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Wednesday, 15 January 2020

Essential Services Commission  
Level 37, 2 Lonsdale Street  
Melbourne, VIC 3000

By email: <https://engage.vic.gov.au>

### **RE: Ensuring energy contracts are clear and fair – Draft Decision**

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Essential Services Commission's (Commission) 'Ensuring energy contracts are clear and fair' – Draft Decision, which seeks to implement specific recommendations stemming from the Independent Review of the Electricity and Gas Retail Markets in Victoria.

#### **About ERM Power**

ERM Power is a subsidiary of Shell Energy Australia Pty Ltd (Shell Energy). ERM Power 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 fuelled ERM Power's growth, and today the Company is the second largest electricity provider to commercial businesses and industrials in Australia by load. ERM Power also operates 662 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, supporting the industry's transition to renewables.

[www.ermpower.com.au](http://www.ermpower.com.au)

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

#### **General comments**

ERM Power has welcomed several of the recommendations under the Independent Review of the Electricity and Gas Retail Markets in Victoria (the Review). Various reforms from the Review have already been implemented and have dramatically changed the contracting behaviour of retailers and continue to do so. Whilst we believe that simplicity, consistency and transparency of retail offer information promotes market competition and customer engagement in the energy retail sector, it is our view a number of recently implemented reforms such as the 'clear advice' requirement already meet the objectives of the proposed obligations contained in the Draft Decision and are therefore unnecessary. This is particularly the case for recommendation 4A, which restricts a retailer from undertaking price changes with the view to achieve the policy objective of providing 'price certainty' to Victorian customers.

In our response to the Commission's Issues Paper in 2019, ERM Power highlighted the complications surrounding customer models that are inconsistent with the concept of comparing offers to the Victorian Default Offer (VDO). We urge the Commission to use a pragmatic approach and exclude multi-site products from the requirements of 3A, which currently requires retailers to make a VDO price comparison when they advertise, publish or offer an electricity product to a small customer. Although multi-site products are unlikely to be advertised (as they are bespoke), extending obligations to 'publishing and offering' of the multi-site product is unworkable as such offers are tailored to cover a single contractual relationship that encompasses multiple physical premises.



ERM Power does not support recommendation 4A to require energy companies to fix any prices they are offering for a minimum of 12 months, aligning the price change date with the VDO. The Government's Terms of Reference to the Commission notes that this recommendation should be interpreted as placing a requirement to freeze contract prices from the date an individual customer enters into a new contract. We continue to believe this proposal is impractical, and retailers will face excessive costs due to the operational monitoring and complex contracting systems required to accommodate the conditions of the recommendation.

With respect to limiting back-billing periods to four months, it is our strong view that there should be no detriment to retailers who are the innocent party to a revised distribution pass through cost or updated data. It is unreasonable for retailers to be exposed to the financial risk associated with distributors reissuing meter data, recouping from faults in their metering assets, and failing to correct inaccurate standing data in market systems; all of which are beyond the retailer's control. It is therefore our view, the Code should be drafted so that this timeframe restriction solely applies to retailer system and billing related errors, rather than attempting to capture an exhaustive list of allowable scenarios that the retailer may recoup beyond four months.

We wish to provide further commentary on the Draft Decision below:

#### **Draft decision 2: Retailers must market electricity offers with reference to the VDO**

The Draft Decision mandates that the VDO is to be used as a reference price for all electricity offers to deliver the policy intent of recommendation 3A of the Review. This will require retailers to make a reference price comparison whenever they advertise, publish or offer an electricity product to a small customer. This decision is intended to be applicable to all small customers and without amendment, this will also include multi-site business customers with sites categorised as small. In this respect the decision is inconsistent with the ACCC's Guide to the Electricity Retail Code, June 2019. The ACCC's Code does not apply to multi-site customers with an aggregated load of greater than 100 MWh, as a customer is defined by a load threshold rather than a load threshold for a customer at a site (as in the case for Victoria).

We request that the Commission removes this obligation to multi-site customers. As it stands, the requirement does not recognise how multi-site customers are offered contracts and procure energy. Multi-site customers undertake a different process to receive, analyse, and select an offer through an entire sophisticated contract negotiation / tender evaluation process. These customers do not consider alternative individual site comparisons and most of these customers are acquired either through a broker or a tender process. Comparing the VDO to a site will be irrelevant as contracted tariffs are based on their existing arrangements covering multiple sites. We urge the Commission to ensure regulations are consistent with the ACCC Guide, recognise that these customers are effectively not 'small' and sensibly exclude multi-site arrangements from the final decision. We suggest this could be amended in a straight-forward manner with similar drafting to the 'best offer' exclusion for multi-site customers currently in the Energy Retail Code.

#### **Draft decision 5: Retailers can only change existing market contract prices when the VDO price changes**

We note that the Victorian Government clarified its recommendation pertaining to 4A as requiring retailers to fix prices for a minimum of 12 months, applying from the date an individual customer enters into a new contract. We have previously highlighted our concerns to the Commission with respect to the operational difficulties this will present to retailers. For ERM Power, the difficulties are compounded as many of our customers are multi-site business customers who have entered into arrangements through a tender process. We recommend the explicit



removal of the obligation that will restrict contract terms and price change provisions of multi-site customer negotiated contracts.

Multi-site customers are business customers who are contracted as a deemed large customer. The hedging arrangements for these customers may be considered similar to any other large customer and placing restrictions on price variations during the contract term may place heightened financial risk to the retailer for these products. Retailers will be required to estimate costs for the 12-month period ahead, when several cost elements are unknown. The consequence is that retailers will be required to cost higher than normal customer risk premiums, ultimately increasing costs to consumers.

For multi-site customers, despite the contract often covering a combination of small and large physical sites, price changes recognise the contract in its entirety. Any provision restricting price change on small sites under the contract will impact the contract as a 'whole'. It is unreasonable for retailers to have large contracted customers impacted by these changes. We also note that the customer is sophisticated and well aware in advance of the conditions around price changes under their multi-site agreement with us.

Further, many of our multi-site customers have operations across various states, and any price change events need to accommodate multiple jurisdictions from a timeframe perspective. Multi-site retailers need the flexibility to accommodate this for our customers. Retailers and multi-site customers want to leverage the cost efficiencies of an aggregated approach for price variations. Furthermore, some tenders require offers to accommodate price changes at set periods defined in the contract.

ERM Power urges the Commission to consider the specific characteristics of multi-site customers and remove multi-site customers from this obligation. We believe the extension of obligations to restrict contract re-pricing to multi-site customers will add unnecessary regulations and prescribe inflexible contract terms to a customer group that commonly procures energy through a tender process and is accustomed to negotiating sophisticated contracts. Additionally, certain products available to multi-site customers, such as ERM Power's unbundled offering, relies on the pass-through of network costs. Restricting the timeframe around the pass through of these costs will mean that these products may no longer be available to customers. The unamended implementation of recommendation 4A may have the negative impact of a loss in diversity and innovation in multi-site contract design and a reduction in competitive offers. Customers should have a right to realise the benefits of convenience and flexibility presented by innovative multi-site products and the continuation of a streamlined approach to contracting and variations.

We also believe that the Commission should clarify that the time restrictions surrounding price change events should not include tariff reassignments. Network tariff reassignments are driven by customer usage changes, replacement of a meter, or customer requests as customers seek to optimise their tariffs. Network charges are regulated, and tariff structures are set by the distributor. Retailers should be able to align their tariffs to the underlying network tariff to ensure that they can adequately and fairly recoup costs. In our view network tariff reassignments should be explicitly excluded from the requirements of the final decision as they do not constitute a change to an existing offer price but rather a new offer price driven by the change to the underlying tariff.

#### **Draft decision 6: Retailers offering products that are not compatible with limiting price changes to once a year must comply with certain conditions**

As we have detailed above, in our view multi-site products are not compatible with the obligation. With respect to accommodating the exemption of multi-site products we suggest that an overarching exemption would be preferable through drafting of the Code. We believe drafting could specify that an exemption could apply to any product that contains more than one business site under a single contract arrangement. ERM Power believe it would be reasonable to report to the Commission on such contracts, noting however that each multi-site contract is bespoke, and that aggregated reporting would be more workable. We believe that providing customers with



'additional factors' when seeking explicit informed consent should already be covered in the clear advice obligations under 70H (1) (b) and therefore this additional condition would be unnecessary.

Please contact me if you wish to discuss the matters raised in this submission.

Yours sincerely

[signed]

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