

22 June 2023

Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2001

[Note: Confidential information has been removed from this submission]

Dear Anna Collyer,

Re: Review into the arrangements for failed retailers' electricity and gas contracts – directions paper

Simply Energy welcomes the opportunity to provide feedback on the Australian Energy Market Commission's (the Commission) directions paper for the review into arrangements for failed retailers' electricity and gas contracts.

Simply Energy is a leading energy retailer across Victoria, New South Wales, South Australia, Queensland and Western Australia. Simply Energy is owned by the ENGIE Group, one of the largest independent power producers in the world and a global leader in the transition to a zero-carbon economy. As a leading retailer focused on continual growth and development, Simply Energy supports the development of effective regulation to facilitate competition and positive consumer outcomes in the market.

As noted in our submission to the consultation paper, Simply Energy supports amendments to the Retailer of Last Resort (RoLR) scheme that would enable the costs of being a designated RoLR being recovered quickly and in full. While we are supportive of the Commission's move away from options that involved the transfer of electricity contracts (or information on contractual arrangements) between retailers, we do have concerns with the proposed mechanism to bill a failed retailer for the costs of its failure.

This submission is focused on the proposals related to reducing the costs of electricity retailer failures for customers and remaining retailers.

We support improvements to the electricity RoLR cost recovery scheme

Simply Energy is not currently a designated RoLR and does not have practical experience in the application of the scheme. However, we are supportive of the Commission's proposals in relation to the costs that are claimable as prudent market costs and clarity on the period in which costs can be claimed. We would also support additional information on the process for assessing the prudence of claimable costs and whether this will sufficiently provide certainty to designated RoLRs that they will be able to recover the costs that are incurred.

In relation to the proposals for progressive or estimated payments being made to reduce cash flow issues for a designated RoLR, these options appear to have merit and we would support these being further developed for the next stage of consultation.

There are significant issues with the proposed mechanism to bill the failed electricity retailer for the costs of its failure

Simply Energy understands the intention behind the proposal to introduce a mechanism to bill the failed electricity retailer for the costs of its failure and consider there is scope to further deter participants from using the RoLR scheme to exit the market when still solvent. While this type of mechanism may partially reduce the costs of a RoLR event in some instances, we are concerned that the Commission's preferred implementation would impose significant costs and risks on energy retailers. Specifically, Simply Energy is very concerned about the potential for the AER to be made a secured creditor within existing insolvency frameworks for all retailers.

In our view, this approach would have substantial impacts on retailers' abilities to raise loans or equity. We expect that this change would be unpalatable to many lenders and significantly reduce the number of lenders that would make finance available to retailers. As these lenders would have subordinate security to the AER, we also expect that any financing would be more expensive. Alternative sources of funding, such as from equity shareholders, will also be expensive and difficult to source.

[Note – Confidential information has been removed]

Simply Energy would not support the introduction of a minimum threshold, where new and smaller retailers would not be required to register a security interest for the AER. A minimum threshold would undermine the usefulness of this proposal, as new and smaller retailers have been shown to be at most risk of failing and leading to the issues where the security interest could be of some benefit. A minimum threshold would result in this mechanism targeting those retailers that have operated in the retail energy market without impact on the RoLR scheme for many years.

For larger retailers, including Simply Energy, the number of customer accounts that would need to be transferred through the RoLR process is so substantial that it is unlikely that the RoLR scheme would be the most effective way to manage the failure. This further reduces the scenarios where the AER's security interest could have beneficial applications. We expect that if a larger retailer failure were to occur that it would need to be managed through a special administration scheme similar to that available to Ofgem in the United Kingdom.¹

Concluding remarks

Simply Energy welcomes further discussion in relation to this submission. To arrange a discussion or if you have any questions please contact Matthew Giampiccolo, Senior Regulatory Adviser, at matthew.giampiccolo@simplyenergy.com.au.

Yours sincerely



James Barton
General Manager, Regulation
Simply Energy

¹ Ofgem 2017, Memorandum of Understanding: Energy Supply Company Administration, 9 February, available at: <https://www.ofgem.gov.uk/publications/memorandum-understanding-energy-supply-company-administration>