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James Clinch
Manager, Regulatory Reform
Essential Services Commission
Level 27, 2 Lonsdale Street
Melbourne, Victoria 3000

By mail and email

Dear Mr Clinch

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Essential Services Commission's draft decision on how to implement recommendations 3F-H of the Retail Market Review (PDF).

About ERM Power

ERM Power is an Australian energy company operating electricity sales, generation and energy solutions businesses. The Company has grown to become the second largest electricity provider to commercial businesses and industrials in Australia by load¹. A growing range of energy solutions products and services are being delivered, including lighting and energy efficiency software and data analytics, to the Company's existing and new customer base. ERM Power also sells electricity in several markets in the United States. The Company operates 662 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland.

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General comments

The first tranche of recommendations from the Independent Review of the Electricity and Gas Retail Markets in Victoria aims to restore trust in customers by increasing retailer accountabilities. In the redraft of the Energy Retail Code (ERC), we welcome the new approach proposed by the Essential Services Commission (the Commission) to not only specify the new regulatory requirement but also outline the reasons why certain information must be provided to customers. That way, retailers are not only able to gauge compliance but also measure how well retailers meet customers' expectations.

The draft decision contains four parts: savings information on bills; prior notification of changes to tariff, charge or benefit; clear advice entitlement; and presentation of price inclusive of GST. We appreciate the intention of the proposed changes and are supportive of the changes in principle, however we have strong reservations where the proposed changes are deemed impractical and unreasonable when expected to be applied to multi-site customers in certain provisions.

Multi-site customers are business customers who have more than one National Metering Identifier (NMI) and are contracted as a deemed large customer. Rule 5 of the National Energy Retail Rule (NERR) allows a business customer, who is or would be a small customer, to enter into an agreement in writing with the retailer to the effect that at least two or more of its business premises are to be aggregated for the purpose of determining whether the upper consumption threshold has been met. The customer is then treated as a large customer for the purposes of Division 3 of Part 1, Part 2 of the NERR and Part 2 of the National Energy Retail Law (NERL).

¹ Based on ERM Power analysis of latest published financial information.



A provision equivalent to Rule 5 of the NERR is not included in the ERC. Instead, Orders in Council define a “relevant customer” on the basis of an individual supply point, and not on the basis of the aggregate of each supply point from which the customer consumes electricity or gas (see Section 5(b), Energy Industry Act (EIA) Order in Council dated 25 November 2008). A “relevant customer” is defined as a customer in respect of each supply point where consumption has not/is not likely to be, more than 40 MWh per annum.

Under section 36(1) of the EIA, a term of a contract for the supply of electricity to a ‘relevant customer’ is void to the extent that it is inconsistent with terms set by the ESC relating to specific matters. This means that a retailer cannot provide the option for a customer to contract out of certain small customer protections in Victoria, as in other states.

The inability to aggregate small business sites in Victoria has both retailer and customer implications. These customers are not able to choose consolidated billing across their sites, and so must manage numerous separate bills. They must manage separate contract expiry and renewal processes for each site, and risk being placed on a standing offer if one is missed. This impacts both customers with multiple sites in Victoria, as well as cross-jurisdictional multi-site customers, where NECF sites are aggregated but Victorian sites are not.

Best offer rule application should be constrained to only single site customers or made exempted for multi-site customers

The proposed new Part 2A Division 4 requires retailers to put their best offer on a customer’s bill. The draft decision proposes that the best offer be defined as the cheapest generally available offer from that retailer for that customer based on their energy usage. Retailers will have discretion to present cheaper plans from among their non-generally available offers. We strongly consider that the above definition does not recognise how multi-site customers contract for energy.

Single-site customers are dependent on generally available offers made by retailers. In contrast, multi-site customers are contracted via sophisticated contract negotiation process using third party brokers, direct submissions to tender requirements, and other means. The pricing and contract terms and conditions over the term of the contract are fully transparent to the customer and vigorously reviewed by their legal and finance team. Price to the multi-site customer, in essence, is not just determined by the offer in the general market, but on a variety of other factors such as network costs, current wholesale price and other benefits that can be offered by the retailer to the customer. The requirement to regularly provide multi-site customers with a best generally available offer is likely to cause confusion to multi-site customers.

Furthermore, in draft decision 10, the requirement to include information on how the customer can access the government comparator website, Victorian Energy Compare (VEC) does not appear to consider its current system capabilities on search functions for multi-site customers. As depicted above, multi-site customers undertake a different process to receive, analyse, and select their best offer through an entire sophisticated contract negotiation / tender evaluation process. It is impractical to expect these customers to use VEC to consider alternative retailer offers. Most of these customers are acquired either through a broker or a tender process; the Victorian Government’s tool does not accommodate multi-site offer arrangements. Therefore, directing a multi-site customer to VEC will have no relevance as the contract formed for these customers covers multiple sites rather than single-site arrangements. Similarly, ‘best offer’ alternatives are unlikely to be relevant as contracted tariffs are based on their existing arrangements covering multiple sites.

Conclusion

ERM Power considers that the Commission’s proposed approach is one that is designed around single-site customers such as households and single-site SMEs. It fails to recognise the complexities and bespoke nature of multi-site contracts. Draft decisions 1 to 17 are unlikely to provide any real benefit to multi-site customers and may in fact only serve to confuse them. We consider the Commission should remove the requirements of 3G (Draft



decision 1 to 17) for multi-site customers either by applying an exemption or directly specifying that it only applies to single-site customers within the small customer threshold.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

Ben Pryor

Regulatory Affairs Policy Adviser

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