



25 October 2021

Kate Symons
Commissioner and Chairperson
Essential Services Commission of Victoria
Level 8, 570 Bourke St
Melbourne VIC 3000

Dear Ms Symons

RE: Making an Energy Retail Code of Practice

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to the Essential Service Commission of Victoria's (ESCV's) Making an Energy Retail Code of Practice consultation.

About Shell Energy in Australia

Shell Energy is Australia's largest dedicated supplier of business electricity. We deliver business energy solutions and innovation across a portfolio of gas, electricity, environmental products and energy productivity for commercial and industrial customers. The second largest electricity provider to commercial and industrial businesses in Australia¹, we offer integrated solutions and market-leading² customer satisfaction, built on industry expertise and personalised relationships. We also operate 662 megawatts of gas-fired peaking power stations in Western Australia and Queensland, supporting the transition to renewables, and are currently developing the 120 megawatt Gangarri solar energy development in Queensland. Shell Energy Australia Pty Ltd and its subsidiaries trade as Shell Energy.

www.shellenergy.com.au

General Comments

Shell Energy understands the need for the Victorian Government to redraft the existing Energy Retail Code to be a 'code of practice' in order to take into account the potential passage of the Essential Services Commission (Compliance and Enforcement Powers) Amendment Bill 2021.

We acknowledge that the ESCV has stated that it does not intend to revisit any policy intent or alter in the obligations that licensees and exempt persons are required to follow in a substantive way. Shell Energy does however see that this would be an opportune time to clarify the imposition of numerous obligations on multi-site customers. The Energy Retail Code already acknowledges that there are differences for multi-site customers, through the exemptions from best offer messaging and the price certainty obligations.³

The majority of Shell Energy's customer base is multi-site customers. These are typically large, sophisticated customers or corporations that have a minimum of ten sites. There are several characteristics specific to this

¹ By load, based on Shell Energy analysis of publicly available data

² Utility Market Intelligence (UMI) survey of large commercial and industrial electricity customers of major electricity retailers, including ERM Power (now known as Shell Energy) by independent research company NTF Group in 2011-2020.

³ For example, see clause 46AA(8) of the existing code, and clause 94(7) of the draft Energy Retail Code of Practice.



customer class which we believe the ESCV should bear in mind when considering how the Energy Retail Code of Practice applies.

Firstly, it is a common for a multi-site customer to have sites in different states across the National Electricity Market (NEM). This requires retailers with multi-site customers to comply with separate jurisdictional obligations, as Victoria applies its own regulatory standards to other states under that National Energy Customer Framework. Secondly, multi-site customers are not mass-market customers. This is a critical point, as many regulatory reforms are intended to provide protections for mass-market customers. Seeking to apply these protections to customer groupings external to the intended beneficiaries is misdirected, and places unnecessary regulatory red tape for these customers. This increases multi-site customer frustration and retailer costs.

As such, we propose a simple addition to make it clear that Parts 2-6 of the Code do not apply to aggregated business customers. This clause is similar to the existing language of clause 46AA(8) of the existing Code. Importantly, Shell Energy proposes continuing to apply Parts 7 to 10 of the revised Code of Practice, relating to family violence, life support provisions and disconnection. This is in recognition of the serious and important nature of these particular consumer protections and is consistent with the approach of the National Energy Customer Framework (NECF). We consider that this still meets the Commission's intent of not altering the code in any substantive way.

Our proposed additional clause is as follows:

6 Aggregation of consumption – business customers

Parts 2-6 (inclusive) of this Code do not apply in relation to a *small business customer* where:

- (a) the *small business customer* is party to a *market retail contract* in respect of more than one premises;
- (b) the *small business customer* is or would be a *small customer* in relation to at least one of those premises; and
- (c) the aggregate of the actual or estimated annual consumption level of the premises under the *market retail contract* is higher than:
 - (i) in the case of electricity – the upper consumption threshold provided for in an Order made under section 35(5) of the *Electricity Industry Act*.
 - (ii) in the case of gas – the upper consumption threshold provided for in an Order made under section 42(5) of the *Gas Industry Act*.

A full copy of Shell Energy's amended draft Energy Retail Code of Practice is attached for the ESCV's reference.

Life support provisions

Shell Energy recognises the importance of maintaining a robust life support framework in order to protect vulnerable customers. We consider that even in the revised Code of Practice there is a lack of clarity around the obligations on parent retailers to exempt sellers for life support customers. In this case, we have no direct relationship with the individual small customer – the exempt seller manages the relationship with the customer.

The revised Code of Practice sets out the obligations on exempt sellers to inform the parent retailer of any life support customers. We consider that the information that exempt sellers, such as embedded networks, need to provide the parent retailer goes beyond what is truly necessary. We agree that parent retailers do need to be informed of the presence of life support customers at a site. However, the draft Code of Practice also requires exempt sellers to provide retailers with a life support customer's personal details including medical confirmation forms.



While Shell Energy agrees that it is crucial for the exempt seller to have these details, there is no reason for the parent retailer to also have to possess and store this information. In our view, it introduces a new level of risk for the exempt seller, the parent retailer and the customer, whose sensitive personal data now must be provided to two separate entities, one of whom they have no direct relationship with (the parent retailer). We consider that exempt settlers should have to collect this information, but all that the parent retail is required to know is whether there is a life support customer at the premises (that is, the parent connection point needs to be registered).

Other issues

Shell Energy is pleased to learn the ESCV plans to repeal the Code of Conduct for Marketing Retail Energy. We do not see that this code has been relevant for some time, yet it still applies and impacts energy retailers. Indeed, it was the Commission's intention to repeal the Code as noted in the final decision on the harmonisation of the Energy Retail Code and Guidelines with the NECF. In that final decision the Commission noted:

"The Marketing Code was not amalgamated into the draft [version 11 of the Energy Retail Code], as the Commission intends to repeal this Code. There are now appropriate protections in the Australian Competition and Consumer Commission (ACCC) approved Energy Assured Limited Code (EAL Code) - to which most Victorian energy retailers have become signatories - and the consumer protections enshrined in the Australian Consumer Law."⁴

We are therefore disappointed to see that several of the clauses in the Code of Conduct for Marketing Retail Energy will be retained in the Energy Retail Code of Practice. Specifically, Shell Energy does not see the purpose in retaining the clauses relating to training. This approach effectively regulates the operational activity of mitigating non-compliance rather than the focus on the prohibited conduct or activity itself. Our concern with prescriptive marketing training requirements is that the training requirements may capture staff or contractors who may not have a direct role in marketing activity or marketing material content (for example a printer of marketing material may be captured by the clause obligations).

We consider it would be far more productive for the ESCV to focus on an organisation's compliance performance rather than defining the training it must deliver staff to achieve compliance.

Yours sincerely

[signed]

⁴ Essential Services Commission (2014), Harmonisation of the Energy Retail Code and Guidelines with the National Energy Customer Framework (NECF) - Final Decision Paper, July, p 3.