

14 November 2008

Manager, MCE Secretariat
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Via email: MCEMarketReform@ret.gov.au

Dear Sir/Madam

RE: MCE Release of the Retailer of Last Resort Draft Consultancy Report

Simply Energy welcomes the opportunity to provide comment on the Retailer of Last Resort (RoLR) – Review of Current Jurisdictional Arrangements and Development of a National Policy Framework, prepared by NERA Economic Consulting and Allens Arthur Robinson for the MCE Retail Policy Working Group.

Simply Energy believes this is a significant step towards a streamlined, national energy retail market. In this context, Simply Energy supports developments which aim to reduce market volatility, facilitate the full pass through of costs, and improve the overall framework of existing RoLR schemes. The paper raises a number of important points which Simply Energy has considered, and offers the following comments for consideration.

Principal objectives

The scheme's proposed principal objectives are encouraging. Along with the important customer protections they engage, the objectives also seek to ensure the integrity of the wholesale market settlements and network balancing arrangements while also confirming that the RoLR should be provided with a reasonable opportunity to recover the efficient costs it incurs in complying with its RoLR obligations. Simply Energy considers that increasing the transparency of the costs involved with being a RoLR will assist in maintaining the integrity of the scheme as well as identifying and rectifying undue imposts incurred by RoLRs through this process.

Principles to be included in the new scheme

The paper suggests that a number of principles be integral to the new scheme. While Simply Energy does not propose to comment on all of them, it offers the following comments.

Simply Energy strongly supports a nationally operating scheme, or one at least incorporating the National Electricity Market jurisdictions. Many retailers operate across multiple jurisdictions. If one of these retailers were to fail, the inconsistencies that currently exist between jurisdictions as to RoLR processes would add confusion.

Simply Energy supports measures which aim to provide a simple, practical scheme. Simply Energy also endorses the proposal that due consideration be given in the development of a national RoLR scheme to the impact on overall retail competition in the gas and electricity markets.

It is the view of Simply Energy that customers of the failed retailer should bear the costs of failure, as the paper proposes, to the extent practicable. Beyond that, it should not be the role of the RoLR or other market participants to underwrite the costs of customers of a failed retailer. Where small customers are unable to

meet such costs, as is reasonable to expect in some circumstances, governments should meet the shortfall through community service obligations or other hardship measures.

Appointment of RoLR

The paper proposes that the Australian Energy Regulator appoint the RoLR. Simply Energy agrees that this is the most practical approach to a streamlined, national scheme.

It is also recommended that eligible parties should be bodies that hold a retail authorization for gas or electricity (as relevant). Simply Energy agrees that a retailer is the best placed market participant to act as a RoLR. This is mainly due to the fact that retailers already undertake a retail function which will minimise the overall cost of the RoLR arrangement in fulfilling RoLR obligations.

The criteria for appointment of a successful RoLR should be clear and transparent, and include consideration of the capacity of a retailer to adequately perform the functions required, and to do so at least cost to consumers.

Voluntary registration as a RoLR

The paper proposes a two stage process for appointment of the RoLR: a pre-registration phase, in which the default RoLR is identified and other retailers can volunteer to be appointed; and following the trigger of a RoLR event, the appointment of the RoLR by the AER, either on a voluntary basis or (where this is not feasible) on a mandatory basis.

Simply Energy is supportive of a system that allows retailers to register voluntarily as a RoLR. This may encourage retailers who have available load capacity, or who can obtain load cost effectively, to offer their services as a RoLR. Voluntary RoLRs should be able to nominate the RoLR tariff that they would charge customers of the failed retailer (including any administration charge). The RoLR tariff offered by a retailer that voluntarily registers as a RoLR should then be one of the factors taken into account by the AER in deciding who to appoint as the RoLR. This model would have the benefit of increasing transparency as to the cost of offering RoLR services (retailers would be likely to offer RoLR services if they could recover an adequate margin), and providing the least possible cost to consumers as competition acts to drive prices down.

If no retailers register voluntarily, it is appropriate that the AER appoint the default RoLR, who would be entitled to charge customers of the failed retailer the regulated RoLR tariff.

Simply Energy cautions against binding a non-default retailer who voluntarily takes on RoLR responsibility to the default retailer's standing offer tariffs. Such an approach would either discourage non-default retailers from offering RoLR services (if the default retailer's standing offer tariffs are set too low) or would lead to the delivery of RoLR services at above cost reflective prices (if the default retailer's standing offer tariffs are set too high).

Cost recovery for RoLR

The scheme proposes an ex-post recovery mechanism to allow the RoLR to recover any efficient costs incurred by the RoLR within 3 months of the RoLR trigger event, that were not recovered through the tariffs and upfront fee. The risk with this approach is that it exposes customers to the volatility of the wholesale energy market at a time when the wholesale market is likely to be at its most volatile. This risk may be appropriate for large customers, but is less appropriate for small customers.

When determining its RoLR tariff for small customers, a retailer voluntarily registering itself as a RoLR should take into account a premium for the risk of offering the RoLR services and should include this in its tariff or

upfront administration charge. By contrast, large customers should bear the risk of the full cost of the RoLR event.

In addition, recovery of this debt from customers (particularly small customer) after the 3 months has expired would be particularly difficult, and would likely lead to an increase in customer enquiries and complaints.

Effect on market competition

While Simply Energy is supportive of the recommendation to have retailers act as a RoLR, it notes that the proposal also has the potential to adversely effect competition, in that the retailer appointed as the RoLR may benefit from the customer not needing to switch away from that RoLR after a certain period. Furthermore, in the event the RoLR is assigned under the mandatory arrangement, the RoLR is the largest retailer in the local retailer area which is likely to reduce competition. In an effort to limit the impact on competition, Simply Energy suggests consideration be given to ensuring every effort be made to appoint a RoLR through the competitive tender process. This impact on competition should also be taken into account by the AER in deciding who to appoint as RoLR.

Please contact Alex Fleming, Legal & Regulatory Manager on (03) 8807 1132 if you would like to discuss this further.

Yours sincerely



Domenic Capomolla
Chief Executive Officer