



22 June 2023

Australian Energy Market Commission  
GPO Box 2603  
SYDNEY NSW 2000

Lodged electronically: [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)

Reference: RPR0016

Dear Sir/Madam,

**RE: Submission to AEMC Review into the arrangements for failed retailers' electricity and gas contracts, Directions paper**

Origin Energy (Origin) appreciates the opportunity to provide a response to the Australian Energy Market Commission's (AEMC) Review into the arrangements for failed retailers' electricity and gas contracts.

The most critical element of a retailer of last resort (RoLR) framework is to ensure that the designated RoLR can recover their costs from the event with certainty and in a timely manner. These conditions are vital to allow the RoLR to manage their risk and avoid contagion.

A RoLR event can involve substantial costs for the designated retailer and impact the financial stability and market standing for even very large retailers. Cost recovery provisions should be clarified to ensure that all legitimate costs incurred by the designated RoLR are recovered in a timely manner. Given the complexity and often unique characteristics of a failed retailer, it is important that the recovery scheme retain sufficient flexibility to accommodate differing circumstances of individual RoLR events. On this basis, we recommend that the AEMC avoid adopting a prescriptive approach to the specification of claimable costs.

We agree in principle that, to the extent possible, costs should be recovered from the failed retailer. However, this is not necessarily a straightforward process, especially where the failed retailer is insolvent. The AEMC proposal to establish the AER as a secured creditor is likely to be difficult to implement and may result in unintended consequences, including for example increased finance costs for retailers. We consider that the potential risks associated with this approach do not justify pursuing the approach.

The current physical supply trigger remains appropriate for gas directions. However, where a designated RoLR agrees to take-up the failed retailer's gas supply contracts, we believe the direction period should be extended to match the individual contract term. This would prevent the failed retailer from frustrating the transfer process or profiting from the sale of contracts.

In principle, we agree that the benefits or costs associated with a gas direction should be shared with the gas customers that have transferred across to the designated RoLR. However, it is not immediately clear how this can be achieved in practice because isolating the benefits/costs attributable to individual residential customers (from a portfolio of supply costs) is not straightforward nor is the development of individual charges (outside the standing offer).

Origin's response to questions identified in the paper are set out below at Attachment A.

## Attachment A

### Question 1: What improvements should be made to the RoLR cost recovery framework?

1. Should the costs that can be claimed by a designated RoLR be defined specifically? Please specify what costs should be claimable and how they would be identified. Please also comment on whether these costs should be in reference to the DMO for small customers and not available for customers not subject to the DMO?
2. What period after the RoLR event should market costs be able to be recovered by the designated RoLR? Please explain and provide evidence.
3. How beneficial would progressive or estimated payments be to reducing cash flow issues for the designated RoLR? Are these benefits reduced or removed if the market costs that can be claimed are clarified? Please explain and provide evidence.

A RoLR event can involve substantial costs for the designated retailer and impact the financial stability and market standing for even very large retailers. Origin supports the designated retailer being able to recover the full costs associated with a RoLR event, including wholesale and/or hedging costs. Failure to do so unnecessarily penalises the designated retailer and risks further contagion. A clear process and right for cost recovery is a key element to making the framework commercially viable and minimising regulatory intervention.

We agree that the cost recovery provisions should be clarified to ensure that all legitimate costs incurred by the designated RoLR are recovered, including for example working capital, a competitive margin on costs and all compliance costs (e.g. environmental costs and jurisdictional scheme costs). However, it is also important that the AEMC retain sufficient flexibility to accommodate the complex and often unique circumstances associated with individual RoLR events. On this basis, we recommend that the AEMC avoid adopting a prescriptive approach to the specification of claimable costs and rather ensure that the framework does not restrict the designated retailer from seeking recovery of all legitimate RoLR costs.

Referencing claimable small customer costs to the default market offer (DMO) for small customers is an appropriate starting point, however an allowance for financing costs may also be required if significant costs are incurred in a relatively short timeframe.

Based on experience to date, we consider that the current nine-month period to present a cost claim is appropriate. A key concern however is how quickly the designated retailer's RoLR costs are reimbursed. Any delay in providing cost recovery to the designated RoLR introduces cash-flow issues for the designated retailer and potential contagion risk. To address this issue, we consider the AEMC should establish a process for partial payments or full payment based on estimated costs with a subsequent true-up once actual costs are determined. The upfront payments should be based on initial cost estimates provided by the designated retailer using available information. The subsequent true-up process where the distributor pays the retailer for any cost estimate shortfall (and vice versa) ensures that customers are not financially disadvantaged.

To the extent possible, we encourage the AEMC to pursue alignment between the NECF and Victorian RoLR schemes to allow for regulatory consistency and to reduce duplication of RoLR cost application and assessment processes.

**Question 2: Should we issue the failed retailer with a bill for the costs of its failure?**

1. Do you support the AER issuing a bill to the failed retailer for the RoLR cost recovery scheme? If yes, do you also support the registration of a security interest on the Personal Property Securities Register (PPSR) at the time of retailer registration or this law coming into effect?
2. If yes to 1) are there any likely cost of capital implications for retailer entry, expansion and operation? Please explain and provide evidence.
3. Do you anticipate any issues with the timing of the RoLR cost recovery and the insolvency process? If yes, are these issues made better or worse if the AER is registered on the PPSR?
4. Do you agree a minimum threshold should be applied for this mechanism to reduce the potential barriers to entry or expansion? If yes, what should this threshold be?
5. Are there other issues to which the AEMC should have regard to with this option? Please explain and provide evidence.

The AEMC proposes the introduction of a process to bill the failed retailer for the cost of its failure including registering the AER on the Personal Property Securities Register (PPSR) making the AER a secured creditor in the event of failed retailer insolvency.

Origin supports measures to recoup costs from failed retailers as a means of funding the designated retailer's RoLR costs, but notes there are likely to be significant operational issues. For example, any attempt to recoup costs needs to ensure that recovery extends to the parent or holding company of the failed retailer to ensure that participants are not incentivised to adopt company structures to avoid the RoLR cost recovery process. In addition, we anticipate the proposal would require complex legislative changes that extend into areas outside the energy regulation framework.

Given potential unintended consequences, we question whether the proposal is worth pursuing within the RoLR framework. The AEMC's proposal for the AER to register PPSR securities may adversely impact the credit rating of retailers making it more difficult for retailers to access funding for their business. Moreover, having an additional and significant creditor (ie the AER) is likely to result in an increase in finance costs and potentially impact prudential obligations. This represents an impost on both existing and prospective retailers and has the capacity to create a barrier to entry for prospective new retailers. The potential impacts on retailers including the impact on retail competition need to be weighed against the prospect (and anticipated degree) of cost recovery. Given impediments to enabling the policy within the regulatory framework and the potential for a failed retailer to circumvent the policy e.g. sell 'in the money' contracts prior to the AER's involvement or adopt different corporate structures to avoid payment, the prospect for cost recovery may be limited. On this basis, we do not support the proposal for retailers to register an 'all assets security interest' on the PPSR in favour of the AER.

We encourage the AEMC to examine alternative options for recovering costs from failed retailers. Any option should not inhibit the recovery of RoLR costs by the designated retailer or unnecessarily impact other retailers or the retail market.

**Question 3: What information is necessary for the AER and electricity RoLRs to fulfil their duties, and how should it be collected?**

1. What information should be provided to the AER and designated RoLRs in electricity RoLR events, and how should that information can be most efficiently collected? Please explain and provide evidence.

Information is critical to the success of the RoLR process. The timely provision of information ensures that the AER and electricity RoLRs can perform their duties with minimal disruption to affected customers. We consider the following information represents the minimum requirement:

- A comprehensive summary of the failed retailer's customers and the basis for which they are charged.
- Price, volumes and contract terms of offers to residential and non-residential customers.

- Metering data in NEM12 format.
- Demand profile and location of all the transferred customers - historical and forecast load size and shape over the past year.
- Individualised customer data such as life support customers, exemptions, customers on payment plans, joint account holder etc

More broadly, we consider that the information to be provided from the failed retailer should be updated to align with current retail information requirements. We note for example that significant developments have occurred in customer protection measures over recent years. A number of these developments, e.g. customer correspondence preferences, are not reflected in the RoLR process, unnecessarily complicating the customer communication process and adding additional time and cost for the designated RoLR. For example, the designated RoLR is required to obtain explicit informed consent before providing electronic communications to impacted customers. We consider that the failed retailer information obligations should be reviewed to ensure they are consistent with current protocols and do not present an unnecessary impediment to the transfer of data or the customer transfer process.

To facilitate a smooth transition for customers and minimise the impact on the designated RoLR it is critical that the information is provided in a timely manner. Further, we consider that any information should be provided in a simple and consistent format.

**Question 4: Should the AEMC change the RoLR gas directions triggers?**

1. Are there any clarifications needed in the current triggers for gas directions?
2. If the trigger for gas directions should be expanded to consider issues other than physical supply, what should the criteria be? For example, should the AER have discretion or should there be a defined threshold?
3. If the AER has discretion in issuing the direction, what factors should the AER consider? For example, the financial impact to the designated RoLR or current market prices?
4. Would expanding the RoLR direction triggers impact a retailer's decisions to enter or exit the market or their ability to obtain gas supply? Please explain and provide evidence.

We consider the current physical supply trigger remains appropriate. Adopting alternative triggers such as broader market conditions and pricing involves a degree of subjectivity from the AER. We do not consider that the AER has sufficient insight or experience to make decisions on the potential financial impact of RoLR events and the use of alternative triggers would only create further uncertainty with the process.

**Question 5: Should we increase the length of time RoLR gas directions apply?**

1. Should the RoLR gas directions period be extended from their current level? If yes, how long should directions last? Please explain and provide evidence.
2. Do you consider increasing the RoLR gas directions period will influence or increase the cost of gas retailers obtaining finance or other incentives to becoming a retailer? If yes, please explain and provide evidence.
3. Would there be benefits in a flexible direction period (e.g. a minimum timeframe with an ability to extend to a specified period)? If so, what criteria should apply to extensions?

We agree that the current three-month duration for a direction does not provide enough time for parties to determine the requirements of the transferred customers and the best arrangements to serve these customers. We consider that the relatively short period may impact negotiations with the failed retailer, especially if market conditions remain volatile. In particular, the failed retailer is likely to seek to optimise the value of novating contracts to the designated RoLR or seek to wait out the period and auction the contracts to obtain maximum value.

In the interest of optimising customer outcomes, we consider that the direction period should be extended. Where the designated retailer agrees to engage in negotiations (i.e. take-up the failed retailer's contracts), we consider that the direction period should be extended to the term of the individual contract. This would

ensure that all relevant gas supply contracts of the failed retailer are provided to the designated RoLR and the failed retailer is not incentivised to frustrate the transfer process.

To the extent a defined (shorter) period is chosen, we consider it essential that the framework specify a clear obligation on the failed retailer to novate all relevant gas contracts to the designated RoLR, with the designated RoLR having the right but not the obligation to acquire these contracts. Further, there should be no scope for the failed retailers to profit from gas supply contracts.

**Question 6: Should we introduce negotiation principles?**

1. Do you support introducing negotiation principles? If yes, what should they include?
2. How should compliance with negotiation principles be measured?
3. Is the need for negotiation principles reduced or removed with a longer directions period?

We consider that negotiation principles are not required if the directions period is extended.

**Question 7: Should we remove the mandatory negotiation process?**

1. Do you support removing mandatory negotiations if the RoLR gas directions period is extended?

We support removing mandatory negotiations if the RoLR gas directions period is extended.

**Question 8: How should we clarify what happens to contracts that begin or end during directions?**

1. Should a direction cease when the directed contract expires?
2. How should options to extend contracts be treated under the directions framework?
3. Should contracts that are due to commence in the directions period be subject to direction?

We consider that a direction should cease when a directed contract expires (as per our response to question 5). The RoLR should have the ability to exercise any extension options in the directed supply contract if it is within the direction period. Similarly, contracts due to commence in the directions period should be part of the direction.

**Question 9: Should gas storage contracts be considered in the RoLR gas directions framework?**

1. Should the gas held in storage be transferred to the RoLR?
2. Are there any issues with Victorian gas facilities being included in the RoLR gas directions framework?
3. Do you consider there are competition issues that should be mitigated? If yes, what measures would be appropriate?
4. Are there any issues with the need to be registered in AEMO's systems to use storage facilities?

We support the inclusion of gas storage contracts and all their rights in the gas directions framework. Without access to these contracts, the designated RoLR may be unable to manage fluctuations in gas demand and need to pay for additional gas on the spot market.

**Question 10. How can the benefits or costs of RoLR events be shared with customers?**

1. How should the benefit of receiving the gas under direction be passed to the impacted customers? Does there need to be separate benefit sharing arrangements for large and small customers?
2. Should this requirement be principles based or prescriptive?
3. How should compliance with this principle be measured?
4. Should gas RoLRs be able to claim wholesale costs associated with RoLR events given there is no DMO for gas? If so, what costs should a RoLR be reasonably able to claim and over what time frame?

It is possible that the designated RoLR could obtain a benefit via the supply contracts of a failed retailer. However, given that the retailer has failed it is unlikely they would be sitting on contracts of material value. For this reason, we consider this would be a rare occurrence and likely immaterial.

We agree in principle that the benefits associated with a gas direction should be shared with the gas customers that have transferred across to the designated RoLR. However, in practice this is likely to be difficult to implement at the individual customer level. Isolating the benefits/costs attributable to individual residential customers (from a portfolio of supply costs) is not straightforward nor is the development of individual charges (outside the standing offer). Origin operates a portfolio approach. Under this approach customer outcomes are maximised at an aggregate level with costs (and benefits) shared across the customer cohort rather than attributing costs (and benefits) to individual customers. We believe this represents an efficient and equitable approach to cost attribution. We consider it is not practical or efficient to adjust an individual customer's standing offer tariff to reflect a benefit. Rather, we consider that any benefit should be smeared across all customers. We welcome suggestions from AEMO regarding how benefits are defined and how these can practically be shared with customers.

The AEMC suggests that RoLR costs can be recovered via an increase in prices for transferring customers. We consider this is both impractical and undesirable. The transferred customers will be placed on a standing offer. We do not believe it is fair or equitable to charge these customers a higher price compared to other standing offer customers because their retailer has failed. This has the effect of penalising the customer twice: 1) losing their existing (and possible cheaper) contracts with their failed retailer; and 2) having to pay a higher charge as a consequence. This would be a very poor customer experience.

We consider that AEMO should explore the adoption of a similar cost recovery mechanism for gas as for electricity, with the existing standing offer price acting as the reference cost.

**Question 11. What information is necessary for the AER and gas RoLRs to fulfil their duties?**

1. What level of customer information should a RoLR receive to efficiently manage their new customers?
2. Should there be limits on how the designated RoLR uses certain information? Please explain.
3. Who is best placed to hold and then share the relevant customer data with the designated RoLR?

Information requirements are as per Question 3. Aside from the comprehensiveness of information, our main concern is the timely provision of such information. Any delay adds unnecessary risk for both the designated RoLR and impacted customers.

We consider that AER is best placed to obtain and share data with the designated RoLR.

If you have any questions regarding this submission, please contact Gary Davies in the first instance at [gary.davies@originenergy.com.au](mailto:gary.davies@originenergy.com.au).

Yours sincerely



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