energy networks association

12 July 2013

Mr John Pierce
Chairman
Australian Energy Market Commission
Level 5, 201 Elizabeth St
Sydney NSW 2000

via website: submissions@aemc.gov.au

Dear Mr Pierce

EMO0024 – AEMC Market Review - NEM financial market resilience – response to First Interim Report

Thank you for the opportunity to make a submission in response to EMO0024 – AEMC Market Review – NEM financial market resilience – First Interim Report released on 4 June 2013.

The AEMC's draft recommendations which include firstly, changes to the ROLR scheme and secondly, development of a special administration regime are supported by the ENA at a general level.

Network businesses operations depend on having a high level of confidence in the financial credit arrangements that support the physical delivery of electricity to customers. The critical nature of these relationships was outlined in our initial submission to the AEMC Options Paper for this Market Review in December 2012. In the further work in this review it is essential that full consideration of implications on network business operations is taken into account in the retailer failure risk mitigation approaches to be developed.

We do however have a number of concerns with the draft recommendations and comments on these follow below.

Changes to the ROLR scheme and credit support arrangements

Timely cost recovery for designated ROLR

The ENA supports greater certainty and timely recovery of costs for the designated ROLR. The ENA note that a large retailer failure will more likely result in a cost recovery arrangement via the distributors in order to smear the ROLR event costs. The proposal is that the revised arrangements would specify the timeframes for the AER to determine a compensation claim and for any payment of any approved compensation through one of the existing payment mechanisms.

Where there is a large retailer failure, the distributors would already be carrying a significant level of unpaid network use of system costs (DUOS and TUOS), metering services costs, solar scheme recovery etc. As noted in our previous submission, this includes up to four weeks of unpaid invoices related to the current billing period and any default on past invoices. The outstanding cashflows could present serious challenges to the distribution business if not properly addressed. The ENA is concerned that any timely compensation payments to assist the designated ROLR should also be accompanied by timely distributor cost recovery or be linked to mechanisms to support timely recovery of costs from customers.

In this context the IPART rule change proposal currently under consideration by the AEMC to bring forward the annual distribution pricing proposal has the potential to delay the ability for the distributor to pass through any unpaid distribution charges and also delay the recovery of the ROLR cost recovery scheme for a further 12 month period.

Delayed designation of ROLRs

The ENA is willing to support providing the AER an additional 24 hours following a ROLR event in which to advise AEMO of the designated ROLRs. However, in further development of the regime the ENA would also like the following process issues to be clarified:

- Provision of daily data by network businesses to a failed retailer will remain acceptable in the transition period as they are still the current Financially Responsible Market Participant (FRMP) at that time;
- Any changes to role arrangements which would be expected to be required eg metering service providers during this delay;
- Operation of Load Control (LC), Supply Capacity Control (SCC) and the wholesale demand mechanism by the failed retailer during the delay; and
- The extent to which the failed retailer should have the rights to disconnect customers and change tariffs etc as the current FRMP. It may be more appropriate if only service requests were processed during the period in question.

Given that smart meters deliver more timely services, there needs to be some care taken or assessment of the way in which these services are delivered during this period.

Allowing the Commonwealth Government to offer credit support

The ENA is supportive of an approach where the Commonwealth Government could offer credit support to AEMO over an interim period. It is important to ensure ongoing confidence and continued operation of all participants in the electricity market.

Operational refinements to the ROLR arrangements

The ENA is supportive of the scope for further improvements in the ROLR processes that would improve the timeliness of establishing the new customer contracting arrangements. The ENA is also supportive of the AER or AEMO making large customers aware that they have the opportunity to opt out to an alternate retailer should their current FRMP fail.

The ENA are supportive of frameworks which may allow a generator to continue operating for a limited period while in administration, as a practical way of ensuring continuity of supply. The ENA is not aware of any circumstances in which the current NER prohibition on trading while in external administration should not apply. The ENA does however note that there are a number of reforms being progressed simultaneously and there may need to be consideration of the application of the wholesale demand mechanisms to ensure that there are no adverse effects.

Special Administration Scheme

Any funding scheme developed for the NEM must take into account the cash flow implications for distribution businesses and it is critical that the arrangements must be explicit about a clear and robust pass-through mechanism for all DUOS and TUOS costs.

The ENA supports the option of a Special Administration Regime in the circumstances that the AER and the Minister consider that reference to the ROLR scheme would be inadequate to manage contagion risk.

The ENA also recognises the objective the AEMC has set in the level of detail it has provided for the scheme, that is, to enable stakeholders to form a view on the potential merits of such a regime, rather than in providing a detailed and definitive description of how such a scheme should be designed and implemented. Nevertheless the AEMC's discussion on principles for the regime does raise several matters of particular interest to DNSPs which the ENA believes will require treatment in further development of the regime to ensure stable energy supply services in the event that the scheme is activated.

These are discussed below.

Cost recovery of the Special Administrator scheme

The ENA notes that the government in the first instance would fund an administrator. From the AEMC description we understand that once an administrator is appointed any distributor's court proceedings against a retailer for not paying distribution charges would be halted and any call on network credit support would also be stopped.

The report states that because the administrator takes over the retailers' contractual obligations and the government has provided funding to allow it to continue to meet those obligations, the appointment of the administrator should not in itself increase counterparties' risks and should not entitle them to terminate contracts.

ENA would seek assurance that the intended process would provide a mechanism which ensures where the failed retailers' retail contracts are sold or auctioned, current liabilities to distributors and metering providers would be addressed via a mechanism which would ensure that the distributors' operations are not placed under financial stress which could impact on their operations.

Where the failed retailer's retail contracts are sold or auctioned, the ENA queries whether the sale will also sell the current liabilities to distributors and metering providers or whether these will be collected via a retailer insolvency event.

Special administrator scheme levy

The AEMC proposes a levy on retailers, distributors or consumers as a cost recovery mechanism for any shortfall in government funding provided for the administration of the failed retailer. The report suggests that the spot price could be high at the time of a large retailer failing and that there will be no attempt to administer the market whilst the administrative arrangements are put in place. It should be noted that this may only serve to increase the wholesale cost, paid by government and funded by all customers. The regime must retain sufficient flexibility to ensure that, where appropriate, the market could be allowed to continue to operate, while noting there may be a case to contain costs and stabilise the market.

The ENA suggests to the AEMC that the regime should make every effort to contain the costs of the event which ultimately will be born by customers. The risk of costs being borne by other participants should also be minimised. It has not yet been made clear for example whether a levy imposed on distributors which is intended to recover from consumers the costs of the special administration scheme would ultimately result in the potential for direct or indirect costs which cannot be passed through and are instead borne by distributors. This would not be a rational outcome and the ENA seeks assurance that the development of the regime would occur in a manner which ensures that, where a distributor is administering such a cost recovery mechanism, it will remain financially neutral and its costs will be met.

Levy Allocation

The ENA suggests that the levy could be allocated in a similar manner to the considerations that the AER would have in the allocation for any ROLR cost recovery scheme.

The ENA welcomes the opportunity to participate in the development of these recommendations and further considerations of these matters and look forward to the release of your Second Interim Report focussing on financial contagion other than the financial distress of a large retailer and ROLR event later in 2013

If you have any questions please contact Jim Bain on 02 6272 1516.

Yours sincerely

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