



11 March 2022

Sarah Sheppard
Executive Director
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000

Dear Ms Sheppard

RE: Variation of Shell Energy Retail Pty Ltd's electricity and gas retail licences

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to the variation of Shell Energy Retail Pty Ltd's electricity and gas retail licences.

About Shell Energy in Australia

Shell Energy is Shell's renewables and energy solutions business in Australia, helping its customers to decarbonise and reduce their environmental footprint.

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 more than 185,000 households and small business customers in Australia. Shell Energy Australia Pty Ltd and its subsidiaries (including Shell Energy Retail Pty Ltd) trade as Shell Energy, while Powershop Australia Pty Ltd trades as Powershop.

As the second largest electricity provider to commercial and industrial businesses in Australia¹, Shell Energy offers integrated solutions and market-leading² customer satisfaction, built on industry expertise and personalised relationships. The company's 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.

Further information about Shell Energy and our operations can be found on our website [here](#).

General comments

We note that the Essential Services Commission considers the proposed licence changes are predominantly administrative in nature, seek to improve consistency across licence holders and will remove redundant conditions. Whilst we welcome a simplification of retail licences, we are concerned that some of the licence changes impose new requirements beyond those we would otherwise have under our current licences and the Energy Retail Code of Practice, and that these requirements are neither necessary, nor reasonable.

¹By 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 2011-2021.

CONFIDENTIAL



The following clauses are of particular concern, and we do not agree to their inclusion:

- clause 9.2 of the Standard Electricity Licence Conditions and clause 10.2 of the Standard Gas Licence Conditions requiring provision of a statement setting out details of a variation of tariff or terms and conditions at least 5 Business Days prior to the changes taking effect; and
- clause 9.4 of the Standard Electricity Licence Conditions for electricity, and clause 10.4 of the Standard Gas Licence Conditions relating to expiry of a fixed term contract.

These clauses extend small customer requirements under the Energy Retail Code of Practice to the large customer cohort and are materially different to our existing licence conditions and obligations under the Energy Retail Code of Practice. There does not appear to be any justification for these changes, nor any policy reason for the apparent extension of small customer protections to a large customer cohort.

The large customer market is well functioning, highly competitive, and provides desirable outcomes for customers in terms of service delivery. Retailers are sufficiently motivated through the commercial relationships they have formed with large customers to provide information in accordance with the customers' needs and circumstances. We argue there is no need to regulate information provision to this large customer group, particularly by extending regulations that have been specially developed for small customers who are not equipped with the resourcing or sophistication of large commercial entities.

Our concerns in relation to these clauses are discussed further below.

Notice of variation to tariff or contract terms and conditions

Clause 9.2 of the Standard Electricity Licence Conditions and clause 10.2 of the Standard Gas Licence Conditions require the licensee to provide notice to a Customer that is not a Small Customer in the form of a statement setting out details of any variation to the tariff or terms or conditions of a contract at least 5 Business Days prior to any changes taking effect. This is a new, additional requirement that does not exist under either our existing electricity and gas retail licences and in our view is an unreasonable and unnecessary extension of the notification obligations under the Energy Retail Code of Practice. We request the deletion of these clauses.

Shell Energy's current electricity and gas retail licenses each require a tariff change notification statement to be included with the customer's next bill, or otherwise as soon as practicable. Clause 92(4) of the Energy Retail Code of Practice provides that retailers must notify small customers of any variation to tariffs and charges "as soon as practicable, and otherwise no later than the small customer's next bill. In our view, this is the provision that should apply to Customers other than Small Customers by reference in the license terms, rather than the more onerous "bill change" notification obligations in clause 106 of the Energy Retail Code of Practice.

Further it is not clear to us why a notice requirement for variation of the terms and conditions of a contract should be imposed on us for Customers that are not Small Customers. We cannot identify that a five business day notification requirement on a variation to term and conditions is contained in the Energy Retail Code of Practice as Clause 92(6) of the Energy Retail Code of Practice provides that "any variation of the terms and conditions of a market retail contract must not be inconsistent with the requirements of [the] code of practice in relation to variation of market retail contracts." It appears that the new Licence clauses impose more onerous obligations than those placed on Small Customers and we argue that these clauses are an unnecessary addition to the large customer cohort that have negotiated commercial terms.

Large customers negotiate contract terms to include the provisions that they require regarding notice of changes. Generally, the large customer cohort do not want regulated notices but instead seek to be informed of changes at the times, and in the manner that suits their business needs. Imposing requirements to notify large customers of



changes within 5 business days in our view is both unreasonable from a commercial perspective, and unjustifiable from a policy perspective.

Obligations on expiry of a fixed term contract

We do not consider that clause 9.4 of the Standard Electricity Licence Conditions and clause 10.4 of the Standard Gas Licence Conditions are necessary for the protection of large customers on expiry of a fixed term contract, and we request the deletion of these clauses.

The approach large customers take to energy procurement is vastly different to small, single site business and residential customers and they do not need the level of protections afforded to small customers for contract expiry. They do not sign up to an energy contract through an online portal, comparator sites or through contact to a call centre. Rather, they engage brokers or run tender processes to assess service and prices from potential energy retailers, who respond formally to tender invitations/ requests by completing templates or adhering to tender format requirements. Considering these customers go through a tender process or negotiation process the expiry notices will be redundant and will only serve to cause confusion to the recontracting process underway.

We also consider that the timing requirements of the expiry notice as drafted ignores the required flexibility for the large customer group as we may often notify customers well before the 40 Business Day period, particularly where wholesale market prices have dropped, and an early extension of contract opportunity provides benefits to the customer.

We strongly believe there is no need for these new notice requirements for large customers as there are no instances of market failure or policy intent requiring the regulation of large customer contract expiry notices as retailers are incentivised to recontract in line with the customers' preferences.

If deletion of these provisions is not agreed, we note that clause 9.4 of the Standard Electricity Licence Conditions and clause 10.4 of the Standard Gas Licence Conditions place obligations over and above those that are required for small, fixed term contracted customers in the Energy Retail Code of Conduct. This is due to the omission of an equivalent provision in the licence conditions to clause 100(5) of the Energy Retail Code of Practice, which does not require the notice to be given where the customer "has already entered into a new contract with the retailer or has given instructions to the retailer as to what actions the retailer must take at the end of the contract".

As currently drafted, clause 9.4 of the Standard Electricity Licence Conditions and Clause 10.4 of the Standard Gas Licence Conditions require the expiry notice to be given whether or not the customer has already recontracted or provided instructions to the retailer about actions to be taken at the end of the contract. In our view, this obligation should be qualified by inclusion of an equivalent provision to clause 100(5) of the Energy Retail Code of Practice.

Request for clarification/amendment

In addition to the concerns noted above, we request clarification of the intent of clause 9.1(iv) Clause 9.1 (iv) of the Standard Electricity Licence Conditions, and Clause 10.1(iv) of the Standard Gas Licence Conditions. These clauses require the licensee to include "any information required by the Act, the ESC Act or any Code of Practice or guideline issued by the commission" in a bill issued to a Customer that is not a Small Customer. To ensure that it is clear that this only applies to information expressly required to be provided to Customers that are not Small Customers under the Act, ESC Act or any Code of Practice or guideline issued by the commission, we request that paragraph (iv) be amended to read:

"any information required by the Act, the ESC Act, or any Code of Practice or guideline issued by the commission to be included in a bill issued to a Customer that is not a Small Customer".



Further comments

We are also greatly concerned that the Licences changes we have highlighted in this submission have not been clearly identified or explained in the explanatory table provided, and we are continuing our careful review of the proposed licence terms and conditions to ensure no other amendments have been made.

Should you wish to discuss this submission further, please feel free to contact me on 03 [REDACTED]

Yours sincerely

[REDACTED]

General Manager Regulatory Affairs and Compliance