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General Manager  
Markets Branch  
Australian Energy Regulator

By Email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Tom Leuner

Lumo Energy, formally Victoria Electricity, thank the Australian Energy Regulatory (AER) for the opportunity to comment on the Approach to Compliance with the National Energy Retail Law and Regulations Issues Paper.

Lumo Energy supports the need for a consistent approach to compliance monitoring standards across all jurisdictions, as well as transparency in performance requirements and enforcement.

While supporting the intention Lumo Energy recognises that there are a number of Compliance factors that have been removed from the National Energy Customer Framework (NECF) and National Energy Retail Law (NERL) including the Guaranteed Service Level (GSL) requirements for Queensland and Wrongful Disconnection Payment (WDP) requirements for Victoria.

These factors, that are indicators of compliance with applicable code obligations, are limited to those jurisdictions and subsequently cannot be replicated and or presented under a national reporting methodology.

In segregating these obligations the AER and jurisdictional regulators will ultimately require duplicated reporting requirements within the same frequencies, further complicating the Compliance obligations.

Until such time that all jurisdictional requirements are encompassed by the NECF and NERL, regulated entities will bear the responsibility and burden of duplicate reporting obligations, timeframes and systems to generate the appropriate reporting between the ARE and each jurisdiction.

### **AER Approach to Compliance**

For many years Retailers have been required to develop and maintain Compliance Policies and Procedures and report on any identified non-compliance within each jurisdiction, along with providing regular reporting of performance information to regulators.

Lumo Energy is not opposed to the development of a national Compliance Program and Policy but recognise that there will be requirements for each jurisdiction to maintain their own compliance obligations which will ultimately duplicate responsibilities and the subsequent burden.

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## **AER Monitoring of Compliance**

The key component to any Compliance Policy or Program is to maintain a strict Monitoring regime ensuring the early identification of non-compliance enabling swift action to be taken.

Whilst critical, the methods and sources used to monitor compliance obligations must accurately reflect the processes and activities that are non-compliant and don't speculatively assume non compliance.

The sources detailed in the issues paper, 5.2 Mechanisms for monitoring compliance, enable the Energy Ombudsman Schemes and Customer Consultative Group to report to the AER on potentially systemic issues and or non-compliance.

Lumo Energy, whilst viewing the number of complaints received as an effective indicator of potential issues, recognise that consumers' complaints often don't stem from a single non-compliance but from the perception of inequity and prefer to use the outcomes as the source of information.

The number of complaints is an indicator of a potential issue however cannot be taken as indicative of non-compliance without regard for the outcomes. As such complaints where the outcomes are not known by the Ombudsman Schemes, i.e. Referrals and Enquiries, must not be taken into account yet may be used in reports to the AER to overstate the impacts or scope of any potential non-compliance.

## **AER Principles for Investigations and Enforcement**

One theme that is apparent through the issues paper is Open and Transparent Monitoring, Reporting and Enforcement with the suggestion that retailers are not transparent within the market for the purpose of compliance. This is further evidenced by outlining the ability of AER to obtain search warrants and compel information from retailers.

Lumo Energy see this approach as being 'heavy handed' and not conducive to a co-operative and open relationship between retailers and the AER and while those facilities are and have long been available to regulators they are seldom utilised.

Our intention, regarding information requests, audits and investigations, is to ensure that all appropriate information is provided to regulators and the matter being investigated is resolved as swiftly as possible. This is partly due to the cost associated with conducting investigations and audits.

It is not in the best interests of any retailer to not comply with its obligations or withhold information during audits or investigations as the consequences are too significant.



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## AER Compliance Reporting

Lumo Energy uses the current jurisdictional compliance obligations as a measure to determine if a potential non-compliance is occurring operationally. We recognise that while it is a useful source of information, many non-compliances are generally outside of the scope of the reporting therefore use reporting obligations as a guide.

Additionally, within each jurisdiction the measures for non-compliance are only identifiable after the event has occurred and subsequently don't consider the measures taken to prevent non-compliance through operational procedures.

Lumo Energy would be grateful of a single reporting frequency with clear obligations however recognise that each jurisdiction may seek to increase the frequency of reporting obligations that will not be encompassed under the NECF given the opportunity.

As regulators have sought to exclude a number of facets of their own jurisdiction from the NECF to maintain control, Lumo Energy, respectfully cautions the AER against making their reporting obligations to frequent causing additional burden on retailers.

## AER Compliance Policies, Systems and Procedures

Lumo Energy has in place a significant number of Compliance Systems and Procedures to prevent non-compliance, and while they mostly apply to individual jurisdiction, they will be integrated into national procedures moving towards the NECF.

These policies, systems and procedures encompass all of the current regulatory obligations per jurisdiction and will need to be amended as the NECF is implemented per jurisdiction and removing all of the jurisdictional derogations.

All policies and procedures are based on the AS 3806 Compliance Programs model with some additional features that have been adopted to suit our particular business model.

## Summary

Lumo Energy believes that a nationalised approach to compliance obligations under the NECF and NERL will assist to clarify retailers' positions in the market.

While recognising that the benefits will outweigh the costs of implementation, Lumo Energy, also believes that the crucial elements are the source of information about market compliance and the method used to analyse such information.

If the source inaccurately reflects non-compliance and the method determines that an investigation is warranted the result is a regulatory burden that will not



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determine a non-compliance but waste time, money and resources due to an unfounded suspicion.

Within the current jurisdictional requirements Lumo Energy, like all retailers, have been required to undergo rigorous investigations and audits as well as provide copious amounts of data to regulators where a non-compliance has not been identified.

If you have any further questions please contact me on 03 8680 6426 or via email at [Ross.Evans@lumoenergy.com.au](mailto:Ross.Evans@lumoenergy.com.au)

Regards,

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