POWERSHOP
A better power company

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Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

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RE: Energy Retail Code of Practice, Consumer Reforms Stage One – Draft Decision

**About Shell Energy and Powershop in Australia**

Shell Energy delivers business energy solutions and innovation across a portfolio of electricity, gas, environmental products and energy productivity for commercial and industrial customers, while our residential energy retailing business Powershop, acquired in 2022, serves households and small business customers in Australia.

As one of the largest electricity providers to commercial and industrial businesses in Australia[1] Shell Energy offers integrated solutions and market-leading[2] customer satisfaction, built on industry expertise and personalised service. Our generation assets include 662 megawatts of gas-fired peaking power stations in Western Australia and Queensland, to provide back-up for rising levels of renewable energy, and the 120-megawatt Gangarri solar energy development in Queensland. Shell Energy also operates the 60MW Riverina Storage System 1 in New South Wales, as well as the 200MW Rangebank Storage System and 370MW Koorangie Storage System, both located in Victoria.

Shell Energy Australia Pty Ltd and its subsidiaries trade as Shell Energy, while Powershop Australia Pty Ltd trades as Powershop. Further information about Shell Energy and our operations can be found on our website here.

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 2011-2024.

## General Feedback

Powershop welcomes the opportunity to provide feedback to the Essential Services Commission Victoria (ESC) consultation on Stage One of the Energy Retail Code of Practice (ERCOP or 'the Code') Consumer Reforms (the reforms).

We support greater targeted protections for customers in payment difficulties; however, it must be implemented in a way that promotes customer engagement. Automatic switching and measures that impact explicit and informed consent (EIC) are not sustainable ways of improving engagement and will not improve the number of customers in financial distress over time. The objectives of the Code could be achieved via retailer processes rather than costly system builds that add to retailer cost and increase the compliance burden on regulators.

## Implementation timeframes

In relation to the reforms proposed in Stage One, the timeframe between final decision and implementation is short and will be difficult to adhere to, considering the system changes are likely to be a major and complex IT undertaking. It is proposed that the final decision will be published at the end of August or early September 2025. This leaves approximately three months to implement the first tranche of reforms, which does not take into account work already planned or the December holiday period.

Further, the reforms are directed at vulnerable customers, one of a retailers' most complex and highest compliance risk areas of service provision. This risk is compounded when considering that the long-held protection of EIC will not be required and therefore it is paramount that retailers are afforded adequate time to make these changes with thorough testing and in an efficient and careful manner. Rushing this implementation will put compliance and therefore customers at risk.

Powershop therefore supports moving the first tranche of reforms for implementation to the end of Quarter 1 2026, with the second tranche relating to the best offer reforms being implemented by the end of Quarter 1 2027. We have provided further feedback on implementation for each of the reforms under the relevant sections below.

## Automatic best offer for payment difficulty customers

We support the intent of this reform, however, there are existing mechanisms and regulations which can be better leveraged to provide positive outcomes for consumers rather than introducing new regulations and altering the existing Code.

We are concerned that automatic switching is unlikely to provide net benefits to those customers who may be disengaged and vulnerable regardless of the best offer, which is calculated at a point in time. Industry will also be challenged to meet obligations alongside complex system builds.

Regardless of the estimates used to inform the Regulatory Impact Statement (RIS), the preferred option represents a significant cost and time investment for both retailers and the ESC. This is particularly relevant for eligibility Option AA.2 and the implementation options, which ranked -0.75 and -1 respectively. Compared to the full suite of proposed reforms under the RIS, this option represents the highest cost to the ESC and entails significant complexity when considering changes to regulations and ongoing compliance monitoring. Indeed, it was highlighted that Option AA.2 "imposed higher costs on industry and higher administrative costs on government than Option AA.1".[3]

## Powershop recommendation

Staying within the current regulatory framework, positive outcomes could be achieved for customers in payment difficulty and customers in arrears with low-cost process changes rather than complex system builds. This would look to Eligibility AA.1 as the preferred option for facilitating an automatic switch, the mechanism being an automatic process that Retailers will undertake, rather than an automatic system switch which would require a complex build in the background.

For a customer to receive tailored assistance under the payment difficulty framework (PDF) they must engage with the retailer. This is an opportunity for retailers to provide clear advice, per Division 4 of the ERCOP, to empower the customer to make the best decision when considering if a different plan would suit their needs. It is also an opportunity for retailers to check eligibility for concessions or other rebates, discuss energy usage and efficiency, assess what other support is available, and gain EIC on any changes to their account. We consider this is more efficient, targeted to where support is needed, and cost effective for all parties. Particularly as the customer will be switched as soon as they declare payment difficulty with retailers being able to trigger the process manually without needing a system build, and the ESC will save costs in compliance monitoring. This option also provides the best outcome in building trust with the consumer to ensure an ongoing positive relationship.

This option for eligibility also means that the ESC would not need to make amendments to the Code as retailers would continue to fulfill their obligations to obtain EIC. Eligibility AA.1 also largely negates the need for the implementation options with existing protections in place, and implementation built into existing processes. This reduces complexity in the compliance process from both the regulator and retailer perspective in that the seven-step process for automated switching as outlined within the RIS would be significantly reduced. Updates resulting from this reform to the Commission's PDF guideline, compliance and reporting guideline, and best offer guideline would also be significantly reduced where changes sit within the current ERCOP.

## Concerns with the preferred approach

Automatic switching to the deemed best offer without consent takes away customer agency and Powershop is inherently opposed to an automated process which impacts a customer's bill (a financial decision) without first obtaining their consent. The removal of customer agency may lead to decisions that do not account for specific customer requirements and may be mismatched to customer needs. Customer agency must be prioritised and protected, particularly where the ESC acknowledges "that there may be some risk of reduced trust from being switched plans without explicit informed consent".[4] In our view, any regulatory change in service provision that has even the potential to erode customer trust must be more thoroughly scrutinised for net benefits and unintended consequences.

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[3] *Regulatory Impact Statement – Energy Consumer Reforms* Essential Services Commission [16 May 2025], at page 83.
[4] *Regulatory Impact Statement – Energy Consumer Reforms* Essential Services Commission [16 May 2025], at page 77.

Division 4 of the ERCOP provides that small customers are entitled to clear advice to consider and compare the features and prices of different energy plans. This provision was specifically enacted so that customers can assess the suitability of each retail contract against their own needs. With automatic switching, the customer is not being presented with the options, and the retailer decides what is "best" for them without considering individual circumstances and removing financial decision making from customers. This process ultimately undermines the ERCOP which seeks to prioritise consumer wellbeing and protections. Where one of the goals of the reforms is to bolster consumer trust, we query whether taking away consumer choice would be a positive step towards achieving this.

Further, Powershop is concerned that extending the eligibility criteria to customers in arrears as proposed in Option AA.2 goes beyond the intended goal and target of the reform. This option has the potential to create perverse incentives and could exacerbate the issue of disengaged and unsupported customers where a switch occurs without their knowledge or input. This is a live risk for customers who are experiencing payment difficulty but do not contact their retailer to access the support available, which goes beyond the best offer. While the automatic switch could assist disengaged customers who are experiencing payment difficulty for a time, there are other support mechanisms that retailers can implement to further ease the customers' situation. This can also include checking concession eligibility, a discussion around energy literacy, energy efficiency and usage, tariff checks, and assessing whether the customer needs to engage with further support through the likes of family violence support services or financial counsellors.

An additional benefit with Eligibility AA.1 is that the switch will happen immediately. This means the customer will not need to wait a minimum 25 business days for the switch to be finalised as is outlined in the current proposal once notification requirements are adhered to.[5] Notification requirements proposed under Implementation A.1 are significant, will add compliance complexity to retailers and may be complex for customers to understand, particularly with multiple notices outlining the same process with different actions required. This includes the retailer indicating an intention to switch, an opt-out, then a post-switch arrangement, potentially also followed by a notice at the end of the process to demonstrate the switch has been finalised. It seems likely that customers who are not engaged and not in contact with a retailer about their debt will be subject to these various notices, and will be even less likely to respond.

The mental load on customers already experiencing payment difficulty could add to psychological distress, particularly where customers in arrears on their energy bills are also likely in arrears for other services. This could also drive an increase in call volumes and complaints and erosion in trust when customers are moved onto different plans, impacting their finances, without informed consent.

It is important to note that engagement between retailers and customers is effective in ensuring the appropriate supports and protections are offered to those consumers who need it. Where the ESC considers that those customers in arrears for at least three months, and with arrears of $1,000 or more are in need of support, Powershop agrees. However, we question whether every customer in arrears is also experiencing payment difficulty, or if their payments have merely lapsed despite having the ability to clear their debt. Greater socialisation of the best offer message, government sponsored education, or linking to the current suite of reforms through the retailers' website or other accessibility requirements will streamline how consumers engage

[5] *Regulatory Impact Statement – Energy Consumer Reforms* Essential Services Commission [16 May 2025], at page 74.

with the different plans available. This approach would be more effective in reaching disengaged customers than an automatic switch which could entrench disengagement.

The customer value proposition is built around more than just price and may include other benefits which the customer considers as part of their plan. For instance, some retailers include loyalty points, streaming subscriptions, or CER-specific benefits which have additional value for the customer and can impact their decision-making lens, and which may be considered important criteria in selection along with a products underlying rate. We question what other benefits or value have been derived from the preferred option beyond a cheaper rate, particularly where the customer has been empowered, engaged and taken the self-determined decision to initially enter into the market contract. In our view the broad assumption that all customers are solely motivated by the cost comparison as the only decision criteria of an offer is a shortcoming of this policy. Informed decisions on criteria such as green energy premiums, subscriptions, and CER benefits appear to be overlooked.

A further issue for the ESC's consideration is how the automatic switch will apply where customers are switched onto a best offer where they do not meet the required eligibility criteria or suitability of that plan. For instance, a retailer may include CER specific plans within their general market offers which could trigger a switch to one of these plans, regardless of whether the customer has the resource or future usage aligning to the criteria the offer was designed around. As a further example, where a customer has signed up to an Electric Vehicle plan and receives specific rates targeted towards their charging behaviour, a switch to the best offer – narrowly defined as the lowest annual cost – may not align with this usage profile (for example, when customer first purchases their elective vehicle or installs solar) or preferences.

Although the proposed approach includes protections in the form of a post-switch or opt-out, if a customer makes an informed choice but has lapsed on payments and is inadvertently switched without consent, the customer is then forced to engage and seek a reversal of the switch. This may cause a worse outcome where what they value has been overridden through an automatic process, particularly where their usage or proposed usage is aligned with a CER-specific plan. This demonstrates that even highly motivated and engaged customers could be captured under this reform where they are not the intended beneficiaries of the proposed changes. A customer's informed choice and autonomy must be prioritised and protected.

### Implementation recommendations for automatic switching

If the ESC proceeded with the preferred options in the RIS, being Implementation A.1 and Eligibility AA.2, there are steps that could be taken to mitigate complexity. There is an inherent compliance risk with system builds around customer eligibility where retailers will be required to run daily checks to ensure no customers fall through the gaps. This is because the system would need to be built to check individual customer debt levels and continuous period in arrears. The only way that retailers would be able to ensure that all customers are systematically checked to assess whether they meet the eligibility criteria would be to run this system constantly in the background. The compliance and consumer centric risks associated with this system are increased in complexity where EIC is not factored in, particularly where customers could experience financial or psychological harm if changes to their plans are made without their consent as they may view a removal of self-determination and choice as a detriment.

A staged approach could be utilised whereby retailers could start implementation by only switching PDF customers in the first instance through a process change, while a larger system build occurs in the background for those customers in arrears. This could assist retailers in implementing a major system change while fulfilling the obligations of the reform. It also creates an opportunity for the ESC to work alongside industry in building appropriate systems to enable the changes required. Particularly in assessing what this system will look like where EIC is not required so that retailers can confidently deliver a system that meets the Commissions expectations.

To reiterate our previous point, Powershop supports this reform falling under Eligibility Option AA.1 where implementation could be adopted significantly quicker than needing to build systems to comply with Option AA.2. This also aligns with the principles outlined in further reforms, being that the process under AA.1 would be efficient and simple from the consumer's perspective.

## Increasing best offer threshold

Powershop supports the change in the best offer threshold from $22 per year to $50 per year. In relation to the timeline, however, we support a longer implementation window than proposed to ensure a seamless transition. At a minimum, we would support the final live date for this reform being pushed to the end of Quarter 1 2026 to account for limited staff availability over the Christmas and New Year period to facilitate the IT changes.

## Improving access to cheaper offers

While we support the objective of reducing barriers to consumers accessing cheaper offers, the proposal may impact what options are available in the wider market. This is largely due to the strict wording of the proposal, which will require *all retailers* to offer paper billing and alternative payment methods on any current or future plans as per Option B.1, or on all plans as per Option B.2. Although the RIS notes that "only retailers who have currently restricted plans in this manner would need to review and adjust their offers", and that "most retailers would not need to make any changes because of this reform"[6], the wording of the proposed reforms and the draft ERCOP Version 4 demonstrate that this is not the case.

Where retailers offer e-billing and direct debit as standard, there is a lower cost to serve and therefore the ability to pass this on in the form of lower prices. This approach is likely to be adopted by smaller retailers or new entrants to the market. Indeed, larger retailers that already offer paper billing, for those customers who need or prefer it, would be significantly advantaged as a result of these reforms. If all retailers were required to offer paper billing and alternative payment methods on all offers, it would increase the cost to serve all customers across the industry by needing to have the service available for compliance purposes, regardless of it was taken up by customers.

This level of regulatory intervention in the market will impact competition by not allowing retailers to target specific customer cohorts, for instance, those that prefer a digital experience. The design of market offers is appropriate to remain with retailers as a strategic business decision rather than imposed by the regulator.

[6] Regulatory Impact Statement – Energy Consumer Reforms Essential Services Commission [16 May 2025], at page 92.

While we do not oppose removing conditional discounts, we do not support a blanket requirement for all retailers to offer paper billing and other payment methods, beyond regulations already in place. It is our view that customers value product differentiation and innovation rather than having only a choice of homogenous products with mandated conditions. We suggest that further scrutiny is required as to whether there is market failure warranting this regulatory intervention into the design of competitive offers, as well as more thorough analysis into the potential adverse impacts on changing the costs and conditions of these plans.

## Improved ability to switch the best offer

Powershop supports the objective of enabling customers to assess which options are available to them to determine which offer is best for their individual circumstances. Having a simple comparison of options to assess the plans available would bolster customer agency and engagement.

While we support the application of minimum standards, the underlying principles of this reform will be key. 'Simple' and 'accessible' could largely be met with equal interpretation from both retailers and the regulator, however 'effective' is more subjective and has nuances of an ex-post assessment. A retailer's interpretation may differ from the ESC, and result in compliance or enforcement action against a retailer where a genuine attempt has been made to meet obligations. Further, any resulting compliance actions from the ESC could only ever be imposed by assessing against a theoretical alternative or counterfactual in a retrospective manner after implementation. This puts industry on the backfoot in the first instance in seeking to build compliant systems where a more efficient outcome could not have been known until after the fact, that it is made without the benefit of hindsight.

Powershop encourages the ESC to work with industry in developing guidance and compliance actions so that both parties can collaborate in creating better outcomes for consumers.

Another avenue to achieve greater accessibility is to broaden the wording in the proposed minimum standards. For instance, reference to the use of a website within the minimum requirements could be updated to reflect that other digital platforms are commonly used by a significant number of consumers. We have suggested wording below to demonstrate this, where 'digital' could also include use of a website:

> "Have, at a minimum, a process via ~~it's website~~ a digital platform and a process by telephone for a customer to switch to their best offer"

Powershop also seeks clarification that this reform is specific to residential offers rather than the current catch all within the draft wording of 111A(4) which states that "a retailer must". This captures all retailers regardless of whether they are residential mass market retailers. Business customers would be subject to different offers and pricing arrangements, so it is not appropriate for all products of all retailers who operate in Victoria to be subject to this reform where residential customers are the intended beneficiaries of the proposal.

Further, Powershop seeks clarification of clause 111A(4)(c), which requires retailers to "provide a simple and accessible process for a small customer to compare their current plan to other plans available to them, including the deemed best offer". A requirement to include the deemed best offer as part of the comparison will be complex to build in practice. Currently our website allows customers and potential customers to compare different options available which can also be looked at alongside the best offer message on their bill. However, if the ESC required retailers to display a deemed best offer specific to the customer and how it compares to the available market offers, it would add significant complexity and therefore costs.

Clarification is required on whether this is the intent of the reform, noting that such a system would take time to build, test, and implement. We support the ESC working with retailers to determine how this might be achieved beyond current practice, if required.

## Protections for customers paying higher prices

Powershop supports protecting customers on older contracts from paying unreasonably high prices. Regarding the options considered, there is merit in a combination of Options D.2 and D.3. This is largely due to the definition of a reasonable price for electricity being linked to the Victorian Default Offer as proposed in Option D.3. However, the benefit of Option D.2 allows the retailer flexibility in considering other factors associated with the customer's plan. Both of these elements could be a reasonable guide for retailers to assess whether the customer is on a reasonable price after four years.

While this reform has been proposed to combat the issue of a 'loyalty penalty', the ESC will need to consider how this applies to customers who have willingly opted in for a long-term contract at a set price. These customers have chosen a plan specific to their circumstances and should be exempted from this reform.

Powershop recommends having a set date on which retailers would be required to check whether customer contracts have met the four-year threshold, for example, by 1 August each year. This would allow retailers to build a systematic check for all customers at or by a single date per year instead of building a system that checks customer plans on a daily basis to ensure no customers are falling through the gaps. A system based on the date a customer enters into a contract would be complex, costly, and time-consuming to build, which will inevitably push out the implementation timeframe of this reform.

This approach also aligns with current price change timeframes which would allow for a single engagement with the consumer rather than creating new additional touchpoints which may not be welcome.

Further consideration will also need to be given regarding the implementation of this reform and how retailers might meet their obligations once a contract has met the four-year anniversary. Powershop welcomes the opportunity to discuss what this might look like with the ESC, and how we might minimise both participant burden and consumer fatigue with multiple notifications.

Additionally, Powershop recommends that the ESC clarify the draft wording in that the four-year period will be a rolling number following the four-year customer anniversary.

## Improving the application of concessions on bills

Powershop supports initiatives aimed at improving the application of concessions on customer bills. While this process is straightforward when handled over the phone, implementing an online solution where a customer requests to change plans with the same retailer introduces additional complexity, time, and cost. This will particularly affect smaller retailers who do not currently offer this functionality and may act as a further barrier.

## Increasing the minimum disconnection amount

Powershop supports that the ESC is seeking to align with the Australian Energy Regulator's proposal to raise the minimum disconnection amount from $300 to $500.

It should be recognised that raising the disconnection amount will place further risk on retailers as the sole bearers of credit risk for the entire supply chain, noting that generators and monopoly networks still receive full payment for energy despite customers' nonpayment. The increase in industry debt would need to be reflected in the Victorian Default Offer.

Powershop would welcome the opportunity to work with the ESC and other government departments to assess alternative options to disconnection or disconnection notice warnings.

## Final comments

The ESC has undertaken significant consideration in how to further enable protections for consumers, particularly those experiencing payment difficulty. Once the outstanding points highlighted in this submission are addressed, we are confident that the ERCOP will enable better engagement and positive outcomes for consumers.

We are happy to engage further on this topic. If you have any questions or would like further details relating to this submission, please contact Shelby Macfarlane-Hill at [redacted]

Thanks,

[redacted]

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