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National Retailer of Last Resort Scheme

Dear Tom

United Energy and Multinet (the businesses) appreciate the opportunity to comment on the development of the National Retailer of Last Resort (RoLR) Scheme.

The AER has issued the following documents for consultation:

- Draft Retailer of Last Resort Plan;
- Draft Retailer of Last Resort guidelines;
- Draft Retailer of Last Resort statement of approach; and
- Notice of draft instruments, Retailer of Last Resort (RoLR) guidelines, RoLR plan and RoLR statement of approach.

The businesses have provided comments in relation to cost recovery matters and the RoLR plan in the Attachment. In summary;

- It would be useful to clarify whether the preparation costs attributed to a backup RoLR are also able to be recovered through RoLR cost recovery applications (for preparation costs);
- The businesses are supportive of the AER encouragement to policy makers to further consider other emergency measures should a default RoLR fail;
- The businesses recommend that the TNI allocation list be reviewed for accuracy and completeness at least every three years when the default/backup RoLRs may be reassigned;
- The businesses welcome the AER statement that they will take account of any potential impacts which the distributor payment determination may have on distributors and will consult with affected distributors prior to making a determination;

- The businesses seek assurance from the AER that distributor recovery of RoLR cost recovery payments is able to occur where recovery is across pricing determinations or across access periods; and
- The businesses seek assurance from the AER that revenue foregone through unpaid distribution charges is a cost within the meaning of the relevant clauses in the Rules for distributor's recovery in a retailer insolvency event.

Please feel free to call me on (03) 8846 9856 if you wish to discuss any aspects of this response.

Yours sincerely

Verity Watson
Manager Regulatory Strategy

Attachment

RoLR preparation costs

The businesses recognise that the default RoLR is able to submit a RoLR cost recovery application to the AER within 9 months after being appointed a default RoLR under the Retail Law.

The AER notes that default RoLR arrangements are likely to be a matter for jurisdictions within their transitional arrangements which will be passed in each jurisdiction on different dates. The AER also notes that they may have to make some default appointments prior to NECF commencing where there is no existing default RoLR.

On this basis the businesses understand that the AER will need to receive RoLR cost recovery applications (for preparation costs) around the end of 2012 or at the latest by the end of March 2013.

The AER paper notes that there is a default RoLR appointed which is generally the local area retailer. The AER considers that there is also a need for a backup RoLR in case the default RoLR fails. Backup RoLRs could be the remaining incumbents or new entrant/mid-sized retailers.

Certainly the AER recognises that a large retailer failure may need to be considered based on TNI allocation to provide a better sharing of the load and avoid cascading failure, particularly given the market shares of AGL, Origin and TRU. It is not entirely clear whether the preparation costs attributed to a backup RoLR are also able to be recovered through RoLR cost recovery applications (for preparation costs).

The businesses also concur with the AER view that if a default RoLR were to fail the provisions in the retail law may be insufficient to prevent cascading failures in the absence of other market interventions. The businesses are supportive of the AER encouragement to policy makers to further consider other emergency measures. Particularly where a single retailer authorisation could result in a gas and an electricity RoLR which the market has as yet not experienced.

TNI List RoLR application

The AER notes that a large retailer failure may require the allocation of RoLR based on a list of TNIs. The businesses note that when Victoria consulted on this approach for a local area retailer failure, the list was not up to date. The businesses recommend that the TNI allocation list be reviewed for accuracy and completeness at least every three years when the default/backup RoLRs may be reassigned.

Distributor payment determination

The businesses welcome the AER statement that they will take account of any potential impacts which the distributor payment determination may have on distributors and will consult with affected distributors prior to making a determination. The businesses are also supportive of the AER pragmatic view that they will take into account whether a distributor payment determination is likely to cause short term funding constraints on distributors and hence will seek to share the payment liability across a number of distributors whilst recognising that small amounts of costs to other distributors would incur significant administrative costs.

Distributor payment determination cost recovery

The businesses note that any approved RoLR cost recovery determinations are automatically pass through amounts for the distributors impacted by the AER payment determination and there is no materiality threshold. The businesses support this approach.

Distributor's cash flow is already impacted when a retailer fails in relation to unpaid distribution use of system charges and possibly transmission use of system charges. The distributors need to manage this cash impact and the impact of fully funding the RoLRs impacts potentially further exacerbating the need for short term funds.

The businesses are disappointed by this approach; however we recognise and support the AER view that distributors are able to receive a time value of money component by allowing a return at the approved weighted average cost of capital from the distributor's last price review/access arrangement.

The AER will approve such adjustments as part of the distributor's annual pricing proposal. The businesses seek assurance from the AER that distributor recovery of RoLR cost recovery payments is able to occur where recovery is across pricing determinations or across access periods.

Recovery of distributor RoLR costs

The AER note that the National Gas (Retail Support) Amendment and the National Electricity (Retail Support) Amendment introduces a new pass through event for the recovery of unpaid distribution charges which a distributor may incur due to a retailer insolvency.

The businesses infer that it is the AER's view that revenue foregone through unpaid distribution charges is a cost within the meaning of the relevant clauses. The drafting of NER 6.6.1 refers to the positive change event which is a retailer insolvency event; the increase in costs must... be taken to be a cost that can be passed through. The businesses understand that the policy intent is that the unpaid network charges are all recoverable charges in a retailer insolvency event or a RoLR event created from market suspension. The costs built into network tariffs include depreciation of assets and other relevant pass through amounts including feed in schemes etc that will not be increased costs arising from the event. The approach of the AER is that the NER allows these costs to be recovered. The businesses seek assurance from the AER in this regard.

RoLR plan

The businesses understand that a market suspension notice may trigger the RoLR event for a retailer in one fuel only, or possibly even in one jurisdiction only. It would be useful if the various templates RoLR notices were specific about the retailer name, fuel impacted and jurisdictions impacted, for example the press release and Q and A factsheet. If the term electricity or gas is used and jurisdiction specified, this is likely to lead to an improved customer awareness of how it might impact them.

The Expression of Interest (EoI) forms to be an additional RoLR with a firm or non firm offer do not need the note that the AER acceptance of the any default RoLR EoI's will be subject to transitional arrangements. These forms are not an EoI for the default RoLR, hence the AER note is not required.