Our draft recommendations will improve how retailer failures are managed

The Australian Energy Market Commission (AEMC or Commission) has made 10 draft recommendations to reduce the costs of retailer failures for consumers. Our recommendations are outlined in the draft report. If implemented, they will simplify and improve the RoLR scheme, better protect retailers who take on the failed retailer's customers and lower costs for consumers.

We seek stakeholder submissions on the recommendations by 4 April 2024.

We seek stakeholder feedback on our 10 draft recommendations

Market participants and regulatory agencies gained valuable experience in managing retailer failures during the stressed market conditions since 2022. Using this experience, the AEMC has developed draft recommendations to reduce the costs of retailer failures for customers. Our assessment was also informed by stakeholder submissions to the consultation and directions papers, discussions with market and government bodies, and further analysis.

This draft report seeks stakeholder feedback on 10 draft recommendations that seek to improve how gas and electricity retailer failures are managed. Stakeholder submissions must be lodged with the Commission by **4 April 2024**.

Our recommendations simplify and improve the gas directions framework

We have made six draft recommendations to simplify and improve the RoLR gas directions framework. This will result in the following benefits:

- The proposed changes to extend the duration and broaden the gas directions trigger and scope will give RoLRs better access to gas contracts to serve their new customers. This will decrease the costs designated RoLRs incur as a result of servicing a sudden increase in customers. These decreases in costs will result in lower prices for consumers through the RoLR passing on the financial benefits of gas directions or through smaller cost recovery claims from RoLRs.
- The proposed gas directions framework is simpler and easier to understand. This clarity will decrease risk for RoLRs and administrative burden on the AER, designated RoLRs and failed retailers.

Our recommendations reduce costs and improve incentives for failing retailers in electricity and gas

We have made four draft recommendations to reduce costs and improve incentives for failing retailers in electricity and gas. This will have the following key benefits:

- The bill framework will reduce the costs of the RoLR event that are paid for by consumers via the RoLR cost recovery scheme (to the extent the failed retailer is able to pay the bill).
- The civil penalty and bill frameworks will discourage exit through the RoLR scheme. This is because the failed retailer may receive a bill for the costs of its failure or be prosecuted by the AER if it did not take all reasonable steps to avoid causing a RoLR event.
- Our other proposed changes will make the RoLR scheme clearer and easier to administer. This will reduce risks from uncertainty to the RoLR and decrease the administrative burden on all parties interacting with the scheme. In particular:
    - Clear guidance on RoLR cost recovery will help designated RoLRs prepare high quality claims with the right information and to engage with the process.

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- Expanding the RoLR regulatory information notices to include all entities that may hold the failed retailer's information will enable designated RoLRs to get the necessary customer information quickly.

Process for this review

In October 2022, we self-initiated this review seeking to improve the RoLR arrangements. In May 2023, we completed our stage one feasibility study and refined options for further work. Stakeholder feedback through formal submissions and discussions has been critical to the development of the Commission's draft recommendations. Stakeholders responded to two rounds of consultation: our stage one feasibility study consultation paper, and our directions paper.

The process for the remainder of the review is as follows:

- **22 February 2024:** publish draft report outlining draft recommendations for feedback
- **4 April 2024**: submissions close
- **Mid-2024**: publish final report with final recommendations.

The RoLR scheme is predominantly held in the National Energy Retailer Law (NERL). Therefore, any recommendations from this review will need to be endorsed and implemented by Energy Ministers through a package of law changes.

Energy is an essential service and requires well-functioning retailer exit arrangements

The RoLR scheme is an important mechanism to ensure the continued supply of an essential service to customers in the event of a retailer failure. While the RoLR scheme facilitates a timely transfer of customers to a new retailer it can result in risks and costs for customers and remaining retailers. While the failed retailer's customers are transferred to the designated RoLR, the failed retailer's contracts that managed their wholesale price risks are not. If retailer failure occurs in volatile market conditions with high wholesale prices, the designated RoLR may face financial stress from being exposed to these volatile prices. There may also be a risk of a gas designated RoLR being unable to obtain gas.

There are different arrangements in electricity and gas to manage this risk:

- In gas, the RoLR scheme has a directions framework that allows the designated RoLR to access the physical gas supply and pipeline capacity contracts previously held by the failed retailer. This provides the designated RoLR with the physical gas it needs to support the transferred customers on the same terms and conditions that were available to the failed retailer for the period of the direction.
- In electricity, where electricity is purchased through the NEM, there is no need for directions to make sure the designated RoLR can supply the transferred customers. The designated RoLR purchases electricity through the NEM and manages its cost risk for supplying the transferred customers via hedging contracts.

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22 February 2024

The Commission has made 10 draft recommendations

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 (the retailer who receives the failed retailer's customers) or consumers.

Recommendation 2: Extend the RoLR gas directions period from three to six months.

Recommendation 3: Remove the mandatory negotiation process between the failed retailer and designated RoLR, and the subsequent auction process if negotiations are unsuccessful.

Recommendation 4: Clarify what happens to contracts that are due to begin or end during the directions period. Specifically that gas directions:

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

Recommendation 5: Expand the RoLR gas directions framework to include storage contracts and gas held in storage.

Recommendation 6: Require designated RoLRs to pass on the financial benefits of RoLR gas directions to consumers through lower prices.

Recommendation 7: Improve cost recovery clarity through changes to the AER RoLR guidelines.

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.

Recommendation 9: Introduce a new framework that allows the AER to issue the failed retailer a bill for the costs associated with its failure.

Recommendation 10: Introduce civil penalties for retailers who did not take all reasonable steps to avoid causing a RoLR event.