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Submitted online: <https://www.aemc.gov.au/contact-us/lodge-submission>

4 April 2024

Dear Julia,

Review into the arrangements for failed retailers' electricity and gas contracts: Draft Report

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Australian Energy Market Commission ('AEMC') *Review into the arrangement for failed retailers' electricity and gas contracts: Draft Report* ('Draft Report').

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

General Comments

The AEC appreciates the opportunity to provide feedback to the Draft Report. We are broadly supportive of the recommendations outlined in the report and acknowledge the constructive engagement the AEMC has provided throughout the consultation process.

The decisions made by the AEMC to not progress a few select options and approaches from both the Consultation and Directions Paper which were of concern to industry is strongly supported by the AEC. In particular, the AEC had reservations on the proposal around the registration of a security interest on the Personal Property Securities Register (PPSR) which would have resulted in the Australian Energy Regulator (AER) becoming a secured creditor. As we outlined in a previous submission, including the AER on the PPSR would have introduced several complexities beyond the electricity market and create a myriad of issues for retailers. Indeed, we noted that this would have affected the financing of retailers and impacted any new entrants into the market, among other issues. These concerns were likewise shared in other submissions. The AEC recommended that the AEMC consult with relevant organisations that have expertise in cost recovery from failed entities to obtain further advice for a workable alternative.

We are pleased that the AEMC has not furthered this proposal within the Draft Report.

The AEC is further aware that Victoria likewise has a RoLR scheme which is outside the scope of this review. Noting that several aspects of the two RoLR schemes interact, particularly for the physical supply of gas, we would urge that the Victorian Department of Energy, Environment and Climate (DEECA) and the Essential Services Commission of Victoria amend their respective rules and legislation to align with the changes proposed by the AEMC.

While the AEC is broadly supportive of the recommendations outlined by the AEMC we provide additional comments on some specific elements of the Draft Report in the sections below.

Draft Recommendations

Draft recommendation 7: Improve cost recovery clarity through changes to AER guidelines.

The AEC is supportive of clarification around the market costs that can be claimed through the RoLR costs recovery process as outlined in the Draft Report. There needs to be confidence among participants that RoLR costs that may be incurred are reimbursed in a timely manner.

The AEC considers a broad definition of costs that could be reimbursed is necessary, with discretion for the AER to grant any additional costs that have not been prescribed. We consider that RoLRs need sufficient flexibility to manage RoLR load and the costs of doing so will be recovered. These definitions need to include spot electricity costs, wholesale contract costs and prudential costs while also allowing flexibility to consider new RoLR related costs in an evolving market. A provision to recover bad and doubtful debts should also be included.

The AEC maintains its support and preference for a nine-month period for market costs to be recovered by the designated RoLR. While the draft recommendation proposes to leave specifying the length of this period up to the AER for consistency, the AEMC could consider the 9-month period as a floor. Indeed, there should be consideration for allowing claims to be made beyond this timeframe. This may occur, for instance, when a RoLR event operates during a RRO event, where customers may be "stranded" as there may not be retail offers available due to lack of interest or market liquidity.

Draft recommendation 8: Expand the AER's RoLR information-gathering powers to include third parties to enable designated RoLRs to get the necessary information to service transferred customers.

The AEC is supportive of the intent behind this recommendation and considers that a minimum threshold of critical information should be streamlined and received by both the RoLR and the AER. The AEMC could consider, for instance:

- Size and shape of the retailers load at the finest level of disaggregation available for at least 12 months prior.
- Retail prices currently paid by households and large loads.
- Other information e.g. life support customers.

The AEC cautions, however, that any further gathering of information to be received by the designated RoLR and the AER should be considered alongside competition concerns.

Draft recommendation 9: Introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure.

The AEC supports the intent behind this recommendation as outlined in the Draft Report. Allowing the AER to bill a failed retailer for the costs associated with its failure would further disincentivize a strategic market exit, thereby helping maintain the integrity of the industry. However, the AEC emphasises that this process must allow for the efficient and timely recovery of costs for designated retailers in situations when a retailer failure occurs.

Declaration of a gas market administered pricing period following a RoLR event.

In our previous submission, the AEC raised the issue that administered pricing provisions for gas RoLR events had yet to be considered and there was an opportunity for this to be considered as part of the review. We outlined that applying administered pricing due to a RoLR event leads to inefficient market outcomes which could in turn result in the cumulative price threshold (CPT) being exceeded.

The AEC acknowledges that the Commission considers this issue beyond the remit of the review and will further consider the recommendation for a rule change process.

Any questions about this submission should be addressed by email to jo.desilva@energycouncil.com.au or by telephone on 03 9205 3100.

Yours sincerely,

Jo De Silva

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