

19 March 2012

Submission - Retail Default Discussion Paper

Dear Sir/ Madam

Thank you for the opportunity to provide a submission on the Retail Advisory Group's Discussion Paper on Retail Default.

Simply Energy agrees with the Retail Advisory Group's preliminary conclusion that there is currently no effective mechanism for managing retailer default.

Simply Energy therefore does not support Option 1 (no change) as this would continue the existing situation.

Certainty of outcome and timing

We believe that the key matter to be addressed is certainty. The current scenario enables defaulting retailers to go on accumulating losses without a satisfactory end point, and does not provide a resolution for consumers.

Therefore any solution needs to provide certainty as to both outcome and timing.

However, the requirement for certainty needs to be balanced against the desirability of ensuring viable retailers continue, or if they cannot, that a commercial resolution is reached if possible.

There is a real risk for any retailer that it can be pushed into default as a result of a temporary cashflow crunch arising from prudential calls for which the retailer has insufficient funds and insufficient time to collect from customers or hedge counterparties.

This is not a situation that can be entirely protected against because of the Rules have limited recognition of hedging instruments in the calculation of prudential exposure e.g. they do not recognise ASX Futures, caps, or receivables linked to spot market final prices. This means a perfectly hedged retailer could theoretically face an infinitely large prudential call. However, such a retailer may in fact continue to have a viable retailing business. It would be value-destroying, as well as inconvenient and potentially costly to consumers and other industry participants, to enforce a transfer too early.

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Proposal

Options 2 & 3

We therefore propose that Options 2 and 3 are both implemented, so that:

1. the Clearing Manager has the power to appoint a Receiver. This would provide for an independent, experienced and qualified person to assess whether the defaulting retailer was in fact a viable business. The Receiver could then decide to:
 - (a) continue to trade; or
 - (b) seek to realise the assets of the business – which, as identified in the Discussion Paper, is largely the customer base. The Receiver could either attempt to sell the customer base (which effectively equates to a retail transfer by commercial means) or decide that is not feasible and recommend a regulated transfer by the Electricity Authority.
2. The Electricity Authority has the power to transfer customers to other retailers. This should be exercised in consultation with the Receiver in the following circumstances:
 - (a) if the Receiver decides the business is not viable; or
 - (b) if the Receiver has tried but been unable to sell the customer base within a specified time (or has sold part of it but there are residual customers).

Rules to this effect would provide a mechanism to put a definite stop to the accumulation of losses on the part of the defaulting retailer, while maintaining the possibility of realising some value for the retailer. Regulatory transfer is needed to provide an effective backstop but given the inconvenience, transaction cost and potential costs for the transferee, it should be a remedy of last resort.

Backdated Switching

We consider that as part of the regulated transfer (which may be achieved through any one of a variety of mechanisms) it is imperative that the Electricity Authority has the ability to backdate the switch to an earlier date from the date of actual transfer.

“Stopping the clock” on a retailer’s responsibility for its ICPs would provide the Receiver and the Electricity Authority the necessary time to implement a solution, while limiting (and providing certainty) on the time over which the retailer’s further losses could accrue.

The backdated switch date would be preset – for example, one week after the date of default, even though the actual date of transfer would not be known until the above processes have been worked through.

We believe that these proposals would address the current uncertainty retain the possibility of the retailer continuing and provide a commercial or (if necessary) regulatory resolution to a default situation.

Stephen Peterson

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Simply Energy Limited