

17 December 2012

Australian Energy Market Commission  
PO Box A2449  
Sydney South  
NSW 1235

Project Number: EMO0024

Thank you for the opportunity to comment on *Options Paper: NEM financial market resilience*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

EWON believes that consideration of the implications of a major retailer failure (while unlikely) is a very important undertaking. Proper preparation and agreement on approach is essential if a stable market is to be maintained and if the costs to small consumers are to be minimized.

### **The impact on Energy Ombudsman Schemes**

The options paper correctly identifies that there are possible flow-on effects for generators, networks, other retailers and of course customers if a large electricity retailer fails. There is another potential consequence of such a failure, and that is the potential workload and financial impact on the various energy ombudsman schemes around Australia. The majority of the energy dispute resolution schemes are independent, industry funded, not for profit services. Members of the schemes (the energy and water companies) pay for the activities of the scheme.

By way of example, within recent years the collapse of Jackgreen, a relatively small retailer, had a serious financial impact on EWON. There were not insubstantial unpaid fees for our handling of complaints by Jackgreen customers. This debt was compounded by ongoing work generated by customers of the failed retailer who continued to complain to EWON or to approach EWON for advice and information. Several years later EWON is still dealing with some Jackgreen matters, primarily related to credit default listings. The costs for unpaid Jackgreen casework fees had to be carried by the rest of the EWON members.

EWON believes that a sudden failure of a major retailer could place energy ombudsman schemes at significant financial and operational risk. If this occurred there would be an impact on all the retailers and distributors in their jurisdiction, with possible implications for the legal requirements for membership. (Please see Attachment 1 which details the ombudsman membership requirements).

While EWON has no immediate answer to this problem, we urge the AEMC to consider the role of the energy ombudsman schemes alongside the other aspects of the NEM that are being considered. Ombudsman schemes would be pleased to discuss this further with the AEMC.

If you would like to discuss this matter further, please contact me or Emma Keene, Manager Policy, on 02 8218 5250.

Yours sincerely



Clare Petre  
Energy & Water Ombudsman NSW

## *Attachment 1*

### **New National Energy Law Requirements for ombudsman membership**

Under the proposed National Energy Customer Framework which has been adopted by the NSW Parliament in June 2012 (to be implemented in 2013) the following jurisdictional requirements for ombudsman membership exist:

(Note This Act applies to both Electricity and Gas)

[National Energy Retail Law \(Adoption\) Bill 2012](#)

#### **86 Retailers and distributors to be members of scheme**

*(1) A retailer must—*

- (a) be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it sells energy to small customers or engages in an energy marketing activity; and*
- (b) comply with the requirements of that scheme.*

*(2) A distributor must—*

- (a) be a member of, or subject to, an energy ombudsman scheme for each jurisdiction where it has small customers connected to its distribution system; and*
- (b) comply with the requirements of that scheme.*

*(3) A retailer must not, in this jurisdiction, engage in the activity of selling energy unless the retailer meets the requirements of subsection (1) in relation to this jurisdiction.*

*(4) A distributor must not, in this jurisdiction, engage in the activity of providing customer connection services unless the distributor meets the requirements of subsection (2) in relation to this jurisdiction.*

*(5) In this section— **energy ombudsman scheme** means a scheme under which an energy ombudsman operates.*

#### **National Energy Customer Framework**

The associated Regulations in the National Energy Customer Framework specify the following:

##### *Regulation 5*

*For the purposes of the definition of **recognised energy industry ombudsman** in the Law, each of the following bodies or persons is prescribed as a recognised energy industry ombudsman—*

- *for the State of New South Wales—Energy and Water Ombudsman (NSW) Limited ACN 079 718 915;*
- *for the State of Victoria—Energy and Water Ombudsman (Victoria) Limited ACN 070 516 175;*
- *for the State of Queensland—Energy Ombudsman Queensland established under Part 2 of the Energy Ombudsman Act 2006 of Queensland;*
- *for the State of South Australia—Energy Industry Ombudsman (SA) Limited ACN 089 791 604;*
- *for the Australian Capital Territory—Energy and Water Consumer Council ACT established under Parts 11 and 12 of the Utilities Act 2000 of the Australian Capital Territory;*
- *if a body or person referred to in paragraphs (a) to (e) is dissolved or otherwise abolished and another body or person is established with functions and powers that correspond to the functions and powers of the body or person referred to in paragraphs (a) to (e)—that other body or person;*
- *if the functions and powers of a body or person referred to in paragraphs (a) to (e) are transferred to another body or person—that other body or person.*