

19 October 2016

Attention: Mr John Pierce  
Chair  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Via email: [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)

**Draft Rule Determination on the *National Electricity Amendment (Market Participant Suspension Framework) Rule 2016***

Dear Mr Pierce

The ENA welcomes the opportunity to make a submission to the Australian Energy Market Commission (AEMC) in response to the *Draft Rule Determination on the National Electricity Amendment (Market Participant Suspension Framework) Rule 2016* published by the AEMC on 8 September 2016.

The Energy Networks Association is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia.

**Relevant liabilities must include network charges**

The objective of the review was to improve the financial resilience of the National Electricity Market (NEM) by enabling the Australian Energy Market Operator (AEMO) to allow a financially viable participant to remain operational under external administration. The Draft Rule and Information Sheet refer to a defaulting Market Participant being able to meet its relevant liabilities under the National Electricity Rules. However, the Draft Determination appears to be in conflict with this stated objective and Rule drafting in stating that AEMO would not be able to include liabilities for network charges due to a lack of time. Network businesses may be able to provide the AEMO with estimated network charges liability and accruing daily liability based on monthly network billing within hours.

Further, the draft rule does not require the AEMO to assess whether the Market Participant is likely to meet its financial obligations towards network service providers. If participants under external administration are not able to meet their network costs incurred under the Rules, then the bad debt contagion is likely to grow, with network businesses being left with a growing amount of unsecured debt.

In the Final Determination, the AEMC should make it clear that a party under external administration needs to continue to meet relevant liabilities under the NER, including the payment of network charges

under Chapter 6B and also needs to meet the requirements to pay network charges in Victoria. AEMC has clarified that if the Market Participant continues to operate they must meet wholesale market settlement and prudential payments. Network service providers should be afforded the same level of security by AEMO arrangements with the external administrator so that customers can still continue to be supplied with safe and reliable services.

### **Non suspension should be supported with robust retailer insolvency pass through arrangements at the same time**

The ENA has previously raised concerns about accumulating unpaid network charges or bad debt that may not be recoverable from the external administrator. The AEMC Draft Determination does not appear to address this matter other than to suggest that the Commission is also considering retailer insolvency event and credit risk arrangements in a further rule change.

The Draft Determination appears to link external administration, then a retailer of last resort (ROLR) event and the ability to recover via an insolvency 'pass through' event. As previously highlighted by the ENA, it remains concerning that a 2014 rule change request related to the retailer insolvency events was not progressed in a timely manner. This is a procedural correction requested by the COAG Energy Council related to a drafting error first introduced four years ago in 2012. The ENA reiterates its request that the rule change related to retailer insolvency events be progressed forthwith. It is important to implement the COAG Energy Council's explicit policy intent that no materiality threshold should apply in such events, and to clarify the scope of the charges (e.g. to include Transmission Use of System (TUoS) payments).

The ENA notes that the AEMC has consolidated the consideration of the COAG Energy Council's rule change request related to the retailer insolvency cost pass-through provisions with AGL's retailer-distributor credit support requirements rule change request. The two requests are being considered as one request. Further, the ENA notes that the AEMC will make a draft determination and, if needed, a draft rule, on the Retailer-Distributor Credit Support Requirements rule change proposal on 27 October 2016.

The ENA considers the links between the Market Participant Suspension Framework and the Retailer-Distributor Credit Support Requirements rule change should be considered and that elements of the Retailer-Distributor Credit Support Requirements rule change relating to retailer insolvency events should commence and take effect on the same day as the Market Participant Suspension Framework Rule Change commences. This would address the potential for increasing levels of unpaid network charges while mitigating the risk of impacts on networks and their customers due to the insolvency of a retailer and delays in creating a ROLR event.

### **Correct the credit rating scores for Dun and Bradstreet**

The Draft Determination places reliance on either current network service provider credit support arrangements or the Retailer-Distributor Credit Support Requirements rule change being finalised. If this Rule proposal for market suspension is finalised and commences before the Retailer-Distributor Credit Support Requirements rule change, then the AEMC must maintain the efficacy and accuracy of the National Electricity Rules and realign the Dun and Bradstreet credit ratings to those of Standard and Poor's. The intent of this request is not to change the credit risk arrangements between retailers and network service providers but rather to realign and correct the outdated table in Chapter 6B. ENA members would be happy to provide the AEMC with advice on this which the Commission could then confirm with Dun and Bradstreet. It is important that the AEMC administer the Rules such that they remain contemporary and aligned with the policy intent, as rating agencies change their scaling.

The Dun and Bradstreet ratings should be corrected and commence and take effect on the same day as this Rule commences. The ENA recommends this approach on the basis that other aspects of the proposed credit risk fund may take longer to develop and implement.

**Credit support triggers should include a non-suspension notice**

The ENA supports the transparency and publication of a non-suspension notice naming the retailer or Market Participants under external administration. The ENA understands that a non-suspension notice could be withdrawn at any time or the Australian Energy Regulator (AER) (or the Essential Services Commission in Victoria) could invoke a ROLR event at any time.

The current NER enables a network service provider to request credit support if a retailer is experiencing financial problems, e.g. under 6B.B3.5 (2) which enables a network service provider to request credit support where the AEMO makes a claim on any credit support held by the AEMO. The ENA recommends that this clause be extended to cover the non-suspension arrangements proposed by this Rule by adding the words "or AEMO issues a non-suspension notice."

If further information is sought on this matter, please contact Ms Kate Healey, Director Regulation, on 02 6272 1516 or by email on [khealey@ena.asn.au](mailto:khealey@ena.asn.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'John Bradley', is positioned above the printed name.

John Bradley  
**Chief Executive Officer**