



15 September 2021

Consumer Data Right Division
Treasury
Langton Cres
Parkes ACT 2600

Lodged via email: data@treasury.gov.au

RE: CDR in the energy sector – Proposals for future consultation

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to the exposure draft of the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021*.

About Shell Energy in Australia

Shell Energy is Australia's largest dedicated supplier of business electricity. We deliver business energy solutions and innovation across a portfolio of gas, electricity, environmental products and energy productivity for commercial and industrial customers. Shell Energy is the second largest electricity provider to commercial and industrial businesses in Australia,¹ offering integrated solutions and market-leading customer satisfaction² built on industry expertise and personalised relationships, to over 4,500 customers (around 18 terawatt hours per annum). We also operate 662 megawatts of gas-fired peaking power stations in Western Australia and Queensland, supporting the transition to renewables, and are currently developing the 120-megawatt Gangarri solar energy development in Queensland. Shell Energy Australia Pty Ltd and its subsidiaries trade as Shell Energy.

www.shellenergy.com.au

General Comments

Treasury is proposing that all National Electricity Market (NEM) retail customers are eligible Consumer Data Right (CDR) consumers, irrespective of size. Shell Energy supports the application of the CDR to the energy sector as we consider there are potential benefits to create additional data value for small energy customers and assist this cohort of customers in comparing complex pricing, as the market shifts towards a distributed model of increased behind the meter technology and demand response behaviour.

However, Shell Energy is firmly of the view that large energy business customers who consume over 100MWh per annum should be out of scope for the CDR. We are concerned that imposing a framework, which seeks to improve small energy customer experiences, to large energy business customers will impose an undue burden on data holders and undermine the efforts and resources to date to deliver competitive products and services.

Shell Energy's specialises in business energy. Our customer base can broadly be categorized into small- medium business enterprise³ (SME) multi-site customers -that are effectively large enterprises that have multiple small sites aggregated under a single contract arrangement - and commercial and industrial customers. We have a unique understanding of this customer segment and the drivers behind their energy needs.

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 2011-2020.

³ The ABS definition of a SME is: small –where an entity employs less than 20 employees, and medium - where a business employs between 20 and 199 employees. <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1321.0>



SME customers are those who consume less than 100MWh per annum. These customers typically are single site, being individual, small consumption premises. A typical customer portfolio in this segment includes fish and chip shops, hairdressers, cafés, and small accounting/financial advisory businesses for example.

As these customers consume less than 100MWh per annum they are generally considered smaller operations who do not have the resources to actively engage in the energy market and make sufficiently informed decisions on energy. As such, they are afforded the consumer protections under the National Energy Retail Law (i.e., minimum requirements for contract provisions for bills, payment obligations, prices, complaint resolution). These customers' interests are protected by the Australian Energy Regulator who enforces the Retail Law and any escalated disputes are dealt with under the relevant jurisdictional energy Ombudsman schemes.

Shell Energy's commercial and industrial (C&I)/large energy business customers are those who consume over 100MWh per annum at a single site or through aggregated sites (multi-sites) over 100MWh per annum. Our customer portfolio in this segment is diverse and our customers

While diverse, what these customers have in common is a sophisticated approach to energy procurement and resources at hand to analyse monitor usage, energy productivity and costs.

Our multi-site customers are typically large customers or corporations that have several small sites and may have sites across different states. The approach these customers (and all our large energy customers) take to energy procurement is vastly different to small, single site business and residential customers. 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. These customers typically require tariff detail unbundled and at a granular level, inconsistent with the presentation of tariff information to small customers which bundle network and energy costs. We have observed that our large energy customers do not use their bill to compare offers, in fact often it is the accounts payable area that receive bills as just another invoice to pay, quite separate to the customers' energy procurement personnel looking to ensure the company has the best contract.

In our experience customers who consume over 100MWh are highly engaged in the energy market and sophisticated enough to make decisions around their contracting. They typically have procurement teams, energy analysts and tools to interpret their data to better inform their energy procurement negotiations. This is supported by data the ACCC examined as part of its 2018 Retail Electricity Pricing Inquiry. The ACCC found that *"C&I customers are characterised by larger electricity usage, generally more than 100 MWh per year, although some retailers have even higher thresholds for their definition"* and *"the contracts for such customers are typically very different to those for residential or SME customers"*⁴. Further, given the level of sophistication, resources, and engagement, it is well recognised and a fundamental principle in the development of energy regulatory frameworks that this customer segment does not need the consumer protections set out in the National Energy Retail Law. It is also our view that resources of energy Ombudsman shouldn't be tied up in resolving disputes for large commercial customers, who often have their own legal teams or resources to obtain legal representation, to the detriment of smaller energy customers.

Critically, for all of Shell Energy's large energy customers with usage greater than 100MWh, we provide dedicated account managers and a customer portal which allows customers (and their nominated third parties) to access NMI data, metering data, billing data and product/tariff data. We note that most of our competitors in this customer segment also have customer portals that offer the same range of data sets.

⁴ <https://www.accc.gov.au/system/files/Retail%20Electricity%20Inquiry%20-%20Preliminary%20report%20-%2013%20November%202017.pdf>



CDR provides no evident additional data benefits for large energy business customers

Shell Energy's focus is service and advice on electricity contracting and energy consumption management. We have put a lot of sunk costs, resourcing and effort into fine-tuning our business model and invested heavily to provide our large energy business customers with tools, products and services that allow them to minimise the risk of wholesale energy market volatility, understand and act on their energy usage, and which support sustainability/emission reduction commitments. We are confident that our services have brought price competition and exceptional services to this segment of the energy market. We have also led the market in customer service for ten consecutive years for C&I customers, as measured independently by the Utility Market Intelligence (UMI) Survey.

It is imperative that Treasury understand the different drivers when it comes to engaging in the electricity market for SME and large energy customers – this is fundamental to the eligibility for CDR purposes. We note that the CDR aims to 'give consumers greater access to and control over their data and will improve consumers' ability to compare and switch between products and services. It will encourage competition between service providers, leading not only to better prices for customers but also more innovative products and services'. Given SME customers want simplicity and automation, it is reasonable for these customers to be eligible customers for the CDR. The benefits that will arise for small and medium business customers from the CDR, including the development of more innovative product offerings, will go some way to ensure these customers can better engage with the market. For example, a valuable outcome of the CDR for a SME could be a real time tracking on an App to enable them to monitor their energy usage and take any subsequent action, if required, in real time.

However, our large energy customers typically want to manage volatility through price certainty, make better energy choices through data insights, improve sustainability, and generate revenue from energy assets. As noted earlier in this submission, these customers usually procure via tendering arrangements run by specialist procurement managers or brokers, and the contracts for supply are negotiated to the customers' unique circumstances, often down to all elements of the cost stack. These contracts may contain confidentiality or non-disclosure clauses. We are concerned that disclosing data to an accredited third party is not accommodated under these terms.

[REDACTED]

[REDACTED]

In addition, we also offer a wide range of energy productivity solutions to help our large energy businesses customers manage their energy consumption, costs and emissions. [REDACTED]

[REDACTED]

[REDACTED] it is not evident to us that the CDR will provide any additional value or data benefits to customers who consume more than 100MWh per annum. Instead, we consider that the CDR will come at a cost with little to no gain in



customer benefit. We have made significant investment in our digital platforms and resources to enable us to deliver our bespoke data products which are well received by our customer base.

Eligibility consumption threshold for the CDR should be set at 100MWh per annum

Shell Energy proposes a 100MWh per annum threshold to delineate between eligible and non-eligible CDR energy business customers as this is a well-recognised threshold in the energy industry and is already enshrined in energy regulatory frameworks. For example, the National Energy Retail Regulations sets out the upper consumption thresholds for determining whether a business customer is small or large, that is a large customer is a business customer who consumes energy at or above 100MWh per annum. In addition, section 153C of the *Competition and Consumer Act 2010* defines a small business customer as “a customer who purchases, or proposes to purchase, electricity at a rate less than 100 MWh a financial year and is not a residential customer in relation to that electricity”. Energy retailers have long been developing their business strategies and operating models and systems around this threshold. We consider that this threshold is fit for purpose for an eligibility criterion for CDR purposes.

We note the Government’s concerns that a 100MWh consumption threshold will mean some large energy customers, who may have a high consumption but are not a sophisticated customer, will miss out on the benefits of the CDR. Shell Energy does not agree with this as a starting assumption to determine eligibility for CDR purposes. We have seen no evidence of this and seek to understand from Treasury what proportion of the market falls into this category and what the realised benefits vs costs for the market would be to roll the CDR out to all NEM retail customer for a perceived group.

An alternative threshold could be 200MWh per annum. A business that is large enough to consume 200MWh per annum is a significant operation and likely to have the appropriate procurement resources to negotiate a good energy contract, regardless of ownership. However, there is a risk in using a 200MWh per annum threshold. It creates an additional complexity and cost for energy market participants whose wholesale strategies are developed around the bespoke products for these customers. In addition, there could be adverse impacts for a customer who consumes between 100MWh and 200MWh per annum. While for CDR purposes they are eligible, they are not eligible for the protections set out in energy legislation which include standardisation to make it easy to compare products and are largely not covered in the jurisdiction of Ombudsman schemes nor should be. This inconsistency may cause confusion.

Tailored product data

Large energy business customers tend to contract under bespoke negotiated agreements and the detailed charges may closely align to our underlying wholesale hedging and purchasing arrangements.

Further, we note that the banking sector raised similar concerns with regards to potential exposure of their wholesale positions. We note guidance³ has been provided to the banking sector that when the level of negotiation between the data holder and the customer (in particular, where a product is especially designed, or highly customised, for the customer) the more likely the product is not ‘publicly offered’ and therefore out of scope for the CDR.

³ [https://cdr-support.zendesk.com/hc/en-us/articles/900003420066-Guidance-for-data-holders-CDR-products-and-eligible-consumers-](https://cdr-support.zendesk.com/hc/en-us/articles/900003420066-Guidance-for-data-holders-CDR-products-and-eligible-consumers)



While our products for large energy business customers are bespoke and not generally available, we consider there are some analogies that Treasury may want to consider so as to give confidence to the energy sector regarding exposure of wholesale hedging strategies. For example, a tailored product could be exempt if the product is offered to larger energy business customers only and only available via account managers.

Implementation

Shell Energy supports the staged application of the rules to the energy sector as proposed by Treasury. We support the three largest retailers, AER, AEMC and DELWP commencing by 1 October 2022. We also support flexibility for smaller retailers to be able to opt into the CDR early with a firm compliance date of 1 October 2023.

Shell Energy welcomes the opportunity to discuss our submission further. Please contact Carmel Forbes at carmel.forbes@shellenergy.com.au or 07 3364 2404 for any queries regarding this submission.

Yours sincerely

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