



27 March 2014

Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Submitted electronically

Dear Sir/Madam

**Re: RRC0001: Consultation Paper: Retail Price Variations in Market Retail Contracts**

Lumo Energy welcomes the opportunity to make a submission to the Australian Energy Market Commission's (Commission) in response to the Consultation Paper for the National Energy Retail Amendment (Retailer price variations in market retail contracts) Rule 2014 (Consultation Paper) as proposed by the Consumer Action Law Centre (CALC) and the Consumer Utilities Advocacy Centre (CUAC) (the proponents).

Lumo Energy is 100% owned by Infratil Limited, a company listed on the New Zealand and Australian Stock Exchanges. Lumo Energy currently retails electricity in Queensland and South Australia, electricity and gas in New South Wales and Victoria, and is one of the largest second tier energy retailers.

## **1. Criteria for assessment**

### **1.1. The National Energy Retail Objective**

As stated by the Commission the criteria for assessing the proposed rule change is against the National Energy Retail Objective (NERO) and its applicability to consumer protections.

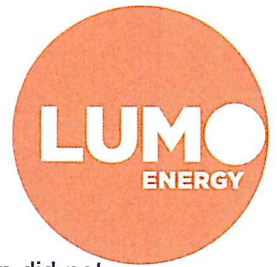
Lumo Energy considers the Commission's criteria for undertaking the NERO test is adequate for this rule change. Lumo Energy supports the Commission recognising that "competitive markets provide the best means of promoting efficiency"<sup>1</sup> identifying the following characteristics of a well-functioning competitive market:

- "efficient allocation of costs and risks;
- effective consumer engagement and participation;
- provision of a range of products and services consumers value; and
- independent rivalry and competition between retailers".<sup>2</sup>

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<sup>1</sup> AEMC 2014, Retailer price variations in market retail contracts, Consultation Paper, 13 February 2014, page 21.

<sup>2</sup> Ibid, page 22.



Given the Commission's criteria for assessing the NERO, the analysis undertaken did not acknowledge that consumers also make decisions in relation to their energy services. It is evident that consumers respond to price signals and make long term decisions in relation to their energy services. Many consumers have made a choice to invest in solar or are changing their energy usage in response to the cost of energy. Lumo Energy ask that this be taken into account by the Commission in the consideration of the NERO test.

Lumo Energy strongly supports the Commission's view that prohibiting retailers ability to offer a variety of products and services to the market is not in the long term interests of consumers.<sup>3</sup>

Lumo Energy does not believe that the proposed rule satisfies the NERO test as it:

1. Does not promote competition and choice for consumers; and
2. The proposed rule is expected to produce inefficient retail energy products and limit the choice of offers.

Lumo Energy expands on these two points in section 2 on market retail contracts below.

## **1.2. The consumer protections assessment**

Lumo Energy supports the Commission conducting a review of the impact of the proposed rule on consumer protections that are currently provided for in the National Energy Retail Law (NERL), National Energy Retail Rules (NERR) and the Australian Consumer Law (ACL).

Energy consumers enjoy the benefits of a comprehensive array of consumer protections both at the state and federal level, which are designed to prevent businesses engaging in unfair practice, aim to protect the rights of consumers, promote informed choice and provide additional protections for vulnerable consumers.

In relation to this rule change and its applicability to consumer protections, Lumo Energy would draw to the Commissions attention that some<sup>4</sup> identified vulnerable consumers (those described as being in hardship under the NERR) are offered the best available contract at that time.

Irrespective of the type of contract that a customer has with Lumo Energy, we offer the cheapest available standard or market contract to an identified vulnerable customer.<sup>5</sup>

Lumo Energy is concerned that the benefit of these consumer protections may be eroded if the proposed rule is implemented.

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<sup>3</sup> Ibid, page 23.

<sup>4</sup> Rule 74(5) requires retailers to consider whether an alternative customer retail contract is more appropriate for the customer. This review is mandatory where the hardship customer is on a market contract that does not have Centrepay available.

<sup>5</sup> Note: Explicit Informed Consent is obtained to switch the consumer to the cheapest available product.



### 1.3. Relationship to other rule changes

Identifying the interaction between this rule change and other rule changes that are being progressed by the Commission will provide the industry direction and regulatory certainty.

The Distribution Network Pricing Arrangements rule change that is currently under consultation, promotes price signaling, cost-reflective pricing and demand side participation. This and other Power of Choice rule changes promote competition and the ability for retailers to innovate, offering products and services to consumers to meet their needs in response to these price signals. This is in direct competition with this proposed retail rule change which promotes increased consumer participation by limiting product offering to consumers.

Whilst both the National Electricity Objective and NERO promote rule changes be made in the long term interests of consumers, Lumo Energy queries how the Commission will deal with these competing priorities and the interaction between these rule changes when making its Draft Determination.

## 2. Market retail contracts

The Commission highlights the various types of market retail contracts available, explicitly:

- a fixed term contract (e.g. 2 year contract);
- a fixed benefit period (e.g. a discount for 12 months);
- contracts that contain a combination of the two (e.g. a discount for 12 months over a 2 year contract); and
- contracts with neither (e.g. a no-frills evergreen contract).

For the purpose of the Consultation Paper, the Commission has described a fixed term contract and a fixed benefit period collectively as “fixed period” contracts. Lumo Energy’s interpretation of the proponents’ request is to limit the ability to vary the retail price during a fixed term contract (a contract with a fixed end date).<sup>6</sup>

Lumo Energy requests the Commission to take this into consideration when making its Draft Determination and limit or define the rule change to only a fixed term retail contract as currently defined in the NERR.

### 2.1. Impacts of fixed price, fixed term on competition and price

Energy retailers offer a wide range of choice to consumers including the following products and services (with a variety of tariff options):

- fixed term products (with differing benefits)
- open term products
- green products
- rate freeze products

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<sup>6</sup> Note: The only reference to ‘fixed benefit contracts’ is in relation to Victorian contracts (out of scope of the NERR) on page 22 of CALC/CUAC Rule Change Request, October 2013.



Energy retailers make commercial decisions on what types of products and services to offer to the market. Consumers have a choice of many different types of products and services at any given point in time, as evidenced by the 53 electricity retail products available to the Commission on 10 January 2014.

The Commission also notes in figure 5.4 of the Consultation Paper that 4% of products offered are fixed price, fixed term market retail contracts (usually described as a rate freeze). In completing its due diligence the Commission found that the fixed term, fixed price product was "approximately 8 per cent more expensive than equivalent market offers that do not fix prices".<sup>7</sup>

The Commission requested stakeholders to provide information regarding whether a risk premium would be added in the event that fixed price, fixed term products would be mandated as the proponents have requested.

Lumo Energy confirms the Commission's findings, that it can be expected that a risk premium will be added to a fixed price, fixed term product should the proposed rule be implemented.

## **2.2. Fixed price, fixed term not satisfying the NERO test on the basis of competition and price**

Lumo Energy does not believe that a fixed term, fixed price product will satisfy a NERO or consumer protections test. Whilst some consumers may wish to enter into a fixed price, fixed term contract, these consumers are actively selecting a product that suits their needs (e.g. budgeting reasons or risk appetite). Whilst other consumers choose products based on price (e.g. those with higher pay on time discounts), or products with higher components of green power based on their personal preferences. It is the active selection and choice in product and services that must be encouraged and meets the NERO, not limiting this selection.

## **2.3. Impacts of fixed price, fixed term on innovation**

Lumo Energy firmly believes that implementing the proposed rule will limit its ability to innovate in the market.

The Commission correctly states that "a retailer is more likely to know what its costs will be in six months time than in 36 months time".<sup>8</sup> The Commission queries what is likely to occur, based on the possible implications of this rule change being implemented.

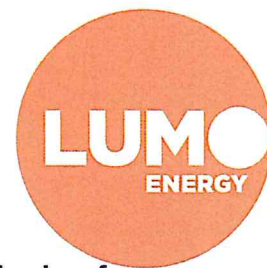
Lumo Energy opposes the introduction of this rule change as it will limit the products and services it can make available to the market. Energy retailers will make commercial decisions regarding the type and length of products that they wish to put into the market, based on the outcome of this rule change.

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<sup>7</sup> AEMC, page 37.

<sup>8</sup> AEMC, page 50.





#### **2.4. Fixed price, fixed term not satisfying the NERO test on the basis of innovation**

The Commission has suggested a number of scenarios as a part of the Consultation Paper regarding the likely consequences on efficiency and competition. Lumo Energy support the Commissions' expectations that consumers may be more likely to choose inefficient products that do not meet their needs and that consumers may engage and participate less in retail energy markets as a result of the proposed rule being implemented. It is expected that these outcomes are likely to occur and the effect on competition and prices over the long term will be detrimental to consumers.

### **3. Other matters**

#### **3.1. Implementation Issues**

The Consultation Paper has not dealt with whether the proposed rule would apply retrospectively or only to new contracts formed after the NERR is amended. Lumo Energy is concerned that applying this retrospectively would be extremely burdensome on all retailers and would like the Commission to provide some commentary in its Draft Determination, should the proposed rule be considered to satisfy the NERO and consumer protections assessments.

#### **3.2. National approach to energy contracts and consumer protections**

Lumo Energy strongly supports a national, harmonised approach to market retail contracts that is free from unnecessary jurisdictional derogations, price regulation or any impediments that create barriers to entry.

Lumo Energy believes that the existing NECF and the ACL provide sufficient consumer protections for all energy consumers.

Please do not hesitate to contact Stefanie Macri on 03 9976 5604 to discuss this submission further.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'A' and 'G' followed by a long horizontal line.

**Aneta Graham**  
General Manager, Regulatory Affairs & Corporate Relations  
**Lumo Energy Australia Pty Ltd**