



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



13 April 2021

Mr Joe Dimasi  
Senior Commissioner  
Independent Competition and Regulatory Commission  
PO Box 161  
Civic Square ACT 2608

Submitted electronically

Dear Mr Dimasi,

**Re: Transparency and Comparability of electricity offers in the ACT**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to comment on the Independent Competition and Regulatory Commission's (the Commission's) draft report on Transparency and Comparability of electricity offers in the ACT (the draft report).

Red is a new entrant retailer in the ACT and we support measures to promote consumer engagement and more effective competition. While we support some elements of the Commission's proposals in principle, we recommend that it undertake further analysis and monitor developments in the national framework before proceeding. Some of the proposals may be inconsistent with similar obligations that apply elsewhere (such as those that apply under the Default Market Offer Code, for example) while others may not generate net benefits for consumers. It is imperative that all decisions from the Commission are based on a rigorous assessment of their respective costs and benefits.

A further issue is the consistency of obligations across jurisdictions. Alignment with existing regulatory obligations will not only deliver better outcomes for consumers but also minimise implementation costs for retailers that are ultimately borne by consumers.

Notable initiatives include the Australian Energy Regulator's project to develop a billing guideline (following a recent determination by the Australian Energy Market Commission) and a forthcoming review of the Default Market Offer Code by the Department of Industry, Science, Energy and Resources. We expect both of these projects will create a range of new obligations on retailers around the content of bills and the presentation of a reference price. Waiting until both changes have been implemented will ensure that the Commission is better placed to assess which provisions will apply in the ACT - through the National Energy Retail Rules - and which others could be mirrored through ACT specific regulations.

## **Setting the Reference Price**

Red and Lumo are concerned by the proposal to allow the Minister to set the reference price 'based on existing regulated standing offer prices'<sup>1</sup> without clear and binding guidance about how the Minister will make this determination or what factors will be used to influence the Minister's decision. The regulated standing offer seems a reasonable starting point as a reference but this should be formalised.

While a reference price can be a useful comparison tool for some consumers, there needs to be a clear process for explaining what it represents and which consumers it relates to. For example, the Default Market Offer Code prescribes a number of factors around the application of the reference price, such as its coverage (i.e. whether it applies to flat and flexible rate products and demand tariffs), how solar exports are accounted for, and that the annual amount paid relates to an average level of consumption and usage profile.

These parameters determine the value of this information to consumers. For example, the reference price will be less useful for those consumers with different consumption profiles or who face more complex pricing structures. This is highly relevant in the ACT where the distribution network assigns consumers with smart meters to demand tariffs. These are highly complex pricing structures that do not easily lend themselves to a simple comparison with an annual allowable amount that is based on various specific assumptions about the volume and timing of energy consumption.

Once the ACT Government reaches a position, we strongly recommend that it release any draft legislation and/or regulation for consultation with key stakeholders. Furthermore, once the final legislation is released, the Commission should re-open consultation on this Code to ensure that it remains fit for purpose.

## **Using the Reference Price**

This discussion raises the issue of what information a retailer must provide and the point at which it should occur. This is not an easy issue to resolve and can also differ across different consumer segments. The Commission will be aware that the Default Market Offer Code requires retailers to provide numerous pieces of information to consumers when they advertise or discuss offers. This includes calculation of the annual amount that a consumer would pay if they meet all conditions across a year to receive a discount, any unconditional annual amount, the percentage discount relative to the reference price, the distribution network area and the customer type. As noted, these annual amounts are based on an average level of consumption and an assumed usage profile for more complex pricing structures.

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<sup>1</sup> Independent Competition and Regulatory Commission, Improving the transparency and comparability of retail electricity offers, Draft report, March 2021, p2

This is a significant volume of information and it remains unclear as to whether this is the best way of promoting greater understanding of offers and greater consumer engagement. Other examples of prescribed information that ACT consumers already receive are Basic Product Information Documents and other information under the Retail Pricing Information Guideline. The forthcoming review of the Default Market Offer Code provides an opportunity to assess this issue and also to undertake further research to identify alternative ways of presenting offers that might better reflect consumers' needs and preferences. This relates to both the type of information and the point at which consumers are most receptive to it.

We strongly urge the Commission to monitor the forthcoming Default Market Offer Code review and align any ACT obligations with those that apply elsewhere.

There is also the issue of retailers having to tailor their processes and communications according to jurisdictional requirements. Inconsistencies in obligations adds to retailers' costs and ultimately consumers' bills. The Commission should adopt a consistent approach and also avoid preempting the outcome of the review of the Default Market Offer Code to minimise the changes that retailers have to make to their systems and process, including marketing collateral and call centre scripting. We implemented our obligations under the Default Market Offer Code within a short timeframe but at a considerable cost and at the expense of other commercial initiatives that would have benefited our customers. We strongly encourage the Commission to avoid generating additional costs and retailers and for consumers by prescribing redundant and/or inconsistent obligations.

We understand that this review of the Default Market Offer Code has commenced and that a revised Code will be in place for 1 July 2022. In the meantime, ACT consumers still benefit from consumer protection law and explicit informed consent provisions, and the commercial incentive of retailers to ensure current and prospective customers understand the terms and conditions of retail contracts. We have also mentioned the Australian Energy Regulator's development of a billing guideline, which is another process for evaluating what information to provide to consumers and when.

A further issue for the Commission to consider is what any advertising requirements mean for competition. Overly prescriptive obligations that largely reflect current offers by large incumbents can stifle the development and marketing of more innovative retail offers that are better suited to the evolving needs of ACT energy consumers (e.g. those with more control over their consumption profile due to solar or batteries).

### **Best offer**

While Red and Lumo support efforts to encourage consumers to engage in the competitive market, there is little evidence that a best offer obligation is the best way to achieve this. A proposal to calculate a 'best' offer for a consumer is challenging due to the various factors that can form a retailer's contract with their customer. For example, the cheapest offer might be contingent on timely

payment of bills, direct debit or a particular form of customer support (e.g. electronic only). Furthermore, moving to the best offer could result in the loss of other benefits.

In our view, further analysis is required before the Commission can be confident about the value to consumers of an obligation on retailers to present the 'best' offer, and the form and timing of when it is presented. We note the Essential Services Commission implemented a best offer obligation on retailers in 2019, which requires them to include a best offer calculation on energy bills. The Essential Services Commission provided energy retailers with 8 months to implement this change (plus an additional 3 month transitional period), and the NSW Department provided retailers with a similar timeframe for their more appropriate offer obligation in their Social Programs Code.

While the Australian Energy Regulator is consulting on their new billing guideline, we recommend the Commission apply an interim approach, to implement a more general obligation on retailers to contact their customers at certain points (annually, for example) to alert them to potential alternative offers that may be available to them. This will allow retailers to provide advice to customers that could save money, and tailor the delivery of this information with their call centres to ensure that customer service standards are maintained.

Once the Australian Energy Regulator has finalised their billing guideline, the Commission can revisit the best offer requirements in the ACT specific Code. However, if the Commission elects to move forward with its proposal for a best offer obligation, it should clearly define that any comparisons only relate to generally available products that the consumer is eligible for (based on distribution network assignment policies, for example). Otherwise, consumers may receive confusing messages about the offers they can access.

### **Clear advice**

Red and Lumo question the need for a clear advice entitlement on retailers. This is a redundant provision in light of retailers' current obligations under Australian Consumer Law and to obtain explicit informed consent. This will only add to retailers' cost to serve (through higher call handling times) for little consumer benefit.

Currently, consumers already receive clear advice prior to providing their explicit informed consent in the contract process. They also have the additional safeguard of a prescribed cooling off period, which gives sufficient time for them to undertake a measured and considered analysis of an energy contract and to reverse their decision without incurring any costs.

At 10 business days, the length of the cooling off period for the energy sector exceeds that for other significant purchases, notably the absence of a cooling off period for a house purchase at auction. This safeguard allows a consumer to consider the financial implications of the best offer and any competing offers (including their lower profile terms), ask questions of the retailer and also the chance to seek advice from other parties, such as financial counsellors, friends or legal counsel if the consumer desires.

## Implementation Timeframe

Our strong preference is for the Commission to defer a decision on these proposals until the outcome of other regulatory initiatives is clear. However, Red and Lumo would propose that an implementation timeframe must be agreed with all stakeholders to ensure adequate time for the development of the reference price but to ensure retailers are able to implement system changes correctly. Inadequate lead times for implementation run the risk of error, which creates compliance risks for retailers but more importantly, can undermine the value to consumers of regulatory obligations.

The Commission must consider that retailers are currently facing a huge number of market and regulatory changes in the next 12 months (including faster customer switching, 5 Minute Settlements, Wholesale Demand Response and the Consumer Data Right).<sup>2</sup> Each of these changes is requiring vast amounts of resources and staffing time, which has limited the ability of retailers to schedule any other system or process changes.

## 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, South Australia and in the ACT to over 1 million customers.

Red and Lumo thank the Commission for the opportunity to respond to its Draft Report. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call [REDACTED] on [REDACTED] or [REDACTED] on [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

General Manager Regulatory Affairs & Stakeholder Relations  
Red Energy Pty Ltd  
Lumo Energy (Australia) Pty Ltd

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<sup>2</sup> <https://www.aemo.com.au/initiatives/major-programs/regulatory-implementation-roadmap>