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31 May 2019

Ms Nicole Joffe  
Director, Electricity Markets Branch  
Australian Competition and Consumer Commission  
23 Marcus Clarke St  
Canberra ACT 2601

Submitted electronically to: [ElectricityMonitoring@acc.gov.au](mailto:ElectricityMonitoring@acc.gov.au)

Dear Ms Joffe,

### **Re: Guide to the Electricity Retail Code**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to comment on the Australian Competition and Consumer Commission's (the ACCC's) draft guide to the Electricity Retail Code (the guide).

We welcome the introduction of the reference price and consider that a well-implemented comparison rate will assist consumers in comparing electricity offers when deciding what product will suit their needs. The guide is an important piece of this new framework, with the ACCC providing an explanation of its expectations on how to promote greater transparency in the comparison of energy offers.

The Competition and Consumer (Industry Code--Electricity Retail) Regulations 2019 (the Code) was implemented expeditiously, with a very short implementation timeframe. As the Code is quite complex and relatively new, we believe the ACCC plays an important role, not just to help retailers comply but also to assist consumers understand the Code and its objectives. The Code will necessitate extensive changes to the way retailers present their offers and introduces new concepts that will require some explanation. Successful implementation of the Code does not only rest with electricity offers being presented in a compliant manner, but with consumers understanding the comparison rates and finding them useful. The ACCC's role should extend to monitoring its effectiveness with consumers and identifying areas for Code improvement.

### **Consumer education required**

Consumers are likely to require clarity on how the new comparison rate applies, in particular its calculation, scope and relevance of the default market offer (DMO) as it relates to their electricity offer. These are new and complex concepts that retailers must now explain to consumers.

We consider that a coordinated approach across all stakeholders, including retailers, the ACCC, Government, and consumer groups is necessary to ensure that electricity consumers understand:

- the term 'reference price' (which is a new concept for the energy sector), which is an annual amount that a representative customer will pay under highly specific circumstances.
- an 'average' or 'representative' customer as a concept - as consumption profiles vary significantly between types of customers and it is unlikely they will be the 'representative' customer who uses the precise prescribed amount of electricity over a 12 month period.
- the lowest annual amount the representative customer would pay if they meet *all* conditions for discounts *and* use the prescribed amount of electricity - this could easily be interpreted as the amount the electricity consumer will pay under their contract.
- the scope of the DMO - that advertisements relate to a specific distribution area and only to a subset of all residential and small business consumers.

Retailers use advertising and publications to encourage electricity consumers to contact them and discuss a product in more detail and to allow the consumer to consider those details in their own time. However, the Code mandates the communication of many prescribed pieces of information, which may confuse customers and have the opposite of its intended effect. Without a combined effort to educate and refinement of the Code (if necessary) there may be a withdrawal of competitive offers with innovative structures and offerings because it may simply be too difficult to effectively convey the necessary information.

### **Misalignment with energy obligations**

The ACCC acknowledges that the Code and guide operate independently from the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) and consequential amendments to energy obligations are necessary to avoid confusion. Red and Lumo are concerned that the provision of inconsistent information to consumers could reduce their confidence in effectively participating in the electricity market. Of particular concern are the discrepancies with the Government's comparison website, Energy Made Easy. The ACCC notes in the guide that, the '*Energy Made Easy website is specifically designed to help consumers make an informed choice about the best deal for them. The AER will be updating the RPIG to reflect the reference price.*'<sup>1</sup>

We note the current version of the Retail Pricing Information Guideline (RPIG) was recently updated through consultation undertaken by the Australian Energy Regulator (AER). This consultation and subsequent development of Basic Plan Information Documents (BPIDs) were the product of extensive behavioural insights and consumer testing of receptiveness to information that is presented in different forms. We welcome further behavioural testing on the best way to reflect the reference price on Energy Made Easy and BPIDs to ensure that it is easy for consumers to understand and compare offers.

We note that the Code requires retailers to advertise and discuss offers with consumers having regard to the AER's DMO reference price. However, at the same time, retailers have obligations under the RPIG to direct these same consumers to BPIDs and provide them on request.

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<sup>1</sup> Australian Competition and Consumer Commission (2019), *Guide to the Electricity Retail Code: Draft for consultation*, page 24

As the ACCC is aware, these documents do not refer to the reference price and instead present offers in a different form from what the DMO Code will mandate, i.e. three annual average estimates of the amount a customer would pay under that offer depending on the size of their household and depending on the postcode in which they live.

The misalignment must be addressed as soon as possible to minimise consumer confusion and disengagement. However, there will be a lengthy lead time to amend Energy Made Easy and for the AER to consult on changes to the RPIG. In the meantime, retailers will need to manage this issue and will bear the brunt of customer frustration and complaints. As noted above, the ACCC could mitigate this to some degree through its own initiatives to promote consumer awareness of the DMO and the prescribed content of energy advertising, particularly the calculation of the reference price.

### **Notification of price changes**

As the ACCC notes, some retailers will amend standing offer prices to comply with DMO price cap. However, we do not share the ACCC's conclusion - in either section 4.2 or 5.9 of the draft guide - that a price change notification sent individually to a customer falls within the definition of an advertisement, publication or offer to supply. In our view, a price change is not an offer as it falls within the contractual terms and conditions prescribed within the NERR. Consistent with all other price change events, we will notify our customers in line with their existing contract (both standing and market). It is unclear where the Code specifies a requirement for retailers to include this information in a price change notification. Further, we question whether the ACCC has the ability under the Code to mandate the provision of additional information where it does not relate to an advertisement, publication or offer.

As such, we also do not agree that any individualised notification of a price change ahead of 1 July 2019 needs to include prescribed information or information that their tariff has changed as a result of the Code, that the terms and conditions of standing offer contract are unchanged, or that market offers and available and offers can be compared on Energy Made Easy.<sup>2</sup>

### **Accurate advertisements**

The ACCC notes that retailers will need to ensure that any advertising is not only compliant with the Code but also with Australian Consumer Law (ACL), the NERR and NERL. We support this approach but are concerned that the mock-up examples the ACCC has included in the guide do not reflect this. Retailers must include additional information to avoid misleading customers and to satisfy their ACL obligations.

For example, while the mock-ups of compliant advertisements include information prescribed by the Code, they do not include disclaimers or indicate in any way the limited scope of the advertised products. They are highly specific to certain customers - those classified as 'small' in the Code for some purposes and not for others (which also excludes solar customers) and in other instances, depends on whether their network has assigned them onto a particular tariff. They are also specific to an electricity network (which is a more material issue in NSW).

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<sup>2</sup> Ibid., page 7

This issue is even more pronounced when flexible rate retail offers are compared with the DMO and the Code mandates retailers use the AER's usage allocations. In our view, these prescribed usage allocations do not align perfectly with what we observe from our customers' consumption profiles. Moreover, consumers who have been assigned to more cost reflective tariffs under their networks' tariff assignment policies will see comparisons to products that they cannot access.

Coordinated consumer education will assist most consumers. While the prescribed content is a policy choice, we note that some consumers may struggle with the volume of information - outlined in example 11 below, for instance - and it may do little to improve their ability to compare offers.



**Energy Us**

**11% less than  
reference price**

plus

Further 3% below the reference price if you always pay on time

*\$1254 p.a for an average customer who always pays on time. These estimated costs are rounded to the nearest dollar and are based on average household annual usage of 3900 kWh. Depending on actual usage your bill can differ from this calculation. Offers only apply to residential customers with a flat rate tariff on the Ausgrid Network.*

Source: Australian Competition and Consumer Commission (2019), *Guide to the Electricity Retail Code: Draft for consultation*, page 21

### Implementation and compliance with the Code

We strongly encourage the ACCC to take a pragmatic view to compliance and enforcement in the first few months of the DMO, noting the very short timeframe for implementation and particularly with any potential late changes when the final guide is published. The ACCC refers to its discretion regarding the matters it will investigate and resolve concerns, while taking account of the 'surrounding circumstances'.

We welcome the ACCC's statement that it will consider the '*extent to which a retailer can demonstrate to us that it has taken steps to prepare for the new requirements, is responsive to our concerns and agrees to timely remediation*'.<sup>3</sup> Compliance with the Code involves extensive revisions to websites, offer letters, other offer-related material and changes to existing processes.

<sup>3</sup> Ibid. page 25

Compliance does not only consist of changes to printed material but will require extensive training to all customer-facing staff so to ensure that they understand the new obligations and can effectively explain the prescribed information now required to be communicated.

### **About Red and Lumo**

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

Red and Lumo thank the ACCC for the opportunity to respond to its draft guide. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

**Ramy Soussou**

General Manager Regulatory Affairs & Stakeholder Relations

**Red Energy Pty Ltd**

**Lumo Energy Australia Pty Ltd**