



3 February 2022

Edward Orum  
Australian Energy Market Commission  
GPO Box 2603  
Sydney 2001

Submitted Online

Dear Mr Orum,

RE: ERC0323 - Improving consultation procedures in the Rules

Thank you for the opportunity to provide input into the Commission's deliberations regarding changes to the rules consultation procedures.

### **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<sup>1</sup>, Shell Energy offers integrated solutions and market-leading<sup>2</sup> 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](#).

### **Default Consultation Process**

Shell Energy does not wholly support the changes to the rules consultation procedures as outlined in the consultation paper. Whilst we understand the need for efficiency and timeliness in the modification or creation of subordinate instruments, we are concerned that the proposed changes may limit stakeholder's opportunity to engage in effective consultation and provide feedback. In particular, we have concerns with the proposal to reduce the default two stage consultation requirements in the Rules Consultation Procedures (RCP) to a single stage consultation process unless the party conducting the process determines otherwise. We also have concerns that the proposal to shorten the periods available for stakeholders to make submissions to an open consultation may limit the quality or breadth of input.

Shell Energy therefore proposes that the RCP retain the default two-stage consultation process but allow for an expedited consultation process where it is non-controversial. This expedited process would be the single-stage process outlined by the Commission in its consultation paper. Under this approach we suggest that the consulting party (AEMO or AER) could publish consultation documents inviting written responses on whether the proposed changes are non-controversial and should be assessed under a single-stage consultation. This would provide interested stakeholders the opportunity to consider whether they agree that a single stage process is appropriate. If the consulting party receives responses from interested parties outlining reasons for following the standard two-stage process, these must be taken into consideration in determining which process to follow. Where the consulting party determines that a single-stage process is appropriate despite stakeholder challenging this, the consulting party

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<sup>1</sup>By load, based on Shell Energy analysis of publicly available data.

<sup>2</sup>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.



would be required to publish its reasoning. This approach works well for the NEM rule change process and we believe that adopting the same approach for the RCP would result in the most efficient regulatory outcome.

#### **Dispute Resolution**

Additional governance improvements could be achieved with the addition to the RCP to access the disputes resolution procedure (DRP, Clause 8.2). Whilst this provision is intended only to be used as a last resort, allowing access to the DRP would significantly improve the governance of the RCP as the use of the DRP would signal a failure of the consulting party to conduct effective consultation in the view of stakeholders. Shell Energy considers that this approach would help guarantee that provisions included in subordinate instruments that are always in the long term interests of consumers.

#### **Requesting Changes to Subordinate Instruments**

Shell Energy supports the Commission's view that parties other than the controlling party may submit a change request regarding a subordinate instrument. When this occurs, it is appropriate that the controlling party be required to provide a response to the change request and set out a schedule for the consultation process within 30 business days of receipt of the change request. All change request material should be published on the controlling party website. In addition, where the rules contain provisions that require routine consultation on a subordinate instrument, the RCP should clarify that all areas of the instrument are open to consultation. This would further enhance the efficiency of consultation on subordinate instruments.

Shell Energy notes the concern that if change requests by external parties are not appropriately prescribed, it could risk creating unnecessary burden for a decision-maker and regulatory uncertainty for market participants. However, our view is that by adopting a change request approach similar to the NEM rule change request framework, a request to amend a subordinate instrument would only be submitted when a change provides benefit to the NEM.

#### **Other Issues**

Shell Energy considers that the RCP should set a maximum time for publication of any final report to ensure that information is delivered and changes are made in a timely manner. We suggest that this could be implemented via an amendment to Clause 8.9(k):

*"Following the conclusion of the consulting party's consideration of all valid submissions the consulting party must publish, **within 30 days**, a final report in accordance with rule 8.9(l), available to all Consulted Persons, setting out:"*

Shell Energy also recommends that it is appropriate under this rule change process to examine AEMO's powers to make procedures under Clause 8.3 – Power to Make Electricity Procedures. We believe that it is appropriate to amend the rules to provide clarity in the circumstance where an AEMO operational procedure has the ability to influence dispatch and or pricing in the NEM. When this is the case Shell Energy considers that the procedure should be subject to the two stage RCP.

Shell Energy supports the amended framework as set out above being adopted for both the National Gas and National Electricity Retail Rules.

Should you have any questions related to this submission, please don't hesitate to contact Peter Wormald (peter.wormald@shellenergy.com.au).

Yours sincerely

Libby Hawker  
GM Regulatory Affairs and Compliance