

9 July 2013

Mr John Pierce
Chair
Australian Energy Market Commission
PO Box A2449
SOUTH SYDNEY NSW 1235



Your Ref: EMO0024

Dear Mr Pierce

NEM financial market resilience: first interim report

The Public Interest Advocacy Centre (PIAC) thanks the Australian Energy Market Commission (AEMC) for the opportunity to provide feedback on its first interim report on NEM financial market resilience.

This letter responds to the consideration of a special administration regime to replace the Retailer of Last Resort (RoLR) Scheme where the financial distress of a large retailer could produce financial risks across the National Energy Market (NEM). Specifically, PIAC requests that the AEMC work with the Australian Energy Regulator (AER) to ensure that the retailer authorisation is revoked where the failure of an energy retailer is dealt with by a special administration regime—rather than a RoLR process.

The interim report outlines a series of steps that may be triggered if a special administration regime is introduced.¹ Under this regime, the special administrator will sell off the retailer's customer base or customer contracts.

PIAC understands that the regime is in an early stage of development. Therefore, PIAC asks that the AEMC work closely with the Australian Energy Regulator (AER) to investigate whether a revocation of retail authorisation would be triggered if a retailer entered special administration. Specifically, PIAC seeks clarity about whether a failed retailer will retain its authorisation, even when its customers have been transferred to another retailer under the special administration regime.

During the development of the *Retailer authorisation guideline*, PIAC outlined its concern that section 142(1) of the Retail Law gave the AER a level of discretion over whether to revoke the authorisation of a retailer following a ROLR event. The AER did not agree that PIAC's concerns were well founded. It stated:

The AER considers that the Retail Law requires the AER to revoke a retailer authorisation following a RoLR event.²

¹ Australian Energy Market Commission, *NEM Financial market resilience: First interim report*, 2013, 34.

² Australian Energy Regulator, *Retailer authorisation guideline: Notice of draft instrument*, 2011, 14.

It is PIAC's view that any regime aimed at dealing with a RoLR event through different methods should also trigger a revocation. PIAC acknowledges that the *Retailer authorisation guideline* states that the AER 'may' revoke an authorisation where:

a retailer has materially failed to meet its obligations under the Retail Law and Retail Rules or other applicable energy legislation; and we have a reasonable apprehension that it will not be able to meet its obligations in the future.³

PIAC understands that a retail failure being dealt with under special administration is likely to trigger a revocation. However, PIAC recommends that any new framework must ensure that a retail authorisation can not remain as an asset of a failed retailer. PIAC aims to remove any opportunity for a new market entrant to acquire retailer authorisation by purchasing the remains of a retailer that had entered special administration.

As providers of essential services, energy retailers hold a position of trust in the community. Under the Retail Law, applications and transfers are assessed against the following three criteria:

- (a) the organisational and technical capacity criterion—the applicant must have the necessary organisational and technical capacity to meet the obligations of a retailer;
- (b) the financial resources criterion—the applicant must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer;
- (c) the suitability criterion—the applicant must be a suitable person to hold a retailer authorisation.⁴

It is important that all new entrants are assessed against these criteria before gaining authorisation and any opportunities to access a retail authorisation without undergoing this assessment are minimised.

If you would like to discuss any matters related to this issue further, please contact myself or Carolyn Hodge, Senior Policy Officer in the Energy + Water Consumers' Advocacy Program, on 8898 6520 or chodge@piac.asn.au.

Yours sincerely



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³ AER, *Retailer authorisation guideline*, 2011, 21.

⁴ National Energy Retail Law Bill 2010 (South Australia) s 90(a)(b)(c).