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4 March 2019

Ms Sarah Proudfoot
General Manager, Consumers and Markets
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submitted electronically: AERConsumerandPolicy@aer.gov.au

Dear Ms Proudfoot,

Re. Draft AER Customer Hardship Policy Guideline

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Australian Energy Regulator's (the AER's) Draft Customer Hardship Guideline.

We explained in our submission to the AER's Issues Paper that, according to the AER's 2018 Retailer Report Cards, Red and Lumo are industry leaders in the early identification of payment difficulty. For example, Red's average electricity debt on entry to a hardship program was \$196 compared with an industry average of \$1,146 (and \$117 for gas debt compared with an industry average of \$734).¹

We also explained that this is a function of the flexibility available in both the National Energy Retail Law (the Retail Law) and National Energy Retail Rules (the Retail Rules) to tailor our support and the way we communicate with our customers.² This flexibility remains, even with recent amendments to the Retail Rules regarding hardship policies.

Despite this, we acknowledge the concerns of the AER and other stakeholders about observed outcomes across the broader retail market. This includes inconsistency between retailers in their management of consumers facing payment difficulties, increased debt at time of entry to a hardship program, fewer successful exits from hardship programs and higher rates of disconnection among hardship customers.

Therefore, we support the AER's initiatives to improve consumers' awareness and understanding of their rights and entitlements. Retailers cannot meet their obligations if consumers - and their representatives - are not aware when and in what form that assistance is available.

¹ Australian Energy Regulator (2018), *Annual Report on Compliance and Performance of the Retail Energy Market 2017-18, Retailer Report Cards*.

² Red Energy and Lumo Energy (2018), *Submission to Issues paper - standardised statements for use in customer hardship policies*

However, our concerns on this point are that the AER would either mandate the inclusion of additional information in hardship policies that was either unnecessary or confusing (thereby eroding the objectives of hardship policies), or prescribe how assistance is offered. We remain firmly of the view that retailers are best placed to work with their customers to provide effective assistance, subject to minimum standards and within a defined legislative framework.

In our view, a hardship policy has two primary purposes. Firstly, it should reassure customers that support is available and they should contact their retailer as soon as they feel they might be experiencing payment difficulties. Secondly, it should advise them that the assistance they receive will reflect their individual circumstances. There is an inherent information asymmetry between a retailer and customer with respect to their circumstances and this must be overcome in order for a retailer to provide effective support.

A customer-friendly hardship policy that encourages engagement is part of that process and then a retailer can draw on its knowledge of what forms of assistance are successful and in what circumstances due to the flexibility that the Retail Law and Retail Rules afford.

Therefore, we welcome the additional guidance in the Notice and Guideline about the level of detail that a policy must contain, particularly in terms of retailers' systems, processes and training (section 3.2.2). This information is most relevant for the AER as it assesses retailers' compliance with legislative obligations with respect to hardship - and the AER can ask for it directly - rather than of interest to consumers. We trust the AER will maintain this position when retailers submit their revised policies under the final Guideline.

The Guideline also seeks to ensure hardship policies are accessible for the diverse range of consumer segments, with particular emphasis on culturally and linguistically diverse (CALD) consumers.³ Once again, we encourage the AER to avoid mandating the inclusion of a substantial amount of additional information with any specific customer segment in mind. It is challenging to find the right balance in terms of the level of detail; for some segments, a prescribed format will meet their needs while others might find it too detailed or not detailed enough and may disengage.

We note that retailers have a regulatory - and commercial - incentive to ensure *all* customers can access support and the AER can seek additional information from any retailer under existing provisions if it believes they are not offering adequate support to any consumer segment. When assessing hardship policies under the final Guideline (and compliance with hardship obligations more generally), the AER can also take account of the other measures that retailers take to provide support to their diverse customer base.

³ The AER's workshop on the Draft Guideline on 25 February also included a presentation from the Melbourne Law School about the presentation of information to consumers with cognitive disabilities.

This might include other documents they prepare to supplement their standard hardship policies, or partnerships with specific advocates and representatives. Clause 38 of the draft Guideline states that retailers should deal with representatives as they would a customer and take steps to verify consent and identity; these representatives can play an important role in ensuring all consumer segments receive assistance.

At the same time, the AER may consider its own initiatives to promote greater awareness among consumer segments, their representatives and across the market more broadly about retailers' obligations.

Specific comments

Clause 45 states that *'any statements a retailer opts to include in their hardship policy about customer obligations and responsibilities must be fair, reasonable and transparent, and consistent with this Guideline, the Retail Law and Retail Rules.'*

This is a valid statement, however the AER must also acknowledge when reviewing hardship policies that effective support requires consumers to engage and continue engaging with their retailer will they receive assistance. There are limits on what a retailer can do if their customer is unwilling to engage at the outset or as they progress through stages of assistance, or a customer does not provide any or accurate information about their circumstances. For example, it may be necessary to revise a payment plan if there is a change in a customer's employment situation (e.g. loss of employment or temporary absence from the labour market due to a change in family situation).

Failure to adhere to an agreed payment plans or to notify a retailer if a plan is no longer suitable are two examples that we mentioned in previous submissions. Retailers cannot offer effective advice about best offers or efficient usage unless they understand a customer's circumstances.

We recommend that there is more emphasis on this in the Guideline and standard statements. For example, the AER could include a statement that retailers need customers to continue to engage while they are receiving assistance to ensure they receive appropriate advice and that assistance can change in line with changes to a customer's circumstances.

Standard statements

Aside from some minor suggestions, we are comfortable with the standard statements the AER has proposed. We propose the following:

- We recommend the AER amend standard statements 1 and 2 that currently state that we will *'recommend that you speak to a staff member who handles enquires about how you might join our hardship program'* if we observe specific outcomes such as late payments or have issued a disconnection notice. Some consumers may consider this coercion or object to our recommendation and we would prefer that customers feel they have control over this decision as it will promote better engagement that is more likely to lead to successful management of payment difficulty.

- The AER should amend the statement to acknowledge that a retailer requires a customer's engagement and explicit informed consent to move them onto customer a more suitable plan for their circumstances when they enter a hardship program. As we mentioned in our previous submission, this would generally occur after we have discussed that customer's circumstances with them and we are then better able to provide effective and tailored advice. For example, it is helpful to understand the flexibility of a customer's consumption profile or whether they would prefer an offer that includes an unconditional discount. This is not always apparent from usage data and payment history that a retailer has access to.
- Alternatively, the AER could delete this part of the statement as Statement 3 and Statement 6 note that a retailer would review a customer's energy plan to '*determine whether there is another energy plan that you may be better suited for*' as part of discussions about payment options and also discuss alternatives if a customer misses a payment while on a payment plan.

Future versions of the Guideline

Looking ahead, the AER advises that it will consider variations to the Guideline if it remains concerned about observed industry outcomes. We encourage the AER to consider all contributing factors - which could be the level of energy prices or the extent of the AER's enforcement of existing obligations - before revising the Guideline and mandating changes to hardship policies. We do not believe that changes to the content of hardship policies will necessarily address some of the underlying drivers of payment difficulty.

The Notice to the Guideline also indicates that the AER will review the effectiveness of a debt trigger for assistance, which is an element of the Victorian Payment Difficulties Framework. The AER notes that a debt trigger is not consistent with the current Retail Law and Retail Rules as it could be considered to define hardship and the point at which a retailer offers assistance.

The AER will need to carefully consider both the provisions and the intent of the current framework - which prescribes minimum standards but grants retailers the discretion to offer assistance in a manner that reflects their customers' circumstances and characteristics - when it contemplates future amendments to the final Guideline.

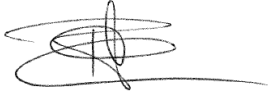
It will also need to be mindful that Retail Rules 75A and 75B prescribe that the Guideline should prescribe that hardship policies contain clear and specific statements of the actions the retailer will take to meet the *minimum requirements* for a customer hardship policy in section 44 of the Retail Law.

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, South Australia and Queensland to over 1 million customers.

Red and Lumo thank the AER for the opportunity to respond to the Draft Guideline. 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, appearing to be "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
Lumo Energy Australia Pty Ltd