



15 August 2022

Energy Policy WA
Level 1
66 St Georges Terrace
Perth WA 6000

Lodged email: energymarkets@dmirs.wa.gov.au

Dear Energy Policy WA,

RE: Civil Penalties and Reviewable Decisions Consultation Paper

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to Energy Policy WA's (EPWA's) Civil Penalties and Reviewable Decisions Consultation Paper (the Paper), released on 18 July 2022. The paper forms part of the broader Wholesale Electricity Market (WEM) Reform package and we note that the Paper provides a high level summary of proposed changes to the WEM, GSI and Pilbara Regulations.

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 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.

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 understands that feedback from this consultation will be used to inform a draft package prior to submission to the Minister for Energy for approval for the Parliamentary Counsel's Office (PCO) to draft the amending WEM Regulations (the amending regulations). Following this, EPWA will release the amending regulations for comment and will include the proposed changes that have been described at a high level in the Paper.

We note that for Shell Energy to provide meaningful feedback to inform the draft package through this consultation, it would be useful for EPWA to provide more information on the detail of the proposed changes. The absence of the detail in the amending regulations in this consultation is not conducive with providing stakeholders the opportunity to comment effectively. The process and schedule for these amendments does not allow sufficient time to enable us to contribute to changes that may have a material impact on our business operations and functions.

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.

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As a rule participant, compliance with the WEM Rules and the associated compliance framework administered by the ERA is extremely important to Shell Energy and we value the effort taken to align the NEM with the WEM where possible.

2. Civil Penalty framework

2.1.1. Current framework and identified issues

As discussed in the Paper, EPWA proposes to amend the penalty provisions listed in Schedule 1 of the WEM Regulations. However, as the provisions have not been detailed in the Paper, it is difficult to comment on the proposed changes. We suggest the draft Schedule 1 be provided for comment once received by EPWA to enable stakeholders to provide feedback prior to this being included in the draft package.

2.1.2. Proposed changes

Daily amount penalty

Shell Energy notes that the details of the proposed changes to the civil penalty provisions will be released with the amending regulations. Changes to the daily penalty amounts have been proposed in the Paper with the introduction of a daily penalty amount for a Category A provision at a maximum of \$5,000.00 as per Table 1. As described in the Paper, Schedule 1 of the WEM Regulations will be reviewed and updated, which will inform what category will be assigned to each provision. Without reviewing the draft Schedule 1, it is difficult to comment on the associated penalty amount. We suggest that EPWA provide this detail to stakeholders for comment prior to the draft package being submitted to the Minister.

Additionally, we suggest that the criteria be provided regarding the applicability of the daily penalty amount. The current proposal is that the ERA and the Electricity Review Board (ERB) will have discretion as to whether a daily penalty should apply and that penalty amount could be based on factors such as the percentage of annual turnover of the participant, and the benefit gained by the contravening party. The paper states that the criteria is *“including but not limited to”* these two factors. Shell Energy does not disagree with this however, please advise what other factors may be applied when considering the daily penalty amount.³

2.3. Reviewable decisions framework

2.3.1 Current framework and identified issues

Schedule 2 - reviewable decisions

We are supportive of the list of reviewable and procedural decisions contained in the WEM Rules to remain in this instrument with the insertion of a Schedule 2 in the WEM Rules, and the removal of the similar list in the WEM Regulations.⁴ We look forward to providing comment on the suggested updates to Schedule 2 when the amending regulations are released for comment and through consultation for the Tranche 6 Amending WEM Rules.

2.4. Other minor amendments

2.4.2. Related WEM Rules changes

Expansion of public breaches register

The Paper includes a proposed change to insert a new clause in the amending regulations, detailing the new ability of the ERA to issue interim orders, such as before the investigation of a breach is finalised. In addition, the Paper outlines proposed expansion to the obligations of the ERA to publish breaches of the WEM rules. The proposal is for the ERA to publish a register of breaches as per section 2.18 of the WEM Rules and in addition, oblige the ERA to publish the initiation of compliance investigations in the register.

Shell Energy remains supportive of transparency around proven non-compliance however, we are concerned with the premature publication of information that might be contained in the proposed public breaches register, especially that which is related to an initiation of a compliance investigation (given this is not yet a breach). This amendment is described as intending to maximise transparency and inform participants what compliance actions the

³ EPWA, Civil Penalties and Reviewable Decisions Consultation Paper 2022, p 4.

⁴ Amend regulation 41(2) of the WEM Regulations so that decisions made under provisions of the WEM Rules and WEM Regulations that are listed in the relevant section of the WEM Rules, are reviewable decisions for the purposes of section 125(1) of the Act. Schedule 2 of the WEM Regulations would consequently need to be removed.



ERA is currently focusing on. This amendment could lead to adverse outcomes, including but not limited to reputational damage and privacy issues. Therefore, we are not supportive of this proposed amendment without consultation on the information that will be contained in the public breaches register and look forward to providing comment on the relevant exposure draft.

Conclusion

We appreciate that the WEM is undergoing significant reform and look forward to further consultation on the proposed amendments contained in the Paper.

Shell Energy would like to reiterate that we have concern over the timing of the Paper and the level of detail contained within. We suggest that EPWA consider our suggestions and provide more detail on the amendments prior to the approval to draft package being submitted to the Minister.

We welcome the opportunity to discuss our submission further. Please contact Tessa Liddelow at tessa.liddelow@shellenergy.com.au for any queries regarding this submission.

Yours sincerely

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