



Australian Energy Market Commission  
GPO Box 2603  
Sydney NSW 2000

Submitted on-line

## **Review Into the Arrangements for Failed Retailers' Electricity and Gas Contracts**

Alinta Energy welcomes the opportunity to comment on the "Review into the Arrangements for Failed Retailers' Electricity and Gas Contracts" consultation paper.

As an active investor in energy markets across Australia with an owned and contracted generation portfolio of more than 3,000MW and over 1 million electricity and gas customers, Alinta Energy has a strong interest in the policies and regulation governing the retail energy market and is well placed to provide comment on the consultation being undertaken.

We understand the premise for the AEMC's review is the increased retailer failure during the recent unprecedented wholesale market volatility, and the subsequent need for the Retailer of Last Resort (RoLR) scheme protections to be enacted. At the outset it should be understood that the RoLR scheme protections provided directly to consumers are not at issue here; consumers of failed retailers have received all appropriate protections, including that of ongoing energy supply during recent RoLR events, demonstrating that the current RoLR scheme is well-functioning and ensures continued energy supply to consumers during a RoLR event.

The issue under consideration is the cost implications for the designated retailer in providing RoLR services to the customers of a failed retailer, and whether there are adequate provisions to allow for the recovery of the reasonable costs for providing these services, given the potential risk to the RoLR in taking on the additional consumers at short notice.

However, consideration of this issue should not be done to the potential commercial detriment of the failed retailer's counterparties, who should not be adversely impacted by the actions of the failed retailer. This would be the case under Options 2, 3a and 3b, which would require commercial-in-confidence contract disclosure to, and possible heavily prescribed contracting obligations with, another participant. These options are opposed by Alinta Energy. There is no evidence of market failure in this regard, with the market having adequately solved for all previous ROLR events.

The AEMC also raises the issue of retailer behaviour during this volatile period, in particular behaviour where retailers increased their pricing whilst also encouraging their customers to seek alternate supply arrangements, and whether this behaviour

harm consumers or the market. In considering this behaviour and whether regulatory changes are required, the AEMC must be mindful as to not introduce constraints on how market participants manage their commercial exposure.

Tools must be available to market participants to manage commercial risk; variation in pricing arrangements is one of those tools, and one which already has extremely prescriptive controls from a regulatory perspective, as well as competitive market pressures. In considering retailer behaviour in volatile markets, the AEMC needs to ensure that any reform being considered does not impose constraints on a retailers' ability to exit the market in an orderly manner.

Conversely, the AEMC should consider whether the prudential requirements upon entities seeking a retailer authorisation are adequate. Barriers to enter the retail market are clearly very low, given the continued entry of new participants (even during periods of high market volatility) and there may be a case for tightening entry requirements. We also note the recent investigation by the AER into retail financial viability, and query whether such interrogation may appropriately be conducted prior to the initial issuing of a retailer authorisation.

With respect to market exit, the AEMC should also consider whether a "good faith" test should be applied to the retailer authorisation process for those seeking to re-enter the market. Such an approach may have more impact on the behaviour of those seeking to exit the market than other regulatory options.

Our detailed comments on the proposed options are set out in the following, submission. Should you have any questions or wish to discuss any aspect of our submission I may be contacted on (02) 9372 2653 or via email: [shaun.ruddy@alintaenergy.com.au](mailto:shaun.ruddy@alintaenergy.com.au)

Yours sincerely



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## **Review into the Arrangements for Failed Retailer's Electricity and Gas Contracts**

### **Cost Recovery**

#### **Option 1**

The consultation paper suggests that an amendment to the existing scheme should be made such that it clarifies that the RoLR cost recovery available to the designated RoLR includes wholesale and hedging costs.

Alinta supports the position that a designated RoLR should be able to recover all reasonable costs incurred in providing services to customers of a failed retailer. Our understanding is that the RoLR scheme provisions/rules already allow for this.

However, if there is a perceived need to further clarify that cost recovery is available to the designated RoLR for the recovery of wholesale and hedging costs, we would support such a clarifying amendment.

#### **Option 2**

Alinta Energy does not support Option 2, matchmaking service, on the grounds that it would result in the commercial-in-confidence contracts of the failed retailer's counterparties being disclosed to the designated RoLR. Counterparties should not be commercially impacted in this manner because of another entity's failure.

Option 2 also assumes, potentially erroneously, that contracts held by the failed/failing retailer are not the reason for the RoLR event being triggered, and that the AER would be able to expeditiously obtain details of the failed/failing retailers wholesale contracts. This option also has challenges from a commercial and legal perspective (particularly confidentiality of commercially sensitive information) that would need to be overcome.

Alinta Energy agrees that the dedicated RoLR should have access to information from the failed retailer that will assist them in performing their RoLR functions, however this information should not be provided at the risk of causing adverse impacts for other participants and should be restricted to the contact details of those counterparties who have contracts in place with the failed retailer.

#### **Option 3a & 3b**

Alinta Energy also opposes Options 3a and 3b, applying a direction framework, on many of those grounds as discussed above under Option 2. Indeed, the potential commercial detriment to counterparties under Options 3a and 3b are significantly

worse, imposing highly prescriptive contracting obligations, again due solely to another entity's failure.

Furthermore, it remains unclear what legislative provisions could be relied on to give affect to the obligations compelling independent commercially competitive parties to negotiate, and to further prescribe the terms for such negotiations. It is also unclear how such obligations would be enforced and monitored.

It is entirely possible that the counterparty that holds the contracts for the failed retailer may view the dedicated RoLR, particularly in the prevailing market conditions, as having a higher risk profile than the failed retailer.

Novation of contracts becomes further problematic when insolvency practitioners have been appointed, given their obligation to maximise returns to creditors, whilst clearing any debt owed by the failing entity. It could be assumed that the greatest asset to be used in achieving the best outcome for creditors is the remaining wholesale hedge contracts. That being the case there would be significant reluctance to relinquish ownership control of any hedge contracts when seeking to obtain the highest return on assets in order to clear outstanding debts.

#### **Option 4**

Option 4, using the failed retailer's contracts to minimise cost recovery, also relies on the premise that the failed retailers' contracts are not the cause (complete or partial) for the RoLR event being triggered. The option relies on the failed retailers' contracts having value that can be realised.

Under Option 4 where a failing retailers' contracts have value, it potentially incentivises the failing retailer to sell or transfer the contracts ahead of the RoLR event being triggered. Such an activity would be deemed reasonable where the failing retailer is seeking to maximise its financial liquidity in order to have the ability to settle outstanding debts to the maximum amount possible as part of an attempt to exit the market in an orderly manner. As previously stated, RoLR scheme provisions (obligations) should not create barriers to orderly market exit.

Whilst Option 4 has the potential to provide an element of risk management where the remaining value of any contracts, after the dispersion of funds to cover creditors, is made available to the dedicated RoLR to assist in covering any additional wholesale costs, it would need to work in conjunction with existing cost recovery mechanisms.

#### **Retailer Behaviour During Volatile Market Conditions**

As part of this review the AEMC is considering the potential impacts from retailer behaviour that was observed during recent market volatility. In considering this behaviour, and the potential for further regulatory oversight, the AEMC must be

mindful as to not introduce any barriers that would prevent a retailer seeking to exit the market in an orderly manner. In addition, reform must not limit a retailer's ability to manage their risk of operation in the market. There is a concern that attempting to create obligations and regulate what occurs with the retailer's hedge contracts when a RoLR event is triggered, will not have the desired effect.

Where a retailer is compelled to relinquish control of their hedge contracts in the event of a RoLR event being triggered, it will incentivise the failing retailer to liquidate their contracts prior to the RoLR event being triggered.

In addition, it has the potential to encourage a level of disengagement between the failing retailer and the market operator. Given this issue the AEMC needs to be cautious in considering the introduction of any regulatory oversight governing the commercial risk mitigation activities of retailers.