21 June 2023

Ms Sam Markham
Project Leader
Australian Energy Market Commission

Submitted electronically at: www.aemc.gov.au/contact-us/lodge-submission

Dear Ms Markham

Stanwell Corporation Limited Response to
Review into the Arrangements for Failed Retailers' Electricity and Gas Contracts
Directions Paper

Stanwell Corporation Limited (Stanwell) welcomes the opportunity to respond to the Australian Energy Market Commissions' (AEMC's) Review into the Arrangements for Failed Retailers' Electricity and Gas Contracts Directions Paper (Directions Paper).

Stanwell is a major provider of electricity to Queensland, the National Electricity Market (NEM) and large energy users throughout Australia. Stanwell's retail business, Stanwell Energy, services the ongoing energy requirements of some of Australia's biggest industrial and commercial customers along the eastern seaboard of Australia. We also own and operate two coal-fired power stations, providing reliable and affordable energy, with a pipeline of renewable generation and storage technologies to reduce our emissions intensity and create future opportunities for our people and communities.

This submission contains the views of Stanwell in relation to the Directions Paper and should not be construed as being indicative or representative of Queensland Government policy.

Introduction

Stanwell commends the project team on its approach to this consultation process and the quality of the Directions Paper. The decision to engage early on a wide range of potential options and ceasing work on the electricity Retailer of Last Resort (RoLR) directions framework, matchmaking service and additional regulation on contracting behaviour and retailer hedge contract trading demonstrate the AEMC's genuine engagement and responsiveness to feedback. The project team has set a high benchmark for the AEMC's approach to stakeholder engagement in future consultation processes.

Stanwell believes the RoLR scheme should ensure that designated RoLRs are not adversely affected when managing RoLR load. More specifically, the delivery of designated RoLRs' market strategies for their own portfolio should not be impinged upon when managing RoLR load (e.g., any generation portfolio spot exposure should not be assumed to physically back unhedged RoLR load). Designated RoLRs should be free to manage their RoLR load to the

best of their abilities and experience. Designated RoLRs should be able to claim the difference between the price it is charging RoLR customers and the reasonable costs incurred (potentially under challenging market conditions) for managing RoLR load.

Key issues

The following comments pertain only to designated RoLRs managing electricity RoLR load. Stanwell acknowledges the desire to align electricity and gas RoLR procedures, however any alignment should be pursued only to the extent that the best practices for electricity and gas are sufficiently similar that their respective processes and procedures can be harmonised. Given the differences between contracts for physical gas supply and contracts for electricity wholesale price hedging, alignment of these processes that are not compatible should not be forced.

Claimable Retailer of Last Resort costs

Stanwell agrees with previous stakeholder feedback that market costs that can be claimed through the RoLR cost recovery process should be clarified. Designated RoLRs need confidence that the costs they incur managing RoLR load will be reimbursed. However, there is the risk that defining the list too narrowly could inefficiently skew RoLR behaviour towards activities that are reimbursed rather than efficient management of the RoLR load. This may result in designated RoLRs bearing some of the costs stemming from the failure of another retailer.

Accordingly, Stanwell supports a broad definition of the costs that could be reimbursed to ensure RoLRs have sufficient flexibility to manage RoLR load and confidence that the costs of doing so will be reimbursed. The definition needs to cover all costs associated with managing the RoLR load (e.g., spot electricity costs, wholesale contract costs, prudential costs, administrative costs), while being sufficiently agile to have provision for the Australian Energy Regulator (AER) able to consider and include new RoLR-related costs in an evolving market.

Stanwell recommends that there also be a provision to cover any bad and doubtful debt costs that are transferred under a RoLR process. This will ensure designated RoLRs are not adversely financially affected by acting as a designated RoLR and head off any potential cascading retailer failures triggered by bad and doubtful debt costs.

Prudent Retailer of Last Resort costs

Stanwell appreciates designated RoLRs' costs of managing RoLR loads are ultimately borne by consumers, so it is important that any costs reimbursed accurately reflect designated RoLRs' actual costs and are demonstrably reasonable under the circumstances. However, designated RoLRs are performing a valuable role in managing RoLR loads and containing potential contagion of retailer failures, so that a designated RoLR's costs could be subsequently deemed not prudent and hence not reimbursed is concerning.

Stanwell acknowledges there could be sizeable challenges when attempting to hedge retail electricity load at short notice, especially if retailer failure is at least partially attributable to

ongoing market volatility, which may result in a perfect storm scenario of high contract prices and low wholesale electricity contract market liquidity. However, it is important that designated RoLRs have confidence that wholesale contracting costs they incur are not subsequently deemed unreasonable (e.g., such as if retrospective analysis is used to determine what would have been the optimal option to manage the load, which was both unknowable at the time and potentially affected by the designated RoLR's contracting activities).

Stanwell suggests one potential way designated RoLRs could identify RoLR costs separately from their other customer costs could be by establishing a sub-book to house RoLR load. For that sub-book, any contracts purchased at a price equal to or less than "market price + X%" (where the magnitude of X% is determined through further consultation) would be automatically deemed prudent during the subsequent cost claim process. Noting the potential for large intra-day price changes and market illiquidity, any contracts purchased at a price above "market price + X%" could be reviewed by the AER as part of the cost claim application process, taking prevailing market conditions into account, to determine whether the price was reasonable at the time of purchase. This approach would reduce the number of individual contracts requiring examination, expediating the claim process.

Cost claim application deadline

Stanwell supports a 9-month deadline for lodging a RoLR cost claim application. RoLR events must have a defined end date to provide certainty to affected customers, the designated RoLR and other market participants. However, Stanwell suggests the AEMC consider allowing additional cost claim stages beyond this deadline under circumstances where costs associated with a RoLR event persist beyond 9 months. One situation where this may occur is if a T-1 Retailer Reliability Obligation (RRO) event is triggered on or during the RoLR event, potentially resulting in customers not being able to transition away from the designated RoLR because of reduced interest from other retailers.

While designated RoLRs may serve a notice on large customers at any time stating the arrangement will be terminated after the 6 month period, there may arise a situation whereby the designated RoLR or other retailers may not be prepared to offer retail contracts due to high wholesale and contracts prices and low wholesale contract market liquidity.[1] Customers could potentially be "stranded" for an extended period with designated RoLRs, and there is currently no recourse or mechanism for designated RoLRs to claim the costs of keeping these customers beyond this timeframe.

Managing potential cash flow issues

Stanwell supports further work on both an initial payment to designated RoLRs based on estimated costs and a multi-stage cost recovery process to address the intertemporal cashflow mismatch between expenditures associated with managing RoLR load and cost recovery under the current regime. As discussed earlier, designated RoLRs are providing a valuable service to the market and consumers and need to be supported across all aspects of this task.

[1] Queensland Government, National Energy Retail Law, Sections 148, page 172.

Billing failed retailers

Stanwell supports the intent of the AEMC's exploration of the AER issuing failed retailers with a notice for a bill to recover designated RoLRs' costs to dissuade strategic market exit. Such exits place material costs on all consumers, and these costs should be recovered from the withdrawing retailer in the first instance wherever possible. However, Stanwell notes the Australian Financial Markets Association has raised concerns about the feasibility of the proposal for AER to become a secured creditor via the Personal Property Securities Register given the corporate structure of some retailers. Stanwell supports further work in consultation with the Australian Securities and Investments Commission, the Australian Taxation Office and the Australian Prudential Regulation Authority on developing a model that captures the intent of this proposal but without the attendant downsides.

With respect to the potential impact of such a reform on the cost of capital, Stanwell believes any arguments concerning potential impacts on barriers to entry need to be framed in comparison with efficient barriers to entry, not low or no barriers to entry. While proposed reforms may potentially increase the cost of capital to a degree, Stanwell believes the market participants should not be externalising failure costs (i.e., repayment of costs should be factored into capital costs). Accordingly, changes that potentially increase barriers to entry are not inherently inefficient or necessarily have an adverse impact on consumers that outweighs the benefits of increased cost recovery from failed retailers.

Information about transferred customers and load

Stanwell supports full disclosure of all relevant information about the customers and load transferred as part of a RoLR process to both designated RoLRs and the AER following retailer failure. The information handed over should include, at a minimum:

- The size and shape of the failed retailer's customer load at the finest level of disaggregation available for at least the previous 12 months;
- Retail prices currently paid by households and large loads;
- Any other critical customer information (e.g., customers using life support equipment); and
- Accounts currently in arrears.

Updating the Default Market Offer in response to significant market changes

Stanwell urges caution with respect to the AEMC's support for further work on allowing *"the AER to update the Default Market Offer (DMO) outside the normal annual review schedule in response to significant market events"*.[2] Stanwell acknowledges the Australian Competition and Consumer Commission's latest inquiry into the NEM recommended providing the AER with the option to adjust the Default Market Offer (DMO) outside of the annual price setting cycle in the event of uncertain or unforeseen circumstances, but questions whether doing so aligns with the purpose of the DMO and provides consumers sufficient certainty over their retail electricity prices.[3]

[2] Australian Energy Market Commission, Review into the Arrangements for Failed Retailers' Electricity and Gas Contracts Directions Paper, May 2023, page iii.
[3] Australian Competition and Consumer Commission, Inquiry into the National Electricity Market, November 2022, page 95.

The DMO is intended to reflect an accurate, long-term market cost of retail energy.[4] While Stanwell acknowledges unforeseen circumstances can significantly change current market conditions, (principally wholesale and contract prices), they would have only a marginal impact on retailers who have hedged their retail load. Updating the DMO would mean customers on standings offer could face higher prices that may not reflect changes in their retailers' costs.

The proposed updating of the DMO also invites questions of how the threshold for deeming circumstances as unforeseen is determined and applied, how frequently the DMO could be updated, and the impact of changes to the DMO's role on retailers and consumers. The market bodies need to undertake further work to ensure the intent and purpose of the DMO are not compromised or diluted by attempting to make it serve multiple incompatible purposes and ultimately failing to adequately satisfy any.

Interactions with the Retailer Reliability Obligation

Stanwell notes that the interactions between the RoLR provisions and the RRO are not covered in the Directions Paper, and queries whether these interactions have been considered by the AEMC.

In the event of retailer failure during or in the immediate lead up to an RRO T-1 period, designated RoLRs would be attempting to procure sufficient coverage to meet their RRO obligations for the RoLR load within an extremely short period of time and potentially under challenging market conditions (i.e., high wholesale contract prices and low wholesale contact market liquidity). If unable to procure adequate wholesale contracts for the RoLR load, designated RoLRs could find themselves non-compliant with their RRO obligations, exposing them to both financial and reputational risk. Given consumers ultimately wear the costs associated with both RoLR and RRO, the potential for higher costs stemming from designated RoLRs' compliance with their obligations under both schemes warrants further consideration.

Stanwell requests the AEMC examine the potential interactions between the RoLR and RRO obligations and explore options to address any identified potential issues.

[4] Australian Energy Regulator, Default Market Offer Prices 2023-24 Final Determination, May 2023, page 16.

Conclusion

Stanwell appreciates the AEMC's continued work on developing and examining options for addressing current deficiencies with the RoLR provisions and incidence of costs associated with retailer failure. Stanwell applauds the AEMC's approach to consultation on this issue and looks forward to engaging with the project team in future consultation stages.

Stanwell welcomes the opportunity to further discuss the matters outlined in this submission. Please refer any questions to Evan Jones, Market Regulation Analyst, on 0419 667 908 or to evan.jones@stanwell.com.

Yours sincerely

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