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Australian Competition & Consumer Commission  
Electronic submission via [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

## **RE: Draft Determination – New Energy Tech Consumer Code**

ERM Power Limited (ERM Power) welcomes the opportunity to respond to the Australian Competition & Consumer Commission (ACCC)'s draft determination on the New Energy Tech Code ('the Code').

### **About ERM Power**

ERM Power is an Australian energy business for business. ERM Power provides large businesses with end to end energy management, from electricity retailing to integrated solutions that improve energy productivity. Market-leading customer satisfaction has fuelled ERM Power's growth, and today the Company is the second largest electricity provider to commercial businesses and industrials in Australia by load<sup>1</sup>. ERM Power also operates 662 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, supporting the industry's transition to renewables.

<https://ermpower.com.au/>

### **General comments**

ERM Power believe that protecting the best interests of energy customers must be a priority for business. It is essential that consumers are fully informed when operating in the energy market, particularly when making purchasing decisions on energy products. We understand that the ACCC is seeking to ensure suppliers in the energy market adhere to good business practices through the development of the Code. The Code is seeking to apply minimum standards of conduct for suppliers when interacting with prospective or existing customers to enhance consumer protections.

It is understood that the Code as currently drafted is based on a COAG Energy Council request to develop an industry code and consumer information products for behind-the-meter (BTM) products and services. The range of proposed New Energy Tech products and services to be applied under the Code is broad.

We believe the application of the Code may be appropriate for specific BTM energy products. However, the Code is intended to apply to future signatory providers of 'new energy tech', which includes emerging energy products and services. We would like to raise some points for consideration about the scope of the Code also including emerging services.

There is a significant amount of regulatory reform currently underway in the National Electricity Market (NEM), with complex services currently in design stage being considered for implementation. We believe that applying a Code for services which have not yet been operationally tested in the market has the potential to unintentionally create customer confusion and misplaced expectations on Code signatories. While suppliers may act in good faith and make best efforts to provide clear and transparent information, the complexity of energy services may result in unexpected outcomes for customers. We believe there may be a specific risk regarding the inclusion of demand response under the Code and provide further comments below.

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<sup>1</sup> Based on ERM Power analysis of latest published information



## Demand response

The proposed Demand Response Mechanism (DRM) is currently being considered for implementation by the Australian Energy Market Commission (AEMC), with a decision on its implementation not yet made final. The proposed DRM represents an energy service that is explicitly defined as applicable under clause 2.3 of the New Energy Tech draft determination:

2.3. *Examples of New Energy Tech include:*

*d) programs aimed at stabilising the supply of energy including those that incentivise or restrict power consumption during critical peak periods*

ERM Power is a provider of demand response and has experience in assessing the economics of demand response. The DRM is a complex mechanism. We believe this complexity indicates that the Code may not be fit-for-purpose for application to emerging services.

There is an amount of consumer education required to ensure that consumers are aware of how retailers treat demand response. For example, we believe that consumers will generally expect to have load curtailed infrequently and with high certainty regarding start and finish times, which may not be an outcome of a DRM contract due to the difficulty in contracting with fast-start at call demand response. For signatories to adhere to the Code while providing demand response, customers must be fully informed and educated on all the complexities of the DRM market and range of potential outcomes. As the energy market cannot yet be fully informed of how these services will function and operate in practice and as such, cannot guarantee the range of potential outcomes for future customers, it is unclear how suppliers will ensure compliance.

The complexities of DRM indicate that the selling of energy services are distinct from the selling of BTM energy products. We caution against the inclusion of these energy services within the Code.

## Conclusion

ERM Power believe that the proposed Code may provide benefits for the interactions between supplier and consumer for specific BTM products. However, we recommend the reconsideration of the extension of this Code to apply to emerging services, particularly demand response. We believe this may create unrealistic expectations on suppliers to meet conditions of the Code, which were not originally designed for complex consumer services.

Yours sincerely

Emma White  
Policy Adviser

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