

14 August 2009

Kristen Palmer
Acting Manager
MCE Secretariat
Department of Energy Resources and Tourism
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Canberra, ACT, 2601

By email: MCEMarketReform@ret.gov.au

Dear Ms Palmer

Survey of Second Tier Retailers

Thank you for the opportunity to provide feedback on the Financial Markets Working Group's (FMWG) Survey of Second Tier Retailer (the Survey). ENA considers that the issues raised in the Survey are of fundamental importance to effective regulatory design of the market.

The Energy Networks Association (ENA) is the peak national body for Australia's energy networks which provide the vital link between gas and electricity producers and consumers. ENA represents gas distribution and electricity network businesses on economic, technical and safety regulation and national energy policy issues.

Energy network businesses deliver electricity and gas to over 13 million customer connections across Australia through approximately 800,000 kilometres of electricity distribution lines. There are also 76,000 kilometres of gas distribution pipelines. These distribution networks are valued at more than \$40 billion and each year energy network businesses undertake investment of more than \$5 billion in distribution network operation, reinforcement, expansions and greenfields extensions. Electricity transmission network owners operate over 42,000 km of high voltage transmission lines, with a value of \$10 billion and undertake \$1.2 billion in investment each year.

As noted in the MCE Bulletin, the Survey canvasses issues that will be subject to further consideration by the MCE as it develops the credit support regime as part of the National Energy Customer Framework (NECF). More particularly, the Survey identifies that second tier retailers consider prudential requirements required by DNSPs to be a barrier to entry.

Given the importance of the issues raised, ENA would be extremely concerned if assertions in the Survey were not subject to rigorous testing and further consultation in the context of the relevant policy process such as the development of the credit support regime under the NECF.

This response highlights areas of concern for distribution businesses but does not attempt to anticipate how these issues will be dealt with in associated processes. ENA anticipates that there will be further opportunities to submit on these issues as policy is developed in associated processes.

Role of prudential requirements

ENA's submission on the first exposure draft of the NECF outlines the fundamental role that prudential requirements such as credit support play in ensuring the proper functioning of the market. Under the regulatory framework, distribution businesses are required to provide distribution services whether or not they are paid by the retailer. Non-payment could create a substantial risk to the business and given the role that distributors play in the effective functioning of the market, any risk that might result in the suspension of distribution services creates a risk to the market generally.

As set out at 5.3.4 of the ENA submission:

The financial failure of one or more distributors, who provide the essential infrastructure on which energy markets rely, could prejudice the financial viability of the whole national energy market.

The recent 'Global Financial Crisis' is a very clear example of how whole markets, and the economies that rely on their functioning, can be placed under extreme financial risk, when the substantial institutions on which they rely fail. The cost of this is inevitably and substantially borne by the affected markets and by Governments who must then act to remedy the situation.

So while prudential requirements enable distribution businesses to manage the risk of default by a retailer; they also play an important role in the overall functioning of the market as a whole.

Barrier to entry

The term 'barrier to entry' is often misused and misunderstood. A barrier to entry is generally a cost that is imposed on new entrants that is not imposed on incumbents. Often costs are incorrectly characterised and rather than being a true barrier they are simply a cost of doing business that has been imposed on incumbents and successfully managed.

Distributors consider that prudential requirements such as those required by AEMO and distributors are not true barriers to entry but rather a cost of doing business. All businesses are subject to prudential requirements such as the credit support regime; however, the effect of the requirements is felt most keenly by retailers that possess characteristics that suggest a greater risk of default.

ENA does not consider that prudential requirements such as credit support are a barrier to entry and therefore an impediment to effective competition in the retail market. Retailers that are unable to meet prudential requirements pose a credit risk to distributors and consequently a real risk to the effective functioning of the overall market.

ENA looks forward to providing further comments on prudential requirements, such as the credit support regime, as part of specific policy processes including the development of the NECF.

Thank you again for the opportunity to comment on the Survey. If you require further information or clarification before then please contact Abbe Hutchins on 02 6272 1519.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'ABLYTH', followed by a period.

Andrew Blyth
Chief Executive