank the Commission for the opportunity to comment on the consultation paper. Should you wish to discuss or have any further enquiries regarding this submission, please call Thakshila Gunaratna, Regulatory Manager, on 0461 338 686.

Yours sincerely

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