

10 April 2024



Ben Davis
Director
Australian Energy Market Commission
Via online portal
Ref: ERC0371

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Dear Ben

Ausgrid response to AEMC's review into arrangements for failed retailers' electricity and gas contracts - Draft Report

Ausgrid is pleased to provide this submission to the Australian Energy Market Commission (**AEMC**) in response to its review into arrangements for failed retailers' electricity and gas contracts Draft Report (**Draft Report**).

Ausgrid operates a shared electricity network that powers the homes and businesses of more than 4 million Australians living and working in an area that covers over 22,000 square kilometres from the Sydney CBD to the Upper Hunter.

Ausgrid has first-hand experience of recent retailer failure events and welcomes the draft recommendations. Ausgrid requests that the AEMC consider taking the draft recommendations further to better protect customers from retailers who do not practice good governance and to mitigate the risk of retailer insolvency. Obligations on retailers and their directors should reflect the fact that energy is an essential service.

Our submission does not comment on the gas-related recommendations. Ausgrid supports Ergon Energy and Energex's submission and its suggested amendments to the recommendations, and we provide further recommendations. **Attachment A** provides our detailed response to the recommendations.

Ausgrid welcomes the opportunity to discuss its submission with the AEMC. Please contact Naomi Wynn, Regulatory Policy Manager at 0447 044 481 or naomi.wynn@ausgrid.com.au.

Regards,

A handwritten signature in black ink, appearing to read "Alex McPherson", written in a cursive style.

Alex McPherson
Head of Regulation

Attachment A:

Draft Recommendation	Description	Ausgrid response
<p>Recommendation 7: Improve cost recovery clarity through changes to the AER RoLR guidelines</p>	<ul style="list-style-type: none"> • Update the RoLR guidelines to specify the: <ul style="list-style-type: none"> ○ Types of costs the AER would reasonably consider ○ Information needed for the AER to assess the claim ○ Period for which the designated RoLR can claim costs ○ Timing and process the AER will use to consider applications • Amend the cost recovery scheme to require the AER to specify in the guideline for when it will publish the claim, publish a consultation paper and make the cost recovery decision 	<p>Ausgrid supports this recommendation and also recommends that the Australian Competition and Consumer Commission (ACCC) Electricity Retail Code be expanded to include retailer obligations related to maintaining appropriate cashflow so that the broader consumer base do not need to bear the cost of RoLR events.</p>
<p>Recommendation 8: Expand the AER's RoLR information-gathering powers to include third parties to enable designated RoLRs to get the necessary information to service transferred customers</p>	<ul style="list-style-type: none"> • Expand the NERL for regulatory information notices (RIN) to include retailer agents and third parties that hold relevant information for the designated RoLR events 	<p>Ausgrid supports this recommendation and believes it should be expanded so that annual retailer compliance audits include financial accounting assessments. This would:</p> <ul style="list-style-type: none"> • Increase the AER's ability to determine the risk of RoLR events, • Improve customer protections; and • Assess whether the amount held on bank guarantee (proposed in our response to recommendation 9) is sufficient for the retailer's customer base and exposure to the wholesale market. This approach would allow retailers to draw on the bank guarantee at times of wholesale market volatility.
<p>Recommendation 9: Introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure</p>	<ul style="list-style-type: none"> • The AER issues a notice for a pending bill to the failed retailer for the designated RoLR cost recovery scheme. This does not have an immediate impact beyond putting the failed retailer on notice for receiving a bill • AER can issue a bill to the failed retailer. If able the retailer pays the AER the bill for the RoLR cost recovery. The AER then pays the DNSPs what it receives from the failed retailers; and instructs the DNSP to pass this onto customers via a negative cost pass through 	<p>Ausgrid suggests that the AEMC should change this recommendation to enable the AER and DNSPs to have a stronger claim against other creditors, and in turn reduce the size of any unrecovered amount that would otherwise be borne by the entire customer base.</p> <p>Ausgrid agrees with the Ergon Energy and Energex submission that unsecured creditors will rarely be able to recover the retailer's debt after employee entitlements, insolvency practitioner professional fees and secured creditors are paid. This means that the proposal for a bill will not have any practical impact in application.</p> <p>Ausgrid therefore supports the Ergon Energy and Energex recommendation that the AEMC requires retailers to register a security interest in the AER's favour on the Person Property Security Register (PPSR) and that this interest should extend to DNSPs. Ausgrid offers an alternative approach where the AER seeks a statutory charge, which are the powers that the Australian Taxation Office has for taxes during insolvencies to ensure payment of taxes over other creditors. As PPSRs are contractual</p>

		<p>agreements that can be challenged, a statutory charge would offer greater security for the AER and customers to ensure that they do not bear the cost of RoLR events.</p> <p>Ausgrid further strongly recommends that the AEMC implement improvements to retailer authorisation processes. This should include requiring retailers to provide mandatory bank guarantees to the AER, on behalf of the AER and DNSPs' customers, as part of their retailer authorisation criteria under section 90 of the NERL. These guarantees should enable the retailer to cover 3 months of market volatility based on their customer numbers and average customer bills.</p> <p>These guarantees would be reviewed annually based on the above recommendation to include financials as a requirement in annual audits and the bank guarantee could be increased or reduced depending on the retailers' exposure. Reviewing approaches to retailer authorisations should also consider including requirements for Director personal guarantees.</p>
<p>Recommendation 10: Introduce civil penalties for retailers who did not take all reasonable steps to avoid causing a RoLR event</p>	<ul style="list-style-type: none"> Introduce new Tier 1 civil penalty provision for retailers that did not take all reasonable steps to avoid causing a RoLR event. 	<p>Ausgrid agrees with the Ergon Energy and Energex submission that it is unclear what the AEMC means by 'reasonable steps'. The civil penalties drafting should include examples such as failure to pay network and metering charges in a timely manner.</p> <p>Ausgrid also support the Ergon Energy and Energex submission that a civil penalty regime may discourage some retailers from engaging a voluntary administrator. Voluntary administration provides better outcomes as it provides the opportunity for the retailer to potentially survive the administration process.</p> <p>A better approach, as proposed by Ergon Energy and Energex, is to design the scheme to deter retailers from accruing debts such as network and metering charges and incorporate this into the Electricity Retail Code, retailer annual compliance audits and retailer authorisation processes as proposed in Ausgrid's response to recommendations 7, 8 and 9.</p>