16 December 2022

Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator
[redacted]

By email: [redacted]

Dear Mr Feather

**RE: Review of consumer protections for future energy services options paper**

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to the Australian Energy Regulator ("**the AER**") and its Review of consumer protections for future energy services options paper (the "Paper").

**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.

As the second largest electricity provider to commercial and industrial businesses in Australia[1], Shell Energy offers integrated solutions and market-leading[2] 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.

Shell Energy Australia Pty Ltd and its subsidiaries trade as Shell Energy, while Powershop Australia Pty Ltd trades as Powershop. Further information about Shell Energy and our operations can be found on our website here.

**General Comments**

Shell Energy supports the Paper and its intentions of reviewing the National Energy Customer Framework (**NECF**). We also support the AER's "preliminary position that the status quo will not be fit for purpose for the future energy market".[3] However, where the AER also states its preliminary position of "the need to regulate new products and services"[4], this notion must be further explored before assuming a certain regulatory model will work for all current and any future product and services provided within the energy industry. This includes the timeline of final recommendations to be made by August 2023.

Importantly, to uphold good governance of the industry with the separation of the functions and roles of the market bodies, Shell Energy believes the AER should not be conducting this review but rather such a review falls under the appropriate powers and processes of the Australian Energy Market Commission (**AEMC**). Given its role as a regulator of the NECF, the AER should remain at arms-length from any final regulatory decisions for such a large reform.

Shell Energy has responded to the key issues this Paper raises below.

[1] By 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.
[3] Australian Energy Regulator, Review of consumer protections for future energy services, October 2022, Page 2
[4] Ibid



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**Proposed regulatory models**

Shell Energy does not support the adoption of any of the three regulatory models until there is a clearer understanding of how the market is going to adapt to new products and services. Sound regulatory policy includes a thorough assessment of the products and services in the market and their impacts before applying any form of regulatory restrictions. The risk of applying a model prematurely without the understanding of emerging markets for products and services potentially stifles supply, innovation and investment, elements already limited by other recent regulatory reforms. Further assuming the 'essentiality' of traditional energy services remains, despite the emergence of other products and services risks creating a disparity and comparatively costly compliance regimes over only certain providers and customers. Ultimately the Australian Consumer Law (ACL) serves as the principal consumer protection law, and it should be recognised that the energy retail market and any new emerging products and services will still be subject to this protection.

We see an issue that NECF itself needs to define more succinctly the concept of 'essentiality' before moving towards a model of choice, and the position that the NECF is not fit for purpose. Customers will only continue to purchase various forms of technologies into the future and the adoption of these technologies may weaken the concept of 'essentiality' for more traditional energy services. The issue is, the NECF does not protect the customers of these new services, and yet stringent protections may remain on existing services, creating a disparity and threatening competitive neutrality.

However, we also do not know currently if these products and services will need such essential protections. How does the AER or industry know for sure that such innovation will be essential for one customer, but not for another customer? Is there a binary divide between essential / non-essential use of energy? The future framework will need to adapt to the market as it evolves, flexible and agile to accommodate products and services that are beneficial for customers. Given the definitional and application issues, perhaps any regulatory framework should identify what exact aspect of energy service needs protecting to certain customers beyond the protections under the ACL and then those protections should be applied in a competitively neutral way to any service/ product provider.

Option 1, considered broadly the status quo, would struggle to apply such flexibility and agility with its tiered authorisation approach, with traditional retailers still wearing most of the regulatory burden. The option does not offer competitive neutrality in favour of non-traditional providers (their customers are less protected as a consequence). Further this option is highly reliant on the assumption that bespoke arrangements and conditions of products and services can fit into a predefined tier, with potentially complicated derogations or tailoring of conditions to be accommodated.

Option 2 could potentially work as a principles-based model, but Shell Energy is concerned that for regulatory certainty, governing principles development and any guidelines would need to be evidence based and tested objectively to ensure that they will uphold an effective outcome to energy consumers and providers that engage in the market. Shell Energy is also concerned that regulatory certainty and flexibility can quickly be eroded if the AER uses guidelines to provide specific directions in an ad hoc and discretionary manner, leading to more prescription, costly inflexibility and moving away from the intent of a principles-based model. We have seen recent examples of this with the development of the Better Bills Guideline, which is now extremely prescriptive, inflexible, and costly to implement.

Option 3 is great theoretically as it could evolve as each retailer innovates and services their customers in a market leading fashion, encouraging competitors to become better, placing the interests of the customer at the heart of products and services provision. However, using an outcomes model, particularly in the energy industry has previously created inconsistent results and experiences amongst retailers of which regulators and consumer groups even today believe is not beneficial.

It is a model that requires a completely different and pragmatic approach by regulators so that it does not lead to ambiguity in enforcement or create compliance risks for retailers and new entrants. It also requires an 'outcome' that is measurable with accurate baseline or benchmark data and parameters for assessing the achievement of the defined outcome. Much like Option 2, this option will also cost industry and customers significant amounts of funds without a guarantee of success.

**Shell Energy views on the preferred approach**

The AER should only 'prefer' a model for this consultation if and only when any of the above three models or a combination has strong evidence that it will support and accommodate future products and services.

Given Option 1 already provides a platform of protections for most customers now, Shell Energy believes that this option should continue, and even be expanded to other providers that are not traditional such as exempt sellers.

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Simultaneously, industry could possibly move to option 2 as it seeks to understand in greater detail how the market is evolving. Principles as per Option 2 could then be established; that are flexible and dynamic to customer and industry market movements but also not open to inconsistency in their application by the AER. The other bridging form of regulation that can protect customers for new products and services is the Australian Consumer Law which broadly protects customers with very similar product and service protections (of which the energy industry may be seeking in principle anyway).

**Conclusion**

Shell Energy is concerned that the AER may still wish to apply a NECF model that despite being modified, still only protects traditional energy customers, failing to balance regulatory burden and compromising innovation and competition. Shell Energy believes a strong balance is required to establish any new framework to ensure all providers of an essential service are regulated equally, selecting a framework that does not restrict the possibility of products and services benefitting customers and accelerating the renewables transition.

Shell Energy welcomes the opportunity to work together with the AER to assist with improving the application of consumer protections while ensuring competition and innovation is also increased for new products and services to become readily available. If you wish to discuss this submission in further detail, please do not hesitate to contact Alan Love at [redacted]

Yours sincerely

Libby Hawker

GM Regulatory Affairs and Compliance