



12 July 2013

Mr John Pierce,
Chairman, Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Lodged via AEMC website: www.aemc.gov.au

Dear Mr Pierce

NEM financial market resilience review – first interim report

Alinta Energy welcomes the opportunity to make this submission in response to the Australian Energy Market Commission's (AEMC) first interim report of the National Energy Market (NEM) financial market resilience review (the Report).

Alinta Energy is an active investor in the energy retail, wholesale and generation markets across Australia, including in the NEM. Alinta Energy has over 2500 megawatts of generation facilities in Australia (and New Zealand), and over 700,000 retail energy customers.

Entities within the Alinta Energy corporate group hold an Australian Financial Services License and are active participants in Australian electricity derivatives markets trading over-the-counter and Australian Stock Exchange products. Alinta Energy has some exposure to non-energy related derivative products.

1. Overview

Introduction

Alinta Energy continues to support the role of the AEMC in the area of assessing market resilience to financial developments. Alinta Energy notes the review process has been underway for more than 12 months and has involved consideration of many of the issues at hand. Consequently, the AEMC has managed to appropriately articulate and address a number of specific problems.

Nevertheless, at times the Report, as with the wider process, seems to suffer from a compulsion to promote solutions without full appraisal of the value of such solutions. In parts of the Report the analysis presents a maze of logic that arrives at conclusions that the risk of financial contagion exists but the suggested benefit of further regulation, intervention and rules appear somewhat contrived.

There is a great risk that the term “risk of financial contagion” becomes a form of celestial teapot whereby the ability to never formally conclude, with absolute certainty, that no risk does exist, or no risk may exist in the face of some fancied form of future events, then leads to the conclusion that the risk must exist. This logic is erroneous.

The burden of proof lies with the party that levies the charge. The burden of proof should not shift to those it is proposed be further regulated as this is a logical fallacy. Failure to prove risk doesn't exist or doesn't need to be managed differently does not prove that it does exist and needs to be regulated more stringently. This is an appeal to ignorance and less than ideal as a basis for regulatory intervention.

Further, if evidence of the absence of financial contagion can never be found, this should not lead to a view that the choice between regulating and not regulating is clear cut. This is a fallacy of false choice. And one that may lead to drastic and costly obligations of no benefit to the market or consumers the market serves.

Before dealing with the substantive issues in the Report, and given the preceding remarks, it is necessary to note that Alinta Energy retains the view that the financial relationships and financial markets that underpin the operation of the NEM are robust. While a range of risks of unknown potential impact have been identified there has been little in the way of concrete evidence that there has been, is, or will be, any significant financial risks that can be regulated out of existence.

On the contrary, the market continues to operate efficiently and entities have well developed and sophisticated risk management expertise underpinned by continued market participation. This is true of major load, generators, retailers and vertically integrated entities.

The out workings of the issues paper, the subject of the options paper, and now this Report demonstrate that many of the market's shortcomings are not necessarily driven by the practices of participants but relate to the regulatory interventions themselves.

High-level perspective on the Report's recommendations

Alinta Energy is broadly supportive of the recommendations to improve the Retailer of Last Resort (ROLR) as an effective default transfer mechanism; however, Alinta Energy is not supportive of attempts to alleviate problems directly associated with the ROLR by creating further regulatory intrusions. Should the ROLR remain in place there are a number of additional measures that can be utilised that are far less onerous than a special administration regime (SAR). Creating a new range of regulatory requirements and potential levers in the face of financial failure of a single participant is untested and in all likelihood could be counterproductive despite best intentions.

Specifically, if the case for SAR cannot clearly be made by the AEMC then it should not be proposed as a possible solution. The AEMC is the pre-eminent NEM economic and policy entity the role of which is determine the costs and benefits to the energy market of proposed changes. The AEMC's suggested approach needs to adequately demonstrate that change from the status quo is justifiable. The veneer of AEMC support for SAR in the absence a robust conclusion on whether SAR should be progressed is not the form of conclusion the AEMC should be making.

Alinta Energy does not believe there is a compelling case to proceed with the SAR. This view is likely to be widely shared and it is regrettable further work was not undertaken with industry prior to the first interim report on this proposal specifically given the general level of interaction with the AEMC has been considered of great value by industry. This paper outlines Alinta Energy's concerns and analysis of the issue in more detail; however, the high-level concerns are summarised below.

- The benefits of a SAR are overstated and quantification of the actual risk being managed or the actual costs arising from a SAR has not occurred.
- The process to appoint a SAR involves more decision points, parties, legal issues, time delays and pre-planning than to date has been deemed permissible for the ROLR or ROLR alternatives/amendments.
- The SAR provides new expanded roles to parties which have not been able to manage the ROLR to a point where it does not remain an arrangement of concern.
- The SAR is mischaracterised as minimising risk when it actually only shifts risks to other parties including shareholders.
- The SAR places other interests ahead of property rights and shareholders' interests in an ad hoc and unclear manner.
- The SAR will result in immediate and significant costs, requires legislative changes to be enacted, requires the legal restructuring of existing entities, and raises a host of yet to be resolved administrative issues.
- The proposal creates risks that could result in failure in other parts of a business that may have a greater overall impact on the market or the economy than those being managed through a SAR.
- Ironically, the SAR requires a number of exemptions from current arrangements including credit support that were deemed unacceptable generally and were in part justification for creation of the SAR – delayed payment of credit support, disallowing hedges to be cancelled etc.
- The proposal increases risks, will create perverse restructuring incentives, raises moral hazards, and could encourage greater risk taking by ring-fenced retail entities in conflict with the intent of the existing prudential regime.
- The proposal still requires a default allocation mechanism following the SAR where all customers have not been allocated. If a default transfer mechanism was in place in the first instance this would obviate the need for a SAR and overcome the ROLR shortcomings and has been Alinta Energy's preference since the commencement of the review process.

Alinta Energy does not believe the AEMC should lend support for a mechanism where such concerns exist and should clearly indicate that such a mechanism is not in the interests of the NEM. Further, any analysis that has a tendency to overstate the risks trying to be resolved and does not fully spell out the problems that arise from any proposed solution, as is the case with SAR, is unlikely to gain stakeholder support.

While Alinta Energy is not satisfied with aspects of the Report, or the propensity to recommend new interventions, it is still important to emphasise that Alinta Energy considers that up until this point the AEMC has done a commendable job in drawing out major issues and particularly values the role of the working group.

2. Enhancements to existing arrangements proposed by the AEMC

Given the established role of the ROLR it is critical that existing concerns are better managed. To this end, Alinta Energy is supportive of steps to improve the ROLR to make it the definitive and final default transfer mechanism and suggests the NEM financial resilience review's success should be measured through improvements to the ROLR to mitigate existing regulatory risk.

Changes to the ROLR scheme and credit support arrangements

Revised cost recovery arrangements

Alinta Energy supports the cost recovery provisions being amended to give the designated ROLR greater certainty that it can quickly recover all reasonable costs associated with a ROLR event.

Alinta Energy agrees that the following clarity is required:

- a clear process for cost recovery applications to be made to the regulator;
- a right for recovery of reasonable and specified costs;
- a limited period during which costs can be recovered, three months appears appropriate as a guide at this stage; and
- clear timelines for a regulatory determination to be made.

This recommendation will reduce the financial uncertainty facing a designated ROLR in the event of a retailer failure, is likely to increase willingness of more retailers to nominate to act as additional ROLRs, and will make parties better placed to source any finance that may be required should an event occur.

Delayed designation of ROLRs

The AEMC has recommended that: the ROLR regime is amended to delay the time at which the designated ROLR is appointed by the Australian Energy Regulator (AER), to improve the allocation of customers and increase the scope to appoint multiple ROLRs.

Alinta Energy understands it may be desirable to allow for limited delay despite the additional risk of non-payment that will arise and be allocated to generators under the existing ROLR. Reflecting on the AEMC's analysis it is arguable that a short delay, and the consequential additional risk, may be a proportionate response in the absence of a SAR, which itself may require a similar delay.

Nevertheless, Alinta Energy notes that if a greater amount of pre-planning had occurred, including identification or obligation to act as additional ROLRs, a delay may not be warranted. The best method for managing a large retailer failure is already being aware of how many firm and non-firm customer allocations each remaining entity can accept in each region and addressing any shortfall.

If the AEMC is minded to go ahead with recommending a delay in designation, despite the reservations of industry, the AEMC needs to model the risk arising from the additional delay and consider options for passing through the costs associated with the additional delay to customers. Given the additional delay is in the interests of consumers, and not generators, it is arguable that the exposure of generators should be capped with a pass through mechanism. Such a cap will also prevent financial contagion to generators as a consequence of delayed designation.

Amendments to AEMO credit support provisions

Alinta Energy is open to further work occurring on the proposal that the increased credit support required to be provided by the designated ROLR to the Australian Energy Market Operator (AEMO) be initially waived and then increased over a short transitional period in limited circumstances. While AEMO currently has a degree of discretion in this area the proposal would clarify the transitional arrangements.

Alinta Energy would rather that generators not be exposed to additional risk as indicated in earlier submissions; however, in the circumstance where a large retailer failed, the increase in credit support may be significant and the overall benefit to the market of a smooth transition to the ROLRs would appear to outweigh some limited additional and acceptable risk of short payment accruing to generators at that point in time.

While Alinta Energy is open to this recommendation, which is a change in position from the Alinta Energy's submission to the options paper, it is supported in light of non-progression of the SAR and strict limitations being imposed on the amount of exposure that can accrue to generators. As with a delay in designation, options for passing through the costs should be considered.

Nevertheless, it is not immediately clear that a delay in posting credit support would be required given the already 5-week incremental increase in credit support a ROLR would be exposed to may be acceptable.

Allowing the Commonwealth Government to offer credit support

Should the Commonwealth be minded to do so, there should be no limitation to its posting credit support to AEMO for an initial period following a ROLR event. This recommendation increases the options available to resolve any matters that may arise but does not obligate action by the Commonwealth under any circumstance. Alinta Energy supports this position.

Operational refinements to the ROLR arrangements

The AEMC has highlighted a number of matters that were raised by participants following earlier AEMC papers that would refine the ROLR arrangements.

Improvement to ROLR processes

The AEMC has recommended that: AEMO and the AER should continue to investigate improvement to the ROLR process, including updated standard customer data and system capability to transfer customer efficiently if a ROLR event occurs.

Alinta Energy acknowledges the issues raised but suggest that no firm recommendation be made at this time excepting encouraging further work by AEMO and the AER. The benefit of providing regular data to AEMO on electricity customers is intuitively appealing but may be illusory as it plays a different role ex-ante compared with ex-post.

Ongoing data obligations are only of value if it is used to inform decisions by participants. In this instance this would be potential ROLRs. However, the data is of limited value ex-ante as any potential default is unknown. Instead, retailers will need to make a determination on their ability to absorb new customers based on net system load profile data as a proxy for unknown potential customers.

Further, many retailers, and especially designated ROLRs, would already be quite aware of retail customer characteristics in the regions they already operate and where they would be most readily able to accept customers in event of a failure. Hence, additional data is more likely to be a reporting burden than a benefit.

Further, if the ROLR as the default transfer mechanism were working effectively each retailer would be engaged regularly to detail to the AER their ability to absorb customers in light of any potential

failure event by region. This information would be more useful and better able to facilitate efficient transfer than customer data after the fact.

Nevertheless, Alinta Energy agrees that it is the case that ex-post, the availability of data is likely to be valuable to assist with hedging, transfer of customers and importantly billing. Therefore availability of failed retailer data is desirable but any new data requirements need to be proportionate.

ROLR arrangements for large customers

Alinta Energy agrees that informing large customers about their right to “opt out” of the ROLR arrangements and nominate their own back-up retailer in the case of a ROLR event may be beneficial to some customers. Although realistically, it is unlikely that many large customers would take steps to arrange an alternative back-up given the belief, and rightly so, that retailer failure is unlikely to occur.

Alinta Energy notes the AEMC’s recommendation and considers that there may be value in making ROLR arrangements for large customers an opt-in arrangement as opposed to an opt-out arrangement. The basis for such a recommendation would be that the rationale for the ROLR is to ensure customers continue to be provided with what can be deemed an essential service. This level of protection is understandably appropriate for mass market customers but less so for large businesses.

Partial market suspension

Alinta Energy appreciates AEMO raising the issue of partial suspensions being problematic based on one interpretation of current procedures. Alinta Energy does not consider this a major issue as it can be remedied via a change to the National Electricity Rules. The AEMC has reached the conclusion that a SAR is the best method of overcoming issues of partial suspension but the AEMC’s conclusions are again disproportionate. Further, the AEMC has conflated this issue to suggest a generator would stop producing energy in these circumstances. Loss of supply is the overriding issue to be managed and Alinta Energy is not convinced by the AEMC’s suggestion this would be a possible outcome under any circumstance.

There is no obvious reason why a generator, providing credit, should be suspended and the action of doing so does not seem to provide any protections to the NEM. The option of allowing a generator to keep providing credit while suspending a participant from acting as retailer and being short to the market may be conceptually cumbersome; however, it is far less intrusive, far less problematic, and requires significantly less legal amendment than the introduction of a SAR. Further, given jurisdictional powers to ‘keep the lights on’, it is a closer reflection of likely outcomes. Alinta Energy encourages progress in this area.

3. Additional enhancement not current proposed by the AEMC

There are a number of possible enhancements which Alinta Energy believes should be further considered and provide better options than a SAR. These are:

- a default transfer mechanism based on pre-determined offers from retailers, generators, distribution companies and others to accept customers based on the existing ROLR;
- transfer of some credit risk to DNSPs which have been thus far rejected out of hand by the AEMC without just cause; and
- a short payment cap and pass through mechanism.

Default transfer mechanism

Alinta Energy notes that under any arrangement, including the SAR, there is a need to develop a default transfer mechanism for customers whose contracts are not transferred as part of a sale or allocation to alternative retailers. This fact, highlighted by Allen Linklaters¹, that a SAR still requires a default transfer mechanism surely illustrates the undesirable nature of the SAR.

If a default transfer mechanism is required, and this seemingly is the case and is effectively the original intent of the ROLR, the transfer mechanism should be structured in a manner that ensures it is fit for purpose, eliminates the need for a SAR and overcomes existing ROLR limitations.

Alinta Energy supports amending the ROLR arrangement, including with the enhancements outlined by Alinta Energy, to be used as a default transfer mechanism where:

- the AER manages an regularly updated register of default transfers offers, both firm and non-firm be region;
- retailers, generators, other interested parties and DNSPs nominate arrangements for the default transfer of customer in the event of a failure event;
 - this could include temporary transfer (whether this is feasible requires further assessment); and
 - should include the number of customers an entity is willing to accept at an agreed price, in agreed locations, and additional customers that an entity could accept at no cost, or with credit support assistance; and
- the AER engages with participants to bridge any gap between nomination totals and the total amount of customers they may require transfer in the event of a failure of a large retailer in each region; and
- in the event of default to allocate any remaining customers, either by auction, or where not wanted by the market, forced transfer with appropriate credit support consistent with the enhancements to the ROLR already discussed.

Alinta Energy acknowledges this default transfer mechanism needs to be further enunciated but highlights that to date there has been a lack of interest in pursuing this alternative and proportionate response to the issues with the existing ROLR mechanism.

Credit risk of DNSPs

The AEMC has shown a surprising unwillingness to recommend any level of credit risk be transferred to DNSPs for a short period of time. This is an unproductive position and should be considered a preferable solution than the complexity of the SAR. There is little reasoning behind increasing risk for generators but not allowing a commensurate risk for DNSPs. It is arguable that DNSPs, as regulated entities with stable incomes, would be in a better position to absorb some additional risk for a short period of time.

Given Alinta Energy's openness to supporting an increased risk to generators to a manageable and understood level the quid pro quo of such an outcome should be that DNSPs share some of the additional risk to the market that arises through any delayed settlements, delayed designation of a ROLR, or delayed positing of prudentials the AEMC may be minded to recommend.

¹ Allens Linklaters, Dealing with Financial Distress in the National Electricity Market, Special Administration Regime for Electricity Retailers, p.33

Naturally, appropriate cost-recover provisions would need to be in place for those networks, the level of additional risk would need to be capped at an understood and manageable level and this additional risk would only arise in unusual circumstances, as would be the case for generators.

Short payment cap and pass through

Alinta Energy notes that the issue of short payment to generators and its management was raised as part of the Energy Market Prudential Readiness Review; however, since that time there has been no work in this area. Alinta Energy suggests that this issue should be considered in the context of the ROLR as a default transfer mechanism and the need to develop pass-through arrangements in the event of a large retailer default.

Notably, the Allens Linklakers report flags taxpayer levies and industry levies and methods of paying for the SAR in certain circumstances. A recovery mechanism without the SAR would seem to be a much simpler approach and would be called upon in the very same limited circumstances.

Shorter Settlement Cycle

Another issue assessed during the Energy Market Prudential Readiness Review was the adoption of a shorter settlement cycle. Alinta Energy remains of the view that the costs and benefits of a shorter settlement cycle need to be considered in detail and that such consideration should form part of, or an outcome of, the current review process given the potential to limit the financial risks around failure.

4. Special Administrative Regime (SAR)

AEMC's analytical approach to the ROLR in the first interim report

The commissions' analytical approach follows that detailed in figure 4.1. Alinta Energy suggests an alternative cascade of questions is also appropriate.

Alinta Energy proposes to address the issues raised by the AEMC in the sequence below.

- (a) Are risks associated with a ROLR event derived from the market or are they a consequence of implementing the ROLR itself?
- (b) Do any of the residual risks that could emerge under any plausible, not contrived, scenario lead to the possibility of financial contagion that differs from that which currently exists in the market?
- (c) Are the residual risks of such a size as to warrant further regulation, or changes to procedures or the National Electricity Rules, beyond those improvements to the ROLR that have already been proposed by the AEMC and stakeholders?
- (d) If the residual risk warrants further regulation, is a SAR the most cost-effective way of managing the residual risk that remains under any or all plausible scenarios?
- (e) If the SAR is not proportionate, not well targeted, and not desirable, which other amendments or changes can be made to better manage the existing risk?

Alinta Energy addresses each of these matters below.

Are risks associated with a ROLR event derived from the market or are they a consequence of implementing the ROLR itself?

It is clear on all accounts that the risk that the SAR is designed to manage arises as a consequence of the problems associated with the ROLR. All analysis to date has suggested the risk of financial failure of a large retailer is small but possible. Additionally, Alinta Energy suggests the risks of failure of a large vertically integrated entity may possibly arise for reasons other than an entities business arrangements in the NEM.

The AEMC's analysis in the options paper suggested the factors leading to financial contagion following a ROLR event were:

- designated ROLR would need to provide increased credit support to AEMO to cover newly acquired customers;
- potential for increased credit support to be provided to DNSPs;
- potential for the designated ROLR to be unhedged;
- may face increased wholesale energy costs with a view (not backed up by evidence or analysis of existing large retailer exposures to high spot prices) that retailer failure would most likely occur at times of high spot prices; and
- the inability to pass through any increased costs due to retail price regulation or competitive pressures (the latter being a unclear).²

Alinta Energy agrees with the view that the ROLR process creates a number of risks, to varying degrees as outlined by the AEMC; however, Alinta Energy is of the view these issues can be managed by improvements to the ROLR or alternatives in the absence of a ROLR.

With the exception of high spot prices, or being unhedged, two ways of expressing the same position, all the other risks arising are a consequence of the process that has been developed and continues to be promoted not a consequence of the market. This suggests those process matters need to be resolved as opposed to developing a SAR to override the existing ROLR.

Do any of the residual risks that could emerge under any plausible, not contrived, scenario lead to the possibility of financial contagion that differs from that which currently exists in the market?

If the risks arising from a large retailer failure were managed to the best possible extent as part of a revised ROLR there would be no significant residual risks except those that are already part of the existing market dynamic. Exposure to spot prices, exposure to risk of generator failure, acquisition of new customers etc. are all existing issues managed on a daily basis by generators, retailers and vertically integrated entities. These risks should not be used as justification for further regulatory intervention.

The impact of a retailer failure is only accentuated as the ROLR arrangements require a sudden, upfront and unexpected injection of capital in the market. If this was not the case there would be little justification for further regulation. Hence, the management of this requirement for capital and taking steps to ensure the market can operate as required are critical. This includes ensuring hedge liquidity and efficient customer transfer and billing.

² AEMC. NEM financial resilience, Options Paper, p.11

Are the residual risks of such a size as to warrant further regulation, or changes to procedures or the National Electricity Rules, beyond those improvements to the ROLR that have already been proposed by the AEMC and stakeholders?

Alinta Energy assumes, and the AEMC should also assume, that changes to the ROLR will be implemented for the purposes of its analysis of residual risk and the possibility of financial contagion in the future. On this basis, Alinta Energy does not believe the risks are of significant size or probability to warrant a SAR.

The AEMC must draw a conclusion on the size, scope and impact of the risks that would remain if it adopted the changes to the ROLR that are supported by industry. Thus far the AEMC has rightly identified some changes that would be beneficial, and some that would be highly undesirable, but there are a group of potential changes that seem to have been parked (i.e. DNSPs exposure to credit risk and further ROLR reform).

There is an ongoing theme that changes which may inconvenience non-market facing bodies are not permissible, or that requiring jurisdictions to work to resolve the existing imperfections in the ROLR and associated arrangements cannot be recommended. But that the introduction of new costs, new risks and expanded roles for AEMO and the AER to overcome but not address issues that are already under their management is somehow desirable.

If the residual risk warrants further regulation, is a Special Administration Regime (SAR) the most cost-effective way of managing the residual risk that remains under any or all plausible scenarios?

Alinta Energy does not believe the residual risk warrants further regulation but a resolution of the issues which arise as a consequence of the ROLR. Thus the SAR is wholly undesirable. The issues with the SAR are significant.

Governance arrangement for SAR are unproven and likely problematic

There is a singular perspective on market failure and commercial risk but an inability to foresee regulatory failure and regulatory risk. The regulatory instruments that are in place have created problems that have until now been ignored. The idea that new regulatory instruments will not suffer from similar problems beggars belief.

Further, the governance entities that have been charged with managing the existing arrangements have failed to address the problems that have been identified over time. However, this has not been addressed and instead those same entities have been flagged as requiring expanded roles and further decision-making powers to implement a SAR. This would be an undesirable outcome and it would be more appropriate to resolve the existing issues with ROLR management.

Specially, the recommendation for the AER to determine when to establish the SAR as opposed to the ROLR or otherwise is not desirable. This role would be overlaid by decision-making by the relevant Commonwealth Minister and a need to access the courts to sure up the operation of the SAR. Alinta Energy would rather the AER work to determine that enough parties would willing accept customers, and on what terms, should a large retailer failure arise then ask the AER to make specific decisions with financially significant consequence on the run.

Impact on creditors and additional risk for shareholders

The SAR places the rights and priorities of shareholders behind those of customers, who in the event of failure would be potentially generating public pressure for action.

Alinta Energy is not comfortable that the change would assist in seeking finance as financiers will need to be notified that in the event of failure customer contracts cannot be assumed as an asset as there will be limited ability to influence a SAR. This is effectively asking financiers and shareholders for funds to compete for customers in the market but providing them with limited assurances as to the value of retail assets if things go awry.

Timeliness and increased complexity at time of event

The insertion of multiple additional participants in the process should signal potential regulatory failure. Working across multiple levels of government and with multiple institutions is not a recipe for a quick resolution of an issue in an orderly fashion. Requiring applications to be made to the courts and introducing multiple points for discretionary decision-making, by the AER and the respective minister, is impractical.

Further, requiring time delays for SAR process to be implemented is not desirable when all that is needed is a transfer mechanism to allow the ROLR to manage the process of taking on additional customers.

Significant legal and administrative issues to be resolved

Leaving aside the SAR requiring a court application at time of commencement and the risks this creates, and the legislative changes needed to enable the SAR regime to be implemented, there are a host of additional legal protections identified by Allens Linklaters. These range from limits on AEMO and the AER's ability to perform their existing roles, to providing super-priority to new financing and limiting rights of counter-parties.

This list of unconventional changes is at best alarming in scope and in the amount of additional uncertainty this will create for existing participants, their shareholders and existing and potential financiers. Limiting the actions of counter-parties, limiting the liability of the SAR, and weakening the rights of creditors at short notice in the event of potential default may create more issues than have been currently considered. Further, it is very uncertain on what basis such decisions would be made at the time and this uncertainty will thus form an ongoing feature of the market.

Moral hazard, perverse incentives and failures

As raised previously the restructuring may create an incentive for excessive risk taking by some retailers in the knowledge that separate administration and credit support from government is likely to be made available in the event of default.

Further, as enunciated at a recent working group forum, Alinta Energy remains of the view that the restructuring requirements would likely create an arrangement whereby the SAR regime is implemented without any real improvement in management of large retailer default as the default drivers are likely to be broader than retail issues.

Hence, if this is acknowledged as such, the issue again falls back, in Alinta Energy's view, to the default transfer mechanism needing to operate smoothly at a time a wider company failure may be

unfolding; a failure which is likely to have its own impact on other participants beyond the retail arm of the failing company.

Costs are disproportionate

The SAR will require the restructure of existing organisation, structures that have been developed to best meet organisational risk appetites, management preferences and business interests. A demand for restructuring, at the stroke of a pen, is a disproportionate response to an isolated assessment of the risk of financial contagion in the event of large retailer default.

Further, the costs to implement the regime, legal issues and the time and distractions for entities like the AER and the relevant portfolio departments, should not be discounted. There are more streamlined processes that can be adopted and changes that can be progressed within the context of the NEM framework that will cause far less concern for participants which should be preferred.

Requires a range of exceptions that were already deemed undesirable for the ROLR

Notably, the delay of appointment of a SAR, the transfer of failed contracts and delays in posting of prudentials creates the very same risk the SAR was supposedly attempting to manage. Some of these features were earlier deemed undesirable, for instance the limit on cancelling contracts with a defaulting party, but are essential features of a SAR. This is counter-intuitive and illustrates the SAR recommendation is not fit for purpose.

The SAR requires too many concessions to be considered viable once considered in detail. Many of these concessions are likely to be of themselves undesirable and it is not appropriate to ignore the undesirability of these changes in order to continue to support the SAR recommendation.

Default transfer mechanism

Surely the need to ensure a default transfer mechanism remains in place, regardless of the success of the SAR at any point in time, is of itself enough to demonstrate that the SAR costs and problems outweigh the potential benefits.

If the SAR is not proportionate, not well targeted, and not desirable, which other amendments or changes can be made to better manage the existing risk?

Alinta Energy's preferred option is progress a single cover-all default transfer mechanism based on the existing ROLR as enunciated earlier in this submission.

5. Conclusion

Alinta Energy agrees with the view that when it relates to large retailer failure there is no easy answer. It is for this reason Alinta Energy favours less regulation and notes the disadvantages of the most intrusive recommendations.

The primary justification for intervention is reliability of supply in the event of insolvency and the ability to transfer of customers where the market does not facilitate such transfer of its own accord, as may be the case in the event of large retailer default. However, failings with the current transfer mechanism, the ROLR, should not justify the adoption of the SAR.



Alinta Energy strongly believes reliability of supply and customer transfer can be achieved without recourse to a SAR. Further, this protection only seems necessary for mass market customers and not commercial and industrial loads that often have more sophisticated energy purchase arrangements.

Should you have any queries in relation to this submission please do not hesitate to contact me on, telephone, 02 9372 2633.

Yours sincerely

A handwritten signature in blue ink, appearing to read "J Lowe", is written in a cursive style.

Jamie Lowe
Manager, Market Regulation