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Monday, 13 July 2020

Mr Aaron Yuen  
Senior Regulatory Manager, Analysis and Reform (Energy)  
Essential Services Commission  
Level 37, 2 Lonsdale Street Melbourne VIC 3000

By email: [energyreform@esc.vic.gov.au](mailto:energyreform@esc.vic.gov.au)

Dear Mr Yuen

## **RE: Supporting energy customers through the coronavirus pandemic – Draft Decision**

ERM Power Retail Pty Ltd (ERM Power) welcomes the opportunity to respond to the Essential Service Commission's Draft Decision on supporting energy customers through the coronavirus pandemic (Draft Decision).

### **About ERM Power**

ERM Power (ERM) is a subsidiary of Shell Energy Australia Pty Ltd (Shell Energy). ERM is one of Australia's leading commercial and industrial electricity retailers, providing large businesses with end to end energy management, from electricity retailing to integrated solutions that improve energy productivity. Market-leading customer satisfaction has fueled ERM Power's growth, and today the Company is the second largest electricity provider to commercial businesses and industrials in Australia by load<sup>1</sup>. ERM also operates 662 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, supporting the industry's transition to renewables.

<http://www.ermpower.com.au>

<https://www.shell.com.au/business-customers/shell-energy-australia.html>

### **Summary**

Retailers are currently working with COVID-19 affected customers to ensure they are appropriately supported in managing their energy costs and are doing so effectively without regulations mandating how this support should be provided. Over the last few months we have been engaged with regulators in the roll out of support, cognisant of the detrimental impact the pandemic is having on our customers. Although the situation continues to evolve and is uncertain, we believe that retailers are sufficiently motivated to ensure their customers are fully supported to minimize the likelihood of bad debt and bankruptcies. Further we believe that the regulator's current 'statement of expectations' is being met, removing the need for these measures to be inserted into the Energy Retail Code.

ERM Power offers services to the large customer sector, including customers that have multiple site groupings, known as 'multi-site' customers. Some large customers have been affected by the pandemic, and we recognize that they may have increasing difficulty in meeting energy costs, particularly once government support eases. The temporary assistance we may offer to these customers must be sustainable, targeted and bespoke to their needs, given large customers' complex tariff structures, varied usage patterns and requirements around energy productivity. Although these customers are large, the customer's individual sites under the contract may be

<sup>1</sup> Based on ERM Power analysis of latest published information.



classified as 'small customers' through the definition in the Victorian Energy Retail Code and are inappropriately captured by this draft decision.

If it is determined that temporary code changes must be made, we strongly believe that the multi-site customer group should be explicitly excluded, as payment assistance extended to large customers should not be regulated or prescriptive, but rather determined through discussion with the large customer and based on their individual situation and contractual settings.

It is our view that extending elements of the residential payment difficulties framework to small business customers is unsuitable and even problematic and we do not support the related proposed amendments to the Energy Retail Code. It is unsuitable as the types of assistance offered is unique to each business and needs to be carefully considered and discussed with the customer. Unlike residential customers, small businesses vary considerably and objectives that generalize and mandate the same minimum support is likely to be impractical and detrimental.

It is well known that assistance extended to business customers as hardship support is complex and problematic due to the unintended consequences of what may be regarded as a business subsidising another business to operate whilst insolvent. This does not mean that retailers fail to provide assistance. Retailers are providing assistance and will continue to do so during this pandemic. However, measures are provided according to each circumstance and are undertaken with considerable care so as not to inadvertently worsen the situation by allowing the business customer to accrue debt unsustainably. To do so would be inappropriate and irresponsible to all suppliers, including other creditors that may be in fact be small businesses.

We suggest that it is more appropriate for the Commission to consider the objective of the support and give retailers the flexibility to provide assistance to their customers in the manner that is suitable, sustainable, considers risks, and as the retailer sees necessary to meet that objective. The objective does not need to be specified in the Code. It could be in the form of a guidance document of best practice or continue to be set as expectations. We do not see codifying the objective adds value to the support provided by retailers, as they are incentivised to do their utmost to assist business customers through this crisis.

We provide the following responses to the questions raised in the draft determination.

***Question 2 Are there other measures you think we should be considering to ensure consistent protections for small business customers experiencing financial stress as a result of the pandemic, either in the short or medium term? If yes, please provide details***

Measures to support small business customers should be determined by the retailer and provided in discussion with the customer. There is no 'typical' small business and retailers require flexibility to meet the various circumstances of payment difficulties presented. Usage patterns and tariff structures differ radically across the small business customer group and there may be significant seasonal variability. The most pragmatic approach is for the retailer to work with the customer to determine the best means of ensuring debt repayments occur sustainably. Retailers are sufficiently motivated to ensure that bad debt is avoided.

***Question 3 We are proposing that if a small business misses a bill pay-by-date, it will be entitled to repayment of arrears over not more than two years by payments at regular intervals of up to one month. Do you think that two years is an appropriate length of time for small business customers to be asked to repay their arrears? If not, please provide details about what alternative would be appropriate.***

The payment of arrears and current charges as proposed is more problematic for business customers as their usage patterns can radically change month to month. Mandating set payment arrangements that are an equal amount over a specified period may be unsuitable when added to such variable ongoing usage charges. To extend a debt payment arrangement out for such a long period (2 years) with variable and uncertain ongoing usage



heightens the risk of the business incurring an increasing level of debt to the point of it being unmanageable, leading to insolvency. This is an unacceptable timeframe and in effect could mandate that support is provided out for 2.5 years, well beyond what is necessary. This will add to retailers' costly debt burden.

The draft decision presents prescriptive obligations for payment of arrears which may mask the relevant test of solvency of a business - that is, the ability to pay debts as and when they become due and payable. A payment arrangement does not remove the debt from being regarded as 'due and payable', but rather to not enforce the recovery of the debt at a certain time. A financially stressed company needs to consider the coverage of debts which are due and those which may fall due soon. In masking the solvency of a business, the proposal may have unintentional consequences as it may deter a loss-making business from seeking insolvency advice; instead the business continues to operate past the point which they would have been able to change practices and recover. The pandemic has resulted in the risks around the 'fine balance of providing support but not causing unintentional consequences' to heighten and be more prevalent, bringing greater cause to not regulate hardship support to business customers at this time.

***Question 4 We are proposing a temporary entitlement to payment assistance for any small business that misses a bill pay-by-date. Do you think it would be practical or appropriate to restrict eligibility for payment assistance to small businesses that meet a set of criteria for financial stress? If yes, please provide details about what criteria would be appropriate.***

It is unworkable to rely on one missed payment to be considered as demonstrating 'financial stress' and to identify a business impacted by COVID19. Any support provided should be based on discussions between the business customer and the retailer. Further the type of support should be determined through these discussions and appropriate to the customer's circumstances. Our credit team will work with customers who are experiencing difficulty in paying their bill. We already encourage our customers to reach out if they are experiencing payment difficulties through bill messaging and information on our website.

We are unsure as to why the application of Schedule 11 would apply to prospective customers (clause 95 (1) (b)) as such customers would not have incurred debt and therefore should not be eligible.

***Question 5 Do you think the current network relief package to retailers has worked the way it was intended? Please provide details to explain your answer.***

The network relief package eligibility was so narrowly applied that it was not relevant to us. Large customers are large employers and will help to sustain our economic recovery yet have been overlooked by networks for relief. Commercial and industrial retailers have extended customer payment terms beyond the contractual arrangements for customers impacted by the pandemic. To date this assistance has been provided by retailers despite the inherently low margins of the large customer group.

***Question 6 Do you think anything further should be put in place in Victoria after the initial network relief package to retailers ends, for example a deferral of network charges similar to the rule change that the Australian Energy Market Commission is currently consulting on? If yes, please provide details***

The AEMC's recent Discussion Paper on network deferral has sought to narrow the application of the AER's proposed rule change to now be completely irrelevant to large customer retailers. This regrettably places retailers in the position of being the sole participants in the industry stepping up to offer and fund large customers support. The AEMC assumptions fail to consider the inherently low retail margins of the large customer group. Retailers



cannot absorb slowing cash receipts and rising levels of bad debt from consumers while continuing to meet all downstream supply charges (wholesale energy charges (generators), distribution costs, and green scheme costs).

We strongly believe that networks must carry some of the burden of affected customer bad debt – being the network component. At present, retailers are absorbing all the industry's bad debts with networks and generators continuing to be paid regardless of whether the energy consumer pays the retailer. It is unsustainable for retailers to solely absorb the shocks stemming from the pandemic. The risks from measures to provide customer assistance must be shared through the supply chain.

Some of the most heavily disadvantaged large business customers are those with high network costs that have seen their demand charges locked to heights of their pre COVID 19 demand, yet consumption has fallen with a loss of business activity. For sustained support, networks need to ensure the network tariff arrangements assigned to large customers are not deepening their debt and therefore should be reset appropriately.

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

Yours sincerely,

[signed]

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