



1 September 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: Market Power Mitigation Strategy Consultation Paper

Shell Energy Australia Pty Ltd (Shell Energy) welcomes the opportunity to respond to Energy Policy WA's (EPWA's) Market Power Mitigation Strategy Consultation Paper (the Consultation Paper), released on 1 August 2022. The Consultation Paper has been developed following the release of an Information Paper in May 2021, which recommended that some components of the design of the Market Power Mitigation (MPM) mechanism, proposed in a consultation paper for comment in March 2021, undergo further analysis and consultation by EPWA. Review of the MPM mechanism forms part of the broader Wholesale Electricity Market (WEM) reform package.

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 an Information Paper for release by EPWA in September 2022. The Information Paper will form the basis of the amending WEM Rules which are due to be released for further consultation in late 2022.

We note there are five elements that were unresolved through the previous consultation period and have been addressed in the Strategy. Previous feedback from Shell Energy included the following concerns:

1. The level of prescription applied to the MPM mechanism putting at risk the effective competition outcomes observed in the WEM;

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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2. Significant details around the various guidelines that are yet to be developed and as such are not available for Market Participants (MPs) and interested stakeholders to review and provide comment;
3. The correct settings for the pivotal supplier test, including ensuring the threshold for the proportion of pivotal intervals that trigger the mitigation mechanisms is not set too low, which could cause uncertainty among MPs;
4. Determination of the frequency of review period for which MPs satisfy the criteria of the pivotal supplier test;
5. Components of proposed reform to the Offer Construction Guideline needing to be more detailed;
6. Level of data and record keeping that may be required if deemed to have market power; and
7. Lack of clarity around the definition of sustained and substantial effect on effective competition outcomes.

As per the Economic Regulation Authority's (ERA) Market Effectiveness Report, released in July 2022, there is already insufficient revenue for generators in the WEM and it would be helpful if EPWA considered the combined outcomes of the Reserve Capacity Mechanism (RCM) review, the proposed policy principles (high emissions technology penalty), the recommendations from the abovementioned ERA report and the MPM Strategy design.³ We are concerned that the number of papers running concurrently for consultation reduces the opportunity for stakeholders to provide effective feedback and to properly consider the overall impact.

We look forward to the release of the information paper on the conceptual design of the remaining components listed in this Consultation Paper and encourage EPWA to provide sufficient time for stakeholder engagement.

Feedback and responses to consultation questions for each of the listed five unconfirmed elements has been provided under the associated subheadings.

3.1. Market Power Test

1. Do stakeholders support the proposed approach for the Gateway Test?

Shell Energy recognises that there needs to be some variation of a Market Power Test to objectively monitor market power. Shell Energy considers that a Concentration Ratio (CR) method based on MWh would provide a superior measure of market power due to the relevance of market conditions. However, we recognise that a static CR provides a simple and stable methodology, reducing uncertainty for participants likely to be assessed in the Market Power Tests.

2. If a Static CR is to be used, are there any reasons why a 10% generation capacity market share should not be adopted?

If a Static CR is to be used, Shell Energy supports the threshold being set at 10% generation capacity market share.

3.2. Offer Construction Guideline

4. Do stakeholders agree with EPWA's assessment of the four options considered for Offer Assessment? If not, what additional information or analysis should EPWA have had regard to?

Shell Energy are supportive of the recommended option for a Guidance Based Assessment which will enable Market Participants to have consultative arrangements with the ERA and will allow for the ERA to have more flexibility when applying assessment requirements. We are comfortable with this approach so long as this is reflective of costs and that MPs are made whole with recovery of actual costs.

3.3. Pre-approval of Offer Parameters

5. Do stakeholders agree with the proposed approach? If not, what additional information or analysis should EPWA have regard to?

We agree with the proposed approach for a Consultation framework as opposed to a Pre-approval framework. Minimising administrative and regulatory burden on the ERA is important and we welcome EPWA's approach to structure the Consultation Framework to limit the ERA's obligation to give guidance on offer parameters.

³ <https://www.erawa.com.au/cproot/22805/2/D249712-WEM.Rep.2022---Triennial-review-of-the-effectiveness-of-the-Wholesale-Electricity-Market-2022.pdf>, pg 13 and 18.



3.4. Level of guidance to be provided to the ERA

6. Do stakeholders consider the level of prescription proposed by EPWA for the Market Power Test is appropriate?

Shell Energy are supportive of assessment requirements being contained within guidelines provided by the ERA, however, we encourage the ERA to consult with stakeholders on the guidelines and ensure that there is sufficient opportunity to provide feedback. We agree that a moderate level of prescription is the most practicable and the requirements will need to be balanced with the guiding principles around certainty, regulatory effort and market efficiency.

In our previous submission, we highlighted the importance of providing adequate timeframes for guideline consultation to ensure MPs have sufficient opportunity to consider impacts to systems and processes. This was in response to the previous consultation paper suggesting that MPs who rarely have market power may choose to keep records for internal purposes anyway, and that the ERA may provide guidance on the types of records it expects MPs to keep. Building these controls in to internal systems requires considerable lead time. In order to make these internal decisions, the detail of what is required for compliance by all MPs is required from the ERA as soon as possible.

3.5. Energy and FCESS Price Limits

7. Do stakeholders agree with EPWA's assessment of the options for the energy price cap?

Shell Energy agrees with the recommended option of a single cost-based energy price cap and notes that it is difficult to find reason to allow an energy price cap above the highest cost generator in the system. The proposed price cap detailed in the Consultation Paper is most aligned with the guiding principles.

Conclusion

In summary, Shell Energy thanks EPWA for its work on the second round of Market Power Mitigation Strategy consultation. We note that the majority of our feedback from the first round of consultation in May 2021 has been addressed and considered in this Consultation Paper.

We look forward to further engagement when the Market Power Mitigation Strategy Information Paper is released to include the conceptual design of the components in this Consultation Paper and that allowing sufficient time for stakeholders to comment will result in more effective feedback.

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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