

20 July 2012

Australian Energy Markets Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Commissioners

### **NEM Financial Market Resilience (EMO0024)**

Thank you for the opportunity to comment on the Australian Energy Market Commission's (AEMC) Issues Paper concerning NEM Financial Market Resilience.

Simply Energy is one of the largest second tier retailers operating in Victoria, South Australia, New South Wales and Queensland. For the purposes of responding to the Issues Paper, we have assumed that the National Energy Consumer Framework (NECF) is operational in all NEM jurisdictions and thus the Retailer of Last Resort (ROLR) arrangements provided for under the NECF are operational.

#### ***Summary of key points***

The key points we make in response to the Issues Paper are as follows:

- Any policy or regulatory response needs to be commensurate with the fact that the failure of a large retailer such as a Tier 1 is a very low probability event with very little likelihood of it ever occurring.
- Any proposed amendments to the Retailer of Last Resort (ROLR) arrangements must give careful consideration to how it will impact on second-tier retailers otherwise the problem of contagion will not be resolved.
- The failure of a large retailer may not require regulatory intervention and amending the ROLR arrangements may detract from market-based solutions because it can increase regulatory uncertainty and undermine investor confidence in purchasing the failing assets.

#### ***Discussion***

The failure of a large retailer such as a Tier 1 is a very low probability event and there is very little likelihood of it ever occurring. The policy or regulatory response that is proposed needs to be commensurate with the very low risk of the event occurring and over-regulation in an attempt to prevent an event that may never occur should be avoided.

As the AEMC is aware, the failure of a retailer would precipitate the Australian Energy Regulator (AER) to initiate the ROLR arrangements. Under these arrangements, the AER would first seek offers from retailers to take on the customer base of the failed retailer. Where this process is unsuccessful, the AER may then appoint the default ROLR and/or any retailer that has provided the AER with a 'firm offer' as the ROLR. The National Energy Consumer Law only allows the appointment of one default ROLR per jurisdiction and in most jurisdictions, the default ROLR is either Origin Energy or AGL.

Any proposed amendments to the Retailer of Last Resort (ROLR) arrangements must give careful consideration to how it will impact on second-tier retailers otherwise the problem of contagion will not be resolved. Any

proposed amendments must be tested thoroughly with all stakeholders to ensure that they do not cause financial stress for other market participants.

It is important to note that the failure of a large retailer may not require any regulatory intervention. Large retailers such as the first tiers typically possess assets that would make them an attractive target for other energy companies wishing to expand their operations in Australia. It would require an extraordinary set of circumstances to render those assets worthless. Thus, in all probability, the difficulties created by the failure of a large retailer could be resolved through a trade sale of the business to another energy company.

What is important is that regulatory interventions do not hinder market-based solutions to a large retailer failure. Providing additional discretion to policy makers or regulators can create uncertainty for those contemplating purchasing a failing business because the potential purchaser may not have confidence on the final make-up of the assets they are purchasing. The UK's energy regulator, Ofgem, has noted the uncertainty that regulatory intervention can create:

Ofgem considers that trade sales are generally more desirable than regulatory intervention. However, the current regulatory regime gives Ofgem some discretion as to when it revokes a licence, and how it selects and appoints a Supplier of Last Resort. Among other things, this can make it difficult for those contemplating purchasing a failing business to commit finance because they may not be sure whether or not the regulator is likely to revoke the supplier's licence.<sup>1</sup>

### *Conclusion*

Simply Energy looks forward to participating further in this review. If you wish to discuss this submission with me, please call me on (03) 8807 1132.

Yours sincerely

Dianne Shields  
Senior Regulatory Manager

---

<sup>1</sup> Ofgem 2008 Supplier of Last Resort: Revised Guidance, December, p. 1