22 June 2023

Australian Energy Market Commission
Level 15, 60 Castlereagh St
Sydney NSW 2000

Submitted online via: www.aemc.gov.au

Reference RPR0016

Dear Sir/Madam

Australian Energy Market Commission (AEMC) Review into the Arrangements for Failed Retailers' Electricity and Gas Contracts (Directions Paper)

Thank-you for the opportunity to provide a submission in response to the AEMC's Directions Paper.

Momentum Energy Pty Ltd (Momentum) is an Australian operated energy retailer, owned by Hydro Tasmania, Australia's largest producer of renewable energy. We pride ourselves on providing competitive pricing, innovation and outstanding customer service to electricity consumers in Victoria, New South Wales, South Australia, Queensland, the ACT and on the Bass Strait Islands. We also retail natural gas to Victorian customers. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services.

1. Overview of AEMC Proposals

This response reflects the views of both Momentum and Hydro Tasmania.

Momentum appreciates the detailed consultation that the AEMC has undertaken both prior to and following the release of the Directions Paper. We fully support their decision to **not** proceed with an electricity directions framework which was intended to reduce the risks and costs of retailer of last resort (RoLR) events. The AEMC has correctly identified that this would cause an unacceptable intrusion into the financial market that trades electricity derivatives. This could cause reduced liquidity of these risk management instruments, which would also not be in the best interests of the market.

We are also supportive of the decision to **not** proceed with a matchmaking service to reduce search costs for acquiring new contracts. We agree with the AEMC that this option may expose different price points between suppliers and retailers which may have a negative effect on ongoing commercial relationships and reduce competition. Moreover, this option would not be able to be used where the failed retailer is still solvent which nullifies a key objective of the AEMC.

1.1. Improvements to the RoLR cost recovery scheme

We acknowledge that the designated retailer, under a RoLR event, is unlikely to recover the full costs of supply for small customers transferred under the Default Market Offer price. In most cases the RoLR event occurs during a volatile or rising wholesale electricity market and the Default Market Offer price will be priced below the cost of supply. We fully support the proposal to provide greater clarity of RoLR costs that can be claimed by the designated RoLR under the Australian Energy Regulator (AER) Guideline. Many of these increased costs occur immediately as customers are transferred. We support both an immediate estimated cost assessment and supplementary claims by the designated retailer, up to nine months post, the RoLR event. This should provide the financiers of the designated RoLR more confidence to provide any additional credit that may be required in both the short and medium terms.

1.2. Introducing a mechanism to bill the failed retailer for the costs of its failure

The AEMC has proposed that the failed retailer should be billed for the costs of its failure. This would reduce the costs paid to customers through the RoLR cost recovery scheme (RoLR costs are determined by the AER and recovered by increased network costs across the relevant network area). This is a reasonable approach, supported by Momentum, and goes some way to minimising the unlikely risk of rogue retailers calling RoLR events in rising wholesale markets, with the sole intention of profiteering from their wholesale contract positions. However, it does not prohibit a retailer from selling off their wholesale position prior to calling up a RoLR event to exit the small customer market. Nor does it assist the recovery of RoLR costs when the failed retailer is insolvent which is most likely to be the case.

Our concern with this option is that the AEMC has proposed that all retailers register the AER as a secured creditor within the existing insolvency framework. This is to give the AER a better chance of recovering funds from an insolvent retailer. All retailers would be required to provide an “all assets security interest” of their assets in favour of the AER. This would be registered on the Personal Property Securities Register (PPSR) listing. Momentum is firmly of the view that this is an inequitable obligation and particularly unfair to existing retailers.

It is inequitable as some retailers may already have other registered parties on the PPSR listing and preference for the allocation of a retailers’ assets is given in order of priority according to when they were listed on the PPSR register. Therefore, some retailers may not have any other party listed on the PPSR as a secured creditor and the AER would receive first preference for any claims made to recover RoLR costs should the retailer become insolvent. Other retailers may have many secured creditors listed on the PPSR and the AER would be at the bottom of the PPSR list and unlikely to recover any funds from the failed retailers’ assets.

Moreover, this new obligation is unfair to existing retailers compared to new retailers as existing retailers may have structured their retail licence financing without any secured listings on the PPSR. Therefore, a subsequent listing may affect their existing and or subsequent credit financing. It could also contradict retail licence guarantees and promises provided by retailers’ boards to regulators and financiers.

The proposal to mandate all retailers to register the AER as a secured creditor is a significant imposition onto all retailers. We believe that the market benefit received by this imposition in the form of perhaps some compensation from a failed insolvent retailer is much less than the burden that it causes and therefore it is not supported by Momentum.

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2. Suggested changes for gas retailer failures

We acknowledge the gas retailer failure framework is somewhat more complex than electricity as physical supply contracts for the gas and transportation are required to supply the failed retailers' customers. The AEMC has proposed some amendments to the current process as follows:

- amending the trigger that enables the AER to issue a direction so that financial risks to the RoLR can also be considered (in addition to ensuring physical supply);
- increasing the time a direction applies from three months to better reflect the period where the designated RoLR needs the failed retailer's supply contracts;
- whether the mandatory negotiation process should be modified or could be removed expanding the directions framework to include storage contracts;
- clarifying the circumstances in which a direction applies for contracts that begin or end in the direction period; and
- clarifying how the costs and benefits of a RoLR event are shared with customers examining the information that is needed for the AER and designated RoLRs to manage the RoLR event in a timely manner.

The market has recently experienced a gas RoLR event when Weston Energy failed in June 2022. Most of these proposed changes reflect suggested improvements by the parties that were closely involved with managing this gas RoLR event. Momentum is generally supportive of the proposed changes and will leave any detailed comments to the parties affected by this event.

3. Summary

The AEMC has had several attempts, over many years, at amending the rules covering RoLR events and the process is generally improving as we understand the issues and market conditions that exist during and after RoLR events. Momentum urges the AEMC to not impose additional inappropriate and disproportionate new obligations, onto all retailers, in their attempt to achieve a perfect RoLR solution. Some of the emerging behaviors by a minority of market participants should not result in new onerous obligations for existing market participants.

Should you require any further information regarding this submission, please don't hesitate to contact me on 0478 401 097 or email randall.brown@momentum.com.au

Yours sincerely

[Signed]
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