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

RE: Ensuring energy contracts are clear and fair – Issues Paper

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

About ERM Power

ERM Power is an Australian energy business for business. ERM Power provides 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[1]. 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.
https://ermpower.com.au/

General comments

ERM Power welcomes a number of the recommendations made in the Independent Review of the Electricity and Gas Retail Markets in Victoria. We believe that simplicity, consistency and transparency of retail offer information promotes market competition and customer engagement in the energy retail sector. We agree that price certainty provides customers with confidence in selecting an offer that best suits their requirements.

However, ERM Power does not support recommendation 4A to require energy companies to fix any prices they are offering for a minimum of 12 months. The recommendation places a requirement to freeze contract prices from the date an individual customer enters into a new contract. We believe this 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. Retailers will also be required to estimate costs for the 12-month period ahead, when several cost elements are unknown and as such, cannot be hedged. The consequence is that retailers will be required to cost higher than normal risk premiums, ultimately increasing costs to consumers.

Recommendation 4A is intended to be applicable to all small customers and without amendment, this will also include multi-site business customers. We are concerned about this outcome, as multi-site customers have different and more complex contracting arrangements than residential customers. This creates increased complications for retailers attempting to manage compliance of multiple individual multi-site contracts. We also believe that recommendation 4A presents excessive regulation, considering that retailers are currently required to clearly provide customers with notification of price changes.

In summary, ERM Power does not support the application of recommendation 4A, as:

- The operational monitoring and systems required to price freeze contracts which take effect at different times places excessive resourcing pressures on retailers to manage compliance
- Multi-site customers will be included, which is unreasonable due to their unique contracting arrangements

[1] Based on ERM Power analysis of latest published information

We provide an alternative approach to recommendation 4A for the ESC's consideration. Further detail is provided in the discussion below.

The exclusion of multi-site customers

The majority of ERM Power's customer base are multi-site customers. These are typically large customers or corporations that have a minimum of ten sites with a minimum aggregated load of 400 MW. There are several characteristics specific to this customer class which must be considered before ubiquitously applying new regulations.

Firstly, it is a common for a multi-site customer to have sites in different states across the National Electricity Market (NEM). This requires retailers with multi-site customers to comply with separate jurisdictional obligations, as Victoria applies its own regulatory standards to other states under that National Energy Customer Framework. Secondly, multi-site customers are not mass-market customers. This is a critical point, as many regulatory reforms are intended to provide protections for mass-market customers. Seeking to apply these protections to customer groupings external to the intended beneficiaries is misdirected, and places unnecessary regulatory red tape for these customers. This increases multi-site customer frustration and retailer costs.

ERM Power believes that recommendation 4A does not consider the specific characteristics of multi-site customers. We believe the extension of obligations to restrict contract 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. These products may no longer be available to customers under the current recommendation. 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.

We recommend the explicit removal of the application of any code change around restricting contract terms and price change provisions from multi-site customer negotiated contracts.

An alternative approach

ERM Power suggests an alternative approach to meet the objectives of recommendation 4A. We propose the restriction of price changes to once per calendar year. Under this arrangement, retailers would only be able to make one price adjustment per year, at the timing determined by the retailer and subject to compliant notification to customers.

This would provide the benefits of not requiring individual contract tracking while allowing retailers to align tariff variations with changes in network tariff determinations. It would also ensure efficiencies in managing and publishing price variation notices, as opposed to staggering restrictions according to contract start dates.

Application of the alternative approach

There are a number of charges which may need to vary within the 12-month contracting period and should be exempt from compliance with ERM Power's alternative approach to recommendation 4A. It is important for the success of the scheme that these exceptions be applied universally, and not considered on a case-by-case basis.

We urge the ESC to reconsider the application of contract variation restrictions on all charges, particularly network pricing. Currently, recommendation 4A allows for retailers to request an exemption from the ESC to address unforeseen changes in network costs. However, changes in network costs are typical, in line with network revenue determination processes. Retailers typically change prices annually in line with network revenue determinations, with network cost changes at the determination of a regulator. Retailers should have the ability to pass through network cost changes without exemption request requirements, and not be forced to take a financial position where these costs are unrecoverable in the timeframe they are charged.

In addition to regulatory determinations, network tariff reassignments may also be driven by customer usage changes or customer requests, as customers seek to optimise their tariffs. We suggest that network tariff reassignments be excluded from any restrictions in price variation.

There are additional elements of a customer contract that are reasonably expected to change during a 12-month contracting period. In addition to network cost changes, there are likely cost changes caused by regulatory reform. Increased costs are expected from system changes driven by the on-going implementation of the Australian Energy Market Operator's Five Minute Settlement and Global Settlement reforms. The ESC should also consider that changes in metering may occur, and not be predicted at the time of contracting. This may occur due to a change in consumer behaviour, such as the installation of behind-the-meter technology. There is also potential for any changes to law to occur. These changes are external to retailer behaviour and contracting strategies, and not within retailer control. As such, they should be excluded from compliance, and considered as a reasonable pass-through cost to consumers.

Conclusion

As currently drafted, recommendation 4A places excessive operational monitoring and system requirements on retailers to ensure individual contracts with different start dates comply with the conditions of the recommendation. This increases costs and regulatory burden for retailers across their portfolio. ERM Power believe that amendments to recommendation 4A are required to ensure fairness to all market participants. Due to the bespoke and sophisticated nature of their contracts, it is important that multi-site customers are exempt from compliance. We also propose that price adjustments be restricted to once per calendar year, with specific exemptions related to network costs changes, regulatory reforms, metering changes and legal arrangements.

We would welcome the opportunity to discuss this submission with your further. Please contact Emma White, Policy Advisor [redacted].

Yours sincerely

[signed]

Libby Hawker
Senior Manager, Regulatory Affairs