



9 July 2013

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Lodged online at: www.aemc.gov.au
Project number EMO0024

Dear Sir/Madam

Re: AEMC First Interim Report - NEM financial market resilience

Thank you for the opportunity to comment on the *Australian Energy Market Commission (AEMC) Interim Report - NEM financial market resilience* (the Report).

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy and water consumers by receiving, investigating and facilitating the resolution of their complaints. EWOV's interest in responding to the Report is based on our extensive experience in handling customer complaints.

In the event that a large energy retailer collapses, energy Ombudsman schemes would have a key operational role in ensuring the smooth transition of customers under the proposed special administration regime. EWOV would like the AEMC to consider this role when making its recommendations to amend to the current Retailer of Last Resort (ROLR) regime. EWOV's comments, set out below, are based on our experience and highlight what we see as considerations that should be taken into account in the design and formation of a special administration regime.

Prompt communications are critical

The collapse of a large retailer would cause a significant increase in customer enquiries and complaints to EWOV and other energy Ombudsman schemes. The establishment of a special administration regime will require a prompt and clear communications plan to inform all affected parties. EWOV will need sufficient prior warning to give us time to prepare and implement the necessary operational strategies to handle the increased caseload and prepare resources to effectively manage enquiries and complaints from affected customers.

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EWOV would like to see an open and collaborative communications channel between our office and the special administration regime so that updates can be quickly provided to help us resolve the complaints of affected customers. We would also commit to providing regular information to the administrator of the failed retailer, such as case data and common complaint issues.

EWOV suggests that Ombudsmen schemes are consulted in the planning of a special administration regime and participate in the proposed communication strategy. This provides us the opportunity to share our experiences of previous ROLR events and the customer concerns that would likely arise. This information would be valuable and in the creation of effective management protocols for the administration process.

Financial impact on EWOV

As well as a direct impact on customers, the collapse of a large retailer could potentially have adverse financial flow-on effects for EWOV and other Ombudsman schemes. EWOV is an industry-funded scheme financed by a 'pay-per-case' principle. Accordingly, there is a real risk that a failed large retailer will not be able to pay for the services we would provide to the many affected customers. It would be unfair if substantial incurred costs were then absorbed by our other scheme participants.

We support the comments made by the Energy & Water Ombudsman NSW (EWON) about the adverse financial impact of a ROLR event on Ombudsman schemes and the increase in workload, made in its submission to the AEMC during the Options Paper consultation in this matter¹. In its submission EWON stated:

'EWON believes that a sudden failure of a major retailer could place energy ombudsman schemes at significant financial and operational risk.'

The limits of EWOV's jurisdiction

It is important to consider that in the event of a special administration regime, EWOV would no longer be able to investigate most of the new cases involving the failed retailer as the company would be overseen by an administrator - a third party that is not an EWOV scheme participant. EWOV takes an inclusive approach when determining our jurisdiction, however most matters related to the administration of the failed retailer are outside EWOV's jurisdiction, as

¹ See <http://www.aemc.gov.au/Media/docs/Energy-and-Water-Ombudsman-NSW-c1a92035-2274-4ade-bef4-fe840dafaf20-0.pdf>

prescribed by our Charter². We would establish our jurisdiction on a case-by-case basis as complaints arise.

The majority of customer contacts with EWOV would either be referred to the administrator or, if the matter has been previously discussed unsuccessfully with them, then to Consumer Affairs Victoria (CAV) in relation to the administrator's work. This may leave affected customers disadvantaged as they would not have access to EWOV's dispute resolution expertise and industry knowledge.

The Jackgreen experience

EWON's submission during the Options Paper consultation outlined the challenges it faced during the collapse of Jackgreen, a small electricity retailer operating in Victoria, New South Wales and Queensland.

Jackgreen was suspended from participating in the National Energy Market on 18 December 2009. About 3,000 Victorian customers were affected by this retailer suspension, compared to around 45,000 customers in New South Wales.

In September 2010, EWON produced a report titled '*Jackgreen - the failure of an energy retailer - the perspective of the Energy & Water Ombudsman NSW in dealing with Jackgreen customer complaints*'³. The report raised several challenges that EWON faced before and after Jackgreen was suspended from the market. We trust that the important matters raised in the report will assist the AEMC to understand the role of Ombudsman schemes in a special administration regime, so that customers have a smooth transition to a new retailer.

The impact of the Jackgreen ROLR event on EWOV was to a much lesser extent than that in New South Wales. From 22 December 2009 to 24 May 2010, EWOV received 57 Jackgreen-related cases, the majority of which (due to our jurisdiction) resulted in the customer being referred to the administrator to resolve their concerns. A small number of customers were also referred to CAV for assistance with their complaint.

In the unlikely event that a large retailer serving a considerable portion of the energy market collapses, then, based on the Jackgreen ROLR experience, EWOV could potentially have to deal with an influx of thousands of cases. The ratio of EWOV Jackgreen ROLR cases to the number of its Victorian customers equated to one EWOV case for every 53 Jackgreen customers (1:53).

² See clause 4.1 of EWOV's Charter - http://www.ewov.com.au/_data/assets/pdf_file/0017/4517/EWOV-Charter_30May2006.pdf

³ See http://www.ewon.com.au/ewon/assets/File/Reports/EWON_Jackgreen_Report_Sept10.pdf

The big three energy retailers operating in Victoria all have over 630,000 electricity customers⁴. Using the same 1:53 ratio, this would equate to almost 12,000 extra cases for EWOV to handle within a short period of time. This highlights the importance of early communications and engaged consultation before and during a special administration regime so that EWOV can implement effective strategies to handle this increased workload.

We would welcome further discussion of this matter with the AEMC and trust that these comments are useful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on (03) 8672 4272.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', with a stylized flourish at the end.

Cynthia Gebert
Energy and Water Ombudsman (Victoria)

⁴ See <http://www.esc.vic.gov.au/getattachment/edd78ebc-e203-4bea-86aa-8c8de7afade7/Energy-retailers-comparative-performance-report-Cu.pdf>