

4 April 2024



Australian Energy Market Commission
GPO Box 2603
SYDNEY NSW 2000

Lodged electronically: aemc@aemc.gov.au

Reference: RPR0016

Dear Sir/Madam,

RE: Submission to AEMC Review into the arrangements for failed retailers' electricity and gas contracts, Draft Recommendations

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.

Origin generally supports the AEMC's proposal to enhance the retailer of last resort (RoLR) cost recovery framework. While providing certainty on the types of costs and information required to support a cost recovery application is necessary for a well understood framework, there also needs to be sufficient flexibility in the framework to recognise that individual retailer failures will have their own set of unique circumstances that need to be assessed on a case-by-case basis.

For this reason, we support a principles-based approach. This model should ensure that a RoLR has the right but not the obligation to acquire all relevant gas contracts from the failed retailer. Furthermore, the framework should also ensure that there is no scope for the failed retailer to profit from gas supply contracts.

Because a RoLR will inevitably service its customers using a portfolio approach, it is not practicable to isolate the benefits of an inherited contract and then to attribute these to specific customers. We believe a more reasonable approach would be for the value of an inherited contract to be considered as part of any consideration of net RoLR benefits and for these to be socialised across the RoLR's customer base.

Finally, we continue to hold concerns over the effectiveness of issuing a failed retailer with a 'bill' which covers the designated RoLR's costs of managing transferred customers. We believe that there are several operational issues that require further investigation before proceeding with this recommendation.

Origin's response to the draft recommendations is set out below at Attachment A.

If you have any questions regarding this submission, please contact Caroline Brumby in the first instance on (07) 3867 0863 or caroline.brumby@originenergy.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sean Greenup".

Sean Greenup
Group Manager Regulatory Policy

Attachment A

Draft recommendation 1:

Require the AER to issue gas directions for all RoLR events, except if the AER reasonably considers that issuing the direction would not benefit the designated RoLR or consumers.

We support the AER issuing a gas direction notice for all RoLR events. The direction notice can direct an entity to make gas supply and pipeline capacity available to the designed RoLR. We note that this recommendation is supported by the AEMC's recommendation to expand the scope of the direction notice to also include storage contracts and the gas held in storage by the failed retailer (recommendation 5).

Draft recommendation 2:

Extend the RoLR gas directions period from three to six months.

Origin supports this recommendation. However, we consider the framework should 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.

Draft recommendation 3:

Remove the mandatory negotiation process between the failed retailer and designated RoLR, and the subsequent auction process if negotiations are unsuccessful.

We support this recommendation.

Draft recommendation 4:

Clarify what happens to contracts that begin or end during the directions period. Specifically, that gas directions:

- do not apply beyond the expiration of the directed contract; but,
- do apply for contracts that are due to begin during the direction period and where there is an option to extend at the sole discretion of the retailer.

Origin supports this recommendation. We consider that a direction should cease when a directed contract expires. 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.

Draft recommendation 5:

Expand the RoLR gas directions framework to include storage contracts and gas held in storage.

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.

Draft recommendation 6:

Require designated RoLRs to pass on the financial benefits of RoLR gas directions to customers.

Origin agrees in principle that the benefits associated with a gas direction should be shared with gas customers rather than specifically linking the benefits to transferred RoLR customers. Origin operates a portfolio approach. Under this approach, the prices for residential and small business customers are determined at an aggregate level. This does not mean that in a RoLR event we would retain the financial benefits of an inherited contract. These would be netted off against the costs of the RoLR event as part of any cost recovery application. Any residual benefits would be factored into our portfolio wide market offers.

We believe this is consistent with how any net costs are recovered under the current distribution recovery model set out in the AER's current RoLR Guidelines.

Draft recommendation 7:

Improve cost recovery clarity through changes to AER guidelines.

The AEMC proposes to require the AER to update its RoLR Guidelines to specify the:

- Types of costs the designated RoLR could reasonably apply for.
- Information needed for the AER to assess claims.

We support all legitimate costs incurred by the designated RoLR being recovered, including for example working capital, hedging, financing, competitive margin on costs and all compliance costs (e.g. environmental costs and jurisdictional scheme costs).

While we support the clarification of the type of costs, the cost recovery framework needs to retain sufficient flexibility to accommodate the unique circumstances associated with individual RoLR events. On this basis, we recommend that the AER avoid adopting a prescriptive approach to the definition of claimable costs and ensure that the framework does not restrict the designated retailer from seeking recovery of all legitimate RoLR costs.

The same principle applies to the information needed by the AER to assess claims. While Guidance will help assist with the information that a designated retailer is required to provide for a cost recovery application, flexibility should be retained to allow a RoLR to include and present data that best supports their claim.

Draft 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.

We support this recommendation. 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 further support the information collected to be in a simple and consistent format. This will allow for the processing of data in a more efficient and timely manner.

Draft recommendation 9:

Introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure.

While we support this proposed approach in principle, we still hold concerns with regards to the effectiveness and ability to enforce this approach. As highlighted in our submission to the Directions Paper, there are likely to be operational issues with seeking to extend the framework to bill the failed retailer. It is not clear how costs from a failed retailer will be recovered, how they will be attributed or offset against other RoLR costs or how their recovery will benefit customers.

We are also concerned that the process to recover funds from a failed retailer, where the AER is one of many creditors, could take months, if not years (depending on the size of the company) to resolve. Waiting for an insolvency process to be finalised, will extend the time in which retailers are unable to recoup the costs they incurred through the RoLR process. There would be greater certainty to the market if the designated retailers were given a clear timeframe in which costs would be recouped.

Draft recommendation 10:

Introduce civil penalties for retailers who did not take all reasonable steps to avoid causing a RoLR event.

This recommendation appears appropriate.