



26 June 2025

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 in Australia

Shell Energy is an energy solutions business and renewables and battery energy storage system developer in Australia. As the one of the largest electricity providers to commercial and industrial businesses in Australia¹, Shell Energy offers integrated solutions and market-leading² customer satisfaction, innovation across a portfolio of electricity, gas, environmental products and energy productivity. Our residential energy retailing business Powershop, acquired in 2022, serves households and small business customers in Australia.

Our generation assets include 662-megawatts of gas-fired peaking power stations in Western Australia and Queensland, supporting the transition to renewables, 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](#).

Shell Energy Response to Consultation

Shell Energy Recommendations:

- Multi-site business customers are provided with an exemption from Stage One of the ERCOP Reforms
- The definition of “small customer” is amended to exclude multi-site business customers or the ERCOP is updated to include provision for aggregation within Stage One of the Reforms
- Align with the AER’s approach to the Better Bills Guideline with respect to multi-site customers.

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.

Shell Energy 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).

In relation to the wider ERCOP Review, Shell Energy supports the Code providing for multi-site business customers by allowing them the choice of aggregating their load to be recognised as large consumers. We are keen to see that the regulations in Victoria are not causing inefficiencies, irregularities and inconsistencies across jurisdictions, and poor service delivery to Victorian multi-site business customers, who often have sites across various states. As a result of the current provisions of the Code, a business customer with multiple sites must be treated as a small customer in relation to any site or connection point (NMI) that consumes less than 40MWh per annum – this may manifest in various situations, for example, a water company with a supply point for a small pump,, a school gym which has it's own metered NMI separate from the main campus or a large corporate customer with various individual small sites. Compliance with the Code results in the provision of unnecessary and unwanted information to these customers, which adds to the cost and complexity of precontractual engagement, billing and notifications, for no benefit.

As such, we recommend that the ERCOP look to incorporate a provision similar to Rule 5 of the National Energy Retail Rules (NERR) which allows business customers, who would otherwise be identified as small sites, to aggregate their consumption levels to be higher than the upper consumption threshold for small customers.

The wording we have suggested in previous submissions is below, which is an example of a simple addition to make it clear that Parts 2-6 of the Code do not apply to aggregated business customers. Shell Energy proposes continuing to apply Parts 7 to 10 of the Code, relating to family violence, life support provisions and disconnection. This is in recognition of the serious and important nature of these consumer protections and is consistent with the approach of the National Energy Customer Framework (NECF). We recommend that the ESC implement this or similar wording to provide for multi-site business customers in Victoria. 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.

While we maintain that this issue is live for Stage Two of the ERCOP Review, there are some proposals in the drafting for Stage One that inadvertently capture multi-site customers. For instance, the proposed minimum requirements under the improved ability to switch reform, improving awareness of Ombudsman services, and protections for customers paying higher prices all have implications to provision of retail services to multi-site customers through the use of the "small customer" definition.

Shell Energy does not consider it appropriate for the Reforms to apply to this cohort. Contractual arrangements and pricing structures for these customers are not typical of mass market customers in that we offer bespoke arrangements to cater for their individual circumstances. This is relevant to Stage One as a whole, but can be further assessed in relation to the best offer reforms, as multi-site customers do not have a generic 'best offer' available due to the tailored nature of offers to these individual customers. Service to this cohort involves analysing their usage profile and tailoring a pricing package that is best suited to their needs across their sites' connection points, which is by definition, the best offer available. This limitation for multi-site customers was previously recognised by the ESC in the Clear and Fair Contracts Final Decision, whereby the ESC noted it:³

"agree[s] that the different way in which retailers contract with multi-site customers means a reference price comparison may have less value for these customers than other small customers, as contracts are generally negotiated in a bespoke way and not at an individual site level. [The ESC] therefore consider the reference price requirements will not apply to multi-site customers and note that this is consistent with national requirements".

Further, the ESC has previously exempted multi-site from Best Offer requirements under the Building trust through new customer entitlements in the retail energy market Final Decision, whereby it noted that:⁴

"[the ESC] can see the merit in excluding multi-site customers. This is on the basis that, when aggregated, these customers are often not small businesses of the sort targeted by these changes. The fact they receive individual bills is largely a function of the existing legal framework in Victoria, rather than the commercial reality. As a result, we have created an exclusion for small business premises where the contract for the supply of energy covers multiple premises under a single commercial relationship between a multisite business and their energy supplier."

Similarly, we see that these Reforms should not apply where the customer has elected for a commercial arrangement which provides greater benefits of bespoke agreements and contracting processes. Indeed, the process and protections at the single-site residential level is inherently different to that of an enterprise, and it is clear that Small and Medium Enterprises, multi-site or otherwise, who are commonly represented by dedicated internal resources such as procurement managers, are not the intended targets of the Reforms.

Shell Energy recommends that further clarification through the drafting and policies is applied to establish that the Reforms are only relevant to residential or single-site small business customers.

Improved ability to switch to the best offer

Shell Energy is concerned that the proposal to include mandatory requirements in enabling customers to switch to the best offer through a website or over the phone is irrelevant for retailers of large users. For those reasons set out above, we consider that the usage profile of multi-site business customers, who would otherwise have aggregated their load in NECF states, have complex and bespoke contracting arrangements which sit outside of the best offer messaging.

The draft wording currently captures these customers through reference to "small customer" and refers to *all retailers* needing to meet this requirement. We consider that this is inappropriate where retailers have chosen to only market to large or commercial and industrial users who will inadvertently be captured by these references, despite having neither a traditional small mass-market customer base nor the standard market offers available to comply with this, and do not use websites as the means for marketing.

³ *Ensuring energy contracts are clear and fair – Final decision* Essential Services Commission [28 February 2020] at page 25. Accessed via link [here](#).

⁴ *Building trust through new customer entitlements in the retail energy market – Final decision* Essential Services Commission [30 October 2018], at page 61. Accessed via link [here](#).

Shell Energy supports further clarification within the draft rules that these requirements will only be relevant to retailers of residential customers. Alternatively, we would support a carve out for retailers of large users, including multi-site customers.

Customers paying higher prices

The same concerns stand for the reform seeking to address protections for customers paying higher prices on contracts older than four-years. It is common for commercial customers, including multi-site businesses, to be on fixed term and fixed price contracts. The expertise of these customers as well as the nature of a retailer's engagement with them – being through the use of account managers and tailored contracts, should indicate that this cohort falls outside of the scope of the intended reforms.

These customers are contracted via sophisticated negotiation processes using third party energy and often legal advisers, direct tenders to market and other means. It would be inappropriate to enforce a regulated timeframe on these contracts where the customer has made an educated and well-informed decision on the price and duration of their agreement. Because this cohort is both specialised in providing for their own needs and smaller in number, these customers are also regularly engaged with to ensure their needs are being met, beyond what retailers with a mass-market customer base can reasonably achieve.

The relief sought for this reform is similar to the above, in that Shell Energy supports further clarification within the draft rules that these requirements will only be relevant to residential customers, or an exemption for business or multi-site customers from the definition of small customers for the purpose of the Stage One Reforms is granted.

Ombudsmen awareness

Shell Energy supports that the ESC has sought alignment with the Australian Energy Regulator (AER) in relation to the Better Bills Guidelines (BBG) and providing the phone number of the Ombudsman on the front page of energy bills for small customers. Shell Energy supports the AER's approach to multi-site customers within the BBG, and we recommend that the ESC also align with them on this front.

As previously mentioned, Rule 5 of the NERR allows retailers to aggregate the energy consumption of a business customer with multiple sites together so that it exceeds the small customer threshold. Where the multi-site customer is no longer considered a small customer, Rule 25 of the NERR which contains the requirement to comply with the BBG for small customers, no longer applies.

We consider that this is completely appropriate given the nature of these customers. Particularly where dispute resolution for this cohort is likely to go through different avenues than the Ombudsman.

Final comments

Shell Energy supports that ESC have undertaken significant consideration in how to further enable protections for residential 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]

Libby Hawker

GM Regulatory Affairs and Compliance